

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES BY PROJECT LININGS LIMITED

The Customer's attention is particularly drawn to the provisions of clause 7.

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Cancellation Charge: the amount to be charged (in addition to any Preliminary Costs) on cancellation pursuant to clause 8.3 and which shall be, in the event that termination occurs:

- (i) more than four weeks prior to the Start Date 10% of the Charges;
- (ii) less than four but more than two weeks prior to the Start Date 20% of the Charges;
- (iii) less than two weeks prior to the Start Date 30% of the Charges.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5.

Conditions: these terms and conditions as amended from time to time in accordance with clause 9.7.

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

Customer: the person or firm who purchases Services from the Supplier.

Materials: any goods, products or materials supplied in connection with the Services.

Order: the Customer's order for Services as set out in the Customer's written acceptance of the Supplier's quotation

Preliminary Costs: any costs or charges reasonably incurred by the Supplier in respect of the Contract as at the date of termination of the Contract or in consequence of it, including but not limited to

- (iv) charges in respect of hotel bookings
- (v) charges in respect of tools and materials
- (vi) stand down charges in respect of employees, contractors and agents
- (vii) £700 per day or part day in respect of any site survey carried out; and
- (viii) £350 in respect of pre-contract administration charges.

Services: the bund and tank and other substrate repair or refurbishment services or any other services, including any Materials, supplied by the Supplier to the Customer as set out in the Specification.

Specification: the description or specification of the Services provided in writing by the Supplier to the Customer.

Start Date: the date on which the Supplier estimates it will commence the repair or refurbishment or any other Services as set out in the Supplier's quotation or the date on which the repair or refurbishment actually commence, whichever is earlier.

Supplier: Project Linings Limited registered in England and Wales with company number 05984185.

1.2 Construction. In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence.

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.

3. SUPPLY OF SERVICES

- 3.1 The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2 The Supplier shall use all reasonable endeavours to meet any performance dates set out in the Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services. In particular, the Supplier shall not be liable for any delays caused by atmospheric or climatic conditions.
- 3.3 The Supplier shall have the right to make any changes to the Services and/or the Specifications which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.5 Subject to clause 3.6 and 3.7 and subject to the Customer giving notice in writing within a reasonable time of discovery, in the event that some or all of the Services are faulty and such fault is as a result of the Supplier not complying with any warranty in this clause 3 the Supplier may at its option, carry out repairs or replacement services, or refund the Charges in full.
- 3.6 The parties agree that given that the nature and value of the contents of the tanks will vary from contract to contract it is reasonable to expect the Customer to insure against and accept the risk of loss and therefore the Customer will be responsible for the cost of removal, storage or the replacement of the contents of a tank bund or site whilst any such repair works are carried out.
- 3.7 These terms and conditions will apply to any repaired or replacement services.
- 3.8 The Supplier shall not be liable for any failure to comply with the warranties in this clause 3 to the extent that the failure arises because the Customer failed to comply with any of its obligations pursuant to this agreement.
- 3.9 Except as provided in this clause 3, the Supplier shall have no liability to the Customer in respect of the failure to comply with any warranties set out in this clause 3.

4. CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall:
- (a) co-operate with the Supplier in all matters relating to the Services;
 - (b) provide the Supplier, its employees, agents, consultants and subcontractors, with:
 - (i) access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier between 08:00am and 18:00pm and outside

of these hours if the Supplier deems it reasonably necessary given the nature of the Services to be carried out or due to atmospheric or climatic conditions;

- (ii) parking for at least two work vehicles;
 - (iii) adequate and safe storage for the Supplier's materials;
 - (iv) adequate welfare amenities and facilities and water and electrical power to the work area.
- (c) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- (d) be responsible for the safe disposal of any waste resulting from any preparatory works carried out by the Customer or Supplier;
- (e) prepare the Customer's premises for the supply of the Services prior to the date on which the Services are to start and in particular the Customer shall:
- (i) obtain and maintain all necessary licences, permissions, inductions, permits of work and consents which may be required before the date on which the Services are to start;
 - (ii) electrically and physically mechanically lock off and isolate the tanks pipework prior to the Services commencing and to continue the isolation until the Services are complete;
 - (iii) remove any materials or objects which may impede access to the work area unless agreed prior to commencement. Ensure all work areas are safe for the Supplier, its employees, agents, consultants and subcontractors and that there are no hazards or hot works in the vicinity where they may be working;
 - (iv) provide adequate fire equipment and lighting;
 - (v) comply with any reasonable instructions notified to the Customer by the Supplier and any instructions set out in the specification;
 - (vi) advise the Supplier of any potential problems which may be caused by dust escape or build up;
 - (vii) if draining, emptying or clearing the work area, seal all inlets or outlets;
 - (viii) remove all sensitive equipment and any items which may be adversely affected by grit blasting, spraying, pressure washing, mechanically keying, chemically etching or any other action carried out by the Supplier.
- 4.2 Some lining systems use solvent based products containing styrene. Styrene emissions will contaminate certain substances. It is the responsibility of the Customer to remove sensitive items from any areas adjacent where fumes may permeate. In addition, although the Supplier will be responsible for venting the tank/bund, in an indoor environment, the Customer is responsible for the removal of any fumes/odour permeating into the general area of the factory tank room.
- 4.3 Following completion of the Services it is the Customer's responsibility to ensure that they have requested and obtained the Supplier's express authorisation and instructions on when or how to refill tanks or other vessels prior to commencing any refill. The Customer must ensure that the vessel or substrate is allowed to cure prior to refilling and that temperatures in tanks or other

vessels are increased slowly (and in accordance with any other specific instructions of the Supplier) to avoid thermal shock.

