

AMB Rail and Utility Ltd



TERMS & CONDITIONS

1 Definitions

In these Conditions, the following expressions will have the following meanings, unless inconsistent with the context:

"Additional Services"	additional services to be provided by AMB Rail & Utility Limited to the Client pursuant to <u>clause 6.3</u> (if any)
"Agreement"	the agreement between AMB Rail & Utility Limited and the Client formed by these Conditions (including their Appendices and Schedules)
"Business Day"	any day which is not a Saturday, Sunday or public or bank holiday in England and Wales
"Charges"	the charges for the Services as set out in this Agreement, as amended from time to time in accordance with <u>clause 6.6</u>
"Client Materials"	the data, text, images, graphics, videos, logos, drawings and other content and material to be provided by the Client for use by AMB Rail & Utility Limited in relation to the provision of the Services.
"Conditions"	The terms and conditions which are set out in this Agreement
"Intellectual Property Rights"	any and all patents, trademarks, service marks, copyright, moral rights, rights in design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating to the same
"Services"	the design, technical and/or other services (if any) to be provided to the Client by AMB Rail & Utility Limited pursuant to the Agreement, as set out in the Appendix A

2 Interpretation

- 2.1 The headings used in the Agreement are inserted for convenience only and are not intended to be part of nor to affect the meaning or interpretation of any of the Agreement.
- 2.2 In the Agreement the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa as the context shall admit or require.
- 2.3 The expression "person" means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture.
- 2.4 In the event of a conflict between any of these Conditions and the tender proposal, the conflict will be resolved according to the following order of priority: these Conditions then the tender proposal.
- 2.5 The words "include", "includes", "including" and "included" will be construed without limitation unless inconsistent with the context.
- 2.6 The Agreement (as varied in accordance with its terms) forms the entire understanding of the parties in respect of the matters dealt within it and supersedes all previous agreements, understandings and negotiations between them.
- 2.7 The parties do not intend that any of the terms of the Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not party to it.

3 Provision of Services

- 3.1 AMB Rail & Utility Limited will provide the Services to the Client upon the terms and conditions set out in this Agreement.
- 3.2 AMB Rail & Utility Limited will provide the Services for the term specified in the Agreement, subject to any extension or earlier termination in accordance with these Conditions.
- 3.3 AMB Rail & Utility Limited will only be obliged to provide the Services at its premises or any other location stated in the Agreement.
- 3.4 AMB Rail & Utility Limited will use its reasonable endeavors to provide the Services in accordance with any timescales set out in the Agreement, but will not be liable to the Client for any failure (using reasonable endeavors) to do so.
- 3.5 Without prejudice to clause 8, AMB Rail & Utility Limited will not be liable for any failure to provide the Services which arises as a result of the failure by the Client to comply with its obligations as set out in the Agreement.
- 3.6 AMB Rail & Utility Limited will not be obliged to provide any services which are not Services nor referred to in the Agreement, unless otherwise agreed with the Client in writing pursuant to clause 6.3.

4 Client Responsibilities

- 4.1 The Client will (where required to under the Agreement) supply to AMB Rail & Utility Limited the Client Materials in accordance with any timescales set out in the Agreement, or if no timescales are set out therein within a reasonable time taking account of the obligations of AMB Rail & Utility Limited
- 4.2 The Client warrants that the Client Materials will be accurate in all material respects and will not knowingly include any material which is illegal or the accessing, holding, transmitting or supplying of which would be a criminal offence or otherwise unlawful or in breach of any laws or codes of practice which may apply to the Client Materials. In particular the Client warrants that all necessary licences, consents and waivers (including those from all rights owners, performers and other contributors) will be obtained and paid for by the Client. Without prejudice to the foregoing, AMB Rail & Utility Limited may decline to use any Client Materials on any reasonable grounds and will have no resulting liability to the Client under or in connection with the Agreement if it does so.
- 4.3 The Client will comply with any obligations placed upon it in the Agreement.
- 4.4 The Client will supply in a timely manner all information, instructions, review and feedback reasonably required by AMB Rail & Utility Limited for the performance of its obligations under the Agreement and will appoint a representative who is fully empowered and authorized to provide the same.

