

Assess Ireland Engineering Inspection Service  
Terms and Conditions




Prepared by: Stephen O'Neill

Reviewed by: Conor Deasy

Effective Date: 29/5/2018

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| <p>Assess Ireland Engineering Inspection Service</p> <p>Terms and Conditions</p> |                          |  |
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## Assess Ireland

### TERMS AND CONDITIONS FOR ENGINEERING INSPECTION SERVICES

#### 1. Purpose

To outline the Terms and Conditions for Engineering Inspection Services provided by Assess Ireland. Please read these terms and conditions carefully to ensure that they meet your requirements.

#### 2. Definitions and Interpretations

The following words and/or expressions shall, for the purposes of these Terms and Conditions, have the meaning detailed below and shall have the same meaning wherever they appear unless otherwise stated.

- “Business day” - any day other than a Saturday, Sunday, bank or public holiday in the Republic of Ireland
- “Commencement Date” - the date on which the Contract starts
- “Company”, “We”, “Us”, “Our” - refers to Assess Ireland, a private limited company registered in Ireland, registration number 304801, having its registered office at Castlemaine Road, Tralee, Co. Kerry.
- “Contract” - any contract between AI and the customer for an Inspection Service, comprising either a Quotation, a Supply Agreement, any relevant purchase order and these Conditions, and in any case as formed in accordance with Condition 4
- “Competent Person” means the Engineer Surveyor employed by AI to perform the Services
- “Customer”, “You”, “Your” - refers to the person or business for whom the Services are to be provided.
- “Fee” - the amount to be charged by AI for the Services, subject to these Terms and Conditions
- “Normal Working Hours” - between the hours of 0900 and 1700 on a Business day.
- “Period of Inspection/Examination” - the period set out under the relevant statutory regulations unless otherwise specified by the Customer and agreed with AI
- “Plant” - all machinery and equipment for inspection, detailed in the Schedule, which is the subject of the Services.

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- "Quotation" - the document submitted to the Customer by AI setting out the terms under which AI is willing to provide the Service (referring to these Terms and Conditions) and the Fee for inspection of the schedule of plant supplied by the Customer.
- "Schedule" - the list of Plant for inspection under the Contract. The schedule will initially be as submitted by the Customer but will be subject to amendment by agreement of both parties.
- "Services" - the services to be supplied by AI to the Customer as specified in the Contract and any additional services AI and the Customer agree are to be provided by AI under the Contract.
- "Site/Plant Location" - the normal location(s) of plant/machinery set out in the Schedule of Plant
- "Term" - the time from commencement date to the date of renewal or termination. This will normally be for 12 months unless otherwise specified.

## 3. Validity of Quotation

- 3.1 Our quotation for Inspection Services will remain valid for 30 days from its date of issue unless otherwise stated.
- 3.2 Our quotation is only valid if the information provided by you is correct at the time of the quote request. We may adjust the Fee in the case of additional plant, different periods of inspection or different sites from those mentioned in your original request.

## 4. Scope of Inspection Services

The Services shall be performed solely within the Republic of Ireland unless expressly otherwise agreed in writing.

### Our responsibilities

- 4.1 We shall, unless otherwise agreed
  - 4.1.1 Provide the Service in accordance with these Terms and Conditions for the agreed Fee
    - 4.1.1.1 Where you require the inspection service in order to satisfy your statutory obligations, we will carry out the service in accordance with the terms of those

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statutory regulations, relevant guidance and/or approved code of practice. The report of examination will identify the regulations which apply.

4.1.1.2 Where you don't require that the inspection be carried out in accordance with any statutory regulations, or no such regulations apply, we will inspect to your specific instructions, at all times observing best practice relevant to the plant being inspected.

4.1.2 Provide the Service within Normal Working Hours

4.1.3 Carry out our inspection(s) with care and with safety always in mind

4.1.4 Give prior notice of our intention to carry out inspection(s) of Plant.

4.1.5 Produce a report for you as soon as is reasonably practicable, but not later than 10 days after an inspection of the Plant has been completed. Where necessary we shall issue an Urgent Defects Notice (on site report) on site if the condition of the Plant warrants it.

