

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 8 (LIMITATION OF LIABILITY).

1. **INTERPRETATION**
 2. **The following definitions and rules of interpretation apply in these Conditions.**
 - 2.1 **Definitions:**
 - 1 **BTAC:** BRIAN THOMPSON AGRICULTURAL CONTRACTORS LIMITED, a company registered in England and Wales with company number 09054847 and whose registered office is Parkdene, Wilton Road, Melton Mowbray, LE13 0UJ.
 - 2 **BTAC Materials:** has the meaning set out in clause 4.1(h).
 - 3 **Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
 - 4 **Charges:** the charges payable by the Customer for the supply of the Services in accordance with clause 6.
 - 5 **Commencement Date:** has the meaning given in clause 2.2.
 - 6 **Conditions:** these terms and conditions as amended from time to time in accordance with clause 12.5.
 - 7 **Contract:** the contract between BTAC and the Customer for the supply of Services in accordance with these Conditions.
 - 8 **Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.
 - 9 **Customer:** the person or firm who purchases Services from BTAC.
 - 10 **Customer Default:** has the meaning set out in clause 4.1(i).
 - 11 **Deliverables:** the deliverables set out in the Order produced by BTAC for the Customer including but not limited to any designs or plans.
 - 12 **Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
 - 13 **Order:** the Customer's order for Services as set in the Customer's written or verbal acceptance of BTAC's quotation.
 - 14 **Services:** the services, including the Deliverables, supplied by BTAC to the Customer as set out in the Specification.
 - 15 **Specification:** the description or specification of the Services provided by the Customer or the Customer's advisers (such as architect or surveyor) .
 - 1.1 **Interpretation:**
 - (a) A reference to legislation or a legislative provision:
 - (i) is a reference to it as it is in force as at the date of this Contract; and
 - (i) shall include all subordinate legislation made as at the date of this Contract under that legislation or legislative provision.
 - (b) Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
 - (c) A reference to **writing** or **written** includes text message and email.
2. **BASIS OF CONTRACT**
 - 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
 - 2.2 The Order shall only be deemed to be accepted when BTAC issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
 - 2.3 Any samples, drawings, descriptive matter or advertising issued by BTAC, and any descriptions or illustrations contained in BTAC's catalogues or brochures or on its website, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
 - 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
 - 2.5 Any quotation given by BTAC shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
3. **SUPPLY OF SERVICES**
 - 3.1 BTAC shall supply the Services to the Customer in accordance with the Specification in all material respects.
 - 3.2 BTAC shall use all reasonable endeavours to meet any performance dates specified in any Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
 - 3.3 BTAC reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and BTAC shall notify the Customer in any such event.
 - 3.4 BTAC warrants to the Customer that the Services will be provided using reasonable care and skill.
4. **CUSTOMER'S OBLIGATIONS**
 - 4.1 The Customer shall:
 - (a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
 - (b) co-operate with BTAC in all matters relating to the Services;
 - (c) provide BTAC, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by BTAC;
 - (d) provide BTAC with such information and materials as BTAC may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - (e) comply with all health and safety and welfare requirements;
 - (f) prepare the Customer's premises for the supply of the Services;
 - (g) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - (h) keep all materials, equipment, documents and other property of BTAC (**BTAC Materials**) at the Customer's premises in safe custody at its own risk, maintain BTAC Materials in good condition until returned to BTAC, and not dispose of or use BTAC Materials other than in accordance with BTAC's written instructions or authorisation and

