

ESSENTIAL SAFETY LTD

SAMPLE TERMS AND CONDITIONS OF ENGAGEMENT

CONSULTANCY AGREEMENT

THIS AGREEMENT is subject to the following terms and conditions.

Nothing in this agreement will create any relationship of employer/employee. The Company is not the servant or agent of the Client.

1. DEFINITIONS

1.1 "Contract" shall mean this agreement between the Client and the Company for the provision of the Consultancy Services together with the Schedules.

1.2 "Consultancy Charges" shall mean the charges specified in Schedule 1 together with any additions thereto or deductions therefrom agreed in writing.

1.3 "Consultancy Services" shall mean the services set out in Schedule 2.

2. MISTAKES IN INFORMATION

2.1 If additional costs or delay are directly occasioned by any discrepancies, errors or omissions in the information and decisions supplied to the Company by the Client, the Client shall pay any such additional costs to the Company and shall allow an extension of any time specified in Schedule 2 to complete the Consultancy Services.

3. PREMISES AND FACILITIES

3.1 The Client shall arrange for or grant the Company access at all reasonable times to premises as may be necessary for the provision of the Consultancy Services and shall provide the Company with the facilities as set out in Schedule 3 – Facilities Provided by the Client, if applicable.

4. LIMITATION OF LIABILITY

The Company shall not be liable to the Client for any loss or damage suffered by the Client as a result of:

4.1 the Client's failure to provide full documentary, material, informational or other support or access to the Company to enable it to perform its duties comprehensively; or

4.2 the failure of the Client to act on advice and recommendations made by the Company.

5. VARIATIONS

5.1 If the Client requires any reasonable alteration, addition or omission to the Consultancy Services (hereinafter referred to as a "Variation") the Company shall identify the impact of the Variation on the Consultancy Services and the Consultancy Charges in writing within a reasonable period of his/her receipt of the Client's written request. The Contract shall remain unchanged unless and until the parties agree any Variation in writing.

6. COMPANY'S AND CLIENT OBLIGATIONS

6.1 The Company shall exercise all reasonable skill, care and diligence in the performance of the Consultancy Services and agreed Variations.

6.2 The Client shall give the consultant any relevant information required to carry out the services and consider the advice provided by the Company.

7. ASSIGNMENT AND SUBCONTRACTING

7.1 Neither party shall assign any of its rights or obligations under the Contract without the prior written consent of the other party, which shall not be unreasonably withheld.

7.2 The Company shall not subcontract any part of the Consultancy Services without the written consent of the Client, which shall not be unreasonably withheld.

8. INDEMNITY AND INSURANCE

8.1 Save in respect of death or personal injury, the liability of the Company shall be limited to the value of the contract, as outlined in Schedule 1, Consultancy Charges.

8.2 The Company shall maintain professional indemnity insurance that provides cover of not less than £1,000,000 and when so required by the Client shall produce evidence of that cover.

9. CHARGES AND TERMS OF PAYMENT

9.1 The Consultancy Charges shall be paid within 30 days of an invoice being submitted in accordance with the provisions of Schedule 1.

9.2 If the payment of any sum due under this Contract is delayed, the Company shall be entitled to charge interest of 4% above the Bank of England base rate for the time being in force and to suspend performance of the Consultancy Services provided that no such suspension may take place unless the Company shall have given written notice requiring payment on an overdue sum and the Client shall have failed to comply with the notice within 7 days.

9.3 If any part of an invoice is disputed or queried by the Client, the payment of the remainder of the invoice shall not be delayed.

10. EXTENSION OF TIME AND ADDITIONAL COST

10.1 If the Company is delayed or impeded in the performance of its obligations by:

a) any act or omission of the Client, its servants or agents,

or

b) by any circumstance that is specified in Schedule 2, the Company shall be entitled to be paid any additional costs thereby incurred by it and, where appropriate, be allowed an extension of any time specified in Schedule 2 in which to complete any outstanding Consultancy Services.

11. INSOLVENCY AND BANKRUPTCY

11.1 If either party shall become insolvent or bankrupt, or have a receiving order or administration order made against it or compound with its creditors or, being a corporation, commence to be wound up (not being a members' voluntary winding up for the purpose of reconstruction or amalgamation) or carry on its business under an administrator or administrative receiver for the benefit of its creditors or any of them, the other party shall be at liberty either

a) to terminate the Contract forthwith by notice in writing to the other or to the administrative receiver or administrator or liquidator or to any person in whom the Contract may become vested,

or

b) to give such administrative receiver, administrator, liquidator or other person the option of carrying out the Contract subject to their providing of a guarantee for the due and faithful performance of the Contract up to an amount to be agreed.

12. TERMINATION

12.1 If either party is in breach of its obligations under the Contract and fails to remedy the breach within 14 days (or such longer reasonable period as may be specified) of receiving a written notice to remedy the breach, then the Contract can be terminated forthwith by the party not in default without prejudice to the accrued rights of the parties. In relation to on-going services, such as the Retained Competent Person service, either party may terminate the Contract by providing one month's written notice to the other party.

13. CONFIDENTIALITY

13.1 The Company and the Client shall keep confidential all information of the other party, whether designated as confidential or not, obtained under or in connection with the Contract and shall not divulge the same to any third party without the written consent of the other party. The provisions of this clause shall not apply to any information in the public domain otherwise than by breach of the Contract; or information obtained from a third party who is free to divulge the same.

13.2 The Company and Client shall divulge confidential information only to those employees who are directly involved in the Contract or have use of equipment and/or software used in connection with the Contract and shall ensure that such employees are aware of and comply with these obligations as to confidentiality.

13.3 The Company may refer to the Contract or to the fact that the Client is its customer with the prior consent of the Client which shall not be unreasonably withheld.

14. FORCE MAJEURE

14.1 If the Company is delayed in the performance of the Consultancy Services by circumstances beyond its reasonable control, it shall give immediate written notice of that fact to the Client and shall be entitled to an extension of any time specified in Schedule 2 for the completion of the Consultancy Services. If the Consultancy Services are so delayed by more than 45 days after the date of the notice, or such other period as the parties may agree, either party may terminate the Contract by giving written notice to the other party. In the event of such termination, the Company shall be entitled to that part of the Consultancy Charges applicable to the Consultancy Services provided prior to the receipt of the written notice of termination, including costs that are reasonably incurred in expectation of the Consultancy Services continuing and any additional costs reasonably incurred in terminating the services.

15. INTELLECTUAL PROPERTY RIGHTS

15.1 Unless otherwise agreed in writing, all intellectual property rights arising out of this Contract shall vest in the Company. The Client shall have a worldwide, non-exclusive, non-transferable, royalty-free licence to use, and have used, that intellectual property for any purpose.

16. RECORDS

16.1 The Company shall maintain records of all Consultancy Services provided under the Contract for a period of 3 years from the completion of the Contract. The Company shall provide copies of such records to the Client as may be reasonably required on request and the Client shall reimburse the Consultant with the reasonable costs incurred in preparing and supplying the copies.

17. ARBITRATION

17.1 Any dispute or difference which may arise between the Client and the Consultant arising out of or in connection with this Contract which cannot be settled amicably shall be referred to a single arbitrator to be agreed between the Client and the Consultant.

18. LAW

18.1 The Contract and the procedure of any arbitration under clause 16 (ARBITRATION) above shall be governed by English law.