

Soil Dynamics (Malaysia) Sdn Bhd Service Terms and Conditions

1. General

- (a) Unless otherwise agreed in writing or except where they are at variance with
 - i. the regulations governing services performed on behalf of government bodies or any other public entity or
 - ii. the mandatory provisions of local law, all offers or services and all resulting contractual relationship(s) between SOIL DYNAMICS (MALAYSIA) SDN BHD (hereinafter, the 'Company') and Customer (the 'Contractual Relationship(s)' shall be governed by these general conditions of service (hereinafter the 'General Conditions')).
- (b) The Company may perform services for persons or entities (private, public or government) issuing instructions (hereinafter, the 'Customer').
- (c) Unless the Company receives prior written instructions to the contrary from Customer, no other party is entitled to give instructions, particularly on the scope of the services or the delivery of reports or certificates resulting there from (the "Reports of Findings"). Customer hereby irrevocably authorizes the Company to deliver Reports of Findings to a third party where so instructed by Customer or, at its discretion, where it implicitly follows from circumstances, trade custom, usage and practice.
- (d) In these Conditions:
 - i. 'Specified Service' means the service to be provided by the Company for the Customer.
 - ii. 'Goods' means the goods which the Company is to supply in accordance with these Conditions.
 - iii. 'Input Material' means any Documents or other materials, and any data or other information provided by the Customer relating to the Specified Service.
 - iv. 'Output Material' means any Documents or other materials, and any data or other information provided by the Company relating to the Specified Service.
 - v. 'Writing' includes telex, cable, facsimile transmission and comparable means of communication.
 - vi. 'Contract' means the contract for the provision of the Specified Service or the contract for the provision of the Specified Service and the purchase and sale of the Goods or the contract for the purchase and sale of the Goods as the case may be.
 - vii. 'Document' includes, in addition to a document in writing, any map, plan, graph, drawing or photograph, any film, negative, tape, disc or other device embodying visual images and any disc, tape or other device embodying any other data.

2. Provision of Services

- (a) The Company will provide services using reasonable care and skill and in accordance with Customer's specific instructions as confirmed by the Company or, in the absence of such instructions:
 - i. the terms of any standard order form or standard specification sheet of the Company; and/or
 - ii. any relevant trade custom, usage or practice; and/or
 - iii. such methods as the Company shall consider appropriate on technical, operational and/or financial grounds.

Soil Dynamics (Malaysia) Sdn Bhd Service Terms and Conditions

- (b) Information stated in Reports of Findings is derived from the results of inspection or testing procedures carried out in accordance with the instructions of Customer, and/or our assessment of such results on the basis of any technical standards, trade custom or practice, or other circumstances which should in our professional opinion be taken into account.
- (c) Reports of Findings issued further to the testing of piles contain the Company's opinion on those piles only and do not express any opinion upon the lot from which the piles were tested.
- (d) Should Customer request that the Company witnesses any third party intervention, Customer agrees that the Company's sole responsibility is to be present at the time of the third party's intervention and to forward the results, or confirm the occurrence, of the intervention. Customer agrees that the Company is not responsible for the condition or calibration of apparatus, instruments and measuring devices used, the analysis methods applied, the qualifications, actions or omissions of third party personnel or the analysis results.
- (e) Reports of Findings issued by the Company will reflect the facts as recorded by it at the time of its intervention only and within the limits of the instructions received or, in the absence of such instructions, within the limits of the alternative parameters applied as provided for in clause 1(a). The company is under no obligation to refer to, or report upon, any facts or circumstances, which are outside the specific instructions received or alternative parameters applied.
- (f) The Company may delegate the performance of all or part of the services to an agent or subcontractor and Customer authorizes Company to disclose all information necessary for such performance to the agent or subcontractor.
- (g) Should Company receive documents reflecting engagements contracted between Customer and third parties or third party documents, such as copies of sale contracts, letters of credit, bills of lading, etc., they are considered to be for information only, and do not extend or restrict the scope of the services or the obligations accepted by the Company.
- (h) Customer acknowledges that the Company, by providing the services, neither takes the place of Customer or any third party, nor releases them from any of their obligations, nor otherwise assumes, abridges, abrogates or undertakes to discharge any duty of Customer to any third party or that of any third party to Customer.