- where applicable, the Customer shall be responsible for site security where requested by BTAC;
- (i) comply with any additional obligations as set out in the Specification
- 4.2 If BTAC's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (b) without limiting or affecting any other right or remedy available to it, BTAC shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays BTAC's performance of any of its obligations;
- (c) BTAC shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from BTAC's failure or delay to perform any of its obligations as set out in this clause 4.1(i); and
- (d) the Customer shall reimburse BTAC on written demand for any costs or losses sustained or incurred by BTAC arising directly or indirectly from the Customer Default. This may include a Standing Charge for inability to work due to the Customer Default.
- 5. SPECIFIC TERMS FOR LABOUR, PLANT OR MATERIAL CONTRACTS**
- 5.1 BTAC undertake to liaise with local authorities and utilities in order to execute the Contract (where applicable).
- 5.2 The Customer agrees to take responsibility for local authority and utility consents where necessary and accepts that if BTAC is unable to provide the Services due to the Customer not obtaining such consents, this shall be a Customer Default and the terms in clause 4.2 shall apply.
- 5.3 In relation to the area in which BTAC will perform the Services, the Customer shall
- (a) Ensure the protection of existing adjacent surfaces such as block paving, concrete, drainage channels which is the responsibility of the Customer/main contractor and BTAC shall not be liable for any damage to such surfaces where adequate protection has not been provided
- (b) Provide all site perimeter fencing (unless by prior arrangement with BTAC);
- (c) Be responsible for
- (i) temporary access roads or hardstanding, unless otherwise stated;
- (ii) setting out, line & level by the Customer or their appointed engineer/representative, unless otherwise stated.
- (iii) traffic management;.
- (iv) disposal of surface water;
- (v) temporary power and water (at no cost to BTAC);
- (vi) off-site road cleaning
- 5.4 All Services and associated prices will be subject to measurement unless a fixed price quotation has been offered.
- 5.5 If additional site visits are required BTAC reserve the right to recover additional costs in full including all plant, labour, transport, material and overhead costs.
- 5.6 No allowance has been made for retentions or discounts unless specifically stated and these will not be accepted unless otherwise agreed with BTAC
- 5.7 Any quotation excludes extra works in relation to:
- (a) abnormal ground conditions;
- (b) hard material (unless there is a quoted item);
- (c) underground services (live or redundant);
- (d) unstable ground;
- (e) running silt or sand; and
- (f) excessive groundwater.
- 5.8 The Customer acknowledges that due to the nature of groundworks, until works commence and unless trial holes have been undertaken or investigations made, site conditions will be unknown. Accordingly, upon discovery by BTAC of any circumstances or Services which did not form part of the original quotation, BTAC will inform the Customer and seek agreement to any additional charges for such works/Services.
- 5.9 If the Customer does not agree to such additional charges quoted in clause 5.8 above, the Customer may cancel the Contract but shall be liable to BTAC for all costs incurred up to the point of cancellation plus compensation of 20% of the remaining Contract value to reflect the fact that BTAC may not have available to it other work that it can move employees or contractors to in order to mitigate its loss and as a genuine pre-estimate of the losses that it will suffer.
- 5.10 Where the Services include earthwork support, BTAC have only quoted for normal support that can be inserted after excavation has been carried out. If more extensive support is required, clause 5.8 will apply.
- 5.11 The Customer will be required to sign off any drainage works following successful testing. Drains will be tested after laying. Testing of large diameter pipes (>200mm) will be subject to additional charges and will be by prior agreement only.
- 5.12 Where plant is hired by the Customer, the Customer is responsible for maintenance, fuel, security against damage or theft. The Customer shall ensure that it insures the hired plant and shall indemnify BTAC for any loss, damage or theft of such plant. Our quoted charges are made irrespective of usage.
- 6. CHARGES AND PAYMENT**
- 6.1 The Charges for the Services shall be calculated on a time and materials basis as per BTAC quotation. Unless otherwise stated in BTAC quote/estimate, rates apply to normal working hours Monday to Friday.
- 6.2 All quotations include the liaison with Local authorities, Utilities and Third-Party Agents, provision of temporary signage and barriers.
- 6.3 Any investigation work or trial holes to be carried out on a daywork basis and will be provided in the quotation.
- 6.4 Quotation pricing is based on a single continuous phase/project without additional transport costs for return visits.
- 6.5 BTAC shall invoice the Customer monthly in arrears or as per the terms set out below.
- 6.6 Contracts with supplied materials are subject to a deposit of 10% payable on receipt of order up to £5,000. Contracts above £5,000 are invoiced every 2 weeks with stage payments upon return.
- 6.7 The Customer shall pay each invoice submitted by BTAC:
- (a) within 30 days of the date of the invoice or in accordance with the invoice or in accordance with any credit terms agreed by BTAC and confirmed in writing to the Customer; and
- (b) in full and in cleared funds to a bank account nominated in writing by BTAC, and
- time for payment shall be of the essence of the Contract.
- 6.8 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable

- supply for VAT purposes is made under the Contract by BTAC to the Customer, the Customer shall, on receipt of a valid VAT invoice from BTAC, pay to BTAC such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 6.9 If the Customer fails to make a payment due to BTAC under the Contract by the due date, then, without limiting BTAC's remedies under clause 10, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 6.9 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%. In addition, BTAC shall be entitled to recover all costs incur in the recovery of such outstanding amount, including but not limited to, all legal fees, court fees, enforcement costs (bailiffs or high court enforcement) and any third party debt agency costs.
- 6.10 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 7. INTELLECTUAL PROPERTY RIGHTS**
- 7.2 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by BTAC.
- 8. DATA PROTECTION**
- 8.1 Other than any contact details of employees of the Customer, the parties do not anticipate processing any other personal data. Each party shall comply with its obligations in relation to the Data Protection Act 2018.
- 9. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**
- 9.1 References to liability in this clause 9 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 9.2 Nothing in this clause 9 shall limit the Customer's payment obligations under the Contract.
- 9.3 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- death or personal injury caused by negligence;
 - fraud or fraudulent misrepresentation; and
 - breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 9.4 Subject to clause 9.3 (Liabilities which cannot legally be limited), BTAC's total liability to the Customer for all loss or damage shall not exceed 100% of the price of the Services paid to BTAC to which the losses or claim relates.
- 9.5 Subject clause 9.2 (No limitation of customer's payment obligations) and clause 9.3 (Liabilities which cannot legally be limited), this clause 9.5 sets out the types of loss that are wholly excluded:
- loss of profits.
 - loss of sales or business.
 - loss of agreements or contracts.
 - loss of anticipated savings.
 - loss of use or corruption of software, data or information.
 - loss of or damage to goodwill; and
 - indirect or consequential loss.
- 9.6 BTAC has given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5
- of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- Unless the Customer notifies BTAC that it intends to make a claim in respect of an event within the notice period, BTAC shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 3 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- This clause 9 shall survive termination of the Contract.
- 10. TERMINATION**
- 10.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party 1 months' written notice. If the Customer cancels, they shall pay all amounts set out in clause 5.9 which for the avoidance of doubt shall include all costs up to the date of cancellation plus 20% compensation for early cancellation.
- 10.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 days of that party being notified in writing to do so;
 - the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
 - the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 10.3 Without affecting any other right or remedy available to it, BTAC may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 10.4 Without affecting any other right or remedy available to it, BTAC may suspend the supply of Services under the Contract or any other contract between the Customer and BTAC if:
- the Customer fails to pay any amount due under the Contract on the due date for payment;
 - the Customer becomes subject to any of the events listed in clause 10.2(c) or clause 10.2(d), or BTAC reasonably believes that the Customer is about to become subject to any of them; and
 - BTAC reasonably believes that the Customer is about to become subject to any of the events listed in clause 10.2(b).
- 11. CONSEQUENCES OF TERMINATION**
- 11.1 On termination or expiry of the Contract:
- the Customer shall immediately pay to BTAC all of BTAC's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, BTAC

- shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of BTAC Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then BTAC may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 11.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 11.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 12. GENERAL**
- 12.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 12.2 **Assignment and other dealings.**
- (a) BTAC may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of BTAC.
- 12.3 **Confidentiality.**
- (a) Each party undertakes that it shall not at any time, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.3(b).
- (b) Each party may disclose the other party's confidential information:
- (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12.3; and
- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 12.4 **Entire agreement.**
- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and
- understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 12.5 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 12.6 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 12.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this Contract deleted under this clause 12.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 12.8 **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 12.9 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.
- 12.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.