



TRAFFIC MANAGEMENT

CUSTOMER TERMS & CONDITIONS – May 2018 Edition

1. INTERPRETATION

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

Contract: the Hirer's acceptance of a quotation for services by the Owner under condition 2.2.

CPA Model Conditions: the Construction Plant-hire Association's model conditions for the hiring of plant as in force from time to time.

Hirer Document: includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

Hirer: the person, firm or company who purchases Services from the Owner.

Hirer's Manager: the Hirer's manager for a Project, appointed in accordance with condition 4.1.

In-put Material: all Documents, information and materials provided by the Hirer relating to the Services, including computer programs, data, reports, specifications and risk assessments.

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

Owner: Headway Traffic Management Limited and/or any subsidiary namely Headway Traffic Management (North) Ltd, Headway Traffic Management (East) Ltd, Headway Traffic Management (South) Limited, Headway Traffic Management (West) Ltd and Headway Traffic Management (IOW) Ltd.

Owner's Equipment: any plant, machinery, vehicles and equipment, including tools, systems, accessories, cabling or facilities, which will be provided by the Owner and its subcontractors in accordance with the CPA Model Conditions.

Project: the project as described in the Owner's quotation for services.

Services: the services to be provided by the Owner as specified in the Owner's quotation for services.

Owner VAT: value added tax chargeable under English law for the time being and any similar additional tax.

- 1.2 Subject to condition 2.1(b), these Conditions are supplemental to the CPA Model Conditions and must be read in conjunction with them.
- 1.3 Any allowances in relation to clause 12(c) of the CPA Model Conditions shall be given at the sole and reasonable discretion of the Owner.
- 1.4 Condition, schedule and paragraph headings shall not affect the interpretation of these conditions.
- 1.5 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.6 Any obligation in the Contract on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.

2. APPLICATION OF CONDITIONS

2.1 These Conditions shall:

- (a) apply to and be incorporated into the Contract; and
- (b) prevail over any inconsistent terms or conditions contained, or referred to, in the CPA Model Conditions and/or Hirer's purchase order, confirmation of order, acceptance of a quotation or specification, or implied by law, trade custom, practice or course of dealing.

2.2 The Hirer's acceptance of a quotation for services by the Owner constitutes an offer by the Hirer to purchase the Services specified in it on these Conditions. No offer placed by the Hirer shall be accepted by the Owner other than:

- (a) by a written acknowledgement issued and executed by the Owner; or
- (b) (if earlier) by the Owner starting to provide the Services,

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

2.3 Any quotation is valid for a period of 30 days from its date, provided that the Owner has not previously withdrawn it.

3. OWNER'S OBLIGATIONS

3.1 The Owner shall only be responsible for the management of the Services.

3.2 The Owner shall use all reasonable endeavours to manage the Services in accordance with the In-put Materials.

3.3 The Hirer acknowledges that Owner's ability to manage the Services effectively and efficiently is heavily dependent upon the content and the quality of the In-put Material, and that the Owner will not be liable for any loss or damage of the Hirer or that of a third party however caused due to inaccurate or incomplete In-put Material.

4. HIRER'S OBLIGATIONS

4.1 The Hirer shall:

- (a) co-operate with the Owner in all matters relating to the Services and appoint the Hirer's Manager in relation to the Services, who shall have the authority contractually to bind the Hirer on matters relating to the Services;
- (b) obtain and provide (at its own cost), in a timely manner, such In-put Material and other information that is necessary for the effective management of the Services and ensure that it is accurate in all material respects;
- (c) provide, in a timely manner, such In-put Material and other information as the Owner may request;
- (d) be responsible (at its own cost) for preparing the relevant highway for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from the highway in accordance with all applicable laws, before and during the supply of the Services on that highway, and informing the Owner of all of its obligations and actions under this condition 4.1(d)
- (e) inform the Owner of all health and safety rules and regulations and any other reasonable security requirements of the Hirer;
- (f) obtain and maintain (at its own cost) all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of the Owner's Equipment, and the use of any In-put Material before the Services commence; and
- (g) keep, maintain and use the Owner's Equipment in accordance with the CPA Model Conditions;

4.2 If the Owner's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Hirer, its agents, sub-contractors or employees, the Owner shall not be liable for any costs, charges or losses sustained or incurred by the Hirer arising directly or indirectly from such prevention or delay.

4.3 The Hirer shall be liable to pay to the Owner, on demand, all reasonable costs, charges or losses sustained or incurred by the Owner (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Hirer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Owner confirming such costs, charges and losses to the Hirer in writing.

4.4 The Hirer shall make good to the Owner all loss of or damage to the Owners Equipment in accordance with the CPA Model Conditions.

5. CHANGE OF SERVICES

- 5.1 If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing. The Owner shall, within a reasonable time, provide a written estimate to the Hirer of:
- (a) the likely time required to implement the change;
 - (b) any variations to the Owner's charges arising from the change;
 - (c) any other impact of the change on the terms of the Contract.
- 5.2 The Owner may, from time to time and without notice, change the Services:
- (a) in order to comply with any applicable safety or statutory requirements, and any requests made by a member of the emergency services, local authority or highways agency provided that such changes do not materially affect the nature or scope of the Services; or
 - (b) as a result of any errors or omissions in the information provided by the Hirer to the Owner (whether before the commencement or during the operation of the Contract); or
 - (c) (without prejudice to the generality of sub-condition (b) above) as a result of any errors or omissions in the site survey commissioned by the Hirer.

