

# **ENGINEERING CERTIFICATION SERVICES**

## **TERMS AND CONDITIONS**



**BRITISH  
ENGINEERING  
SERVICES**

## Interpretation

These terms and conditions, along with the Quotation and Order Acknowledgement form the contract (the “Contract”) between:

- you, the customer or insured named in the Order Acknowledgement; and
- us or, British Engineering Services. Registered office: British Engineering Services Limited, Unit 718, Eddington Way, Birchwood Park, Warrington, WA3 6BA. Tel: 0345 678 2985, info@briteng.co.uk, britishengineeringservices.co.uk

This document sets out the terms and conditions under which we provide Certification Services to you. It is an important document and you should keep it in a safe place. It comprises the following sections:

- Definitions
- Our responsibilities
- Your responsibilities
- General provisions
- Exclusions and extra charges

If there is any conflict between the Order Acknowledgement and any other provision of these terms and conditions, the Order Acknowledgement will prevail.

We only provide services to you on these terms and conditions. These terms will apply to any supply of services by us to you (even if you subsequently send us your terms and conditions) unless we otherwise agree in writing.

Please read these terms and conditions carefully to ensure your requirements are met.

## Definitions

The following words and terms have the meanings shown wherever they appear in the Contract.

**Certification Services** means the services that we provide to you, as identified in the Order Acknowledgement, which include:

- a) identifying and analysing risks in relation to your business or any other services we agree with you in the Order Acknowledgement or as we otherwise agree with you in writing; and
- b) providing you with Reports on the basis set out in the Order Acknowledgement.

**Fee** means our fees and expenses for performing the Certification Services, plus any applicable taxes, which are payable and may be adjusted under clause 9.

**Order Acknowledgement** means the document issued by us to you in which we formally agree to provide you with the Certification Services (subject to these terms and conditions) and which sets out, without limitation, the scope of the Certification Services.

**Quotation** means the quotation issued by us to you setting out, amongst other things, the Fee for the Certification Services.

**Report(s)** means any report that we provide to you following our risk identification and analysing activities carried out as part of the Certification Services.

**References to a “working day”** shall mean any day other than a Saturday, Sunday or any bank or public holiday in England.

## Our Responsibilities

### 1. Certification Services

We will:

- carry out the Certification Services with all due care in a safe manner;
- ensure the Reports comply with applicable industry practice/codes/standards/legislation; and
- provide you with a dedicated consultant or other business contact to co-ordinate all activities relating to the Contract.

### 2. Scope of Certification Services

The scope of our Certification Services is limited to the scope set out in the Order Acknowledgement or as otherwise agreed in writing with you. We have no responsibility to provide Certification Services in respect of any matter outside the scope of such Order Acknowledgement unless otherwise agreed in writing with you.

### 3. Working Hours

We shall carry out the Certification Services during standard working hours (07.00 - 19.00), Monday to Friday excluding bank or public holidays. We may charge an additional Fee for any work we carry out outside these hours.

### 4. Timing

We will carry out the Certification Services in accordance with the timing we agree between us in writing provided that you have complied with clause 7. We shall use reasonable endeavours to meet any performance dates specified in the Order Acknowledgement or otherwise agreed between you and us, but any such dates shall be estimates only and time shall not be of the essence for performance of the Certification Services.

## Your Responsibilities

### 5. Care of Plant

You are responsible for the care, custody and control of your property, equipment, materials, plant and other items which is either the subject of the Certification Services or is necessary for us to undertake the Certification Services.

### 6. Prior information

Before the provision of the Certification Services you will inform us of any matter, including any misuse or incident involving or affecting, or modifications of, any property, equipment, materials, plant or other items, which are relevant for the purposes of the Certification Services.

### 7. Preparation

To enable completion of the Certification Services you must:

- agree with us the period during which the identification and analysis work, or other services as agreed, will be carried out;

- at your expense clean, prepare and make available to us any property, equipment, materials, plant or other items necessary for us to undertake the Certification Services, within a reasonable time before the Certification Services are due to be carried out;
- at your expense, provide safe access to any relevant property and equipment owned or leased by you and provide any staff we need to enable us to perform the Certification Services;
- provide any facilities, help, information or documentation our representatives request while performing the Certification Services; and
- if not readily available to us, or if you have not already provided to us, then provide details of a specified or agreed code or standard in accordance with which the testing and interpretation of test results will be carried out together with all relevant information to enable the test to be satisfactorily carried out in accordance with that code or standard.

## 8. Health and Safety

You have responsibilities under the Health and Safety at Work Act 1974 and the Management of Health and Safety at Work Regulations 1999 to provide a safe working environment for our representatives on your site(s). You must notify our representatives of any site-specific hazards together with the measures you propose to control the risks posed by those hazards prior to us carrying out any Certification Services on your site(s). We will carry out a site-specific risk assessment to ensure the safety of our staff and may refuse to carry out the Certification Services if our risk assessment reveals unacceptable hazards. If as a result of site-specific risk assessment we refuse to carry out the Certification Services the terms of clause 10 (Cancellation Fees) shall apply.

