

Red One Limited Terms and Conditions

Red One Limited Terms and Conditions for Confined Space Rescue Services

Updated: 01 August 2023

1. Definitions & Interpretation of Contract

1.1. The following definitions apply in these conditions:

Company

Means Red One Limited, company number 07379630, whose registered address is: Devon Transport Centre, Red One Offices, Westpoint, Clyst St Mary, Exeter, EX5 1DJ.

Conditions

Means the clauses, terms and conditions as provided herein;

Confidential Information

Means any confidential information which is disclosed, or made available, by the Company to the Customer whether before, on or after the date of the Contract, which is designated in writing as confidential or would appear to a reasonable person to be confidential and which relates to the Company's or the Authority's business including its business methods, corporate plans or intentions, management systems, finances, new business opportunities, operations, processes, trade secrets, know how, personnel, suppliers and customers, and potential suppliers and customers and any information in respect of which the Company owes an obligation of confidentiality to any third party and including information that the Company creates or develops in connection with the Contract, and all information derived from any of the above together with the existence or provisions of the Contract and any negotiations relating to it.

Contract

Means any contract between the Company and the Customer for the supply of confined space rescue services, made up of the Contract Documentation;

Contract Documentation

Means:

- a) the Conditions; and
- b) any proposal/Quotation/estimate provided to the Customer by the Company;

Customer

The organisation or person who purchases confined space rescue services from the Company;

Data Protection Legislation

Means any applicable laws and regulations in any relevant jurisdiction relating to the use or processing of personal data including: (i) EU Regulation 2016/679 ("GDPR"); (ii) any laws or regulations ratifying, implementing, adopting, supplementing or replacing the GDPR (including, in the UK, the Data Protection Act 2018 ("DPA") and (to the extent in force) the UK GDPR as defined in The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 ("UK GDPR")); (iii) any laws and regulations implementing or made pursuant to EU Directive 2002/58/EC (as amended by 2009/136/EC) (including, in the UK, the Privacy and

Electronic Communications (EC Directive) Regulations 2003); and (iv) any guidance or codes of practice issued by a governmental or regulatory body or authority in relation to compliance with the foregoing; in each case, as updated, amended or replaced from time to time;

Delivery Point

The place where delivery of the confined space rescue services is to take place under Section 5;

Intellectual Property Rights

Means 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 shall subsist now or in the future in any part of the world;

Party

Means either the Company or the Customer and 'Parties' shall be construed accordingly;

Price

Means the price payable for the relevant Goods and/or Services in accordance with clause 6;

Quotation

Means any statement of work, tender, quotation, price list or other similar document describing the confined space rescue services to be provided by the Company;

VAT

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

1.2. Interpretation of Contract

1.2.1. If any disputes between the parties relating to any ambiguity or discrepancy between the Contract Documentation arises, the order of priority of the Contract Documentation shall be:

- a) any Quotation provided to the Customer by the Company; then
- b) the Conditions; and then
- c) any information document and joining instructions provided by the Company.

1.2.2. In the Conditions, unless the context otherwise requires;

- a) the masculine includes the feminine and the neuter and vice versa; the singular includes the plural and vice versa;
- b) headings are included for ease of reference only and shall not affect the interpretation or construction of the Contract;
- c) references to Clauses are unless otherwise provided, references to Clauses and Appendices within the Contract Conditions;

d) "Act of Parliament" or any Order, Regulation, Statute, Statutory Instrument, Code of Practice, Byelaw, Directive or the like, whether detailed expressly or incorporated by general reference, shall be deemed to include a reference to any amendment, re-enactment or replacement of it;

e) a reference to writing or written includes emails; and

f) the words "includes" or "including" shall be constructed without limitation.

2. Conditions Applying

2.1 Unless otherwise agreed in writing, these Conditions and the terms of the Contract will govern all contracts for the sale and supply of confined space rescue services from the Company. Any qualification or modification of these Conditions and any other conditions which the Customer may seek to impose will not apply unless expressly accepted by the Company in writing. By instructing the Company to proceed or accepting the Company's Quotation, the Customer agrees to these Conditions and the terms of the Contract to the exclusion of all other terms, conditions, warranties or representations.

