



**IRISH
ENGINEERING
SERVICES**

ENGINEERING INSPECTION SERVICES

Terms and Conditions

Interpretation

These terms and conditions, along with the Contract/Renewal Schedule and Plant Schedule, form the contract (the Contract) between:

- you, the customer or insured named in the Contract/Renewal Schedule; and
- Vertigo Inspection (ROI) Limited T/A Irish Engineering Services, RSA House, Dundrum Town Centre, Sandyford Road, Dublin 16. 01 290 1238, info@irisheng.ie, www.irishengineeringservices.ie

This document sets out the terms and conditions under which we provide inspection services to you. It is an important document and you should keep it in a safe place. It comprises the following sections:

- Definitions
- Our responsibilities
- Your responsibilities
- General provisions
- Exclusions and additional charges

If there is any conflict between the Contract/Renewal Schedule and any other provision of these terms and conditions, the Contract/Renewal Schedule will prevail. We only provide services to you on these terms and conditions. These terms and conditions will apply to any supply of services by us to you (even if you subsequently send us your terms and conditions) unless we agree otherwise in writing.

Please read these terms and conditions carefully to ensure your requirements are met.

Definitions

The following words and terms have the meanings shown wherever they appear in the **Contract**.

“Contract/Renewal Schedule” means the document setting out your details, the period of the Contract, where the Inspection Service is to be carried out and the Contract Fee.

“Examination” means the inspection of equipment or machinery.

“Existing Overdue Position” means in relation to any Plant, that such Plant is (or is due to become) overdue for statutory inspection:

- a) as at the start date of the Contract;
- b) as at the date which such Plant is added to the Plant Schedule; or
- c) within 28 days of the dates set out in (a) and (b) above.

“Contract Fee” means our fee for performing the Inspection Services, which is payable and may be adjusted under clause 11.

“Inspection Service” is the service that we provide to you, which includes:

- a) providing you with a competent person to perform the periodical Examination of that Plant which is safely accessible and appropriately prepared for examination;
- b) providing you with an Examination report which complies with applicable statutory requirements; and

- c) our staff complying with your local site requirements and health and safety procedures.

“Plant” means all machinery and equipment on which we have agreed to carry out Examinations for you to the extent of the Scope of Examination.

“Plant Schedule” means the document listing all the Plant.

“Scope of Examination” means the extent of Examination we agree to carry out. The Scope of the Examination will be in accordance with:

- a) the requirements of any applicable statutory regulation(s) where identified by you or alternatively;
- b) the scope as instructed by you and agreed by us and as recorded/referenced in the Examination report.

“Working Day” means any day other than a Saturday, Sunday or any bank or public holiday in Ireland.

Our Responsibilities

1. Examination

We will carry out the Examination of the Plant with all due care in a safe manner. Where required by law we will forward a copy of the Examination report to the Health & Safety Authority.

2. Our inspection of the Plant is limited to the Scope of Examination. We have no responsibility to examine items forming part of the Plant which are outside the Scope of Examination or Plant Schedule.
3. Our inspection does not replicate or replace the work required by designers or installers of plant nor does it replace the requirement to maintain or inspect the Plant between Examinations.
4. We will not examine chimneys, masonry, brickwork, foundations or supporting structures (unless any are expressly included in the Scope of Examination).

5. Working Hours

We may provide the Inspection Service during standard working hours (09.00 - 17.00), Monday to Friday excluding public holidays. We may charge you in addition to the Fee for any work we carry out outside these hours.

Your Responsibilities

6. Although we will seek to carry out Examination of the Plant listed in the Plant Schedule at intervals agreed with you, where the Examination is to be carried out in accordance with any statutory regulation(s), it is your legal obligation (and not Irish Engineering Services') to ensure that the Plant is examined within any prescribed inspection interval.

Where you are a new customer with Plant which is in an Existing Overdue Position or where you are an existing customer with additional Plant which you wish to add to an existing Plant Schedule and such additional Plant is in an Existing Overdue Position, we will liaise with you to agree a timetable for inspection of such Plant.

