

# ARM Pipetek Ltd

## TERMS & CONDITIONS FOR THE SUPPLY OF SERVICES

### 1. Interpretation:

**1.1** The definitions and rules of interpretation in this condition apply in these terms and conditions (**Conditions**).

**(a) "Contract"** means the Customer's acceptance of a quotation for Services by the Company under condition 2.2;

**(b) "Company"** means ARM Pipetek Limited whose registered office is at Unit 8, Belmont Industrial Estate, Durham, DH1 1TN;

**(c) "Company's Equipment"** means any equipment, including tools, systems, cabling or facilities, provided by the Company or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Customer;

**(d) "Customer"** means the person, firm or company who purchases Services from the Company; (

**(e) "Customer's Equipment"** means any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Services;

**(f) "Deliverables"** means all Documents, products materials and plant developed by the Company or its agents, subcontractors, consultants and employees in relation to the Services including any deliverables specified in the Quotation; **Document** includes, without limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form;

**(g) "Material"** means all Documents, information and materials provided by the Customer relating to the Services including (without limitation), computer programs, data, reports, specifications surveys and any other such information required to enable the Company to effectively carry out the Services;

**(h) "Intellectual Property Rights"** means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

**(i) "Pre-existing Materials"** means all Documents, information and materials provided by the Company relating to the Services which existed prior to the commencement of the Contract;

**(j) "Quotation"** means a quotation for services provided by the Company to the Customer;

**(k) "Services"** means the services to be provided by the Company under the Contract as set out in the Quotation together with any other services which the Company provides, or agrees to provide, to the Customer;

**(l) "Site"** means the site where the Company will provide the Services set out in the Quotation to the Customer; and

**(m) "VAT"** means value added tax chargeable under English law for the time being and any similar additional tax.

**1.2** Headings in these conditions shall not affect their interpretation.

**1.3** A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

**1.4** A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any

amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

**1.5** A reference to writing or written includes faxes but not e-mail.

**1.6** References to conditions are references to the conditions contained in this document.

### 2. Application of Conditions:

**2.1** These Conditions shall:

**2.1.1** apply to and be incorporated into the Contract; and

**2.1.2** prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation, or specification or other Document supplied by the Customer, or implied by law, trade custom, practice or course of dealing.

**2.2** The Customer's acceptance of a Quotation constitutes an offer by the Customer to purchase the Services specified in it on these Conditions. No offer placed by the Customer shall be accepted by the Company other than:

**2.2.1** by a written acknowledgement issued and executed by the Company; or

**2.2.2** (if earlier) by the Company starting to provide the Services, when a contract for the supply and purchase of the Services on these Conditions will be established. The Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other Document shall not govern the Contract.

**2.3** Quotations are given by the Company on the basis that no Contract shall come into existence except in accordance with condition 2.2. Any Quotation is valid for a period of 60 (sixty) days from its date, provided that the Company has not previously withdrawn it.

### 3. Commencement and Duration:

**3.1** The Services supplied under the Contract shall be provided by the Company to the Customer within 10 Working Days of the Customer's acceptance of the Contract unless otherwise agreed between the parties.

**3.2** The Services supplied under the Contract shall continue to be supplied until the Services have been completed in accordance with the Quotation or, if earlier, until the Contract is terminated by one of the parties giving to the other not less than one month's written notice unless the Contract is terminated in accordance with Condition 11.

### 4. Company's Obligations:

**4.1** The Company shall use reasonable endeavours to provide the Services in accordance in all material respects with the Contract; and

**4.2** The Company shall use reasonable endeavours to meet any performance dates but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

### 5. Customer's Obligations:

**5.1** The Customer shall:

**5.1.1** co-operate with the Company in all matters relating to the Services;

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**5.1.2** provide the Company, its agents, subcontractors, consultants and employees, in a timely manner and at no charge to the Company, with access to the Site, office accommodation, data and other facilities on the Site as required by the Company;

**5.1.3** provide to the Company, in a timely manner, such Material and other information as the Company may require and ensure that it is accurate in all material respects;

**5.1.4** be responsible (at its own cost) for preparing and maintaining the Site for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from the Site in accordance with all applicable laws, before and during the supply of the Services at the Site;

**5.1.5** inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply at the Site;

**5.1.6** ensure that the Customer's Equipment is in good working order and suitable for the purposes for which it is used and supplied in relation to the Services and conforms to all relevant United Kingdom standards or requirements;

**5.1.7** obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of the Company's Equipment, the use of Material and the use of the Customer's Equipment in relation to the Company's Equipment in all cases before the date on which the Services are to start;

**5.1.8** keep, maintain, store and insure the Company's Equipment in good condition and in accordance with the Company's instructions throughout the Services as notified in writing from time to time, and not to dispose of or use the Company's Equipment other than in accordance with the Company's written instructions or authorisation;

**5.1.9** provide and maintain suitable Health & Safety and Welfare facilities at all times and throughout the Services to allow the Company to effectively carry out the Services; and

**5.1.10** co-ordinate all trades, professions and labour on Site to allow the Company to effectively carry out the Services and so as not to cause any delay to the performance of the Services by the Company.

