



## SOUTH57 HIGHWAYS & TRAFFIC MANAGEMENT LTD

### Supply of Services: Standard Terms and Conditions

Your attention is particularly drawn to the provisions of clause 8 (Limitation of Liability).

#### 1. Interpretation

##### 1.1 Definitions:

<b>Business Day</b>	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
<b>Charges</b>	the charges payable by you for the supply of the Services in accordance with clause 6 (Charges and payment).
<b>Commencement Date</b>	has the meaning given in clause 2.2.
<b>Conditions</b>	these terms and conditions as amended from time to time in accordance with clause 11.5.
<b>Contract</b>	the contract between you and us for the supply of Services in accordance with these Conditions.
<b>Control</b>	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression <b>change of control</b> shall be construed accordingly.
<b>Customer Default</b>	has the meaning set out in clause 5.2.
<b>Deliverables</b>	the deliverables set out in the Order produced by us for you.
<b>Intellectual Property Rights</b>	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
<b>Order</b>	your order for Services as set out in your written acceptance of our quotation, or the order form accompanying these Conditions or otherwise agreed in writing between you and us, as the case may be.
<b>Party</b>	either you or us, and <b>Parties</b> shall mean both you and us.

<b>Services</b>	the services, including the Deliverables, supplied by us to you as set out in the Specification, and which, for the avoidance of doubt, do not include any additional or remedial services (unless these are already set out in the Specification).
<b>Site</b>	any location that is confirmed in the Order as the intended location for the carrying out of the Services.
<b>Site Equipment</b>	any plant, machinery, equipment, tools, fencing, systems, cabling and signage used directly or indirectly in the supply of the Services at the Site, including any such items specified in the Order, and whether provided by us or any of our employees, workers, agents, subcontractors, or consultants.
<b>Specification</b>	the description or specification of the Services provided or otherwise confirmed in writing by us to you.
<b>Our Materials</b>	has the meaning set out in clause 5.1.9.
<b>We, us, our</b>	SOUTH57 HIGHWAYS & TRAFFIC MANAGEMENT LTD (registered in England and Wales with company number 16149895).
<b>You, your</b>	the person or firm who purchases the Services from us, as set out in the Order.

## 1.2 Interpretation:

- 1.2.1 Unless expressly provided otherwise in this Contract, a reference to legislation or a legislative provision:
- 1.2.1.1 is a reference to it as amended, extended or re-enacted from time to time; and
  - 1.2.1.2 shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.2.2 Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.2.3 A reference to **writing** or **written** includes email, but does not include fax.
- 1.2.4 If there is any conflict or ambiguity between any provisions of the Order and the Conditions, the provisions of the Conditions shall prevail.

## 2. Basis of Contract

- 2.1 The Order constitutes an offer by you to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when we issue written acceptance of the Order, at which point, and on which date, the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by us, and any descriptions or illustrations contained in our 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.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.5 Any quotation given by us shall not constitute an offer, and is only valid for a period of 10 Business Days from its date of issue.

### 3. **Supply of Services**

3.1 We shall supply the Services to you in accordance with the Specification in all material respects.

3.2 We shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 We reserve the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and we shall notify you in any such event.

3.4 We warrant to you that the Services will be provided using reasonable care and skill.

### 4. **Site Equipment**

4.1 We will be responsible for the provision, installation, and removal of any Site Equipment, and any Site Equipment shall remain our property at all times.

4.2 Where specified in the Order, or otherwise at our discretion, following the initial installation of the Site Equipment, we shall provide you with:

4.2.1 electronic copies of photographic evidence of the Site Equipment following its initial installation; and/or

4.2.2 a Site report.