- 4.4 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default and the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from any such suspension, delay or failure.

5. CHARGES AND PAYMENT

- 5.1 Subject to clause 5.5 the Charges for the Services shall be as set out in the Supplier's quotation.
- 5.2 Unless expressly agreed otherwise in writing, at the time the Order is submitted the Customer shall pay a deposit equivalent to 30% of the Charges as set out in the Specification. Further staged payments will be due at the times as set out in the Specification. The Supplier shall invoice the Customer for the balance of the Charges on the date on which the Supplier deems that the Services have been completed.
- 5.3 The Customer shall pay each invoice submitted by the Supplier within 30 days of the date of the invoice and in full and in cleared funds to a bank account nominated in writing by the Supplier. Time for payment shall be of the essence of the Contract. All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). The Customer shall pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.4 Without limiting any other right or remedy of the Supplier, including any right pursuant to the late payment of Commercial Debts (Interest) Act 1988, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**Due Date**), the Supplier shall have the right to charge interest on the overdue amount at the rate of three per cent per annum above the then current Bank of England's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 5.5 The Supplier shall be entitled to invoice, and the Customer shall pay, additional charges for costs or losses sustained or incurred by the Supplier, arising directly or indirectly from:
- (a) a Customer Default as defined in clause 4.4;
 - (b) modifications variation or additions to the Specification made at the request of the Customer;
 - (c) modifications variations or additions to the Services or the Specification becoming reasonably necessary as a result of latent defects or internal surfaces of a tank, pool or bund not being visible or being obscured at a pre –commencement site inspection provided that the Supplier shall give written notice of the additional charges as soon as reasonably possible and where reasonably possible prior to the charges being incurred and the Customer shall have the right to elect to accept the additional charges or to

terminate the agreement, subject to payment of the Supplier's Preliminary Costs, within 24 hours of receipt of such notice.

- 5.6 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part.
- 5.7 For the avoidance of doubt the Customer is responsible for payment of all amounts due under this Contract and the Supplier will not accept delays in payment due to force majeure events, or the acts or omissions of third parties including any delays in processing insurance claims.

6. **CONFIDENTIALITY**

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 6 shall survive termination of the Contract.

7. **LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

- 7.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 7.2 Subject to clause 7.1:
- (a) the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed 200% of the Charges in respect of the Contract; and
 - (c) the Supplier shall not be liable to the Customer for any loss whatsoever arising directly or indirectly from:

- (i) the escape or build-up of dust during grit blasting unless the Customer has identified a specific area or item of plant or machinery and the Supplier has confirmed in writing that such area or item would remain dust free; or
- (ii) latent defects in any vessel, bund wall, tank floor or other structure; or
- (iii) the Customer failing to wait for the Supplier's explicit authorisation to refill the tanks or other vessel or failing to follow any of the Supplier's instructions.

7.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

7.4 This clause 7 shall survive termination of the Contract.

8. TERMINATION

8.1 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if the other party becomes insolvent or if an order or resolution is passed for the winding up of the other party or if an administrator, administrative receiver or receiver is appointed in respect of the whole of or any part of the other party's assets or if the other party makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt.

8.2 Without limiting its other rights or remedies, the Supplier may terminate or suspend the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

8.3 Subject to the payment of the applicable Cancellation Charge and the amounts set out in clause 8.4 the Customer may terminate this agreement at any time prior to the Start Date. The parties confirm that the Cancellation Charge represent a genuine pre-estimate of the loss of the Supplier.

8.4 In addition to any applicable Cancellation Charge, on termination of the Contract for any reason (other than where clause 8.5 applies) the Customer shall be liable to pay to the Supplier on demand a sum equivalent to any Preliminary Costs incurred by the Supplier.

8.5 **In the event that the Customer threatens or purports to terminate this agreement or cancel the Contract on or after the Start Date, the Supplier may elect to accept such purported cancellation or termination and the Customer shall immediately become liable to pay the Charges in full.**

9. GENERAL

9.1 Force Majeure: The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or

machinery, fire, flood, storm or default of suppliers or subcontractors or adverse atmospheric or climatic conditions. If the event prevents the Supplier from providing any of the Services for more than eight weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

9.2 Assignment and subcontracting: The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent. The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

9.3 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax or email, on the next Business Day after transmission.
- (c) This clause 9.3 shall not apply to the service of any proceedings or other documents in any legal action.

9.4 Waiver: A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

9.5 Severance:

- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

9.6 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

- 9.7 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the Supplier.
- 9.8 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.