2.2 Nothing in these Conditions shall prejudice any condition or warranty, express or implied, or any legal remedy to which the Company may be entitled in relation to the confined space rescue services, by virtue of any statute, law or regulation.

3. Contract

3.1 The Company's Quotation does not constitute an offer. An order from the Customer based upon the Company's Quotation shall constitute the offer. An acknowledgement of that order sent by the Company by normal post or email shall constitute the acceptance of that offer. The order shall not be capable of being cancelled from the moment the acknowledgement is posted or sent via email.

4. Representations

4.1 The only representations in connection with the Company's confined space rescue services for which the Company shall accept liability are those specifically included or referred to in the Company's price list or Quotation. No advertising material, leaflets or brochures or any other statement, written or oral, or correspondence shall form part of the Contract unless otherwise specifically agreed between the Company and the Customer in writing to be a term of the Contract. It is agreed that on entering into the Contract the Customer is not relying on any other representations.

5. Delivery

5.1 Delivery Point is as detailed in the signed Quotation.

5.2 The Company shall not be liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the confined space rescue services, howsoever caused.

6. Price and Payment

6.1 The Price quoted in the Quotation is open for acceptance for 10 days unless withdrawn by the Company in writing beforehand. If an order is not received and accepted by the Company within the period stated, the Company may review the Price in its Quotation.

6.2 All Prices quoted are exclusive of any VAT at the appropriate rate payable in respect to the supply of confined space rescue services, any applicable charges as outlined in the Quotation and any other applicable taxes which will be charged in addition at the rate in force at the time the Customer is required to make payment. VAT and any applicable charges and other taxes shall be this will be additionally payable by the Customer. Any work that continues past the 31st March

in anyone year will be subject to an inflationary price increase effective from the 1st April of that year.

6.3 Payment of the invoiced amounts shall be in the manner specified in the Quotation and shall be due before the confined space rescue services take place unless otherwise agreed in writing.

6.4 If the Customer does not pay the whole of the invoice by the due date the Company shall be entitled to charge statutory interest daily on any overdue amount from the due date until the date of payment.

6.5 In the event that the Customer's procedures require that an invoice be submitted against a purchase order to receive payment, the Customer shall be responsible for issuing such purchase order before the confined space rescue services are supplied. Non issuing of a purchase order will not prevent the invoice from being due for payment. It is the Customer's responsibility to ensure a purchase order is issued. The Customer's non-issuance of a purchase order shall not prevent the Company validly raising the invoice.

6.6 Cancellation of an agreed commencement date for the supply of confined space rescue services must be received with a minimum of 2 weeks' notification otherwise the fees are payable in full. The Company will make every effort to redeploy staff and equipment and if this is possible the fee payable will be reduced to reflect this.

7. Warranty

7.1 The Company warrants that the services performed under this Agreement shall be performed using reasonable skill and care, and of a quality conforming to generally accepted industry standards and practices.

7.2 Except as expressly stated in these Conditions, all warranties whether express or implied, by operation of law or otherwise, are hereby excluded in relation to the confined space rescue services to be provided by the Company.

8. Indemnification and Customer's Obligations

8.1 The Customer shall indemnify the Company against all claims, costs and expenses which the Company may incur and which arise, directly or indirectly, from the Customer's breach of any of its obligations under these Conditions.

8.2 Where the Company is required to perform confined space rescue services on the Customer's premises, the Customer shall provide a full and safe working environment for the Company's staff and contractors and shall inform that all staff and contractors of Company who are engaged in providing the services are fully informed of all relevant health and safety requirements of the Customer's site prior to any services being performed.

8.3 The Customer shall maintain in force suitable employer's liability and public liability insurance at all times whilst confined space rescue services are being performed at the Customer's site.

9. Limitation of Liability

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

9.2. Nothing in this Agreement shall exclude or limit either party's liability for:

9.2.1. death or personal injury caused by negligence;

9.2.2. fraud or fraudulent misrepresentation; or

9.2.3. any other liability that cannot, as a matter of law, be limited or excluded.

