

## TERMS AND CONDITIONS FOR SURVEY CONTRACTS

Paper presented to ISPRS Commission IV, Working Group 4  
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### INTRODUCTION

The Terms and Conditions for Survey Contracts (Model Contract Document) is intended to complement the various specifications for survey work already produced by the Royal Institution of Chartered Surveyors and it is therefore recommended that this document is used in conjunction with the following RICS publications:- "Specification for Survey of Land, Buildings and Utility Services at Scales 1:500 and Larger"; "Specification for Vertical Air Photography"; "Specification for Mapping at Scales 1:1000 to 1:10,000"; "Guidelines for the Preparation of Hydrographic Survey Specifications"; and "Guidelines for the Preparation of Hydrographic Survey Specifications for Dredging".

This document has been structured to include the main contractual Terms and Conditions necessary for survey contracts whilst at the same time enabling the Employer and the Surveyor to define the terms and conditions of engagement by which the surveyor is appointed and the scope of services to be provided. It has been kept relatively simple and is intended for use by those who feel the need for more than an exchange of letters, but do not wish to use one of the longer and more complex general contract documents which already exist.

The document contains no detailed clauses covering payment terms, stage payments or progress payments, because these are likely to be specific to each contract and to vary considerably with the nature of the work. Where the Surveyor is engaged on a rate basis the payment terms should make provision for regular reviews of the rates in accordance with agreed indices. Where contracts are to be paid for in foreign currency the payment terms should take account of possible currency restrictions and exchange rate fluctuations.

Most of the Terms and Conditions hereunder are equally applicable to the provision of hydrographic surveying services. When commissioning such services Employers may therefore wish to be guided by this document and its Appendix, as the latter contains clauses specifically relating to the conduct of hydrographic surveys.

These Terms and Conditions are designed to be governed by English law and may need to be amended for use under other legal systems.

Comments and suggestions from users of this document are welcomed for consideration in preparing future editions and should be sent to:



Land Surveyors Division  
The Royal Institution of Chartered Surveyors  
12 Great George Street, Parliament Square  
LONDON SW1P 3AD, United Kingdom

## TERMS AND CONDITIONS FOR SURVEY CONTRACTS

### 1 DEFINITIONS AND INTERPRETATION

In these Terms and Conditions the following words and expressions shall have the following meanings:

- (a) "The Employer" means ..... and such representatives thereof as shall be designated in writing.
- (b) "The Contract Price" means the sum named in or to be ascertained in accordance with the Tender or quoted price subject to such additions or deductions as may be made under the provisions hereinafter contained.
- (c) "The Contract" means The Agreement concluded between the Employer and Surveyor, including these Terms and Conditions and all Specifications and other documents which are relevant to the Contract.
- (d) "The Surveyor" means the company or firm whose Tender or quotation for the Work is accepted by and on behalf of the Employer and includes the Surveyor's successors and permitted assigns.
- (e) "Work" means the surveying, mapping or service to be executed and all supporting documents including any photographs, plot drawings, field records, map sheets, plans, digital data, co-ordinate lists and control data to be produced and supplied by the Surveyor in accordance with the Specification and includes any additional work requested by the Employer under Clause 6.

### 2 SUFFICIENCY OF TENDER

- (a) In so far as it is reasonably possible, the Surveyor shall be deemed to have satisfied himself before submitting the Tender as to the nature of the Work, the quantities and types of equipment and materials which will be required for the Work, the conditions under which the Work will be completed and the correctness and sufficiency of the Tender. To assist the Surveyor in Tendering, the Employer will provide all reasonable information concerning the nature and scope of the Work and any unusual conditions which might apply.
- (b) The several documents forming the Contract are to be taken as mutually explanatory of each other and in cases of discrepancy the Specification shall prevail. If there should be any ambiguity or discrepancy in or between the documents the matter shall be referred immediately to the Employer for mutually acceptable clarification.

### 3 COMMENCEMENT OF WORK

- (a) The Surveyor shall commence the Work when requested in writing to do so by the Employer.

#### 4 EXECUTION AND COMPLETION OF WORK

- (a) The Surveyor shall execute and complete the Work in conformity with the Specification and the delivery dates agreed. He shall at his own expense supply and provide all the equipment, materials, labour (including the supervision thereof), transport and other things of every kind required for the completion of the work except as specifically provided for in this Contract.
- (b) Work which the Employer considers does not meet the standards specified may within 30 days of receipt be returned to the Surveyor for correction at his own expense.
- (c) If on re-submission of the Work after correction it should continue to be faulty and this can be demonstrated to the Surveyor by the Employer, the Employer reserves the right not to return it for correction a further time and to arrange for it to be corrected by such means and in such manner and to such extent as he may decide. In this event the costs of correction and all other expenses incurred shall be charged to the Surveyor.
- (d) If on being checked by the Surveyor the work returned by the Employer for correction is found to have been within the standards specified and this can be demonstrated to the Employer by the Surveyor, the additional costs of the checking carried out and all other expenses incurred shall be charged to the Employer.

#### 5 EXTENSION OF TIME FOR COMPLETION OF WORK

The Work shall be completed in accordance with the agreed delivery programme and dates or within such extended time as may be agreed with the Employer. Any request by the Surveyor for extension of time shall be delivered in writing to the Employer and shall give full and detailed particulars of the circumstances giving rise to the delay within 7 days of the circumstances arising.

#### 6 POWER TO VARY WORK

The Employer at his discretion may arrange with the Surveyor to vary the work either in form, quality or quantity provided that the total cost of the contract is not affected by more than 10%. Such variations shall be valued at the rates set out in the contract where applicable or failing this at new rates acceptable to both Employer and Surveyor. Where variations to the work would affect the total cost by more than 10% the Contract Price may be renegotiated at the request of the Surveyor.

#### 7 ASSIGNMENT OR SUB-LETTING

The Surveyor shall not directly or indirectly transfer, assign or sub-let this Contract, or any part, share or interest therein without the prior written consent of the Employer which shall not be unreasonably withheld. No sub-letting shall relieve the Surveyor from full and entire responsibility hereunder or from active superintendence of the Work during its progress.

8 ENTRY ONTO PRIVATE PROPERTY - IF APPLICABLE

Where it is considered necessary for the Surveyor to have access onto private property the Employer will be responsible for obtaining any necessary permissions. He will also furnish the Surveyor with any letters of identification which may be needed.

9 ACCESS FOR INSPECTION

- (a) The Employer may at any reasonable time examine or test any part of the Work or materials intended to be used for the Work at any place where they may be and the Surveyor shall give every facility necessary for such examination or test and shall assist where necessary, and shall comply with any reasonable requirement of the Employer relating thereto. The cost of making any test shall be borne by the Employer.

10 FINAL ACCEPTANCE AND COMPLETION

When the Work has been completed and all materials detailed in the Specification delivered, the Employer shall, within 30 days from the date of receipt by him from the Surveyor of the last of the completed Work under the Contract, notify the Surveyor in writing of any discrepancies, errors or omissions requiring correction. In the absence of any such written notification payment of all outstanding amounts will become due.

11 PAYMENTS

- (a) Invoices may be submitted by the Surveyor to the Employer at not less than monthly intervals for completed stages of the work accepted by the Employer. Payment will be made within 30 days of the date of invoice.
- (b) No payment other than final payment shall be taken as admission of the due performance of the contract or any part thereof or of the accuracy of any claim or demand made by the Surveyor nor shall any payment except the final payment prejudice any of the powers of the Employer nor prejudicially affect the contract.

12 SURVEYOR TO INDEMNIFY EMPLOYER

12.1 Compliance with Regulations

The Surveyor shall keep the Employer fully indemnified against all penalties, costs, charges, expenses and liabilities of every kind arising from compliance with and breach of any Act of Parliament or Ordinance or Regulation or Bye-Law of any local or other statutory authority in relation to the execution of the work.

12.2 Interference with or Damage to Persons or Property

All operations necessary for the execution of the Work are to be carried out so as not to interfere unnecessarily or improperly with the public convenience or to jeopardise the safety of the public and all reasonable precautions must be taken to avoid injury to any person or property. The Surveyor shall indemnify and keep indemnified the Employer against all claims, proceedings, damages, costs, expenses and loss incurred in respect of such interference, injury or damage.

### 12.3 Employers Liability

The Surveyor's liability to indemnify the Employer as aforesaid shall be reduced proportionally to the extent that any act or neglect of the Employer may have contributed to the said loss, injury or damage.

## 13 INSURANCE

- (a) The Surveyor shall hold or effect a policy (or policies) of insurance to cover an amount of not less than five hundred thousand pounds (£500 000.00) for third party liability arising from any one incident or claim arising from all of the obligations and liability of the Surveyor under this Agreement.
- (b) The Surveyor shall also hold or effect Professional Indemnity Insurance in compliance with the regulations laid down for the time being by The Royal Institution of Chartered Surveyors.
- (c) The Surveyor shall insure the Work and any documents and materials relating thereto against all risks of loss and damage of any nature whatsoever including loss and damage in transit until the same are delivered to the Employer.
- (d) No liability shall attach to the Surveyor in respect of any consequential loss or damage suffered by the Employer.

## 14 RIGHTS TO TERMINATE THE CONTRACT

### 14.1 The Employer

- (a) In the event of the Surveyor failing, for any reason other than under clauses 14.2 or 16 hereto, to carry out the Work in accordance with this Agreement, the Employer shall be entitled to serve written notice on the Surveyor specifying the breaches of Contract and requiring them to be remedied within 30 days. Failing such remedy the Employer may at the end of the 30 days terminate the Contract by serving written notice to that effect on the Surveyor. The Employer may then arrange for the Work to be completed by such means and in such manner and to such extent as the Employer may decide. In that case the Employer may use for such purpose so much of any partially completed Work as he may decide.
- (b) If this Contract is terminated under 14.1(a) above then:  
  
The Employer shall not be liable to pay to the Surveyor any further money on account of the Work until the actual completion and acceptance of the whole of the Work and the costs of completion and damages for delay (if any) and all other expenses incurred by the Employer have been ascertained. The Surveyor shall then be entitled to receive only such sum (if any) as may be due to him after deduction of the amount so ascertained.

### 14.2 The Surveyor

- (a) In the event of the Employer failing to provide materials or services as agreed in the Contract the Surveyor shall be entitled to an extension of the Contract period for any consequent delay and to payment for any additional costs he may incur.

- (b) Should the Employer fail to make payments by the due date the Surveyor shall have the right to suspend work and to claim payment for any additional cost arising from such suspension without prejudice to any of his other rights under the Contract.

15 BANKRUPTCY

- (a) If either party to this Contract (the first party) commits an act of bankruptcy or has a receiving order made against him or makes any arrangement with his creditors or if distress or execution is levied or threatened upon any of his property or any judgement against him remains unsatisfied for more than 14 days or if being a limited company it enters into liquidation whether compulsory or voluntary (other than a voluntary liquidation for the purpose of amalgamation or reconstruction) or has a receiver appointed of any of its assets, the other party (the second party) may suspend performance of the Services or may terminate the Agreement upon serving written notice on the first party to that effect.
- (b) When performance of the Services has already been suspended for more than 14 days, the second party may terminate the Agreement upon serving written notice on the first party to that effect.

Providing always that such termination shall not prejudice or affect any right, or action or remedy which shall have accrued or shall accrue thereafter.

16 FORCE MAJEURE

- (a) IF during the currency of the Contract war (whether declared or not) or natural emergency, the requirements and regulations of Government bodies of any country, revolution, riot, civil commotion or industrial dispute; acts of God such as flood, fire, earthquake, tempest, epidemic or any other cause not within the control of the Surveyor shall materially effect the execution of the Work, the Surveyor shall continue so far as physically possible and reasonably practicable to execute the Work in accordance with the Contract for a period of seven days reckoning from midnight on the day when such event first occurred.
- (b) IF at any time before the expiration of the said period of seven days the work shall have been completed so far as to be usable all the provisions of the Contract shall continue to have full force and effect.
- (c) IF the work shall not have been completed as aforesaid either party shall be entitled to determine the Contract (with the exception of this Clause and Clauses 20 and 21 hereof) by giving notice in writing to the other at any time after the aforesaid period of seven days has expired and upon such notice being given the Contract shall (except as above mentioned) forthwith determine but without prejudice to the claims of either party in respect of any antecedent breach thereof.
- (d) IF the Contract shall be determined under the provisions of the last preceding sub-clause the Surveyor shall with all reasonable despatch send to the Employer to such place as he shall direct all work which has been completed or is to be paid for together with all original material.

(e) IF the Contract shall be determined as aforesaid the Surveyor shall be paid by the Employer for all work executed prior to the date of determination at the rates and prices provided in the Contract and in addition:-

(i) The cost of materials or goods reasonably ordered for the work which shall have been delivered to the Surveyor or of which the Surveyor is legally liable to accept delivery (such materials or goods becoming the property of the Employer upon such payment being made).

(ii) A sum to be certified by the Employer being the amount of any expenditure reasonably incurred by the Surveyor in the expectation of completing the whole of the Works, in so far as such expenditure shall not have been covered by the payments in this sub-clause before mentioned, together with any additional expenditure arising from the premature termination of the Contract

#### 17 FRUSTRATION

IN the event of the Contract being frustrated whether by war or otherwise howsoever the sum payable by the Employer to the Surveyor in respect of the work executed shall be the same as that which would have been payable under Clause 16(e) hereof if the Contract had been determined under the provisions of Clause 16(c) hereof.

#### 18 SETTLEMENT OF DISPUTES

ALL disputes and differences of any kind whatever arising out of or in connection with the contract or the execution of the work (whether during the progress of the work or after its completion and whether before or after the determination, abandonment or breach of the contract) shall formally be referred to the Employer who shall state his decision in writing.

#### 19 ARBITRATION

If the Surveyor is dissatisfied with the decision on any matter, question or dispute of any kind then, and in any such case, the Surveyor may within twenty-eight days after receiving notice of such decision require that the matter shall be referred to an arbitrator to be agreed upon between the parties or failing agreement within six weeks to be nominated by the President for the time being of the Royal Institution of Chartered Surveyors.

#### 20 COPYRIGHT

The copyright in and the legal and beneficial ownership of all material produced under the terms of this Agreement shall vest solely in the Employer and no use shall be made of it other than as provided hereunder except with the prior written permission of the Employer.

21 The Surveyor shall keep confidential and shall not disclose to any unauthorised party or make other unauthorised use of any secret or confidential documentation and information relating to the Work.

22 CONTRACT TO BE ENGLISH

THIS Contract shall be and be deemed to be an English Contract and shall accordingly be governed by and construed according to the laws for the time being in force in England.

SIGNED for and on behalf of .....

SIGNED for and on behalf of .....



ADDENDUM

Terms and Conditions for Hydrographic Surveys in the UK

The following additional clauses should be incorporated in any agreement for the retention of Hydrographic Surveying Services.

(i) Consequential Loss

The Surveyor shall not be liable for the consequences of delays and interruptions to the work occasioned by unseasonable or freak weather conditions and acts of vandalism to unattended equipment.

Allowance should be made for the cumulative effect of any such occurrences, especially where operations are constrained by phenomena or circumstances beyond the Surveyor's control eg the state of the tide or access to the work site.

Onus of proof of such events lies on the Surveyor who must also show that all reasonable precautions were taken to anticipate them.

(ii) Increase in Fuel Costs

The Surveyor shall be compensated for unexpected increases in the price of fuel where such costs are a significant element of vessel hire charges.