## 9. Payment of Fee

- 9.1 You must pay the Fee in accordance with the Contract or as otherwise agreed between you and us in writing.
- 9.2 The Fee is specified in, or is calculated in accordance with, the Quotation or is calculated in accordance with such other mechanism we agree with you in writing. The Fee may be adjusted upon completion of the Certification Services to take account of any changes you make, with our agreement, to the scope of the Certification Services. Where a significant change is made to the scope of the Certification Services an interim adjustment during the provision of the Certification Services may be agreed. Any adjustment will take into account any Certification Services we have already carried out.
- 9.3 You must pay the Fee in the currency specified in the Quotation within a period of 30 days from the date of the invoice, unless we agree otherwise in writing.
- 9.4 The Fee is based on the information you have provided to us at the inception of the Contract. If anything changes which would result in us incurring additional costs or disbursements in performing the Certification Services, we will charge you for those additional costs and disbursements in addition to the Fee.

- 9.5 We reserve the right to charge for costs incurred by us in relation to time spent or delays caused by your acts or omissions (including, but not limited to, time spent by us where you fail to clean, prepare and make available the property, equipment, materials, plant or other items in accordance with clause 7).
- 9.6 If you are late in paying any invoice, we shall be entitled (in addition to any other right we may have) to suspend provision of any Certification Services (under this Contract or under any other contract we may have with you) to you until such time as those invoices have been paid in full. We shall have no liability to you arising out of or in connection with such suspension. You acknowledge that where we have suspended provision of Certification Services to you under this clause that even when we recommence the provision of Certification Services to you, due to other commitments, this may mean that we are unable to provide Certification Services immediately (and again, we shall have no liability to you arising out of or in connection with such suspension).
- 9.7 If you are late in paying any invoice, we shall be entitled (in addition to any other right we may have) to charge interest on any overdue sum at 8% per annum above the base rate of Barclays Bank plc from time to time, such interest to accrue from the date the sum became overdue until the date the sum is paid.
- 9.8 You must inform us of any issue with any invoice provided by us within 15 working days of the date of receipt of the invoice, otherwise, the invoice shall be deemed to be accepted in full by you.

## 10. Cancellation Fees

- 10.1 In the event that:
- you cancel the Certification Services within 48 hours of the date on which we were due to start carrying out the Certification Services; or
  - you request, within 48 hours of the date which we were due to start carrying out the Certification Services, that you would like to change the start date; or
  - you have not complied with your obligations under clause 7, such that we are not able to carry out the Certification Services; or
  - we refuse to carry out the Certification Services in accordance with clause 8;

then we shall be entitled to charge you in full the Fee which we would have charged you had we been able to carry out the Certification Services in accordance with the Order Acknowledgement (the "Cancellation Fee").

## 11. Your Legal Obligations

Our provision of Certification Services under the terms and conditions of the Contract does not remove your legal obligation to have your activities or interests subjected to periodical audit or other investigation. Should we reveal defects affecting the safety of any process, plant, machinery, equipment or any other aspect

comprising your business, you will need to take appropriate action, which may include removing the relevant item from service and notifying your insurers or other interested parties.

## **General Provisions**

### **12. Termination of Contract**

- 12.1 Either party may end the Contract immediately by giving written notice to the other party if the other party:
- has not met any of its responsibilities under the Contract and has not put the matter right within 30 days of receiving written notice of the problem; or
  - goes into liquidation (whether voluntary or compulsory) or has a receiver, administrator or administrative receiver appointed over all or part of its assets.
- 12.2 We may end the Contract at any time by giving you 30 days' written notice.
- 12.3 We may end the Contract immediately by giving written notice to you where continuing to provide the Certification Service to you would breach any prohibition or restriction imposed by law or regulation (including without limitation should you appear on the Consolidated List of Financial Sanctions Targets in the UK, as amended or updated from time to time).
- 12.4 When the Contract ends, you must pay the Fee for the Certification Services we have provided (plus any taxes, our expenses and disbursements or any additional costs incurred (pursuant to clause 9.4)).

### **13. Force Majeure**

We will not be liable for any delay or the consequences of any delay in the provision of the Certification Services if such delay is due to matters outside our control. We will be entitled to a reasonable period of time to perform the Certification Services in such circumstances. If such delay extends beyond 20 working days the Contract may be terminated immediately by us by giving you written notice.

### **14. Jurisdiction and Choice of Law**

The Contract will be governed by English law (unless we have specifically agreed otherwise with you in writing). The parties submit to the non-exclusive jurisdiction of the Courts of England and Wales.

### **15. Confidentiality**

Unless we have agreed with you otherwise in writing, we will each keep confidential the terms of the Certification Services and all information gained about the other party in connection with the Contract. Neither party may use information about the other for any purpose other than to meet your or our responsibilities under the Contract unless otherwise required by law.

### **16. Limitation of our Liability**

- 16.1 This clause 16 sets out our financial liability to you (including any liability for the actions or failings of our officers, employees, agents and sub-contractors) if:
- we break any material term of the Contract;

- we are negligent in any statement or action we make in connection with the Contract; or
- we are found to be liable in any other way in connection with the Contract;

(and each of the limitations of liability contained in this clause 16 shall apply to any loss suffered as a result of any such act or omission by us).