9.3. Subject to clause 9.2, in no event shall the Company be liable to the Customer for the following types of losses:

9.3.1. loss of business;

9.3.2. loss of opportunity;

9.3.3. loss of profits;

9.3.4. loss of or damage to goodwill; and/or

9.3.5. indirect, consequential or special loss.

This shall apply even where such a loss was reasonably foreseeable or the Company had been made aware of the possibility of the Customer incurring such a loss.

9.4. Subject to clause 9.2 the Company's total liability to the Customer in respect of all events arising under the Contract, whether in contract, tort (including negligence), for breach of statutory duty or otherwise, arising out of or in connection with the Contract shall be limited to the price paid by the Customer under the annual Contract value or £250,000 whichever is lower.

10. Termination

10.1 Either party may terminate the Contract forthwith by notice in writing to the other if:

10.1.1 the other party commits a material breach of the Contract and, in the case of a breach capable of being remedied, fails to remedy it within 30 calendar days of being given written notice from the other party to do so;

10.1.2 the other party commits a material breach of the Contract which cannot be remedied under any circumstances;

10.1.3 the other party suspends, or threatens to suspend payment of its debts or is deemed unable to pay its debts within the meaning of section 123(1), Insolvency Act 1986; or

10.1.4 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

10.1.5 a petition is presented, or a resolution is passed, or an order is made, for the winding up, provisional winding up, or bankruptcy of the other party, other than for the sole purpose of a solvent amalgamation or solvent reconstruction of that other party; or

10.1.6 a receiver, administrative receiver, administrator, compulsory manager or any similar officer is appointed in respect of the other party or any of its assets, or any step is taken towards the appointment of any such officer; or

10.1.7 the other party commences negotiations in relation to, or enters into, any arrangement, compromise, assignment or composition with its creditors or any class of them (with or without first having sought or obtained a moratorium); or

10.1.8 enforcement of any security over any assets of the other party; or

10.1.9 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 10.1.3-10.1.8 inclusive.

10.2. The Company shall be entitled to terminate the Contract immediately if the Customer fails to any amount due under the Contract on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment.

11. Consequences of termination

11.1. All rights and obligations of the Parties shall cease to have effect immediately on termination or expiry of the Contract except that termination shall not prejudice or affect:

11.1.1. the accrued rights and obligations of the parties at the date of termination;

11.1.2. the right to claim damages for losses whenever they occur provided they arise out of an event occurring on or before termination of the Contract; and

11.1.3. the continued existence and the validity of the rights and obligations of the parties under any clauses the survival of which is necessary for the interpretation or enforcement of the Contract.

11.2 On termination or expiry of the Contract:

11.2.1. the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of the Goods and/or Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt; and

11.2.2. the Parties shall return all or any Confidential Information in its possession relating to the other Party together with all copies thereof, or at the other Party's option destroy all such Confidential Information by shredding or incineration of all documents and other material in its possession, custody or control and/or irretrievably deleting the same if stored on electronic or magnetic media and certifying to the other Party that this has been done.

12. Intellectual Property Rights

12.1 All Intellectual Property Rights produced from or arising as a result of the performance of the Contract shall, so far as not already vested, become the absolute property of the Company, and the Customer shall do all that is reasonably necessary to ensure that such rights vest in the Company, which may include executing agreements upon request by the Company.

13. Confidentiality

13.1 The Company and the Customer will take all reasonable steps to ensure that any documents or other materials and data or other information which are supplied to the other party as Confidential Information remain confidential to the parties. Such information will only be made available by the parties to those of their personnel who have a reasonable need to know of it and the documents or other materials and data or other information or copies thereof will not be made available to any third parties except for professional advisers in confidence or if required by law. Either party is entitled to demand the return of all copies of any such documents or other materials and data or other information within fourteen (14) days by giving the other party written notice.

13.2 This obligation of confidentiality will remain in force beyond the cessation or other termination of this Contract.

13.3 On the cessation or earlier termination of this Contract, each party shall return to the other all documents or other material containing the Confidential Information if requested.