4.1.6 Comply with your safe systems of work as advised.

4.1.7 Where required under the law we will forward a copy of the inspection report to the Health and Safety Authority (HSA)

4.2 We may

4.2.1 Appoint sub-contractors to carry out all, or any part, of the inspection Service when and as deemed necessary by us to maintain the Service

4.2.2 Not carry out an inspection of Plant if, in our opinion, to proceed would pose an unacceptable risk to the health, safety or welfare of either our Engineer Surveyor or others

4.2.3 Make a charge in addition to the fee if

4.2.3.1 You request us to carry out an inspection outside Normal Working Hours (see Appendix 1 for applicable rates)

4.2.3.2 More than one Engineer Surveyor is required to carry out the service (for safety reasons)

4.2.3.3 You fail to prepare the plant correctly for inspection or fail to make the plant available to the Competent Person at an agreed, pre-appointed date and time

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- 4.2.3.4 Return visits to premises are made by Engineer Surveyor(s) in order to perform the Services following failure to provide suitable access to premises and/or Plant or when a return visit is required to inspect repair or recertification work
- 4.2.3.5 We are required to carry out induction procedures specific to your site which we were not aware of when setting up the contract
- 4.2.3.6 We are required to attend additionally on site or otherwise to discuss the results of our inspections and/or discuss proposed repairs to Plant
- 4.2.3.7 You or a representative of yours requires copy reports of inspection
- 4.2.3.8 Where increased expenditure is incurred by us in the performance of the Services due to factors beyond our reasonable control
- 4.2.4 Make a proportional return of fee to you in the event that you no longer require inspection for items noted on the schedule
- 4.2.5 If there are additional services required by you, and we are in a position to provide them under the contract, we will agree a fee with you for these services. These services may include, but not necessarily be limited to
  - 4.2.5.1 The compilation of additional reports or certification not required under the Services
  - 4.2.5.2 The witnessing of ultrasonic, radiographic or other non-destructive tests (NDT), proof load or other tests of a non-routine nature
  - 4.2.5.3 The assessment of the design or suitability of Plant for its intended use
  - 4.2.5.4 The assessment of the suitability of any proposed repair or modification to the Plant
  - 4.2.5.5 The carrying out of any additional inspections of the Plant required as a consequence of carrying out a repair or modification to the Plant

### Your responsibilities

- 4.2.6 Pay us the agreed Fee for the Service
- 4.2.7 Provide the Competent Person with:
  - 4.2.7.1 Safe access to the site(s) and the Plant therein
  - 4.2.7.2 A safe working environment on the site(s)

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- 4.2.8 Have the Plant properly prepared, clean and dismantled as necessary to enable the Competent Person to carry out the inspection
- 4.2.9 Be responsible for the reassembly and re-commissioning of the Plant following completion of the inspection Service
- 4.2.10 Co-operate with the Competent Person in the course of the inspection and with any requests for information and data relating to the Plant which may be required to properly conduct the inspection Service
- 4.2.11 Make available resources such as premises, staff, facilities and access equipment as may be reasonably requested to enable the Competent Person perform the inspection Service. In particular, where the operation of Plant is required for the purposes of an inspection, you shall provide a skilled and qualified operator available for the duration of the inspection
- 4.2.12 Ensure that all Plant requiring inspection is included on the Schedule.
- 4.2.13 Ensure that no undue pressure to influence the results of an inspection is placed on the Competent Person by you or by your agents where applicable.
- 4.2.14 These Terms and Conditions do not relieve you of your legal responsibility to ensure that all statutory inspections are carried out. Where you do not make Plant available for inspection under these Terms and Conditions we will not be liable for inspections not carried out under the Contract. The Contract will be considered to be completed when these Terms and Conditions are met.
- 4.2.15 To renew the Contract annually where we have agreed and entered into a long term agreement and the term of any such agreement has not expired

## 5. Fees

- 5.1 The Fee is calculated for inspection of the Plant, as notified to us at the start of the Contract term and as detailed in the Schedule of Plant.
- 5.2 Prices quoted are shown in Euro exclusive of VAT or other taxes. Any such taxes or duties are payable by you in addition to the Fee quoted
- 5.3 We reserve the right to withhold further supply of the Services to you where you fail to pay the Fee for services already provided
- 5.4 We reserve the right to retain any/all reports of inspection until the agreed Fee has been paid in full