5 Personnel

AMB Rail & Utility Limited will use its reasonable endeavours to use the designated personnel referred to in the Agreement in connection with the provision of the Services, but will not be liable for any failure to provide such personnel which arises for reasons outside its reasonable control.

6 Charges

- 6.1 The Client will pay to AMB Rail & Utility Limited the Charges at the rates or in the amounts set out in Appendix C of the Agreement .
- 6.2 The Charges and other amounts payable by the Client pursuant to this clause 6 are (unless stated otherwise in the Agreement) exclusive of VAT and the reasonable expenses of AMB Rail & Utility Limited incurred in connection with the provision of the Services including the cost of:

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- 6.2.1 travel;
 - 6.2.2 accommodation;
 - 6.2.3 subsistence;
 - 6.2.4 materials;
 - 6.2.5 third party services; which will be payable by the Client in addition to the Charges.
 - 6.3.1 AMB Rail & Utility Limited agrees in writing pursuant to any Change (as such term is defined in Clause 23) to provide services to the Client in addition to the Services;
 - 6.3.2 the Client changes its requirements and AMB Rail & Utility Limited agrees to accept that change; or
 - 6.3.3 AMB Rail & Utility Limited incurs additional obligations or time as a consequence of the Client's failure to comply with its obligations under the Agreement;
- the Client will pay for those Additional Services at the rates of AMB Rail & Utility Limited applicable to the provision of the Additional Services set out in Appendix C to this Agreement .
- 6.4 AMB Rail & Utility Limited may invoice the Client for the Charges and other amounts payable by the Client pursuant to this clause 6 in accordance with any payment profile set out in the Agreement at the end of each calendar month in respect of the Services and Additional Services provided in that month.
 - 6.5 If the Client does not pay the Charges or any other amounts become payable in accordance with this Clause 6 and Clause 9, AMB Rail & Utility Limited may (without prejudice to its remedies elsewhere in these Conditions) withhold further provision of the Services and of any reports or other materials being provided as part of the Services until payment is made.
 - 6.6 AMB Rail & Utility Limited may increase any rates set out in Appendix C to the Agreement (and any Charges based on such rates) on the review date set out in Agreement and annually thereafter by up to 10% of the then applicable rate such increase to come into effect on the immediately following 1st January.
- 7 Warranty**
- 7.1 AMB Rail & Utility Limited warrants that (subject to the other provisions of the Agreement) it will provide the Services and any Additional Services (referred to in clause 6.3) with reasonable care and skill.
 - 7.2 AMB Rail & Utility Limited will not be liable for a breach of the warranty in clause 7.1 unless the Client notifies AMB Rail & Utility Limited in writing of such failure within 30 days of the performance of the relevant Services.
 - 7.3 If the Client makes a valid claim against AMB Rail & Utility Limited based on a failure by AMB Rail & Utility Limited to comply with the warranty in clause 7.1, AMB Rail & Utility Limited may, at its option, take such steps as it deems necessary to remedy such failure or refund such part of the amount payable by the Client under clause 6 as relates to such Services, provided that the liability of AMB Rail & Utility Limited under the warranty in clause 7.1 will in no event exceed the aggregate amount of the sums already paid to AMB Rail & Utility Limited by the Client pursuant to clause 6 (excluding VAT and expenses) in the 12 month period prior to the date on which the Client makes a claim under that warranty.
 - 7.4 If AMB Rail & Utility Limited complies with clause 7.3, it will have no further liability for a breach of the warranty in clause 7.1 in respect of the provision of the Services and/or any Additional Services.
- 8 Client's General Obligations**
- 8.1 The Client will promptly provide to AMB Rail & Utility Limited and/or its consultants, employees and agents such information and assistance as they may reasonably require in order to be able to carry out the Services.
 - 8.2 The Client will procure all necessary access rights, consents, licenses and permissions from third parties (including intellectual property licenses if required) which are from time to time required in order for AMB Rail & Utility Limited to be able legally to provide the Services and exercise its rights under the Agreement.
- 9 Payment Terms**
- 9.1 Any sums payable by the Client as set out in Appendix C of this Agreement to AMB Rail & Utility Limited are exclusive of value added tax or any similar taxes, levies or duties, which will be added to such sums and be payable by the Client at the appropriate rate.
 - 9.2 The Client agrees to pay AMB Rail & Utility Limited invoices within 14 days of the date of the invoice. If invoices are not settled in full by then, the Client will be liable to pay interest on any sum outstanding from the due date for payment at the annual rate of 2% above the base lending rate from time to time of Barclays Bank plc accruing on a daily basis until payment is made whether before or after any judgment.
- 10 Confidential Information**
- 10.1 Each party will (unless contrary to law):
 - 10.1.1 keep confidential all information obtained from the other under or in connection with the Agreement ("**Information**");
 - 10.1.2 not disclose any Information to any third party without the prior written consent of the other except to such persons and to such extent as may be strictly necessary for the performance of the Agreement; and
 - 10.1.3 not use any Information otherwise than for the purposes of the Agreement.
 - 10.2 Each party will take all necessary precautions to ensure that all Information:
 - 10.2.1 is given to each member of staff only to the extent necessary for that member of staff's activities in connection with the Agreement; and
 - 10.2.2 is treated as confidential and not disclosed (without prior approval) or used by any staff otherwise than for the purposes of the Agreement.
 - 10.3 The provisions of clauses 10.1 and 10.2 do not apply to any Information:
 - 10.3.1 which is or becomes public knowledge (otherwise than by breach of this clause); or
 - 10.3.2 which was in the possession of the party concerned without restriction as to its disclosure before receiving it from the disclosing party; or
 - 10.3.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; and nothing in this clause 10 prevents either party from disclosing any Information for a proper purpose to a public authority or any regulatory body, or to a court of law in the United Kingdom or elsewhere in legal proceedings, or to its senior management, its auditors, bankers, lawyers or other professional advisers.
 - 10.4 Nothing in this clause 10 prevents either party from using any techniques, ideas or know how gained during the performance of the Agreement in the course of its normal business to the extent that this does not result in a disclosure of confidential information.
 - 10.5 The provisions of this clause 10 will continue to apply notwithstanding termination of the Agreement.

