

**MINING SEARCHES UK
TERMS AND CONDITIONS OF ENGAGEMENT**

1 INTERPRETATION

1.1 The following definitions and rules of interpretation in the condition apply in these terms and conditions (**Conditions**):

Contract	the provision of the Order Form by the Client and MSUK's acceptance of it;
Client	the person, firm or company who purchases Services from MSUK;
Mining Archive Report	a mining archive report prepared by MSUK for the benefit of the Client;
MSUK	Cornwall Mining Services Limited, a company incorporated and registered in England and Wales with company number 1381067, whose registered office is at Highburrow Lane, Wilson Way, Pool Industrial Estate, Redruth, Cornwall TR15 3RN and whose trading name is "Mining Searches UK";
Order Form	a form of order form prepared by MSUK and sent to the Client (whether by post or by email following a request from the Client through MSUK's website) describing the Services and the Price;
Price	the price paid by to MSUK for the provision of the Services;
Services	the services to be provided by MSUK to the Client in accordance with these Conditions; and
VAT	value added tax chargeable under English law for the time being and any similar tax.

1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

2 APPLICATION OF CONDITIONS

The Client's provision of a signed Order Form constitutes an offer by the Client to purchase the Services on these Conditions. No offer placed by the Client shall be accepted by MSUK other than (a) by a written acknowledgement issued and executed by MSUK; or (b) (if earlier) by MSUK starting to provide the Services. These Conditions take precedence over any terms and conditions of the Client upon which the Client might otherwise seek to rely.

3 COMMENCEMENT AND DURATION

MSUK shall provide the Services from the later of (a) the date stated in the Order Form; and (b) the date of acceptance of the Client's offer by MSUK in accordance with condition 2.

4 MSUK'S OBLIGATIONS

4.1 MSUK shall use reasonable endeavours to provide the Services in accordance in all material respects with the Client's instructions in the Order Form.

4.2 Specialist Services

- (a) Unless otherwise agreed between the parties, the scope of the Services will be defined in the Order Form and confirmed in writing by MSUK prior to the commencement of the provision of the Services.
- (b) When carrying out site investigations MSUK shall use reasonable endeavours to identify the main lode (mineralised fissures or vein) and crosscourse trends as indicated from existing available records to which MSUK has access, or to identify any other untoward natural or man-made ground conditions.
- (c) MSUK reserves the right to cease investigations and reassess the Price where investigations reveal features, either natural or man-made, which affect the provision of the Services.
- (d) MSUK will use reasonable endeavours to ensure that excavations are supervised by a suitably qualified employee or appointed representative of MSUK.
- (e) Where site investigation is carried out by means of either machine or hand excavated trial pits/trenches, these excavations will be backfilled prior to leaving the site. Any site investigation involving excavation must be expected to cause some disruption, and following backfilling, settlement of any trial pits/trenches must be expected. MSUK accepts no responsibility for the damage to property or surrounds resulting from any investigations, nor for the replanting or reseeding, etc. of land. In the event that during our investigations, whether by the use of hand or machine excavation of trial pits or trenches or by the use of probing or borehole methods, a mining feature or other untoward natural or man-made feature is discovered and which, at the time or later as a result of the disturbance of the feature, causes settlement or subsidence, MSUK will not be held responsible.

4.3 Mining Archive Search/Report

MSUK will use reasonable care and skill in preparing a Mining Archive Report. Any Mining Archive Report is provided to the Client subject to the following:

- (a) MSUK cannot be responsible for the accuracy of any information or data used to compile a Mining Archive Report.
- (b) The Client recognises that these sources used to compile Mining Archive Reports are historical in nature, may contain inaccuracies and may not be complete. Accordingly, MSUK does not claim that the information used is an exhaustive or comprehensive list of sources that might be consulted.
- (c) Error in or corruption of information is possible from a number of causes including, but not limited to, inaccuracy or omission in primary or secondary information, inaccurate processing of

information, computer malfunction or corruption of data whilst in the course of conversion, processing by computer or electronic means in the course of transmission by electronic communication link, or printer malfunction. MSUK cannot accept any liability whatsoever arising out of error or corruption of information arising due to circumstances beyond its control.

- (d) Mining Archive Reports are prepared for the benefit of the Client only and is confidential. Ownership in any report prepared for the Client remains with MSUK until the Price has been paid to MSUK. The Client shall not disclose the contents of the Mining Archive Report to anyone other than their legal advisers without the written consent of MSUK.
- (e) MSUK reserves the right to use any information or material obtained in the course of preparing the Mining Archive Report for any other purpose and without restriction.

4.4 Contaminated land investigations

- (a) MSUK is not obliged to advise the Client as to the actual or potential presence of pollution or contamination or as to the risks of such matters having occurred being present or occurring in the future. MSUK shall not have any duty to consider such matters as influencing any aspect of the provision of the Services except where MSUK has specifically agreed, in writing, to provide such advice or consideration.
- (b) Where the scope of the Services includes a site or environmental assessment, audit, review or investigation which includes the interpretation, interpolation or extrapolation of data from discrete sampling locations and/or discrete times, the Client accepts and agrees that these data may not represent actual conditions between these locations or between these times and that MSUK's conclusions and recommendations based on such data are statements of professional opinion and not statements of fact. Whilst MSUK will carry out such Services and provide its conclusions and recommendations with reasonable skill, care and diligence, MSUK accepts no liability if the actual conditions between the locations and times is different to MSUK's conclusions or recommendations.