4.3 You shall not install, replace, remove, alter or otherwise interfere with any Site Equipment without our prior written consent, and only in accordance with the conditions of that consent, which may include:

4.3.1 requirements around:

4.3.1.1 how and when any works are to be carried out;

4.3.1.2 health and safety;

4.3.1.3 insurance;

4.3.1.4 access and egress;

4.3.1.5 protection of the Site Equipment;

4.3.1.6 protection of any neighbouring property; and

4.3.1.7 repair and making good;

4.3.2 you entering into such agreement as we may reasonably require in relation to the installation, replacement or removal of any Site Equipment.

4.4 You shall take good care of the Site Equipment and use all reasonable endeavours to ensure that the Site Equipment is not damaged, lost or destroyed in any way.

- 4.5 You shall comply with any reasonable directions that we issue in respect of the installation, use, maintenance, and removal of the Site Equipment.
- 4.6 We may install, alter, replace, remove, or otherwise work on or with the Site Equipment at any time at our sole discretion, provided that, other than any temporary interruption in the Services caused by such works which we have deemed are necessary, this shall not materially interfere with the carrying out of the Services.
- 4.7 Where any repairs, replacement, removal, or other remedial works to the Site Equipment are required due to the acts or omissions of any party other than us, this shall be at your sole cost and expense, and where required, the subject of a new Order.
- 4.8 We shall remove all Site Equipment following completion of the Services. Where this has not occurred prior to termination or expiry of the Contract, we shall remove the Site Equipment as soon as reasonably practicable after termination or expiry of the Contract.

## 5. **Your Obligations**

- 5.1 Without prejudice to any of your other obligations in the Contract, you shall:
- 5.1.1 ensure that the terms of the Order and any information you provide for the purposes of, or in, the Specification, are complete and accurate;
  - 5.1.2 co-operate with us in all matters relating to the Services;
  - 5.1.3 where required in connection with the Services, provide us, our employees, agents, consultants and subcontractors, with access to your premises, office accommodation and other facilities as reasonably required by us;
  - 5.1.4 without prejudice to clause 5.1.3, provide us with requisite rights of access to, and egress from, the Site for the purpose of carrying out the Services;
  - 5.1.5 prepare the Site for the supply of the Services (unless such preparation falls within the Services);
  - 5.1.6 provide us with any facilities or equipment specified in the Order;
  - 5.1.7 provide us with such information and materials as we may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
  - 5.1.8 obtain and maintain all necessary licences, permissions, and consents which may be required for the Services before the date on which the Services are to start, and ensure that any such licences, permissions, and consents benefit us and allow us to carry out the Services where required;
  - 5.1.9 where provided to you, keep any materials, equipment, documents and our other property (**Our Materials**) at your premises in safe custody at your own risk, maintain Our Materials in good condition until returned to us, and not dispose of or use Our Materials other than in accordance with our written instructions or authorisation; and
  - 5.1.10 comply with any additional obligations as set out in the Specification or Order.
- 5.2 If our performance of any of our obligations under the Contract is prevented or delayed by any act or omission by you, or failure by you to perform any relevant obligation, (in each case, **Your Default**), without prejudice to any other provisions of the Contract:
- 5.2.1 without limiting or affecting any other right or remedy available to us, we shall have the right to suspend performance of the Services until you remedy Your Default, and to

rely on Your Default to relieve us from the performance of any of our obligations in each case to the extent Your Default prevents or delays our performance of any of our obligations;

5.2.2 we shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay to perform any of our obligations as set out in this clause 5.2; and

5.2.3 you shall reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from Your Default.

## 6. **Charges and Payment**

6.1 The Charges for the Services shall be set out in the Order, or as might otherwise be agreed in writing between the Parties.

6.2 If the Charges for the Services are not set out in the Order, or have not otherwise been agreed in writing between the Parties, the Charges shall be calculated in accordance with our prevailing rates applicable from time to time.

6.3 Unless otherwise specified in the Order, we shall be entitled to charge you for any expenses reasonably incurred by the individuals whom we engage in connection with the Services, including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by us for the performance of the Services, and for the cost of any materials.