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- 10.6 AMB Rail & Utility Limited will be able to refer to the fact that it has undertaken work for the Client in any of its marketing materials provided that in doing so it does not disclose the Client's Information.

11 Intellectual Property

- 11.1 The Client acknowledges and agrees that it will not own or acquire ownership of any of the Intellectual Property Rights in any product or materials provided in connection with the Agreement or which may arise in connection with AMB Rail & Utility Limited performance of this Agreement and that it will have no rights in or to any such product other than the rights expressly granted by the Agreement. The Client may however make use of such Intellectual Property Rights to the extent required to make use of any product or materials delivered to the Client by AMB Rail & Utility Limited under the Agreement for the purposes for which such product or materials was/were created, as envisaged by the Agreement.
- 11.2 The Client will indemnify and keep AMB Rail & Utility Limited indemnified from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, losses, damages, claims, demands, legal costs (on a full indemnity basis) and judgments which AMB Rail & Utility Limited incurs or suffers as a consequence of infringement of any Intellectual Property Right of any third party arising directly or indirectly from:
- 11.2.1 the Client's failure to procure all necessary rights from third parties (including intellectual property licenses) which are from time to time required in order for AMB Rail & Utility Limited to be able legally to provide the Services; or
- 11.2.2 the use by AMB Rail & Utility Limited in connection with the Agreement of the Client Materials.
- 11.3 No Intellectual Property Rights in any product relating to the provision by AMB Rail & Utility Limited of the Services will transfer or be assigned to the Client unless AMB Rail & Utility Limited and the Client have signed a written assignment document to that effect.