By agreeing the Plant Schedule or inspection timetable with us, you agree to waive any rights you may have, now or in the future, against us arising out of or in connection with Plant which is in an Existing Overdue Position or Plant being added to the Contract which is in an Existing Overdue Position and you agree to indemnify us for any liability, costs, claims or expenses however incurred, arising out of or in connection with Plant which is in an Existing Overdue Position or Plant being added to the Contract which is in an Existing Overdue Position.

7. You are responsible for the care, custody and control of the Plant at all times.
8. Before each Examination you will inform us of any matter, including any misuse or incident involving or affecting the Plant, or modification to the Plant, which is relevant for the purposes of our Examination.

9. **Plant Preparation**

To enable completion of the Inspection Service you must:

- agree with us the date for the Examination of each piece of Plant;
- at your expense, clean, prepare, cool, decommission, dismantle or open out all Plant to the condition agreed with us before the Examination is due;
- at your expense, provide safe access to all Plant (by providing work platforms, scaffolds, ladders, lighting, gas free certificates, preventative barriers, test weights etc) and provide any staff we need to perform the Inspection Service; and
- provide any help, information or documentation our Engineer Surveyor requests while performing the Inspection Service.

10. **Health and Safety**

You have responsibilities under the Safety, Health & Welfare at Work Act 2005 to provide a safe working environment for our Engineer Surveyor. We will carry out a site-specific risk assessment to ensure the safety of our staff and may refuse to carry out the Inspection Service (at no cost to us) if our risk assessment reveals unacceptable hazards. You must notify our Engineer Surveyor of any site-specific hazards together with the measures you propose to control the risks posed by those hazards prior to any Examination. If as a result of a site-specific risk assessment we refuse to carry out an Examination the Contract Fee is payable.

11. **Payment of Contract Fee**

- 11.1 You agree to pay the Fee by the start of the Contract and each year after that during the Contract period (unless we agree otherwise in writing). You agree that we shall be able to charge you for any expenses or disbursements that we incur in performing the Inspection Service (including any travel time or expenses). We add all applicable taxes, at the current rate, to the Contract Fee.
- 11.2 The Fee is calculated using the Plant Schedule. The Fee will be adjusted at the end of the Contract period to take account of any changes you make to the Plant Schedule.

Where a significant change is made to the Plant Schedule an interim adjustment during the Contract period may be agreed. Any adjustments will take into account any Examinations we have already carried out.

- 11.3 The Fee is payable if the Plant is not available for inspection or we are unable to inspect it because you have not prepared it or made it available for inspection in accordance with clause 9. We shall also be entitled to charge the Fee for any time spent or return visits which are required as a result of you failing to prepare the Plant or make it available in accordance with clause 9. We also reserve the right to charge an additional fee if more than one person is required to carry out the Examination.
- 11.4 You agree to pay the Contract Fee (or any invoice for expenses or disbursements) in Euro within a period of 30 days from the date of the invoice (unless we agree otherwise in writing).
- 11.5 The Fee is based on information you have told us about as at the date of the Contract. If you do not notify us of any local site requirements (or change these following the date of the Contract), which would result in us incurring significant additional costs or disbursements in performing the Inspection Service, we will charge you for those in addition to the Contract Fee.
- 11.6 We will send you a new Contract/Renewal Schedule prior to the end of the current term of the Contract and you agree to advise us in writing no less than two weeks prior to the end of the current term that you wish to renew the Contract or otherwise. In the event that you do not provide this notification, the Contract will be automatically terminated on the renewal date and the Inspection Service will cease.
- 11.7 If you are late in paying any invoice, we shall be entitled (in addition to any other right we may have) to suspend provision of any Inspection Service to you until such time as that invoice has been paid in full. We shall have no liability to you arising out of or in connection with such suspension (including any pieces of Plant becoming overdue for statutory inspection). You acknowledge that where we have suspended provision of the Inspection Service to you under this clause that even when we recommence the provision of an Inspection Service to you, due to other commitments and/or the build up of items requiring Examination, this may mean that we are unable to provide the Inspection Service in relation to Plant prior to its required inspection date (and again, we shall have no liability to you arising out of or in connection with such suspension).
- 11.8 If you are late in paying any invoice, we shall be entitled (in addition to any other right we may have) to charge interest on any overdue sum at 2% per annum above the Bank of Ireland AA overdraft rate for its business banking customers, such interest to accrue on a daily basis from the date the sum became overdue until the date the sum is paid.