6.4 We reserve the right to increase the Charges on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.

6.5 Unless otherwise specified in the Order or agreed in writing with us, we shall invoice you monthly in arrears.

6.6 Unless otherwise specified in the Order or agreed in writing with us, you shall pay each invoice submitted by us:

6.6.1 within 30 days of the date of the invoice or in accordance with any credit terms agreed by us and confirmed in writing to you; and

6.6.2 in full and in cleared funds to a bank account nominated in writing by us, and time for payment shall be of the essence of the Contract.

6.7 All amounts payable by you under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by us to you, you shall, on receipt of a valid VAT invoice from us, pay to us 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.

6.8 If you fail to make a payment due to us under the Contract by the due date, then, without limiting our remedies under clause 9, you shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 6.8 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

6.9 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

7. **Intellectual Property Rights**

- 7.1 All Intellectual Property Rights in, or arising out of, or in connection with, the Services (other than Intellectual Property Rights in any materials provided by you), shall be owned by us.
- 7.2 We grant to you, or shall procure the direct grant to you of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding materials provided by you) for the purpose of receiving and using the Services and the Deliverables in your business.
- 7.3 You shall not sub-license, assign or otherwise transfer the rights granted in clause 6.2.
- 7.4 You grant us a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by you to us for the term of the Contract for the purpose of providing the Services to you.

8. **Limitation of Liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

- 8.1 References to liability in this clause 8 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 8.2.1 death or personal injury caused by negligence;
  - 8.2.2 fraud or fraudulent misrepresentation; or
  - 8.2.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 8.3 Subject to clause 8.2 (Liabilities which cannot legally be limited), our total liability to you for all loss or damage shall be limited to the total amounts payable by you to us under the Contract.
- 8.4 Subject to clause 8.2 (Liabilities which cannot legally be limited), and without prejudice to any other provisions of the Contract, we shall not be liable whatsoever for:
- 8.4.1 any interruption in the performance of the Services arising out of or in connection with any necessary installation, alteration, replacement, or removal or the Site Equipment or otherwise any necessary works to the Site Equipment, provided that we have used our reasonable endeavours to ensure that such interruption is kept to a minimum and is temporary in nature, in each case where reasonably practicable in the relevant circumstances;
  - 8.4.2 any:
    - 8.4.2.1 failure to carry out the Services in whole or in part; or
    - 8.4.2.2 otherwise breach of any of our obligations under the Contract,which has arisen out of, or in connection with, your acts or omissions or the acts or omissions of any third party;
  - 8.4.3 any damage, loss or expense (including any damage to any Site Equipment) arising out of, or in connection with, your acts or omissions or the acts or omissions of any third party.

- 8.5 Subject to clause 8.2 (Liabilities which cannot legally be limited), our liability in respect of the following types of loss is wholly excluded:
- 8.5.1 loss of profits;
  - 8.5.2 loss of sales, business or revenue;
  - 8.5.3 loss of agreements or contracts;
  - 8.5.4 loss of anticipated savings;
  - 8.5.5 loss of use or corruption of software, data or information;
  - 8.5.6 loss of or damage to goodwill; and
  - 8.5.7 indirect or consequential loss.
- 8.6 We have given commitments as to compliance of the Services with the Specification in clause 3.1. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 8.7 Unless you notify us that you intend to make a claim in respect of an event within the notice period, we shall have no liability for that event. The notice period for an event shall start on the day on which you became, or ought reasonably to have become, aware of the event having occurred and shall expire 12 (twelve) months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 8.8 This clause 8 shall survive termination of the Contract.

