

MILLBROOK PROVING GROUND LIMITED

TERMS AND CONDITIONS FOR SUPPLY OF SERVICES

1. INTERPRETATION

In these Conditions:

- a. Millbrook Proving Ground Limited is called 'the Company' and the firm, individual, or corporate body with whom the Company contracts is called 'the Client'
- b. The terms 'Company' and 'Client' shall include their respective employees, representatives, servants and/or agents
- c. 'Contract' means any contract or order for the supply of Services made between the Company and the Client
- d. 'Contract price' means the consideration to be paid by the Client to the Company in respect of the Services provided under the Contract
- e. 'Millbrook' means the Millbrook Proving Ground at Millbrook near Amptill, Bedfordshire and/or any of its facilities
- f. 'Services' means research, testing, project work, track hire, and other services, goods or information of any kind which are supplied to the Client by the Company.

2. APPLICATION

Every Contract placed with the Company by the Client is accepted on the basis of the following terms and conditions only. In the event that the Client's order contains terms and conditions inconsistent herewith, these Conditions shall prevail in construing the terms of the Contract.

3. ACCEPTANCE

Unless subsequently withdrawn, any offer made by the Company is open for acceptance by the Client within 30 days from the date thereof, and is subject to confirmation by the Company at the time of acceptance.

4. CONTRACT PRICE

4.1 Unless otherwise stated in any offer of Services, the prices quoted for fulfilment of the Contract are given for guidance purposes only. If at any time it becomes clear that the project cannot be completed within the authorised financial limit the Company will notify the Client and limit expenditure to the authorised amount pending further instructions from the Client.

4.2 The Company expressly reserves the right to make any further necessary and reasonable charges based on the actual cost of providing the Services to reflect any variation after the date of quotation in the cost of materials, fuel, power, overheads, equipment, labour or transport, or of conforming to any Act of Parliament, or any order, regulation or bye-law made with statutory authority by government departments, or by local or other authorities. However, in calculating the actual cost of the Services no account shall be taken of any costs incurred solely by reason of the default or negligence of the Company.

4.3 In the event of delay or suspension of performance of the Contract at the request of, or due to the default of the Client the Company expressly reserves the right to amend the Contract Price to cover any variation in cost due to such delay or suspension.

4.4 Unless otherwise stated in any offer of Services, the Service will not be provided on UK public holidays nor between public holidays at Easter and Christmas/New Year.

5. EXCLUSIVE ITEMS

The Contract Price shall, unless expressly specified, be exclusive of all duties and taxes whatsoever in respect of the provision of the Services and all such duties and taxes shall be paid by the Client. Unless specified therein, quotations exclude Value Added Tax.

6. TERMS OF PAYMENT

6.1 The rights to and property in any products, Intellectual Property, reports or other items developed or prepared by the Company during the provision of the Services shall remain vested in the Company until full and satisfactory performance of the Client's obligations under the Contract whereupon the same shall become the property of the Client.

6.2 Payment terms are strictly cash with purchase order unless otherwise agreed. Where credit, part payment or stepped payment terms are agreed, final payment shall be payable nett cash within 30 days of the date of the Company's relevant invoice unless otherwise expressly agreed in writing. If the Client is resident outside the United Kingdom payment will, if so required by the Company, be made by confirmed irrevocable letter of credit issued by a bank acceptable to the Company and at the sole expense of the Client.

6.3 The Company shall charge the Client interest on outstanding invoices from the due date of payment until actual payment. The rate of interest shall be 3% above the prevailing Base Rate of the National Westminster Bank plc.

6.4 Where all or part of an invoice remains unpaid for 60 days or more, the Company reserves a right of lien to retain in its possession any test material, vehicles or reports until such time as the said invoice has been paid and to dispose of these and to retain the proceeds up to the value of non-payment and to cover any costs incurred in disposal.

6.5 The Company reserves its right to levy a 3% surcharge to the Client on all credit card transactions made by the Client in respect to payment relating to the Services provided by the Company.

7. INTERIM PAYMENTS

The Company shall be entitled to require the Client to make interim payments which shall be on account of the Contract Price.

8. ADDITIONAL SERVICES

8.1 Where the Client requires the Company to supply Services in addition to those specified in the Contract such additional Services shall be supplied to the Client in accordance with these Conditions and at the relevant price subsisting at the date at which supply of the additional Services is commenced.

8.2 Materials or Services purchased by the Company on behalf of the Client will be subject to a 15% charge.

9. PERFORMANCE

9.1 Unless expressly provided in writing, any times specified for the supply of Services are statements of expectation only and shall not be binding. Subject to the foregoing, the Company shall use its reasonable endeavours to effect full performance by the stipulated time, or, if no such time is stipulated, within a reasonable time.

9.2 If the Company shall be prevented or hindered from performing the supply of Services under the Contract by any circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials

9.3 If subsequent to the commencement of such suspension the Company and the Client agree to terminate the Contract or to cancel any outstanding part thereof, the Client shall pay the Contract Price for all Services supplied by the Company up to and including the actual date of such termination.

9.4 The Company shall not have any liability to the Client for any direct or consequential loss or damage suffered by the Client as a result of the Company's inability to perform its obligations under the Contract in the circumstances aforementioned in this paragraph 9.

10. PROVISION OF INFORMATION

10.1 The Client shall provide promptly all vehicles, components, materials, drawings or other information required to enable the Services to be supplied pursuant to the Contract. All costs, claims, expenses, and other liability suffered by the Client due to delay caused by a failure to provide such items when required shall be for the sole account of the Client.

11. DELIVERY AND COLLECTION OF CLIENT'S PROPERTY

11.1 All vehicles, components, or other materials ('Client's Property') supplied by the Client are to be delivered to and collected from Millbrook by the Client free of any charge to the Company. Any charges incurred by the Company for provision of material or for transportation, customs clearance, storage or handling will be the responsibility of the Client and will be subject to a 15% charge.

11.2 All Client's Property will, unless a specific written undertaking signed by a Director of the company, remain at the risk of the Client at all times.

11.3 The Client shall collect or arrange for the storage of Client's Property within 30 days of notification that it is ready for collection. In cases of default the Company reserves the right to arrange for storage and to charge the Client with all costs incurred.

11.4 In the event that Client's Property remains uncollected three months after notification of availability for collection the Company reserves the right to dispose of each such item as it thinks fit without recourse to the Client.

12. DRAWINGS AND SPECIFICATIONS

12.1 All descriptions, drawings, test schedules, acceptance criteria, ratings, standards, specifications or other descriptive matter given by the Company to the Client prior to commencement of the Contract (whether verbal or in writing) are approximate only and shall not form part of the description of the Services to be provided hereunder.

12.2 The content of the Company's catalogues, price lists or other published matter are intended to present a general idea of the Company's services and none shall form part of the Contract or be considered a collateral warranty or a representation inducing the same.

13. RESTRICTIONS

13.1 The Company does not guarantee that the product of any Services will be satisfactory for the purposes of the Client.

13.2 The liability of the Company for any claim or claims for direct injury, loss, damage, costs or expenses made by the Client against the Company whether in contract, or tort or otherwise arising out of or in connection with any act, omission, neglect or default of the Company in the supply of Services or otherwise arising in connection with the use of Millbrook shall be limited to the Contract Price relevant to that element of Services concerned up to the maximum sum of £1,000,000 including all legal and other costs incurred.

13.3 The Company shall not be liable for any claims for indirect or consequential injury, loss, damage, costs or expenses made by the Client against the Company whether in contract, in tort or otherwise arising out of or in connection with any such defect, act, omission, neglect or default referred to in sub-clause 13.2 above.

13.4 For the avoidance of doubt. The Company shall not be liable for any claims brought either directly or indirectly where a Client or a third party working on behalf of a Client has failed to obtain all necessary and legally required military and/or export licences to allow them to bring their vehicles, materials (including vehicles), drawings, software, technology or other materials in to or out of the United Kingdom. Also, Millbrook shall not be liable for any claims brought either directly or indirectly where a Client or a third party acting on behalf of a Client fail to provide Millbrook with information needed to determine whether Millbrook would need to apply for an export licence.

13.5 Nothing in these Conditions shall limit or exclude the liability of the Company in respect of death or personal injury resulting from the negligence of the Company.

14. PATENTS, TRADEMARKS AND REGISTERED DESIGNS
- 14.1 All intellectual property rights (including but not limited to patents, trademarks, registered designs and copyright) arising from the provision of Services under the Contract shall be the property of the Company unless otherwise agreed in writing between the Company and the Client.
15. JOINT AND SEVERAL OBLIGATIONS
- Where the Contract is made between the Company and two or more Clients the obligations of such Clients to the Company shall be joint and several and the provisions of these Conditions shall apply fully to each of them.
16. CONTENTS OF THE CONTRACT
- All matters whether verbal or in writing communicated to the Client by the Company prior to or after the commencement of the Contract are expressly excluded from the Contract unless otherwise confirmed in writing by or at the request of a Director of the Company.
17. INSOLVENCY AND BREACH OF CONTRACT
- In the event that:
- the Client shall commit any breach of the Contract and shall fail to remedy any such breach within a period of 14 days from receipt of notice in writing from the Company requesting such breach to be remedied; or
 - any distress or execution is levied upon any of the goods or property of the Client; or
 - the Client offers to make any arrangements with or for the benefit of its creditors or commits any act of bankruptcy; or
 - the Client has a Receiver or Administrator appointed of the whole or any part of its undertaking, property or assets or any order is made or a resolution is passed or analogous proceedings are taken for the winding up of the Client (save for the purpose of reconstruction or amalgamation without insolvency and previously approved in writing by the Company), then the Company shall thereupon be entitled, without prejudice to its other rights hereunder, forthwith to suspend all further supplies of Services until the default has been made good, or to determine the Contract or any unfulfilled part thereof or at the Company's option to make partial supplies of Services. Notwithstanding any such termination, the Client shall pay to the Company the Contract Price for all Services supplied up to and including the date of termination.
18. USE OF MILLBROOK
- The following sub-clauses shall apply only where the Client both attends at and makes use of Millbrook:
- No warranty, expressed or implied, is given by the Company that Millbrook or any part of it will prove adequate in all respects for any use contemplated by the Client.
 - The Client shall comply with all reasonable requirements of the Company notified to the Client in connection with the use of Millbrook. The Company expressly reserves the right at any time to refuse access to or order the removal of any individual or vehicle from Millbrook upon reasonable grounds and without notice, although reasonable notice will be given whenever possible. Such a refusal of access or exclusion shall be without prejudice to the rights of the Company to charge the Client in respect of Services already supplied.
 - The Client shall only make use of that part of Millbrook designated by the Company as being available for use by the Client and during such hours and using such procedures as may be specified by the Company. The Client shall not enter any part of Millbrook's premises other than those to which they have been given access in connection with the Contract. Security restrictions must be adhered to.
 - Vehicles used by the Client at Millbrook shall be provided with silencing to such standards as may be required by the Company at its reasonable discretion.
 - The Client shall immediately notify the Company of any incident or matter coming to the attention of the Client during its use of Millbrook which may be a contravention of these Conditions. Such notification may be verbal at first instance but shall be confirmed in writing to the Company giving all relevant detail within 48 hours of such incident or matter.
 - The Client shall ensure to the satisfaction of the Company that each individual who is in control of a vehicle using Millbrook on behalf of the Client is in possession of a valid United Kingdom driving licence (or such overseas driving licence as is recognised in the United Kingdom as being equivalent thereto) in respect of the class of vehicle concerned, is medically fit to drive that vehicle, and shall provide upon demand such reasonable proof of fitness as may be required by the Company.
 - The Client shall ensure that each individual who is in control of the Client's vehicles is familiar with and capable in all respects of driving such vehicles in a safe and controlled fashion.
 - The Company expressly reserves the right to remove any disabled or obstructing vehicle of the Client from Millbrook in whatever reasonable and proper fashion it deems appropriate at the sole cost of the Client.
 - The Client will at all times observe the requirements of the Health and Safety at Work Act.
 - The Client shall fully and effectively indemnify the Company against all costs, claims, expenses and other liability, howsoever arising, whether in respect of damage to property or otherwise and whether suffered by the Company or any third party, so far as the same arises directly or indirectly in consequence of the negligent or improper use of Millbrook by the Client.
 - The Client shall maintain a policy(s) of insurance against all liabilities which may attach to the Client for any death, injury, loss or damage to any person or property arising out of or in connection with the Client's use of Millbrook. This insurance shall be effected in such sum as may be agreed but in any event for not less than an indemnity of £1,500,000 in respect of any one accident or series of accidents arising out of one event.
19. CONFIDENTIALITY
- 19.1 The Client agrees that it will treat all information (howsoever gained) of which it obtains knowledge concerning activities at Millbrook which are not released to the Client for its use under the terms of the Contract as strictly confidential and shall not release details of the same to any third party for any reason whatsoever without the prior written consent of a Director of the Company.
- 19.2 The Company agrees that it will treat all information drawings and other documents passed to it by the Client during the continuance of the Contract as strictly confidential and shall not release details of the same to any third party for any reason whatsoever without the prior written consent of a Director of the Client.
- 19.3 The Client and the Company shall respectively be relieved of any of the obligations contained in sub-clause 19.1 or 19.2 above if the relevant information:
- was known to them or an associated company (being a company over which they exercise majority control) prior to the provision of Services under the Contract;
 - becomes known to them or any associated company through another source and there was no knowledge or reason to know on the part of the recipient that the other source had obtained the information under any obligation of secrecy; or
 - after disclosure enters the public domain except by breach of any Contract to which these Conditions are applicable; or
 - was disclosed pursuant to a requirement of law.
- 19.4 The Client shall be relieved of the obligation contained in sub-clause 19.1 above if on behalf of a third party it has contracted the Company to provide a Service and wishes to release information relating to that Service to that third party.
- 19.5 The Client shall not in any publication or publicity material make use of any report or statement issued by the Company, or any extract therefrom, nor refer to the fact that any product or process has been the subject of a contract with the Company in any publication or publicity material without the express written permission of a Director of the Company which shall not be unreasonably withheld.
20. HAZARDOUS SUBSTANCES
- With regard to the Control of Substances Hazardous to Health Regulations 2002 (COSHH) the Client will provide the Company with handling and storage data for any relevant material and will provide updated data as it becomes available.
21. EQUIPMENT BROUGHT ON TO SITE
- 21.1 The Client warrants that all equipment and instrumentation brought on to Millbrook premises by the Client fully complies with relevant safety standards. This includes portable electric appliances which must have been tested, certified as safe and identified as such by a competent person as defined by the Electricity at Work Regulations 1989 (EAW Regulations).
- 21.2 The Company reserves the right to inspect such equipment and instrumentation and to refuse entry or to undertake the appropriate certification at the Client's expense. The Company shall not be liable for any delays or costs to the Contract resulting from any action under this condition.
22. WAIVER
- The rights and remedies of the Company against the Client shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time by the Company nor by any failure of or delay by the Company in asserting or exercising any such right or remedies.
23. LAW
- These Conditions and each Contract made pursuant thereto shall be governed by and construed in all respects in accordance with the Laws of England and the Company and the Client hereby irrevocably submit to the exclusive jurisdiction of the English Courts.
24. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999.
- A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.'