- 16.2 Nothing in these terms limits or removes our liability for death or personal injury caused by our negligence or fraudulent statements or any other liability which cannot be limited or excluded by law.
- 16.3 If we are liable to you for any reason in connection with the Contract, that liability will be limited in the aggregate to the lower of:
- £3 million; or
  - 3 x the Fee.
- 16.4 We will not be liable to you for any loss of profit.
- 16.5 We will not be liable to you for any loss of revenue, loss of goodwill, loss of opportunity or loss of business suffered in connection with the Contract.
- 16.6 We will have no liability to you for any failure or delay in providing the Certification Services which is caused by your acts or omissions.
- 16.7 We will not be liable to you for any indirect or consequential loss of damage (however incurred).
- 16.8 You acknowledge and agree that hydraulic or load testing of equipment is inherently high risk. All hydraulic or load testing of equipment shall be carried out by you at your own risk and the role of our personnel (including our sub-contractors) present at any such testing shall be as a witness only to certify, where appropriate, the results of the test. In no circumstances shall we or those for whom we are legally responsible be liable for any loss or damage resulting from or arising out of the carrying out of any such testing unless due to our negligence.
- 16.9 This clause 16 shall survive termination of the Contract.

### **17. Indemnity**

You shall indemnify and keep us indemnified in respect of any proceeding, action or claim of any nature whatsoever made or brought against us and all loss, damages, costs and expenses suffered or incurred by us as a result of any third party claim including, but not limited to, a claim by our employee(s) or your employee(s) arising out of your negligence or that of your employees, agents or sub-contractors or your failure to comply with your obligations under the Contract.

### **18. Deductions from our Fee**

You must make payments you owe us under the Contract without taking off or holding back any amount to reflect a refund we owe you or any responsibility that you believe we have not met (whether under the Contract or any policy of insurance in which we have any interest).

#### **19. Employees**

We shall not be obliged to employ any of your employees (or any employees of a third party contractor appointed by you) as a result of or in connection with the Contract or us providing the Certification Services, and you agree to indemnify us against any costs, liabilities and expenses incurred by us as a result of any claim (including for dismissal) or demand of any nature by any such employee against us.

#### **20. Not Exercising Rights**

Failure or delay by a party to exercise any of its rights under the Contract will not preclude that party from exercising that right in the future.

#### **21. Illegal or Unenforceable Terms**

- 21.1 If any court or other authority finds that any term (including any sub-clause or part thereof) of the Contract is illegal or cannot be enforced, that will not affect the other terms of the Contract which shall remain in force.
- 21.2 If a term is found to be illegal or cannot be enforced, we shall agree with you a substitute term that achieves (as far as possible) the aim of the term that is illegal or cannot be enforced.

#### **22. Our Relationship**

Nothing in the Contract creates a partnership or joint venture between you and us.

#### **23. Notices**

Any notice that has to be given in connection with the Contract must be in writing and either be delivered by hand or sent by fax or post to the relevant party's address or fax number set out in the Order Acknowledgement, or any other subsequent address reported to the other party.

#### **24. Rights of Third Parties**

A person who has not entered into the Contract and is not named in the Order Acknowledgement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of the Contract. This does not affect any right a third party has other than under that act.

#### **25. Sub-contracting and Assignment**

We may under some circumstances appoint an appropriately qualified and accredited sub-contractor to perform the Certification Services. We will remain responsible for the acts or omissions of any sub-contractor retained to complete the Certification Services. If you require this provision to be altered or deleted you may agree this with us and the remaining provisions will remain in force. This provision will only be deemed altered or deleted if we have agreed this in writing before entering into the Contract.

You will not transfer or assign your rights in this Contract. We shall be entitled to transfer or assign our interest in this Contract to any subsidiary of British Engineering Services or any holding company of British Engineering Services or any subsidiary of such holding company ("holding" and "subsidiary" being interpreted in accordance with section 1159 of the Companies Act 2006).

#### **26. Changing this Document**

The Contract can only be changed if both parties agree to the changes in writing.

#### **27. Complaints**

We aim to provide you with a first class service. If we have not delivered the service you expect, or you are concerned with the service provided, we would like to put things right. We will fully investigate your complaint, keep you informed, do everything possible to resolve your complaint and use this information to continually improve our service. If you have any concerns these should be raised in the first instance with your usual business contact.

#### **28. Entire Agreement**

The Contract forms the parties' entire understanding of the Certification Services and the arrangement between us. It replaces all previous agreements, understandings and representations about the Certification Services.

Each party acknowledges and agrees that in entering into this Contract it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person that is not expressly set out in this Contract.

#### **Exclusions and Extra Charges**

#### **29. Services not Included**

For the purpose of the Contract, we are not acting in our capacity as an insurer. The Certification Services will not include the provision of advice about insurance generally nor any insurance provided by us.

#### **30. Reports**

If you ask for additional copies of Reports we may charge you an additional fee.