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## 6. Cancellation and termination of Contract

- 6.1 The Contract may be terminated immediately by either party, by written notice, in the event that
- 6.1.1 The other party goes into liquidation (other than voluntary liquidation for the purpose of amalgamation or reconstruction)
  - 6.1.2 An application is made to the court for the appointment of a receiver, administrator or administrative receiver for the whole, or part, of the assets of the other party
  - 6.1.3 The other party ceases to trade
  - 6.1.4 The other party has committed a material breach of the terms of the Contract which is incapable of remedy
  - 6.1.5 An event of Force Majeure delays a scheduled inspection for more than 30 days
- 6.2 We may terminate this Contract by giving you 30 days' notice in writing at any time throughout the duration of the Contract. If you have paid the Fee in full you shall be entitled to a refund for that part of the Fee which we have not earned.
- 6.2.1 You may terminate the Contract by giving not less than 30 days' notice in writing to us and in such event you shall pay the Fee due to us for Services rendered up to the date of cancellation (plus any applicable tax)

## 7. Limitation of Liability

- 7.1 Nothing in these Terms and Conditions shall limit or restrict our liability for fraudulent misrepresentation or for death or personal injury resulting from our negligence or for any other liability which cannot be excluded or limited under Irish law
- 7.2 We accept no responsibility for damage sustained by Plant as a result of failure of Plant to withstand a test applied as part of the inspection Service
- 7.3 Neither we nor you shall be liable in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature incurred or suffered by the other party of an indirect or consequential nature including without limitation any economic loss or other loss of profit, turnover, business or goodwill

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- 7.4 Without prejudice to the generality of these terms and conditions we shall not be liable for any claim, loss or damage of any kind whatsoever resulting from
- 7.4.1 Any circumstances beyond our reasonable control
  - 7.4.2 Any instructions given by, or act or omission of yours, your employees, agents, suppliers or subcontractors
  - 7.4.3 Any breach by you of any of the terms and conditions of the Contract
  - 7.4.4 Any indirect or consequential loss or damage
- 7.5 Our aggregate liability to you arising out of any tortious act or omission or any breach of contract or statutory duty, for any loss or damage of whatever nature and howsoever caused shall be limited to and in no circumstances shall exceed the lessor of
- 7.5.1 The market value at the time of the occurrence, replacement cost, or if less, repair, of the item which was the subject of the particular supply of Services which were performed negligently or in breach of Contract or which resulted in the breach of statutory duty concerned (as the case may be)
  - 7.5.2 Such total Fee as would have been properly payable for the Services had we performed all of our obligations under the Contract, and in any event shall be limited to and in no circumstances shall exceed €6.5M.

## 8. Force Majeure

We shall be entitled to delay or cancel performance of the Services or to reduce the amount of Services performed if, and to the extent that we are delayed or hindered in performing the Services by any cause whatsoever beyond our reasonable control including but not limited to inclement weather, war, accidents, civil disturbance, fire, flood, strikes or other labour disputes. If we are so delayed or hindered in performing the Services we shall advise you in writing indicating the reason for and where possible the expected extent and duration of any delay or cancellation and we shall not be liable to you for any such delay or cancellation. Subject to Clause 6.1.5, neither party is entitled to terminate the Contract in these circumstances.

## 9. Novation, Assignment and Sub-Contracting

- 9.1.1 You shall not novate the Contract, or assign the benefit or burden of the Contract, or any part of it, without our prior written consent

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9.1.2 We may novate the contract or assign the whole or any part of the Contract to any person, firm or company and may employ the services of any sub-contractor for the purpose of fulfilling the whole or any part of our obligations under the Contract.

9.1.3 Should we novate, assign or sub-contract the contract or any part of it we will send you a written request for your agreement to this.

## 10. Notices

All notices given under this Contract shall be in writing and shall be sent by mail or e-mail to the other party at its registered office or such address as it may from time to time designate in writing for that purpose. A notice shall be deemed to be given 48 hours after the proven time of posting or transmission.