13.4 "Confidential Information" does not include, and the obligations contained in this clause 12 shall not apply in respect of the information:

13.4.1 which was in the public domain at the time of disclosure; or

13.4.2 which though originally confidential subsequently falls into the public domain through no fault of the receiving party; or

13.4.3 independently developed by the receiving party or its employees or agents where such party can show it has no access to that the information as Confidential Information of the disclosing party received under this Contract; or

13.4.4 lawfully in the possession of the receiving party at the time of receipt or which is subsequently lawfully received from a third party not under an obligation of confidentiality to the disclosing party in respect of that information.

13.5 Without limiting the generality of paragraphs 13.4.1 and 13.4.2 above, information shall not be deemed to be in the public domain just because it is known to only a few of those people to whom it might be of commercial interest and a combination of one or more items of Confidential Information with information in the public domain shall not cause such Confidential Information to be deemed to be in the public domain.

13.6 Both parties undertake that any information which is received from the other party under this Contract will only be used for the purposes of this Contract.

14. Force Majeure

14.1 The Customer shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to industrial relations difficulties, strikes, lock-outs (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, act of God, war, riot, strikes, pandemics, sickness, accidents, civil commotion, malicious damage, fuel shortage, compliance with any law or government order, rule or regulation or direction, breakdown of equipment, fire, flood, storm or default by suppliers or subcontractors.

15. Independent Contractors

15.1 The Company and the Customer are contractors independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties. The Company may, in addition to its own employees, engage sub-contractors to provide all or part of the services being provided to the Customer and such engagement shall not relieve the Company of its obligations under this Agreement or any applicable Quotation.

16. Data Protection

16.1. Each Party shall comply with Data Protection Legislation in respect of any personal data processed under the Contract.

17. Assignment

17.1 The Customer shall not be entitled to assign or transfer its rights or obligations or delegate its duties under the Contract without the prior written consent of the Company.

17.2. The Company shall be entitled to assign, novate, subcontract or otherwise dispose of its rights and obligations under the Contract or any part thereof to any third party entity which will substantially perform any of the functions that had previously been performed by the Company provided that any such assignment, novation or other disposal shall not increase the burden of the Customer's obligations under the Contract.

18. Severability

18.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction, such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if the Contract had been agreed with the invalid illegal or unenforceable provision eliminated.

19. Waiver

19.1. Any failure or delay of the Company to enforce or to exercise, at any time for any period of time, any term of or any right, power or privilege arising pursuant to the Contract does not constitute and shall not be construed as a waiver of such term or right and shall in no way affect the Company's right later to enforce or exercise it nor shall any single or partial exercise of any remedy, right, power or privilege preclude any further exercise of the same or the exercise of any other remedy, right, power or privilege whatsoever.

20. Notice

20.1 Any notice to be given by either party to the other may be served by email, personal service or by post to the address of the other party given in the Specification Document or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall be deemed to be received on the same working day it was sent (or if sent on a day which is not a working day, the next working day), if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

21. Entire Agreement

21.1 The Contract contains the entire agreement between the parties relating to the supply of Confined space rescue services and supersedes any previous agreements, arrangements, contracts, undertakings or proposals, oral or written in relation to such subject matter.

21.2 Each party acknowledges that:

21.2.1 upon entering into the Contract, it does not rely, and has not relied, upon any representation (whether negligent or innocent), statement or warranty made or agreed to by any person (whether a party to the Contract or not) except those expressly set out in the Contract;

21.2.2 the only remedy available in respect of any misrepresentation or untrue statement made to it shall be a claim for breach of contract under the Contract; and

21.2.3 nothing in this clause 21 shall limit or exclude any liability for fraud

22. The Contracts (Rights of Third Parties) Act 1999

22.1. Unless expressly provided in the Contract, no term of the Contract is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

23. Right to Set Off

23.1. The Company reserves its right to set-off against its indebtedness to the Customer any debt owed to it by the Customer and any liability, damage, loss, costs, charges and expenses which it

has incurred in consequence of any breach by the Customer of the Contract or any other contract with the Company. The Customer shall have not right to set-off any amounts under the Contract.

24. Governing Law and Jurisdiction

24.1 The Contract and any dispute or claim (whether contractual or non-contractual) arising out of or in connection with it, its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

24.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) arising out of or in connection with the Contract, its subject matter or formation.