6. CHARGES AND PAYMENT

- 6.1 The price for the Services shall be the amount set out in the Contract. The Owner shall invoice the Hirer for Services, together with any other expenses calculated in accordance with condition 6.2.
- 6.2 Any price contained in the Contract excludes:
- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Owner engages in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Owner for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Owner at cost;
 - (b) the cost of making good and loss of or damage to the Owner's Equipment in accordance with condition 4.4;
 - (c) any additional expenses incurred by the Owner in accordance with condition 5.2; and
 - (d) VAT, which the Owner shall add to its invoices at the appropriate rate.
- 6.3 The Hirer shall pay each invoice submitted to it by the Owner, without deduction or set-off, in full and in cleared funds, within 30 days from month end.
- 6.4 Without prejudice to any other right or remedy that it may have, if the Hirer fails to pay the Owner on the due date, the Owner may:

- (a) charge interest on such sum from the due date for payment at the annual rate of 5% above the base lending rate from time to time of National Westminster Bank PLC, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Owner may claim interest and compensation under the Late Payment of Commercial Debts (Interest) Act 1998; and
 - (b) suspend all Services until payment has been made in full.

- 6.5 All sums payable to the Owner under the Contract shall become due immediately on its termination, despite any other provision. This condition 6.5 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

- 6.6 The Owner may, without prejudice to any other rights it may have, set off any liability of the Hirer to the Owner against any liability of the Owner to the Hirer.

- 6.7 Invoice queries will not be accepted unless notified in writing within 4 days of receipt.

- 7. **HIRER LIMITATION OF LIABILITY - THE HIRER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF THIS CONDITION**

- 7.1 This condition 7 sets out the entire financial liability of the Owner (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Hirer in respect of:
 - (a) any breach of the Contract;
 - (b) any use made by the Hirer of the Services; and
 - (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

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

- 7.3 Nothing in these Conditions limits or excludes the liability of the Owner:
 - (a) for death or personal injury resulting from its negligence; or
 - (b) for any damage or liability incurred by the Hirer as a result of fraud or fraudulent misrepresentation by the Owner;

- 7.4 Subject to condition 7.2 and condition 7.3:
 - (a) the Owner shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for:
 - (i) loss of profits;
 - (ii) loss of business;
 - (iii) depletion of goodwill and/or similar losses;
 - (iv) loss of anticipated savings;
 - (v) loss of goods;

- (vi) loss of contract;
 - (vii) loss of use;
 - (viii) loss of corruption of data or information;
 - (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) the Owner's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Services.

8. TERMINATION

8.1 Subject to condition 8.3, the Contract shall terminate automatically on completion of the Project.

8.2 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other on giving the other not less than one months written notice or immediately on giving notice to the other if:

- (a) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within a reasonable time of that party being notified in writing of the breach taking in to account the nature of the Project; or
- (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or
- (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- (d) a receiver is appointed of any of the other party's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
- (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
- (f) the other party ceases, or threatens to cease, to trade; or

8.3 On termination of the Contract for any reason:

- (a) the Hirer shall immediately pay to the Owner all of the Owner's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Owner may submit an invoice, which shall be payable immediately on receipt;

- (b) the Owner may take possession of all the Owners Equipment. Until the Owners Equipment has been returned or repossessed, the Hirer shall be solely responsible for its safe keeping; and
- (c) the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

9. FORCE MAJEURE

- 9.1 The Owner shall have no liability to the Hirer under the Contract (or otherwise) if it is prevented from or delayed in performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of the Owner or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Owners or sub-contractors.
- 9.2 Without prejudice to the generality of condition 9.1, the Owner shall have no liability to the Hirer under the Contract (or otherwise) if the Owner is unable to contact the Hirer in order to obtain further or better instructions prior to or during the carrying out of the Services. The Hirer must, prior to commencement of the Contract, provide the Owner with full contact details for a designated, duly authorised responsible individual whom the Owner may contact if necessary in order to obtain further or better instructions.

10. VARIATION

Subject to condition 5.2 no variation of the Contract or these Conditions shall be valid unless it is in writing and signed by or on behalf of each of the parties.

11. WAIVER

- 11.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
- 11.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

12. STATUS OF PRE-CONTRACTUAL STATEMENTS

Each of the parties acknowledges and agrees that, in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these terms and conditions or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract.

13. ASSIGNMENT

- 13.1 The Hirer shall not, without the prior written consent of the Owner, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 13.2 The Owner may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

14. NO PARTNERSHIP OR AGENCY

Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

15. RIGHTS OF THIRD PARTIES

The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

16. DATA PROTECTION

- 16.1 All personal information the Owner may collect will be collected, used and held in accordance with the provisions of the Data Protection Act 1998 and the General Data Protection Regulation (SI 2016/679), together with any subsequent amendments to them. The processing and use of any personal information by the Owner is defined within its privacy statement, which can be reviewed on its website www.headwaytm.co.uk.
- 16.2 When the Hirer is acting other than as a consumer and provides the Owner with personal data or personal data is obtained by the Owner, or on its behalf, from the Hirer (including from the employees, agents and other representatives of the Hirer) in connection with the Contract:
- (a) the Hirer warrants and undertakes that it will be responsible for ensuring that there is a lawful basis on which such data can be processed;
 - (b) the Hirer warrants and undertakes that it will be responsible for ensuring that appropriate privacy notices and/or policies are communicated to the relevant data subjects which explain how such data will be processed, including the fact that such data may be disclosed to the Owner;
 - (c) the Owner and the Hirer each agrees not to do or permit anything to be done through act or omission which would cause the other to incur any liability under any applicable data protection legislation; and

- (d) the Owner and the Hirer each agrees to comply with all applicable data protection legislation at all material times in respect of the processing of personal data.

17. NOTICES

Notice given under the Contract shall be in writing, sent for the attention of the person, and to the address or fax number, given in the Owner's quotation for services (or such other address, fax number or person as the relevant party may notify to the other party) and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed receipt under this condition 16 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is a business day), at 9.00 am on the first business day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.