3. Obligations of Customer

The Customer will:

- (a) Ensure that sufficient information, instructions and documents are given in due time to enable the required services to be performed;
- (b) Procure all necessary access for the Company's representatives to the premises where the services are to be performed and take all necessary steps to eliminate or remedy any obstacles to, or interruptions in, the performance of the services;
- (c) Supply, if required, any special equipment and personnel necessary for the performance of the services;

Soil Dynamics (Malaysia) Sdn Bhd Service Terms and Conditions

- (d) Ensure that all necessary measures are taken for safety and security of working conditions, sites and installations during the performance of services and will not rely, in this respect, on the Company's advice whether required or not;
- (e) Inform Company in advance of any known hazards or dangers, actual or potential, associated with any order or samples or testing including, for example, presence or risk of radiation, toxic or noxious or explosive elements or materials, environmental pollution or poisons;
- (f) Fully exercise all its rights and discharge all its liabilities under any relevant sales or other contract with a third party and at law.

4. Intellectual Property Rights

- (a) The property and any copyright or other intellectual property rights in:
 - i. any Input Material shall belong to the Customer
 - ii. any Output Material shall, unless otherwise agreed in writing between the Customer and the Company, belong to the Company, subject only to the right of the Customer to use the Output Material for the purposes of utilizing the Specified Service.
- (b) Any Input Material or other information provided by the Customer which is so designated by the Customer and any Output Material shall be kept confidential by the Company, and all Output Material or other information provided by the Company which is so designated by the Company shall be kept confidential by the Customer; but the foregoing shall not apply to any Documents or other materials, data or other information which are public knowledge at the time when they are so provided by either party, and shall cease to apply if at any future time they become public knowledge through no fault of the other party.
- (c) The Customer warrants that any Input Material and its use by the Company for the purpose of providing the Specified Service will not infringe the copyright or other rights of any third party, and the Customer shall indemnify the Company against any loss, damages, costs, expenses or other claims arising from any such infringement.
- (d) Subject to paragraph 4(c), the Company warrants that any Output Material and its use by the Customer for the purposes of utilizing the Specified Service will not infringe the copyright or other rights of any third party, and the Company shall indemnify the Customer against any loss, damages, costs, expenses or other claims arising from any such infringement.

5. Terms and Payment

- (a) Goods
 - i. Subject to any special terms agreed in Writing between the Customer and the Company and if a credit arrangement has been approved by the Company, the Company shall be entitled to invoice the Customer for the price of the Goods on or at any time after delivery of the goods.
 - ii. Provided that a credit arrangement has been approved by the Company, the Customer shall pay the price of the Goods (together with any applicable Value Added Tax and less any discount to which the Buyer is entitled but without any set-off, counterclaim or any other deduction) within 30 days of the date of the

Soil Dynamics (Malaysia) Sdn Bhd Service Terms and Conditions

Company's invoice, and the Company shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Customer.

(b) Specified Service

The Company shall be entitled to invoice the Customer on or at any time after completion of the specified service, or following the end of each month in which the Specified Service is to be provided or at other times agreed with the Customer. The Company charges and any additional sums payable shall be paid by the Customer (together with any applicable Value Added Tax, and without any set-off, counterclaim or other deduction) within 30 days of the date of the Company's invoice.

- (c) Fees not established between the Company and Customer at the time the order is placed or a contract is negotiated shall be at the Company's standard rates (which are subject to change) and all applicable taxes shall be payable by Customer.
- (d) Customer shall not be entitled to retain or defer payment of any sums due to the Company on account of any dispute, counter claim or set off which it may allege against the Company.
- (e) Company may elect to bring action for the collection of unpaid fees in any court having competent jurisdiction.
- (f) In the event any unforeseen problems or expenses arise in the course of carrying out the services the Company shall endeavor to inform Customer and shall be entitled to charge additional fees to cover extra time and cost necessarily incurred to complete the services.
- (g) The time of payment shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- (h) If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
- i. cancel the Contract or suspend any further deliveries of the Goods or performance of the specified Service to the Customer;
 - ii. the immediate payment of all payments outstanding in respect of the Goods and specified Service and of any other goods, works or services under any other contract notwithstanding the fact that the date for payment may not yet have fallen due;
 - iii. appropriate any payment made by the Customer to such of the Goods or Specified Service (or the goods or services supplied under any other contract between the Customer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Customer);
 - iv. charge the Customer interest (both before and after any judgment) on the amount unpaid, at rate of 1.5% per month (or such other rate as may be established in the invoice) from the Due Date up to and including the date payment is actually received (a part of a month being treated as a full month for the purpose of calculating interest); and
 - v. charge the Customer the cost of recovery of any unpaid amount including any legal costs, disbursements and bank charges incurred.