**5.2** If the performance of the Company's obligations under the Contract is prevented, delayed or otherwise affected by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

**5.3** The Customer shall be liable to pay to the Company, on demand, all reasonable costs, charges or losses sustained or incurred by the Company (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Customer in writing.

**5.4** The Customer shall not, without the prior written consent of the Company, at any time from the date of the Contract to the expiry of 3 months after the last date of supply of the Services, solicit or entice away from the Company or employ (or attempt to employ) any person who is, or has been, engaged as an employee, of the Company in the provision of the Services.

**5.5** Any consent given by the Company in accordance with condition 5.4 shall be subject to the Customer paying to the Company a sum equivalent to **15%** of the then current annual remuneration of the Company's employee, or, if higher, **15%** of the annual remuneration to be paid by the Customer to that employee.

**5.6** The Customer acknowledges that the Company has relied and continues to rely on the Customer to make full disclosure of all known assumed and suspected structures, tanks, utilities, pipelines, discharges, spillages or any hazardous substances at, under or near the Site and if the Company's inspection reveals any such matters which were not disclosed the Company reserves the right to increase the price contained in the Quotation accordingly.

### **6. Charges and Payment:**

**6.1** In consideration of the provision of the Services by the Company, the Customer shall pay the charges as set out in the Quotation, which shall specify whether they shall be on a time and materials basis, a fixed price basis or a combination of both. Condition 6.2 shall apply if the Company provides Services on a time and materials basis condition 6.3 shall apply if the Company provides Services for a fixed price. The remainder of this condition 6 shall apply in either case.

**6.2** Where Services are provided on a time and materials basis:

**6.2.1** the charges payable for the Services shall be calculated in accordance with the Company's standard daily fee rates, as set out in the Quotation and as amended from time to time in accordance with these Conditions;

**6.2.2** the Company's standard daily fee rates for each individual person are calculated on the basis of an **eight-hour** day, worked between **7.30** am and **4.00** pm on weekdays (excluding public holidays); **6.2.3** the Company shall be entitled to charge an overtime rate of **150%** of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages in connection with the Services outside the hours referred to in condition 6.2.2; and

**6.2.4** the Company shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this condition 6.2.

**6.3** Where Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Quotation. The total price shall be paid to the Company (without deduction, set-off) in monthly instalments. The Company shall invoice the Customer monthly in arrears for the charges that are then payable, together with expenses, the costs of materials and VAT, where appropriate, calculated as provided in this condition 6.

**6.4** The Quotation excludes:

**6.4.1** the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Company engages in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Company for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Company;

**6.4.2** VAT, which the Company shall add to its invoices at the appropriate rate;

**6.4.3** the removal of active waste, contaminated material and any material not excavated by the Company in the course of providing the Services;

**6.4.4** the excavation &/or support of strata comprising of running sand, silt, artificially hard or rock material;

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**6.4.5** the spreading of stone/hard core sub-base and fill material other than to tolerances of + 10mm to -30mm; and

**6.4.6** all hand (non mechanised) labour items.

**6.5** The Company reserves the right at any time during the Services to fully re measure any works or materials forming part of the Services and to adjust the prices contained in the Quotation accordingly.

**6.6** The Company will carry out the Services on a continuous basis and the Company reserves the right to charge standing time in respect of any delay or interruption to the Services at a rate of two thirds of the appropriate rate stated in the Quotation.

**6.7** The Quotation is based on the Company carrying out the Services on a continuous basis and completing the Services in one visit to the Site and the Company reserves the right to charge the Customer for any additional visits to the Site which become necessary to fully complete the Services at a rate of **£550** plus VAT per visit.

**6.8** Payment of each invoice submitted to the Customer by the Company, shall be due in full and in cleared funds and without retention upon receipt of each invoice to a bank account nominated in writing by the Company. The final date for payment of each invoice shall be 14 days after each invoice becomes due.

**6.9** Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Company by the final date for payment, the Company may:

**6.9.1** charge interest on such sum from the final date for payment at the annual rate of 5% above the base lending rate from time to time of the Bank of England, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Customer shall pay the interest immediately on demand. The Company may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and

**6.9.2** suspend all Services until payment has been made in full.

**6.10** Time for payment shall be of the essence of the Contract.

**6.11** All sums payable to the Company under the Contract shall become due immediately on its termination, despite any other provision. This condition 6.11 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

**6.12** The Company may, without prejudice to any other rights it may have, set off any liability of the Customer to the Company against any liability of the Company to the Customer.

**7. Intellectual Property Rights:**

**7.1** As between the Customer and the Company, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by the Company. Subject to condition 7.2 and to payment in full by the Customer to the Company, the Company licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services. If the Contract is terminated by the Company prior to the completion of the Services pursuant to condition 11 this Licence shall automatically terminate.

**7.2** The Customer acknowledges that, where the Company does not own any Pre-existing Materials, the Customer's use of rights in Pre-existing Materials is conditional on the Company obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Company to license such rights to the Customer.