12 Liability

- 12.1 The provisions of this [clause 12](#) and [clause 7](#) set out the entire liability of AMB Rail & Utility Limited (including any liability for the acts or omissions of its consultants, employees, agents and authorised representatives) to the Client in respect of:
- 12.1.1 any breach of the Agreement; and
- 12.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Agreement.
- 12.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are excluded from the Agreement to the fullest extent permitted by law.
- 12.2.1 Loss of profits; or
- 12.2.2 Loss of business; or
- 12.2.3 Depletion of goodwill and/or similar losses; or
- 12.2.4 Loss of anticipated savings; or
- 12.2.5 Loss of goods; or
- 12.2.6 Loss of contract; or
- 12.2.7 Loss of use; or
- 12.2.8 Loss or corruption of data or information; or
- 12.2.9 Any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 12.3 AMB Rail & Utility Limited 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 this agreement shall be limited to 100% of the stated Contract value.

13 Force Majeure

Neither party is under any liability to the other party in respect of anything which, apart from this provision, may constitute a breach of the Agreement arising by reason of force majeure which means, in relation to either party, circumstances beyond the reasonable control of that party including acts of God, acts of any governmental or supra-national authority, war or national emergency, riots, civil commotion, fire, explosion, flood, epidemic, lock-outs (whether or not by that party), strikes and other industrial disputes (in each case, whether or not relating to that party's workforce), restraints or delays affecting shipping or carriers, inability or delay in obtaining supplies of adequate or suitable materials and currency restrictions.

14 Term and Termination

The Services will be performed and the Agreement will continue for the period referred to in Appendix A. Without prejudice to any rights of termination set out elsewhere in the Agreement:

- 14.1 AMB Rail & Utility Limited may immediately terminate the Agreement (or at its option, any part of it) by notice in writing to the Client if the Client fails to pay to AMB Rail & Utility Limited any sum due under the Agreement on the due date for payment;
- 14.2 either party may terminate the Agreement (or, at its option, any part of it) forthwith by notice in writing to the other if the other:
- 14.2.1 is in material breach of the Agreement and fails (where the breach is capable of remedy) to remedy the breach within 30 days of the receipt of a request in writing to remedy the breach, such request setting out the breach and indicating that failure to remedy the breach may result in termination of the Agreement;
- 14.2.2 becomes the subject of a voluntary arrangement under section 1 of the Insolvency Act 1986;
- 14.2.3 is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 14.2.4 has a receiver, manager, administrator or administrative receiver appointed over all or any parts of its undertaking, assets or income, has passed a resolution for its winding-up, or has a petition presented to any court for its winding-up or for an administration order; or
- 14.2.5 has ceased or threatened to cease to trade.

15 Consequences of Termination

- 15.1 Termination of the Agreement is without prejudice to the rights and duties of either party accrued prior to termination.
- 15.2 The clauses of the Agreement which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.
- 15.3 Upon termination of the Agreement, the Client will immediately pay all outstanding invoices raised by AMB Rail & Utility Limited pursuant to the Agreement and pay for all work in progress not previously paid for on a reasonable pro-rata basis (subject to receipt of an invoice for the same from AMB Rail & Utility Limited).

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16 Dispute Resolution

- 16.1 Any dispute or difference (a “**Dispute**”) between AMB Rail & Utility Limited and the Client in respect of or arising out of the Agreement will be dealt with in accordance with this clause 16.
- 16.2 In the first instance, a representative of each party will each use their reasonable endeavours to resolve the Dispute. If the Dispute cannot be resolved by such representatives, it will be referred to a senior representative of each party, who shall each use their reasonable endeavours to resolve the Dispute.
- 16.3 If a Dispute cannot be resolved by negotiation as referred to in clause 16.2 within 30 days of the Dispute arising, either party may refer the Dispute for determination in accordance with the mediation procedure administered by the Centre for Dispute Resolution (CEDR), the costs of the mediator being split equally between the parties, who shall otherwise bear their own costs of the reference.

17 Severability

The illegality, invalidity or unenforceability of any provision of the Agreement will not affect the legality, validity or enforceability of the remainder. If any such provision is found by any court or competent authority to be illegal, invalid or unenforceable, the parties agree that they will substitute provisions in a form as similar to the offending provisions as is possible without thereby rendering them illegal, invalid or unenforceable.

18 Waiver

- 18.1 The failure or delay by either party in exercising any right, power or remedy of that party under the Agreement will not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by either party of any right, power or remedy under the Agreement will not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy.
- 18.2 Any waiver by either party of a breach of or default under any of the terms of the Agreement by the other party is not deemed a waiver of any subsequent breach or default and in no way affects the other terms of the Agreement.

