

1. TERMS AND CONDITIONS

1.	<u>Definitions</u>			
1.1	In these Conditions the terms in column 1 below have the meanings appearing opposite them in column 2:			
1	2			
“Business Day”	any day (other than Saturday) on which clearing banks are open for normal banking business in the City of London;			
“Conditions”	these terms and conditions as amended from time to time in accordance with Clause 2.4;			
“Confidential Information”	all information which is identified as confidential or is by its nature confidential including (but without limitation) commercial, financial and technical information, know how, trade secrets, inventions, computer software and other information whatsoever and in whatever form or medium and whether disclosed orally or in writing, together with all reproductions in whatsoever form or medium and any part or parts of it;			
“Competent Person”	an engineer surveyor engaged by Us and authorised to perform a Thorough Examination or Inspection under the Contract;			
“Contract”	the contract made between You and Us for the Services subject to these Conditions;			
“Fees”	the amount payable for the Services as stated in the Schedule as varied from time to time pursuant to Clause 4;			
“Insolvency Event”	any one or more of: (i) a notice being issued to propose a resolution for winding up or dissolution, or such a resolution being passed; (ii) a petition for a winding up or an administration or bankruptcy order being presented, or such an order being made; (iii) any steps being taken with a view to a voluntary arrangement or other assignment, composition or arrangement with all or any creditors or any moratorium, readjustment, rescheduling, forgiveness or deferral of all or any indebtedness; (iv) suspension of payments to all or any creditors and/or ceasing business; (v) an encumbrancer taking possession of all or any assets of a party; (vi) an administrator or receiver being appointed over a party or all or any of its assets; (vii) any action anywhere similar or analogous to any of the foregoing; (viii) the other party having reasonable grounds for believing that any of the foregoing is imminent; (ix) the foregoing occur in relation to a partner in either party it will be deemed to occur in relation to that party.			
“Inspection”	an inspection of Plant which is exempt or excluded from the requirement for a Periodic Thorough Examination or examination in accordance with a Written Scheme as specified in the Regulations, and any such inspection:- (i) will be an external visual inspection carried out to the extent practicable given the design of and the extent to which You have prepared the Plant for inspection and provided safe access to it; (ii) may include such tests as are deemed appropriate to establish general condition and standard of Plant maintenance; and (iii) will not be deemed to comply with specific regulations or Regulations unless specified in the Schedule;			
“Normal Working Hours”	8:00am to 6:00pm Monday to Friday excluding public and bank holidays;			
“Order”	Your written request to Us that an Order be concluded on the basis of a quotation, which We have provided to You;			
“Parties”	both parties to the Contract and “Party” means one of them;			
“Periodic”	the performance of the Services repeated at such intervals stated in the Schedule;			
		“Regulations”	the following statutory regulations (as amended or extended by any enactment or statutory re-enactment thereof) as may be applicable to the Thorough Examination of Plant at the time of any such Thorough Examination: (i) The Lifting Operations and Lifting Equipment Regulations 1998; (ii) The Pressure Systems Safety Regulations 2000; (iii) The Provision and Use of Work Equipment Regulations 1998 Part IV; (iv) The Control of Substances Hazardous to Health Regulations 2002; (v) The Workplace (Health Safety and Welfare) Regulations 1992; (vi) The Control of Major Accident Hazard Regulations 1999; (vii) The Electricity at Work Regulations 1989; (viii) The Dangerous Substances and Explosive Atmospheres Regulations 2002; (ix) The Factories Act 1955; (x) The Safety in Industry Act 1980; (xi) The Safety Health and Welfare at Work (General Application) (Amendment) Regulations; (xii) The Safety Health and Welfare at Work (Quarries) Regulations.	1.3.4 any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and 1.3.5 a reference to writing or written includes faxes and e-mails.
				2. <u>Basis of Contract</u> 2.1 You will have 60 days from the date on any quotation we provide within which to notify us that you wish to place an Order on the terms of that quotation. 2.2 Such quotations are not offers by us so that your notification that you wish to place of any Order will constitute an offer by You. A contract between us will be formed when We accept Your Order in writing and not otherwise. 2.3 These Conditions will form the terms and conditions of any Contract for Services and will apply to the exclusion of any terms or conditions whether put forward by or on behalf of You, in Your Order or otherwise, or whether implied by law (insofar as the exclusion is lawful). 2.4 Any variation, including the introduction of any additional terms and conditions to the Contract will only be effective if expressly agreed to in writing by Us. 2.5 The Contract represents the entire agreement between the parties and supersedes all prior agreements and representations made by either party, whether oral or written.
		“Report”	a document in Our standard format issued to You electronically or on paper that provides details of a Thorough Examination or Inspection of Plant;	3. <u>Provision of Services</u> 3.1 During the Term, We will provide the Services at the Site during Normal Working Hours subject to the Conditions. 3.2 In providing the Services, We will comply with Your reasonable and proper safe systems of work, provided such systems are notified to Us in advance of any Thorough Examination or Inspection. 3.3 We will use reasonable endeavours to meet any dates quoted by Us for performance of all or any of the Services, but any such dates are estimates only and time will not be of the essence. We will not be liable for any failure to meet any such estimate, or for any directly or indirectly resulting loss of Yours. 3.4 During the Term, We may:- 3.4.1 decline to undertake any Thorough Examination or Inspection which, in Our sole opinion poses a health, safety or welfare risk; or 3.4.2 appoint sub-contractors to provide all or any part of the Services but any such appointment will not reduce or affect our liability for the Services.
		“Services”	(i) the Periodic performance of a Thorough Examination or Inspection of Plant during Normal Working Hours, and (ii) the provision of a Report of Thorough Examination or Inspection within a reasonable time, or within legal requirements if prescribed by applicable Statutory Regulations, and for the avoidance of doubt does not include:- (i) keeping in repair any Plant, (ii) preparing any such Plant for inspection, (iii) reassembling any such Plant after inspection, or (iv) reporting or advising upon the general safety or general condition of any such Plant.	4. <u>Fees</u> 4.1 In consideration of Our performing the Services, You will pay the Fees. 4.2 We may invoice You for any Services when they are performed or at any time thereafter. 4.3 You will pay Our invoices within 20 Business Days (30 days including weekends) of their date of Our invoice. We may charge interest at 5% per annum above Barclays Bank Plc base rate on all overdue amounts from their due date until the date of payment. 4.4 Prices quoted by Us are based on costs current on the date of quotation. We may adjust the price payable by You to reflect changes in our costs between the date of our quotation and the date on which we provide Services.
		“Site”	the location detailed in the Schedule;	
		“Term”	the duration of the Contract as shown in the Schedule;	
		“Thorough Examination”	a thorough examination of Plant or examination of Plant in accordance with a Written Scheme which is carried out solely in accordance with the requirements of the Regulations which apply to the Plant at the time of examination;	
		“We, Our, Us”	Industrial Safety Inspections Limited;	
		“Written Scheme”	a document drawn up by a competent person in accordance with Regulation 8 of the Pressure Systems Safety Regulations 2000 which contains information about selected items of Plant that form a pressure system including but not limited to the parts which require examination and the nature and frequency of such examinations;	
		“You, Your”	the party with whom the Company contracts.	
1.2	In these Conditions, the following rules apply:			4.5 All prices are exclusive of VAT which will be charged where appropriate at the rate prevailing at the relevant tax point.
1.3	1.2 Construction of certain references			4.6 During the Term We may make a charge in addition to the Fees if You: 4.6.1 add any Sites or individual items of Plant to the Schedule during the Term; 4.6.2 request and We agree to perform the Services outside Normal Working Hours; 4.6.3 require additional copies of Reports; 4.6.4 fail to prepare or make the Plant available at the date and time agreed; 4.6.5 require additional services; or 4.6.6 require the Competent Person to undertake training or particular risk assessment specific to Your own premises or Your health, safety and welfare procedures.
1.3.1	a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);			
1.3.2	a reference to a party includes its personal representatives, successors or permitted assigns			
1.3.3	a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;			

5. Your responsibilities
- 5.1 You will ensure that the terms of any Order and the information provided in the Schedule are complete and accurate.
- 5.2 You will retain sole responsibility for the care, custody and control of the Plant at all times.
- 5.3 You will as a condition precedent to the performance by Us of the Services or any other obligations under the Contract: allow Us access to the Site and Plant at all reasonable times during Normal Working Hours, or as otherwise agreed between the Parties;
- 5.3.2 provide Us with:-
(a) a safe working environment on the Site,
(b) a safe physical means by which to gain access to the Plant to perform the Services,
(c) all necessary equipment to permit the Plant to be tested upon completion of the Thorough Examination or Inspection, and
(d) proper and safe protection of all people, tools, equipment, materials and all assets brought onto the Site by us or anyone present at our request or on our behalf;
- 5.3.3 have all Plant properly prepared, dismantled and reassembled as necessary in order to enable Us to carry out the appropriate Thorough Examination or Inspection;
- 5.3.4 ensure that all requirements applicable to the Contract, whether statutory or regulatory, and/or otherwise howsoever, are duly complied with (for the avoidance of doubt, it will be a condition precedent to the performance by Us of Our obligations under the Contract that all necessary licences, permits and consents will have been obtained by You);
- 5.3.5 cooperate with and, upon request, provide Us with all information and data relating to the Plant required by Us or the Competent Person including (but without limitation) full information concerning any modification to the Plant that has been made since the last Thorough Examination or Inspection and in respect of Plant that is capable of being moved from one location to another the precise location and any change in location of any such Plant.
- 5.4 You acknowledge that you owe a duty of care to Us, our personnel and subcontractors and our assets whenever they are present on Site for the purposes of the Contract. You will at all times maintain insurance with reputable insurers for all your potential liability relating to such duty of care and will ensure that such insurance names Us as co-insured with the right to claim directly under your policy of insurance. You will produce the policy to Us upon request together with the latest premium receipts and in default of effecting the same We will be entitled to do so and add the cost of such insurance to the Fees.
- 5.5 The provision of the Services under the Contract does not relieve You of Your legal duty under relevant Regulations to have the Plant inspected.
- 5.6 You will pay Us all expenses We incur by reason of a breach by You of any obligations in this Clause 5 without prejudice to Our right to recover any loss thereby occasioned.
6. Warranty
- 6.1 We will make good by reimbursement of the Fees or by re-performance of the Services at our discretion if the Services are performed in defectively or erroneously provided You notify any such failure to Us in writing providing full details of the nature of the alleged failure within as soon as possible and in any event within one Business Day of discovery of failure in relation to any Services, which was not apparent on reasonable inspection provided that:
- 6.1.1 any such failure must in any event be notified within 3 months after the date on which the relevant Services were performed; and
- 6.1.2 until We have carried out such inspection as we require or indicated that we will not do so, no one will interfere with or move anything which might be relevant to an assessment of what has occurred and any defect in the Services.
- 6.2 Subject only to Sub-Clause 6.1, neither We nor any of Our employees make any warranty, express or implied, concerning the activities described in the Contract and all such warranties are hereby excluded to the maximum extent permitted by law.
7. Limitation of Liability and Indemnification
- 7.1 Whilst a Thorough Examination will be carried out in accordance with the requirements of the Regulations, which apply to Plant at the time of examination, the scope of any such prescribed examination will not (unless otherwise agreed in writing) include:
- 7.1.1 approval or verification of the fitness for purpose of any design or design features of plant;
- 7.1.2 performing or witnessing tests of a non-routine nature (unless as stipulated as the responsibility of the Competent Person in a Health and Safety Executive or Safety Assessment Federation Approved Code of Practice or Guidance);
- 7.1.3 the carrying out or witnessing of any ultrasonic, radiographic, hydrostatic, evaporation or other non-destructive testing to any boiler/pressure plant;
- 7.1.4 neither any thorough examination as required when exceptional circumstances have occurred nor proof load stability, anchorage supplementary, or similar test to any lifting and handling plant;
- 7.1.5 the examination of enclosed parts or tests of any mechanical power press plant subject to the requirements of PUWER 98 Part IV;
- 7.1.6 any initial appraisal of any local exhaust ventilation plant; or
- 7.1.7 the witnessing of any load test of any hoist, lifting machinery or lifting tackle.
- 7.2 Notwithstanding any contrary provision of the Contract we do not seek to limit our liability for any act of fraud or other dishonesty or for death or personal injury caused by our negligence or that of our appointees, employees or subcontractors
- 7.3 Subject only to clause 7.2, neither We nor any of Our employees will be liable directly or indirectly for:
- 7.3.1 the electrical, mechanical or internal condition of any Plant unless this should reasonably have been apparent from carrying out the Services;
- 7.3.2 the general safety or general condition of any Plant;
- 7.3.3 any loss, damage or injury to property or persons resulting from any accident or defect in any Plant;
- 7.3.4 any defect in any Plant arising from:
(a) fair wear and tear;
(b) damage to any Plant unless caused by our negligence or wilful act;
(c) lack of or failure in maintenance or servicing any Plant;
(d) using any Plant abnormally, in unusual conditions or otherwise in a manner for which the Plant is not adapted, designed or intended;
(e) failure to follow Our instructions (whether oral or written) in relation to any Plant;
(f) failure to use, store, transport, maintain or care for Plant in accordance with the specifications, instructions and guidance given by its supplier or manufacturer; or
(g) alteration or repair of any Plant without Our approval.
- 7.3.5 loss, damage or injury of any kind arising from or connected in any way with any Services or documentation of any Services including but not limited to Reports, or for the omission of any Services or documentation of any Services including but not limited to Reports, whether or not such Services, documentation or omission was at Your request,
- 7.3.6 failure in the performance of the Services arising from any information or failure to provide assistance by You,
- 7.3.7 any economic loss including (but not limited to), loss of business, reputation, profits or revenue, use of any Plant, opportunity or goodwill whether direct or indirect and whether caused or claimed in contract, negligence or breach of other tortious duty;
- 7.4 Subject only to clause 7.2, Our liability under or in connection with the Contract, and the provision of the Services whether arising in contract, tort, negligence, breach of statutory duty or otherwise, will be limited to the price payable for any Services which We have failed to provide or failed to provide in accordance with the Contract.
- 7.5 Subject only to clause 7.2, Our liability under or in connection with the Contract, and the provision of the Services whether arising in contract, tort, negligence, breach of statutory duty or otherwise, will be limited to £5,000,000 in respect of physical damage to property caused directly by us whilst on Site.
- 7.6 You will indemnify and keep Us indemnified in respect of all claims made against and all losses, damages, liabilities, costs and expenses incurred by Us as a result of any claim by a third party resulting out of Your failure or alleged failure to comply with Your obligations under the Contract.
- 7.7 Any release, waiver or compromise or any other arrangement of any kind by Us will not affect Our rights and remedies as regards any other party nor Our rights and remedies against You in whose favour it is granted or made except to the extent of the express terms of the release and no such release will have effect unless granted or made in writing.
- 7.8 Upon completion of the Services or termination of the Contract, the provisions relating to indemnity, waivers, limitations of remedies and limitations of liability, including, but not limited to those contained in this Clause 7, will remain in full force and effect.
- 7.9 We are not responsible for or accept any liability, loss damage or theft or any other consequential loss (whether direct or indirect) relating to goods, plant or items either in-transit, delivered or for the duration of visit at Our premises.
8. Confidentiality
- 8.1 We will not disclose or communicate to any third party any Confidential Information obtained as a result of the Contract and relating to Your business affairs, and We will not use such Confidential Information for any purpose other than to perform Our obligations under the Contract.
- 8.2 You will not disclose or communicate to any third party any Confidential Information obtained as a result of the Contract and relating to Our business affairs, and You will not use such Confidential Information for any purpose other than to perform Your obligations under the Contract.
- 8.3 Nothing in this Clause 8 will impose an obligation of confidentiality on information that was already in the public domain, that was rightfully in the possession of the party prior to the commencement of the Contract, or that is required to be disclosed pursuant to any applicable law or by order of any Court or other authority having jurisdiction.
- 8.4 Unless otherwise agreed between the parties, all Reports and similar material prepared by Us in connection with the Services will be released only to You or Your designated representative.
- 8.5 We may use data gathered in connection with the Services for statistical use.
- 8.6 The obligations under this clause 8 will come into effect at the start of the Term and will survive termination of the Contract.
9. Termination
- 9.1 This Contract will continue for the Term unless terminated earlier in accordance with this clause 9.
- 9.2 We may terminate this Contract at any time by giving 30 Business Days written notice to You.
- 9.3 Either We or You may terminate the Contract with immediate effect at any time by giving written notice to the other:
- 9.3.1 where the other Party has committed a material breach of the terms of this Contract which is incapable of remedy;
- 9.3.2 where the other Party has committed a material breach of the terms of this Contract which is capable of remedy and fails to remedy such breach within 30 Business Days after receipt of a written notice by the other Party giving full particulars of the breach and requiring it to be remedied;
- 9.3.3 where an Insolvency Event occurs in respect of the other Party; or
- 9.3.4 where an Thorough Examination or Inspection is delayed by more than 30 Business Days in circumstances envisaged by clause 12.
10. Data Protection
- 10.1 We will only use the personal information You provide to Us to provide the Services, or to inform You about similar services which We provide, unless You tell Us that You do not want to receive this information.
- 10.2 You acknowledge and agree that We may pass Your details to credit reference agencies.
11. Force Majeure
- 11.1 We will not be liable for any delay or failure delay in performing the Services to the extent that such delay is due to any cause beyond Our reasonable control.
12. General
- 12.1 Law and Jurisdiction
This Contract will be governed by the laws of England. The Parties hereby submit to the exclusive jurisdiction of the Courts of England and Wales.
- 12.2 Assignment
You may not assign, transfer or charge Your rights and responsibilities under the Contract or any of them, without Our prior written consent.
- 12.3 Severance
If any term of the Contract is or becomes invalid, illegal or unenforceable, the validity, legality or enforceability of the other provisions will not in any way be affected or impaired.
- 12.4 Notices
All notices to be given under the Contract will be in writing and may be delivered by first class post or facsimile transmission, and will be deemed to have been delivered 48 hours after posting in the case of first class pre-paid letter and in the case of facsimile transmissions on receipt of a valid answerback from the recipient facsimile machine provided that:
- 12.4.1 a notice served by post which would have been treated as served on a day which is not a Business Day, will instead be treated as served on the next following Business Day; and
- 12.4.2 facsimiles received after 4.00 pm will be deemed to have been served at 9:00 on the next Business Day. 12 hours after dispatch.
- 12.5 Set-off
You will pay Our invoices without making any deduction or set off in relation to any claim or alleged claim. We may apply and apportion monies paid by You under the Contract in or towards any sums owing to Us whether under this Contract or otherwise.
- 12.6 Third Party Rights
It is not intended that this Contract or any part of it confer any rights on any third party so that no one other than You or We may enforce any of its terms whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.



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