5 CLIENT'S OBLIGATIONS

The Client shall:

- (a) provide, within a reasonable time, all necessary and appropriate information and assistance as required by MSUK to enable MSUK to provide the Services;
- (b) ensure that any decisions of, or instructions from, the Client are provided within a reasonable time to ensure that there is no undue delay to the provision of the Services by MSUK;
- (c) decide on the extent of any pollution and contamination investigation that may be necessary and to investigate whether pollution or contamination may affect the provision of the Services or any site to be used by MSUK in providing the Services; and
- (d) provide MSUK with details of any buried services and structures that exist below ground level at any sites where the Services are to be provided.

6 CHARGES AND PAYMENT

- 6.1 In consideration of the provision of the Services by MSUK, the Client shall pay the charges as set out in our letter enclosing the Order Form.
- 6.2 Unless otherwise stated, all prices are exclusive of VAT.
- 6.3 Unless otherwise agreed, the Client shall pay each invoice submitted to it by MSUK, in full and in cleared funds, within 30 days of receipt by cheque or to a bank account nominated in writing by MSUK. MSUK reserves the right to request part or full payment in advance before a site investigation is carried out.
- 6.4 Without prejudice to any other right or remedy that it may have, if the Client fails to pay MSUK on the due date, MSUK may:
- (a) charge interest on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of Barclays Bank Plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Client shall pay the interest immediately on demand. MSUK may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
 - (b) suspend all Services until payment has been made in full.
- 6.5 Time for payment shall be of the essence of the Contract.
- 6.6 All sums payable to MSUK under the Contract shall become due immediately on its termination, despite any other provision. This condition 6.6 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 6.7 MSUK may, without prejudice to any other rights it may have, set off any liability of the Client to MSUK against any liability of MSUK to the Client.
- 6.8 Where any plant or machinery is hired by MSUK to enable it to provide the Services, the Client agrees to pay a handling and insurance charge equivalent to 10% of the costs of hiring the plant or machinery. The Client acknowledges that contractors' charges can vary, therefore any prices given for hiring plant or machinery are estimates and provided as a guide only.

7 LIMITATION OF LIABILITY

THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF THIS CLAUSE 7

- 7.1 This condition 7 sets out the entire financial liability of MSUK (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Client in respect of:
- (a) any breach of the Contract;
 - (b) any use made by the Client of the Services (including Mining Archive Reports); 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 MSUK:

- (a) for death or personal injury resulting from negligence; or
- (b) for any damage or liability incurred by the Client as a result of fraud or fraudulent misrepresentation by MSUK.

7.4 Subject to condition 7.2 and condition 7.3:

- (a) the Supplier shall not be liable for: loss of profits; loss of business; depletion of goodwill and/or similar losses; loss of anticipated savings; loss of goods; loss of contract; loss of use; loss of corruption of data or information; or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) MSUK'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.

7.5 Whilst we will endeavour to locate any underground services as far as possible, we cannot accept responsibility for damage to unrecorded underground services. Client's wishing to hire their own machinery and operators will be responsible for the location and security of, and any damage to underground services.

7.6 MSUK shall have no liability to the Client under the Contract 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 (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of MSUK 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 suppliers or subcontractors.

8 TERMINATION

8.1 MSUK may, at its sole discretion, terminate the Contract if the Client:

- (a) refuses to accept MSUK's recommendations on the nature and extent of investigations required that may differ from the Client's instructions stated in the Order Form; or
- (b) fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment.

- 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 immediately on giving notice to the other if:
- (a) the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment; or
 - (b) 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 30 days of that party being notified in writing of the breach; or
 - (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or
 - (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
 - (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (f) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party; or
 - (g) a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or
 - (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or
 - (i) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

8.3 On termination of the Contract for any reason:

- (a) the Client shall immediately pay to MSUK all of MSUK's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, MSUK may submit an invoice, which shall be payable immediately on receipt; and
- (b) the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

8.4 On termination of the Contract (however arising), conditions 7, 8 and 9.9 shall survive and continue in full force and effect:

9 GENERAL

- 9.1 The Contract constitutes the entire agreement between the parties and supersedes all previous agreements between the parties relating to this subject matter.
- 9.2 MSUK may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. If MSUK requests a change to the scope of the Services for any other reason, the Client shall not unreasonably withhold or delay consent to it.
- 9.3 Subject to condition 9.2, 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.
- 9.4 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.
- 9.5 If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected. If a provision of the Contract (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 9.6 The Client shall not, without the prior written consent of MSUK, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. MSUK may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 9.7 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 9.8 Any notice or other communication required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery to the other party as specified in the Order Form or such other address as specified to the other party in writing. Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address stated in the Order Form or such other address as specified to the other party in writing or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the business day after posting. A notice or other communication required to be given under or in connection with the Contract shall not be validly served if sent by e-mail.

9.9 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter.