

ENVIROLAB LIMITED TERMS AND CONDITIONS FOR PROFESSIONAL AND CONTRACTING SERVICES

These terms and conditions (“**Conditions**”) are to be read in conjunction with the **ENVIROLAB Proposal**.

Definitions and interpretation

In these **Conditions**:

- “**ENVIROLAB**” means any company within the **ENVIROLAB** Limited group of companies as identified in the **Proposal**;
- “**Client**” means the contracting party to whom the **Proposal** is addressed and, for whom **Work** is performed by **ENVIROLAB** and the party responsible for payment of the **Fee**;
- “**Dispute**” means any dispute or claim arising out of or in connection with the **Contract** or its subject matter;
- “**Fee**” means the amount payable by the **Client** to **ENVIROLAB** for the **Work** in accordance with the **Proposal** or as otherwise agreed in writing between **ENVIROLAB** and the **Client**;
- “**Work**” means the scope of work detailed in the **Proposal**;
- “**Proposal**” means the written **Proposal** prepared as an offer by **ENVIROLAB** for carrying out the **Work** for the **Client** on the basis of the scope of work, set of rates and associated budget estimate or lump sum price, and the time frame for undertaking that work, all as detailed in the proposal, and includes any amendments to the original proposal that **ENVIROLAB** may propose or accept in writing prior to commencement of the **Work**;
- “**Deliverable**” means any advice, document, report, map, plan, system, data or software produced or provided pursuant to the **Work**;
- “**Act**” means the Housing Grants, Construction and Regeneration Act 1996 (as amended by the Local Democracy, Economic Development and Construction Act 2009);
- “**Payee**” means **ENVIROLAB**;
- “**Payer**” means the **Client**;
- “**Excluded Loss**” means loss of profits; loss of business; depletion of goodwill and/or similar losses; loss of anticipated savings; loss of goods; loss of contract; loss of use; loss or corruption of data or information; or for any special, indirect, consequential or purely economic loss, costs, damages, charges or expenses;
- “**Notice of Adjudication**” means a notice served by either party on the other to refer a dispute to adjudication;
- “**Scheme**” means the Scheme for Construction Contracts (England and Wales) Regulations 1998 (as amended by the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) 2011).

Headings in these **Conditions** shall not affect their interpretation. A reference to a “person” includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment, and includes any subordinate legislation for the time being in force made under it. Where the words “include(s)”, “including” or “in particular” are used in these **Conditions**, they are deemed to have the words “without limitation” following them. The singular includes the plural, unless the context otherwise requires.

Contract

1. Unless stated otherwise in the **Proposal**, the Proposal will be valid for 3 months from the date of the **Proposal**.
2. The **Client’s** purchase order or the **Client’s** acceptance of the **Proposal** constitutes acceptance by the **Client** to purchase the delivery of the **Work** by **ENVIROLAB**, as specified in the **Proposal** on these **Conditions**, or (if earlier) by **ENVIROLAB** starting to perform the **Work**, when a contract for the supply and purchase of the **Work** on these **Conditions** will be established (the “**Contract**”). No counter-offer placed by the **Client** shall be accepted by **ENVIROLAB** other than by a written acknowledgement issued and executed by **ENVIROLAB**. The **Client’s** standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other document shall not govern the **Contract**. In the event of any conflict between the provisions of these **Conditions** and the provisions of the **Proposal**, the provisions of the **Proposal** shall prevail.
3. The **Proposal** is given on the basis that no contract shall come into existence except in accordance with Condition 2.

ENVIROLAB obligations

4. **ENVIROLAB** will exercise reasonable skill, care and diligence in the performance of the **Work** and in accordance with the provisions of the **Proposal**. **ENVIROLAB** will undertake the **Work** in accordance with current health, safety and environmental legislation available at the time the **Contract** is agreed.

Insurance

5. **ENVIROLAB** will maintain adequate insurance cover for statutory insurances which shall include professional indemnity to the value of £1 million for each and every claim provided always that a series of claims arising the same original cause or single source or event is deemed to be one claim and subject to an annual aggregate sub-limit for all claims relating to pollution and asbestos of £1 million, during the **Work**, and for six years after completion of the final **Deliverable**, providing such insurance is available at commercially reasonable rates. If such insurance ceases to be available at commercially reasonable rates, then **ENVIROLAB** will promptly notify the **Client**.

Liability limitation

6. This Condition 6 sets out the entire financial liability of **ENVIROLAB** (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the **Client** in respect of any breach of the **Contract**; any use made by the **Client** of the **Work**, the **Deliverables** or any part of them; and any representation, statement or tortious act or omission (including negligence) arising under or in connection with the **Contract**.
 - 6.1. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the **Contract**.
 - 6.2. Nothing in these **Conditions** limits or excludes **ENVIROLAB’s** liability for death or personal injury resulting from negligence, or for any damage or liability incurred by the **Client** because of fraud or fraudulent misrepresentation by **ENVIROLAB**.

6.3. Subject to Conditions 6.1 and 6.2:

- (a) **ENVIROLAB** shall not be liable for **Excluded Loss**;
- (b) The total liability of **ENVIROLAB** under or in connection with the **Contract** for all claims, whether in contract, tort (including negligence), breach of statutory duty or otherwise, shall be limited to the lesser of (i) £1 million; or (ii) the amount recoverable by **ENVIROLAB** under professional indemnity insurance maintained in accordance with these **Conditions** and in force at the time the claim, or (if earlier) circumstances that may give rise to the claim is, or are, reported to the insurers in question;
- (c) **ENVIROLAB's** liability to the **Client** shall be limited to such proportion of the **Client's** loss and damage as it would be just and equitable for **ENVIROLAB** to pay having regard to the extent of its responsibility for the loss and damage and on the assumption that (i) all other consultants, contractors, subcontractors, project managers and advisers engaged in connection with the project have provided contractual undertakings on terms no less onerous than those set out in this **Contract** to the **Client** in respect to their obligations in connection with the project; and (ii) all the parties referred to in this clause have paid to the **Client** such proportion of the loss or damage that it would be just and equitable for them to pay, having regard to the extent of their responsibility for the loss or damage;
- (d) Subject to the other limitations contained in this Condition 6, if **ENVIROLAB** is in breach of its obligation under Condition 4 to exercise reasonable skill, care and diligence during the delivery or performance of the **Work**, the liability of **ENVIROLAB** will be limited to the reasonable cost of correcting or completing the relevant part of the **Work** or, if necessary, the cost of obtaining replacement work of equivalent standard as that provided for in the scope of the **Work**.

6.4. No action or proceeding for any breach of this **Contract** will be commenced against **ENVIROLAB** after the expiry of six years from the date of the completion of the **Work**, as indicated by the provision of the final **Deliverable**.

Client obligations

- 7. The **Client** must ensure that **ENVIROLAB** is fully briefed and provided with all necessary documentation and equipment to be able to perform the **Work** as detailed in the **Proposal**. In accordance with the Construction Design and Management Regulations (“**CDM**”), the **Client** shall provide all existing information, including any health and safety files, hazardous materials information including asbestos surveys, service location drawings and contact details for all other companies involved with the project, especially the ‘Principal Designer’ and ‘Principal Contractor’. The **Client** will retain the roles of ‘Principal Designer’ and ‘Principal Contractor’ unless notified to, and agreed by **ENVIROLAB**, in writing.
- 8. The **Client** shall ensure that all information, documentation and materials provided to **ENVIROLAB** are complete and accurate in all material respects and the **Client** acknowledges that **ENVIROLAB** shall rely upon any, and all information provided by the **Client**.
- 9. The **Client** will give written requests to **ENVIROLAB** for any variations or additional instructions. **ENVIROLAB** will confirm in writing as soon as practicable any variation to the cost and programme for delivery of the **Work** arising from variations or additional instructions requested by the **Client**. **ENVIROLAB** will not materially alter the scope of the **Work** without the written agreement of the **Client**.
- 10. To the extent (if any) which **ENVIROLAB** is required to act as agent for the **Client** during the proper performance of the **Work**, the **Client** shall indemnify **ENVIROLAB** against all claims in respect of, or arising out of, such agency except where and to the extent that the loss or damage claimed, results from **ENVIROLAB's** negligence.
- 11. The **Client** shall permit **ENVIROLAB** to undertake a credit assessment following acceptance of the **Proposal** and vary the payment terms, should the result be insufficient for the payment sums required. In certain circumstances, payment may be required before commencement of the **Work**.
- 12. Where there is more than one **Client**, each **Client** shall be jointly and severally liable for the **Client** obligations, including but not limited to payment of the **Fee**, under the **Contract**.

Remuneration and payment

- 13. When consultancy services are included in the **Proposal**, the fees charged will cover all consultant time spent on the project, whether at the premises of the **Client** or elsewhere, including travelling. Unless otherwise stated in the **Proposal** or agreed in writing with the **Client**, disbursements and out-of-pocket expenses will be charged at cost plus a 10% handling charge.
- 14. The **Client** will be responsible for paying all the relevant taxes, including VAT or equivalent where applicable. Any amount expressed as payable to **ENVIROLAB** under the **Contract** is exclusive of VAT, unless stated otherwise. Where payments are made by credit card a card transaction fee of up to 2.50% will be added to any sums due. We are unable to show the transaction fee on invoices due to accounting practices applicable to the billing method used by credit card operators.
- 15. The **Fee** shall be calculated and paid in instalments in accordance with the **Proposal**. If not set out in the **Proposal**, the **Fee** shall be invoiced at intervals of not more than one month, beginning no more than one month after **ENVIROLAB** begins performing the **Work**. The **Fee** will be a reasonable assessment of the **Work** performed and not conditional on any milestone or receipt of a **Deliverable**.
- 16. Where the **Proposal** includes any **ENVIROLAB** standard rates for services or works such rates shall be subject to review on the 1 April annually.
- 17. **ENVIROLAB** will forward an invoice to the **Client** for each instalment of the **Fee**. The invoice will specify the sum that **ENVIROLAB** considers will become due on the **Payment Due Date** and the basis on which that sum is calculated. The “**Payment Due Date**” is the date of issue of the invoice and will be the tax point date. The invoice will constitute the “**Payee Notice**” and the invoice value shall be the “**Notified Sum**”. The final date for payment (“**Final Payment Date**”) will be 28 calendar days after the **Payment Due Date**. If the **Client** fails to pay an amount due to **ENVIROLAB** by the **Final Payment Date** and fails to give a **Pay Less Notice**, interest shall be added to the unpaid amount from the **Final Payment Date** until the actual date of payment, which will be calculated on a daily basis at the annual rate of 12% over the annual base rate of the Bank of England or at the statutory interest rate, whichever is the greater. Compensation for late payment of each debt will also be due at the following fixed sums £40 (for debts up to £999.99), £70 (for debts £1,000–£9,999.99) or £100 (for debts over £10,000) in accordance with the Late Payment of Commercial Debts

Regulations 2013 or as stated in any revisions of these regulations. Except as expressly, or by necessary implication, provided otherwise in these **Conditions** (and in particular conditions 13 and 14) or in the **Proposal**, the payment procedure under Part II of the **Scheme** shall be deemed incorporated into this **Contract**, even if the **Contract** is not a “construction contract” for the purposes of the **Act**.

18. Unless the **Client** has served a **Pay Less Notice**, it shall pay the **Notified Sum** on or before the **Final Payment Date**. Not less than 14 days before the **Final Payment Date**, the **Payer** may give to the **Payee** notice of the **Payer’s** intention to pay less than the **Notified Sum** (“**Pay Less Notice**”). A **Pay Less Notice** must specify the sum the **Payer** considers to be due on the date the **Pay Less Notice** is served and the basis on which that sum is calculated.
19. If the **Client** fails to pay in full a **Notified Sum** by the **Final Payment Date** and the **Client** has not given a **Pay Less Notice**, **ENVIROLAB** has the right (without prejudice to any other right or remedy) to suspend performance of all or part of the **Work** by giving not less than seven days’ notice to the **Client** of its intention to do so and stating the ground(s) on which it intends to suspend performance (“**Notice of Suspension**”). Performance will be resumed when the **Notified Sum** (together with any interest payable thereon) has been received. **ENVIROLAB** shall be entitled to claim payment of its reasonable costs and expenses in accordance with Section 112(3A) of the **Act** and the provisions of Section 112(4) of the **Act** shall apply to any relevant time limits for the performance of the **Work**. No liability will be accepted by **ENVIROLAB** for any loss, damage or consequential loss, delay or disruption, however suffered, by virtue of the suspension of the **Work** in accordance with this **Condition**.

Material default and termination

20. The **Client** may notify **ENVIROLAB** of a material default at any time during the **Work**. **ENVIROLAB** shall, within 30 days of receiving written notification, investigate the complaint, determine if a material default has occurred and agree any remedy with the **Client**.
21. **ENVIROLAB** may terminate the **Work** in the event of a material default by the **Client**. The material default must have continued without remedy for seven days after written notification by **ENVIROLAB**.
22. In the event of a material default by the **Client**, the **Client** will be liable for fees up to the date of termination. An additional charge will be made by agreement with the **Client** as compensation for the recovery of costs for the demobilisation, reassignment of personnel and equipment, and any associated loss of profit.
23. On termination of the **Contract** for any reason, the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected.

Dispute resolution

24. Subject to either party’s right to adjudicate a **Dispute** at any time, the parties shall use their reasonable endeavours to resolve any **Dispute** through negotiation or mediation, and the **Dispute** will be referred to the managing director in the case of **ENVIROLAB**, and, in the case of the **Client**, the managing director or equivalent of the relevant division of the **Client**, who will attempt to resolve the **Dispute** within 28 days of the **Dispute** being referred to them.
25. Notwithstanding any other provision in the **Contract**, either **ENVIROLAB** or the **Client** may, by giving to the other a **Notice of Adjudication**, refer a **Dispute** to adjudication at any time under Part 1 of the **Scheme**, and such Part 1 shall take effect as if it were incorporated into this **Condition**. The adjudicator will be a member of the Construction Industry Council (“**CIC**”) selected by the parties or, if they are unable to agree within 7 days of the **Notice of Adjudication** or their selected person is unable or unwilling to act, by nomination by the **CIC**. The Adjudication will follow the ‘Users Guide to Adjudication’ published by **CIC** in 2017.

Sub-contracting

26. **ENVIROLAB** will be entitled to subcontract any part of the **Work** to another consultant, adviser or contractor (the subcontractor). **ENVIROLAB** will remain responsible for the performance of any services performed by the subcontractor.

Confidentiality and data protection

27. The details of the **Proposal** and any supporting information shall remain confidential and not be shared with any third party. During the **Work**, **ENVIROLAB** shall not publish any articles, photographs or other illustrations relating to the project without the written agreement of the **Client**. The **Client** shall not use any trade name or logo of **ENVIROLAB** or of any of the **ENVIROLAB** group companies, nor shall the **Client** disclose to any third party, the involvement of **ENVIROLAB** without the prior written consent of **ENVIROLAB**, unless legally required to do so.
28. All information provided to **ENVIROLAB** by a client and not already in the public domain will remain confidential unless the **Client** authorises its release in writing to specifically named parties in conjunction with assignments, collateral warranties or requirements of a regulatory body.
29. Where **ENVIROLAB** or the **Client** receives any personal data as defined by the General Data Protection Regulations 2018, (“**GDPR**”) they both shall ensure that they fully comply with the provisions of the **GDPR** and only deal with the data to fulfil their obligations under the **Contract**.

Copyright and ownership of documents

30. Any document prepared for the **Client**, on acceptance, can be used under licence by the **Client** solely for the purposes of the **Work** (“**Permitted Purpose**”). Unrestricted reproduction and use for the **Permitted Purpose** are granted to the **Client** but copyright of all documents and drawings remains with **ENVIROLAB**. Without prejudice to the generality of this Condition, **ENVIROLAB** accepts no liability for claims from third parties to whom the **Client** has made known document contents. The **Client** will indemnify **ENVIROLAB** against any such claims arising from such third parties.
31. **ENVIROLAB** shall not be liable for the use of a **Deliverable** for any purpose other than that for which they were provided.
32. **ENVIROLAB** will retain all intellectual property rights and proprietary rights it may have in all information and data reproduced in any **Deliverable**.

Assignment and third parties

33. The **Client** shall not without the prior written consent of **ENVIROLAB** assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the **Contract**. Without prejudice to the foregoing, if the **Client** requests **ENVIROLAB** to consent to an assignment of some or all of the **Client's** rights, the **Client** acknowledges that **ENVIROLAB** is free to give or withhold on reasonable grounds its consent, and that **ENVIROLAB** shall be entitled to charge an additional fee, if not specifically identified in the **Proposal**, for such assignment or for any change of **Client** details.
34. Benefits to third parties through collateral warranties or letters of reliance shall not be provided unless a fee for each warranty or letter is agreed in the **Proposal**. The form of wording used in the warranty or letter shall be provided by **ENVIROLAB** for agreement by the **Client**. Any reasonable changes to the form of wording will be implemented by mutual agreement, however the terms in the warranty or letter cannot offer the third party any greater benefit than the **Proposal** offers to the **Client**.
35. Nothing in this **Contract** confers or purports to confer on any third party any benefit or any right to enforce any term of this **Contract** under the Contracts (Rights of Third Parties) Act 1999.