19 Assignment and Subcontracting

- 19.1 The Client may not assign the benefit or delegate the burden of the Agreement nor sub-license any of its rights under the Agreement (including to any company within the same group of companies as the Client) without the prior written consent of AMB Rail & Utility Limited
- 19.2 AMB Rail & Utility Limited may sub-contract or assign any or all of its rights and obligations under the Agreement.

20 Amendments

Where either party requests a variation or amendment to the Services or the Agreement then the provisions of Clause 23 to these Conditions will be followed. No variation or amendment to the Agreement is effective unless agreed in writing and signed by both parties.

21 Notices

Any notice to be given or made by either party under or in connection with the Agreement must be in writing and given or made to the other party at its address stated below or to such other address as either party may from time to time notify to the other. Every notice, if so addressed, is deemed to have been duly given or made, if delivered by hand, upon delivery at the address of the relevant party, if sent by prepaid first class post, two Business Days after the date of posting and if transmitted by facsimile, at the time of transmission (provided a confirmatory letter is sent by prepaid first class post) provided that, where, in accordance with the above provisions, any notice would otherwise be deemed to be given or made on a day which is not a Business Day or after 4.00 p.m. on a Business Day, such notice shall be deemed to be given or made at 9.00 a.m. on the next Business Day.

AMB Rail & Utility Limited	
Suit 2 Browne Europe House Gleaming wood Drive Chatham Kent ME5 8RZ	
Fax	Fax

22 Applicable Law and Jurisdiction

The construction, performance and validity of the Agreement will be governed by English law and the English courts have exclusive jurisdiction to settle any disputes which may arise out of or in connection with it.

23 Change Procedure

- The parties recognise that there may be changes to the scope of the Services to reflect changing requirements and improvements which may be identified by either party. The change control procedures for any type of change will be the same and it will make no difference whether it is AMB Rail & Utility Limited or the Client who propose a change.
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- If the Client proposes a change to the Services (a “**Change**”) it will notify AMB Rail & Utility Limited of such requirement in writing specifying in as much detail as is practicable the nature of the change to the Services following which AMB Rail & Utility Limited will at the Client's cost promptly prepare and deliver to the Client a specifying in reasonable detail the amended or additional Services, the charges or charging principles for the Change, its estimate of the effect which the Change will have on existing Services, resource requirements, likely implementation date(s) and, if applicable, how it considers its ability to carry out the Services as then being performed will be adversely affected by the Change (the “**Change**”).
- The Client will consider the Change and:
 - will notify AMB Rail & Utility Limited in writing within 20 Business Days of receipt of the Change of its decision on whether or not to proceed with the Change in accordance with the Change ; or
 - may enter into negotiations with AMB Rail & Utility Limited to vary the Change and where the parties cannot reach agreement recourse will be made to a director of each party.
- If the Client decides not to proceed with the Change pursuant to **paragraph 3(a)** or no agreement is reached following recourse to respective directors pursuant to **paragraph 3(b)** then the Change will not be of any effect and the Services will continue on the same basis as before notification of the Change was given.
- AMB Rail & Utility Limited may propose a Change (and will provide a Change as defined in **paragraph 2**) which will be dealt with in accordance with **paragraphs 3 and 4**.
- AMB Rail & Utility Limited will have no obligation to commence work in connection with any Change until the Change has been agreed by the parties in writing. Having been so agreed, AMB Rail & Utility Limited will, to the extent that AMB Rail & Utility Limited is able to do so in light of any non-compliance or compliance by the Client with its obligations under the Agreement, carry out the Services as so amended as though the Services (so revised) were provided as Services originally specified under the Agreement and the Client will pay the modified Charges to AMB Rail & Utility Limited on the basis so agreed provided always that if the Client requests that any addition or change to the scope of the Services be implemented as a matter of urgency then AMB Rail & Utility Limited may (but is not obliged) to elect to proceed to implement the Change subject to AMB Rail & Utility Limited being indemnified to its satisfaction against all reasonable costs it incurs.