## 11. Contracts

11.1 Failure by either party to enforce any of the rights under this Contract will not be taken as, or deemed to be, a waiver of such rights

11.2 If any term or provision of this contract is held illegal or unenforceable the remainder will remain in full force and effect

11.3 No person other than you or us is entitled to enforce any of the Terms of this Contract

11.4 This Contract can only be changed if both parties agree to the changes in writing and these changes become part of any subsequent Contract between the parties

## 12. Confidentiality

12.1 Neither party will disclose or communicate to any third party any confidential information obtained from the other party as a result of this Contract

12.2 Nothing in this clause will impose an obligation of confidentiality on information

12.2.1 Already in the public domain

12.2.2 That was rightfully in the possession of such party prior to the commencement of this Contract

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- 12.2.3 That is required to be disclosed pursuant to any applicable law or regulatory body requirement. The obligations under this clause will come into effect on the Commencement date and will survive termination.
- 12.2.4 In circumstances where we are required by law to release client information, we will clearly advise you of this requirement and of the information so released. Further where we are required by law to forward a copy of the inspection report(s) to the Health and Safety Authority, this is clearly advised to you on the respective report(s).
- 12.3 Unless expressly prohibited by you we will make copies of inspection reports available to your broker and/or insurer if requested.
- 12.4 All documentation is retained for a minimum of 7 years.

### 13. Data Protection

- 13.1 We shall comply with the General Data Protection Regulation (Regulation (EU) 2016/679) and any other applicable data protection legislation. To the extent that we process any personal data for you we shall at all times
  - 13.1.1 Maintain all technical and organisational security measures to prevent unauthorised or unlawful processing of any personal data supplied to us by you and accidental loss or destruction of, or damage thereto
  - 13.1.2 Only process personal data for you for the purpose of performing the Services in accordance with your instructions
  - 13.1.3 Not process, transfer, modify, amend or alter the Personal Data or disclose or permit the disclosure of the Personal Data to any third party other than in accordance with our documented instructions or in accordance with the law
- 13.2 By entering into this agreement you consent to the fair, lawful and legitimate processing of any personal data supplied to us insofar as such processing is reasonably necessary for performing the Services.

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## 14. Complaints

We aim to give you an excellent service however we recognise that things may occasionally go wrong. We will do our best to deal with any complaint you may have as effectively and quickly as possible. If you have arranged this Contract through an agent or Broker then please send your complaint through them. If your complaint is not dealt with to your satisfaction please contact one of the following:

Erin Cosgrove

Stephen O'Neill

Director of Operations

Director of Engineering Services

Assess Ireland

Assess Ireland

[erin.cosgrove@assessireland.com](mailto:erin.cosgrove@assessireland.com)

[stephen.oneill@assessireland.com](mailto:stephen.oneill@assessireland.com)

Tel: 0818 229 229

Tel: 0818 229 229


## 15. Law

The law applicable to this contract is the law of Ireland. The courts of Ireland shall have jurisdiction in respect of all matters arising in respect of this contract.

## 16. Severability

If any provision in this Agreement is deemed to be, or becomes invalid, illegal, void or unenforceable under applicable laws, such provision will be deemed amended to conform to applicable laws so as to be valid and enforceable; or if it cannot be so amended without materially altering the intention of the parties, it will be deleted, but the validity, legality and enforceability of the remaining provisions of this Agreement shall not be impaired or affected in any way.

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## Appendix 1

### Fee(s) chargeable for work undertaken outside Normal Working Hours

Under Section 2 (page 2) of our Terms and Conditions we define clearly what we mean by the terms 'Normal Working Hours' and 'Business day'.

Section 4.1.2 states that we shall provide our service within Normal Working Hours.

Section 4.2.3, and more specifically 4.2.3.1, states that we may make an additional charge if you request us to carry out an inspection outside of Normal Working Hours.

Should we deem it necessary to make an additional charge under Section 4.2.3.1 specifically then the following are the rates we will apply:

|                                 |               |
|---------------------------------|---------------|
| First 4 hours (or part thereof) | €400 plus VAT |
| Each additional hour            | €125 plus VAT |

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