## 9. **Termination**

- 9.1 Without affecting any other right or remedy available to us, we may terminate the Contract with immediate effect by giving written notice to you if:
- 9.1.1 you commit a material breach of any term of the Contract and (if such a breach is remediable) fail to remedy that breach within 30 (thirty) days of you being notified in writing to do so;
  - 9.1.2 without prejudice to clause 9.1.1, the payment of any sums due to us from you under the Contract (which are not the subject of a bona fide dispute) is outstanding and such payment has not been made within 14 (fourteen) days of you being notified in writing to do so;
  - 9.1.3 you take any step or action in connection with you entering administration, provisional liquidation or any composition or arrangement with your creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of your assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - 9.1.4 you suspend, or threaten to suspend, or cease or threaten to cease to carry on all or a substantial part of your business; or
  - 9.1.5 your financial position deteriorates to such an extent that in our opinion your capability to adequately fulfil your obligations under the Contract has been placed in jeopardy.

- 9.2 Without affecting any other right or remedy available to us, we may suspend the supply of Services under the Contract, or any other contract between you and us, if:
- 9.2.1 you fail to pay any amount due under the Contract on the due date for payment;
  - 9.2.2 we reasonably believe that you are about to become subject to any of the events listed in clause 9.1.3; or
  - 9.2.3 you become subject to any of the events listed in clause 9.1.4 to clause 9.1.5, or we reasonably believe that you are about to become subject to any of them.

## 10. **Consequences of Termination**

- 10.1 On termination or expiry of the Contract:
- 10.1.1 you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, we shall submit an invoice, which shall be payable by you immediately on receipt;
  - 10.1.2 you shall return any of our Materials and any Deliverables which have not been fully paid for. If you fail to do so, then we may enter your premises and take possession of them. Until they have been returned, you shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 10.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 10.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## 11. **General**

- 11.1 **Force majeure.** Neither Party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for three months, the Party not affected may terminate the Contract by giving 30 (thirty) days' written notice to the affected Party.

### 11.2 **Assignment and other dealings.**

- 11.2.1 We may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 11.2.2 You shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of your rights and obligations under the Contract.

### 11.3 **Confidentiality.**

- 11.3.1 Each Party undertakes that it shall not at any time during the Contract, and for a period of three years after termination or expiry of the Contract, disclose to any person any confidential information of the other Party, including any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party, except as permitted by clause 11.3.2.

- 11.3.2 Each Party may disclose the other Party's confidential information:
- 11.3.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the Party's obligations under the Contract. Each Party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other Party's confidential information comply with this clause 11.3; and
  - 11.3.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3.3 Neither Party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

**11.4 Entire agreement.**

- 11.4.1 The Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 11.4.2 Each Party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- 11.4.3 Nothing in this clause shall limit or exclude any liability for fraud.

- 11.5 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

- 11.6 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or default. A failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

- 11.7 **Severance** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part-provision of the Contract is deleted under this clause 11.7, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**11.8 Notices.**

- 11.8.1 Any notice required or permitted to be given by either Party to the other under the Contract shall be in writing and shall be:
- 11.8.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - 11.8.1.2 sent by email to the following addresses (or an address substituted in writing by the Party to be served):

- (a) **Us:** [office@south57tm.co.uk](mailto:office@south57tm.co.uk), [nicola@south57tm.co.uk](mailto:nicola@south57tm.co.uk) and [kg@south57tm.co.uk](mailto:kg@south57tm.co.uk);
- (b) **You:** such email address as may be specified in the Order or as you may otherwise confirm.

11.8.2 Any notice shall be deemed to have been received:

- 11.8.2.1 if delivered by hand, at the time the notice is left at the proper address;
- 11.8.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting;
- 11.8.2.3 if sent by email, subject to not receiving confirmation of any message send failure, at the time of transmission, or if this time falls outside the hours of 9.00 am to 5.00 pm on any Business Day in the place of receipt, the following Business Day.

11.8.3 The provisions of this clause 11.8 shall not apply to the service of any proceedings or other documents in any legal action.

#### 11.9 **Third party rights.**

11.9.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

11.9.2 The rights of the Parties to rescind or vary the Contract are not subject to the consent of any other person.

11.10 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

11.11 **Jurisdiction.** Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.