**8. Confidentiality and the Company's Property:**

**8.1** The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Company, its employees, agents, consultants or subcontractors and any other confidential information concerning the Company's business or its products which the Customer may obtain.

**8.2** The Customer may disclose such information:

**8.2.1** to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Customer's obligations under the Contract; and

**8.2.2** as may be required by law, court order or any governmental or regulatory authority.

**8.3** The Customer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this condition 8.

**8.4** The Customer shall not use any such information for any purpose other than to perform its obligations under the Contract.

**8.5** All materials, equipment and tools, drawings, specifications and data supplied by the Company to the Customer (including Pre-existing Materials and the Company's Equipment) shall, at all times, be and remain the exclusive property of the Company, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Company, and shall not be disposed of or used other than in accordance with the Company's written instructions or authorisation.

**9. Limitation of Liability:**

**9.1** This condition 9 sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Customer in respect of:

**9.1.1** any breach of the Contract;

**9.1.2** any use made by the Customer of the Services, the Deliverables or any part of them; and

**9.1.3** any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

**9.2** All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

**9.3** Nothing in these Conditions limits or excludes the liability of the Company:

**9.3.1** for death or personal injury resulting from negligence; or

**9.3.2** for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Company;

**9.4** Subject to condition 9.2 and condition 9.3

**9.4.1** the Company shall not be liable for:

**9.4.1.1** loss of profits; or

**9.4.1.2** loss of business; or

**9.4.1.3** depletion of goodwill and/or similar losses; or

**9.4.1.4** loss of anticipated savings; or

**9.4.1.5** loss of goods; or

**9.4.1.6** loss of contract; or

**9.4.1.7** loss of use; or

**9.4.1.8** loss or corruption of data or information; or

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**9.4.1.9** any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

**9.4.2** the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of the Contract shall be limited to the price paid for the Services by the Customer.

**10. Data Protection:**

**10.1** The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Company.

**11. Termination:**

**11.1** Without prejudice to any other rights or remedies which the parties may have either party may terminate the Contract without liability to the other on giving the other no less than one month's written notice or immediately on giving notice to the other if:

**11.1.1** the other party fails to pay any amount due under the Contract on the due date for payment and remains in default for not less than seven days after being notified in writing to make such payment; or

**11.1.2** the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

**11.1.3** the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or

**11.1.4** the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or

**11.1.5** the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or

**11.1.6** a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

**11.1.7** an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party; or **1**

**1.1.8** a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or

**11.1.9** a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or

**11.1.10** a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or

**11.1.11** any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 11.1.4 to condition 11.1.10 (inclusive); or

**11.1.12** the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

**11.1.13** there is a change of control of the other party (as defined in section 574 of the Capital Allowances Act 2001).

**11.2** On termination of the Contract for any reason:

**11.2.1** the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt; **11.2.2** the Customer shall, within a reasonable time, return all of the Company's Equipment, Pre-existing Materials and Deliverables. If the Customer fails to do so, then the Company may enter the Site and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and

**11.2.3** the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

**12 Force Majeure:**

**12.1** The Company shall have no liability to the Customer under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of the Company's suppliers or subcontractors.

**13. Variations:**

**13.1** The Company may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. The Company may, from time to time and subject to Customer's prior written consent, which shall not be unreasonably withheld or delayed change the Services, provided that, where practicable, it will give the Customer at least 14 days notice of any change.

**13.2** Subject to condition 13.1, no variation of the Contract or these Conditions shall be valid unless it is in writing and signed by or on behalf of each of the parties.

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### **14. Waiver:**

**14.1** A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

**14.2** Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

### **15. Severance:**

**15.1** If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.

**15.2** If a provision of the Contract (or part of any provision) is found illegal, invalid or unenforceable, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

### **16. Entire Agreement:**

**16.1** The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

**16.2** Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract), as expressly provided in the Contract.

**16.3** Nothing in this condition shall limit or exclude any liability for fraud.

### **17. Assignment:**

**17.1** The Customer shall not, without the prior written consent of the Company, assign, transfer, charge, mortgage, subcontract, or deal in any other manner with all or any of its rights or obligations under the Contract.

**17.2** The Company may at any time assign, transfer, charge, mortgage, subcontract, or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

**17.3** Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.

### **18. No Partnership or Agency:**

**18.1** Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

### **19. Rights of Third Parties:**

**19.1** A person who is not a party to the Contract shall not have any rights under or in connection with it.

### **20. Notices:**

**20.1** Any notice or other communication required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery or by commercial courier to the other party and for the attention of the Company Secretary, or as otherwise specified by the relevant party by notice in writing to the other party.

**20.2** Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address for the party referred to in 20.1 or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

**20.3** This condition 20 shall not apply to the service of any proceedings or other documents in any legal action.

**20.4** A notice or other communication required to be given under or in connection with the Contract shall not be validly served if sent by e-mail.

### **21. Governing Law and Jurisdiction:**

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

**21.2** The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter or formation (including non-contractual disputes or claims).