11.9 You must inform us of any issue with any invoice provided by us within 15 working days of the date of receipt of the invoice; otherwise, the invoice shall be deemed to be accepted in full by you.

12. Your Legal Obligations

Our provision of an Inspection Service under the terms and conditions of the Contract does not remove your legal obligation to have your machinery or equipment subjected to periodical examination. Should an Examination reveal defects affecting the safety of any Plant you will need to take appropriate action, which may include removing the relevant item from service and notifying your insurer.

General Provisions

13. Termination of Contract

- 13.1 Either party may end the Contract immediately by giving written notice to the other party if the other party:
- has not met any of its responsibilities under the Contract and has not put the matter right within 30 days of receiving written notice of the problem; or
 - goes into liquidation (whether voluntary or compulsory) or has a receiver or examiner appointed over all or part of its assets.
- 13.2 We may end the Contract at any time by giving you 30 days' written notice.
- 13.3 We may end the Contract immediately by giving written notice to you where continuing to provide the Inspection Service to you would breach any prohibition or restriction imposed by law or regulation.
- 13.4 When the Contract ends, you must pay the Fee for the Inspection Service we have provided (plus any taxes, our expenses and disbursements or any additional costs incurred (pursuant to clause 11.6)).

14. Force Majeure

We will not be liable for any delay or the consequences of delay in provision of the Inspection Service if such delay is due to matters outside our control. We will be entitled to a reasonable period of time to perform the Inspection Service in such circumstances. If such delay extends beyond 20 working days the Contract may be terminated by us in accordance with clause 13.

15. Jurisdiction and Choice of Law

The Contract will be governed by Irish Law (unless we have specifically agreed otherwise with you in writing). The parties submit to the non-exclusive jurisdiction of the Courts of Ireland.

16. Confidentiality

Unless you and we have agreed otherwise in writing, we will both keep confidential the terms of the Inspection Service and all information gained about the other party in connection with the Contract. Neither party may use information about the other for any purpose other than to meet your or our responsibilities under the Contract unless otherwise required by law.

17. Limitation of our Liability

- 17.1 This clause 17 sets out our financial liability (including any liability for the actions or failings of our officers, employees, agents and sub-contractors) if:
- we break any term of the Contract;
 - we are negligent in any statement or action we make in connection with the Contract; or
 - we are found to be liable in any other way in connection with the Contract

(and each of the limitations of liability contained in this clause 17 shall apply to any loss suffered as a result of any such act or omission by us).

- 17.2 Nothing in these terms limits or removes our liability for death or personal injury caused by our negligence or fraudulent statements or any other liability which cannot be limited or excluded by law.
- 17.3 If we are liable to you for any reason in connection with the Contract, that liability will be limited in the aggregate to €10,000,000 (ten million Euro).
- 17.4 We will not be liable to you for any loss of profit.
- 17.5 We will not be liable to you for any loss of revenue, loss of goodwill, loss of opportunity or loss of business suffered in connection with the Contract.
- 17.6 We will not be liable to you for any indirect or consequential loss or damage (however incurred).
- 17.7 We will have no liability to you for any failure or delay in providing the Inspection Service to you which is caused by your acts or omissions.
- 17.8 This clause shall survive termination of the Contract.

18. Indemnity

You shall indemnify and keep us indemnified in respect of any proceeding, action or claim of any nature whatsoever made or brought against us and all loss, penalties, damages, costs and expenses suffered or incurred by us as a result of any third party claim including but not limited to, a claim by our employee(s) or your employee(s) arising out of your negligence or that of your employees, agents or sub-contractors, your failure to comply with your obligations under the Contract or your failure to ensure that items of Plant are examined within any prescribed inspection interval.

19. Inspection Periodicities

Unless otherwise agreed in writing, the inspection periodicities used will be those described in the Safety, Health & Welfare at Work (General Application) Regulations 2007 to 2012 (as amended, extended or replaced).

Where a specific periodicity is not defined, we will liaise with you to agree a suitable periodicity for inspection of the Plant. This does not affect your responsibility to assess and provide appropriate examination and maintenance to ensure continued safe use of the Plant

20. Deductions from our Fee

You must make payments you owe us under the Contract without taking off or holding back any amount to reflect a refund we owe you or a responsibility that you believe we have not met.