Soil Dynamics (Malaysia) Sdn Bhd Service Terms and Conditions

6. Suspension or Termination of Services

The Company shall be entitled to immediately and without liability either suspend or terminate provision of the services in the event of;

- (a) failure by the Customer to comply with any of its obligations hereunder and such failure is not remedied within 10 days that notice of such failure has been notified to Customer; or
- (b) any suspension of payment, arrangement with creditors, bankruptcy, insolvency, receivership or cessation of business by Customer.

7. Liability and Indemnification

(a) Limitation of Liability:

1. The Company is neither an insurer nor a guarantor and disclaims all liability in such capacity. Customers seeking a guarantee against loss or damage should obtain appropriate insurance.
2. Reports of Findings are issued on the basis of information, documents, piles and/or calibration items provided by, or on behalf of, Customer and solely for the benefit of Customer who is responsible for acting as it sees fit on the basis of such Report of Findings. Neither the Company nor any of its officers, employees, agents or subcontractors shall be liable to Customer nor any third party for any actions taken or not taken on the basis of such Reports of findings nor for any incorrect results arising from unclear, erroneous, incomplete, misleading or false information provided to the Company.
3. The Company shall not be liable for any delayed, partial or total non-performance of the services arising directly or indirectly from any event outside the Company's control including failure by Customer to comply with any of its obligations hereunder.
4. The liability of the Company in respect of any claim for loss, damage or expense of any nature and howsoever arising shall in no circumstances exceed a total aggregate sum equal to the amount of the fee paid in respect of the specific service which gives rise to such claim or US\$20,000 (or its equivalent in local currency), whichever is the lesser.
5. Notwithstanding anything to the contrary in these General Conditions, the Company shall have no liability for any indirect or consequential loss including without limitation loss of profits, loss of business, loss of opportunity, loss of goodwill and cost of product recall. It shall further have no liability for any loss, damage or expenses arising from the claims of any third party (including, without limitation, product liability claims) that may be incurred by the Customer.
6. In the event of any claim, Customer must give written notice to the Company within 30 days of discovery of the facts alleged to justify such claim and, in any case, the Company shall be discharged from all liability for all claims for loss, damage or expense unless suit is brought within one year from:
 - i. the date of performance by the Company of the service which gives rise to the claim; or
 - ii. the date when the service should have completed in the event of any alleged non-performance.

Soil Dynamics (Malaysia) Sdn Bhd Service Terms and Conditions

- (b) Indemnification: Customer shall guarantee, hold harmless and indemnify the Company and its officers, employees, agents or subcontractors against all claims (actual or threatened) by any third party for loss, damage or expense of whatsoever nature including all legal expenses and related costs and howsoever arising relating to the performance, purported performance or non-performance, of any services.

8. Miscellaneous

- (a) If any one or more provisions of these General Conditions are found to be illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- (b) During the course of providing the services and for a period of one year thereafter Customer shall not directly or indirectly entice, encourage or make any offer to Company's employees to leave their employment with the Company.
- (c) Use of the Company's corporate name or registered marks for advertising purposes is not permitted without the Company's prior written authorization.

9. Governing Law, Jurisdiction and Dispute Resolution

Unless specifically agreed otherwise, all disputes arising out or in connection with Contractual Relationship(s) hereunder shall be governed by the substantive laws of Malaysia exclusive of any rules with respect to conflicts of laws and be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules. The arbitration shall take place in Malaysia and be conducted in the Melayu language.