Waste

36. **ENVIROLAB** will hold any hazardous substances or wastes, including samples and contaminated equipment, arising from the **Work** as agent for the **Client**, whose property such materials will remain. **ENVIROLAB** will make all reasonable efforts to assist the **Client** with the safe handling and disposal of such material; however, the **Client** will be responsible for this disposal and all associated costs if not included in the **Proposal**.

Force majeure

37. **ENVIROLAB** will not be liable to the **Client** if the provision of the **Work** is delayed or prevented by force majeure, meaning any one or more circumstance beyond the reasonable control of **ENVIROLAB**, including, but not restricted to, a failure of the **Client** to provide facilities, access or information; acts or omissions of the **Client's** other suppliers or contractors; fire, flood or storm; unavailability of labour, materials or services; process shutdown; breakdown of plant or machinery; acts of God or the public enemy; riot or civil commotion or war; malicious damage; strikes or labour disputes or industrial action; act or regulations of any government or other agency; failure of a utility service, communications network, or transport network; and the presence of unusually high levels of ionising radiation or radioactive substances.
38. If force majeure continues for more than 90 days, either **ENVIROLAB** or the **Client** may terminate the **Work** by notice to the other. **ENVIROLAB** will be entitled to charge the **Client** for work done prior to the force majeure on the basis provided in the **Contract**. Work done and reasonable and proper fees and disbursements accruing during the force majeure event will be charged at the standard rates for **ENVIROLAB**, unless agreed otherwise in writing.

Notices

39. Any notice to be given under the **Contract** must be in writing and shall be delivered by hand or sent by pre-paid first class (or airmail) post or recorded delivery post to the business address of the party, as stated in the **Contract** or as otherwise last notified in writing by the other party. A notice delivered by hand is deemed to have been received when delivered (or if delivery is not in business hours, 9.00 am on the first business day following delivery). A notice sent by post will be deemed to have been received on the next business day following that on which the notice was posted to an address in the United Kingdom and after five days in the case of an overseas letter sent by air mail.

ENVIROLAB personnel

40. The **Client** agrees not to solicit, either directly or indirectly (including by way of head hunter, employment agency, press advertisement or through related companies), any employee of **ENVIROLAB** for the purpose of offering them full-time, part-time, temporary or contract employment of any kind. In the event the **Client** offers employment to any member of staff at **ENVIROLAB** and that employee chooses to leave **ENVIROLAB** because of the offer received, the **Client** agrees to pay to **ENVIROLAB** a sum which is the greater of £50,000 or 20% of the total employment cost of that member of staff. This condition shall remain in full force both during and for a period of six months after the end of the most recent contract with the **Client** and applies to all **ENVIROLAB** staff whether involved in contracts with the **Client** or not. Upon receipt of the employee's resignation, **ENVIROLAB** will issue an invoice to the **Client** and that invoice will be due and payable upon receipt.

General

41. If any provision in these **Conditions** is or becomes invalid, illegal or unenforceable in any respect, the remaining parts will remain in force and will not in any way be impaired.
42. The **Contract** and any **Dispute** will be governed by and construed in accordance with English law and the parties irrevocably agree that the English Courts shall have exclusive jurisdiction to settle any **Dispute** (subject to the parties having first attempted resolution under conditions 24 and/or 25, if relevant).
43. No variation of the **Contract** or these **Conditions** or of any of the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the parties.
44. The **Contract** constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter. Each party acknowledges that, in entering into the **Contract**, it has not relied on and shall have no right or remedy in respect of any statement, representation, assurance or warranty (whether made negligently or innocently) that is not set out in this **Contract**.
45. A waiver of any right under the **Contract** is only effective if it is in writing and it applies only to the circumstances for which it is given. 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. Unless specifically provided otherwise, rights arising under the **Contract** are cumulative and do not exclude rights provided by law.