21. Employees

We shall not be obliged to employ any of your employees (or any employees of a third party contractor appointed by you) as a result of or in connection with the Contract or us providing the Inspection Service, and you agree to indemnify us against any costs, liabilities and expenses incurred by us as a result of any claim (including for dismissal) or demand of any nature by any such employee against us.

22. Not Exercising Rights

Failure or delay by a party to exercise any of its rights under the Contract will not preclude that party from exercising that right in the future.

23. Illegal or Unenforceable Terms

If any court or other authority finds that any term (including a sub-clause or part thereof) of the Contract is illegal or cannot be enforced, that will not affect the other terms of the Contract. The other terms will remain in force. If a term is found to be illegal or cannot be enforced, you and we must agree on a substitute term that achieves (as far as possible) the aim of the term that is illegal or cannot be enforced.

24. Our Relationship

Nothing in the Contract creates a partnership or joint venture between you and us.

25. Notices

Any notice that has to be given in connection with the Contract must be in writing and either be delivered by hand or sent by fax or post to the relevant party's address or fax number set out in the Contract/Renewal Schedule, or any other subsequent address reported to the other party.

26. Sub-contracting and Assignment

We may under some circumstances appoint an appropriately qualified and accredited sub-contractor to perform the Inspection Service on our behalf but we will remain responsible for the acts and omissions of any such sub-contractor in relation to the provision of the service. If you require this provision to be altered or deleted you may agree this with us in writing before entering into the Contract.

We may also appoint Engineer Surveyors employed by our parent company (British Engineering Services Ltd) to perform the Inspection Service.

You will not transfer or assign your rights in this Contract. We shall be entitled to transfer or assign our interest in this Contract to British Engineering Services Limited or any holding company of British Engineering Services Limited or any subsidiary of such holding company ("holding" and "subsidiary" company being interpreted in accordance with sections 7 and 8 of the Companies Act 2014

27. Changing this Document

The Contract can only be changed if both parties agree to the changes in writing.

28. Complaints

We aim to provide you with a first class service. If we have not delivered the service you expect, or you are concerned with the service provided, we would like to put things right. We will fully investigate your complaint, keep you informed, do everything possible to resolve your complaint and use this information to continually improve our service. If you have any concerns these should be raised in the first instance with your usual business contact.

29. Entire Agreement

The Contract forms your and our entire understanding of the Inspection Service and the arrangement between us. It replaces all previous agreements, understandings and representations about the Inspection Service.

Each party acknowledges and agrees that in entering into this Contract it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person that is not expressly set out in this Contract.

Exclusions and Extra Charges

30. Services not Included

Our Inspection Service will not include the following activities:

- witnessing or carrying out of any pre-commissioning examinations or any proof load, stability, anchorage, hydraulic or other similar testing;
- design approval or verification of design to relevant standards;
- arranging or carrying out any ultrasonic, radiographic or other non destructive examinations;
- examination of property, equipment or machinery prior to purchase;
- maintenance or repair of the Plant or return visits following the repair of Plant found to be defective or in need of further investigation;
- return visits as a result of you failing to make any Plant available, having agreed with us in advance the date for the Examination;
- carrying out the Inspection Service on weekends, public holidays, or outside the standard working hours of 09:00 - 17:00;
- return visits required to examine internal parts of various equipment and machinery;
- examining Plant after it has been moved to a new fixed location, after a change in guarding systems or after exceptional circumstances;

- performing Examinations on any machinery or equipment which is not included in the Plant Schedule; or
- site surveys to establish any Plant owned by you which may require Examination.

We may agree to perform any of the activities that are excluded from the Inspection Service for you for an additional fee which we will agree with you in advance.

31. Work Outside standard Working Hours

If you want us to carry out the Inspection Service on weekends, public holidays, or outside the standard working hours of 09:00 - 17:00, we may charge an additional fee, which would be agreed in advance.

32. Examination Reports

We will provide you with electronic copies of all Examination reports free of charge. It is your responsibility to download copies of the electronic reports. If you have not downloaded copies of the electronic reports before the Contract terminates, we reserve the right to charge an administration fee for providing those reports to you. Should you wish to receive paper copies of the inspection reports, we can provide these for an additional fee which we would agree in writing with you.