

Validair Monitoring Solutions Limited Service Contract Terms and Conditions

1. Formation of the Purchase Agreement

A Purchase Agreement between the parties shall only be formed when VMSSL accepts any Order, instruction or letter of intent from the Purchaser in writing. A written acceptance by VMSSL shall constitute an unequivocal agreement by both parties to be bound by these terms and conditions.

2. Definitions

The following words and phrases shall have the meanings set out below unless the context or specific clauses in this purchase agreement provide otherwise:

Word or phrase	Meaning
'Adjudicator'	the person appointed by the Confederation of Construction Specialists in accordance with clause 25 of these terms and conditions.
'Due Date for Payment'	the date on which VMSSL's entitlement to payment becomes due under the contract.
'Final Date for Payment'	the date on which payment must be made by the Purchaser to VMSSL.
'Purchaser'	the company, firm or person whose Order, instruction or letter of intent has been accepted by VMSSL in writing.
'VMSSL'	Validair Monitoring Solutions Limited.
'Purchase Agreement documents'	VMSSL quotation, including system drawings approved by the Purchaser in writing, and/or specification and any Order, instruction or letter of intent that has been accepted in writing by VMSSL and these terms and conditions.
'The Works'	the service and calibration of any Environmental Monitoring System and equipment all as described in the VMSSL quotation documents together with any variations made in accordance with these terms and conditions.
'Support Services'	installations, work, services, facilities, materials and equipment to be provided by the client to facilitate VMSSL being able to perform the correct delivery of the works.
'WEEE'	Waste electrical and electronic equipment as defined in the WEEE Regulations
'WEEE Regulations'	The Waste Electrical and Electronic Regulations 2006 (SI 2006/3289)

3. Equipment Locations

It is the responsibility of the Purchaser to Provide VMSSL (free of charge) with accurate drawings detailing the location of all equipment included in the service contract.

In the event that the Purchaser's drawings are inaccurate and such inaccuracy causes a delay to VMSSL or results in additional works required by VMSSL to properly deliver the works, VMSSL shall be entitled to an extension of time under clause 21 and to loss and expense and/or damages under clause 20.

4. The Purchasers' Obligations

- The Purchaser shall at all times act in a fair and reasonable manner towards VMSSL.
- The end user client shall appoint a system owner who will be the point of contact for the end user client team.
- The Purchaser shall provide VMSSL with free, uninterrupted and safe access to enable VMSSL to carry out the works which shall also form the basis of a Schedule setting out the support services to be undertaken by the Purchaser prior to the commencement of the works by VMSSL.
- Sensors, probes and detectors in fridges, incubators, mini incubators and similar equipment will be placed in free space, away from sides/top/bottom, corners, shelf supports, inner flanges, hinges etc. The customer should be aware this may utilise space required for product/samples, but results in most accurate readings. VMSSL cannot support or troubleshoot readings where sensors, probes or detectors have been moved to unrepresentative locations within equipment.
- Where sensors, probes or detectors are damaged by mishandling, inappropriate cleaning, impact from product or related storage equipment or any other such misuse, replacement, recalibration and revalidation will be at additional cost.
- VMSSL can take no responsibility for discrepancies between the results recorded on the VMSSL display to that shown on the client equipment display.
- Calibration accuracy will be in accordance with VMSSL standard calibration SOPs, copies available upon written request, and which are valid at the time of issue and may be subject to change without notice. Customers should be familiar with the concept of accumulated errors and devices/systems' natural tendency to deviate due to unavoidable physical factors and variations, i.e. accuracy is not absolute but a function of real world dynamic physical factors. Also, accuracy and calibration at a given point in time are for that time only, and subject to subsequent deviation over time.
- The Purchaser shall ensure that the area for the performance of the works is safe and free from any hazardous contamination sources including any installed asbestos products and shall certify in writing that the area is safe prior to the commencement of the works by VMSSL.
- The Purchaser shall ensure that any installed equipment is safe from any hazardous contamination sources and shall certify in writing that the equipment is safe prior to removal from the facility either by VMSSL personnel or by the Purchaser's personnel.
- The Purchaser shall ensure that any equipment returned to VMSSL is safe from any hazardous contamination sources and shall certify in writing that the equipment is safe prior to return of that equipment. The certificate shall be sent via fax or email prior to despatch to VMSSL and shall also be attached to the outside of any packing containing an item of returned equipment.
- The Purchaser is responsible for replacement of any ancillary component that is deemed obsolete due to modification or upgrade by the manufacturer.
- The Purchaser shall not commit any act that causes its Sub-Contractor to be in breach of a contract with any Sub-Sub-Contractor.
- The Purchaser shall carry out all support services necessary for the proper delivery of the works in a good and workmanlike manner using materials of a satisfactory quality. The Purchaser shall provide free of charge to VMSSL all reasonable and necessary support services to enable VMSSL to complete the works on site in addition to any specific attendances and facilities set out in the purchase agreement.
- In the event that VMSSL has not had the opportunity to inspect the site and the site logistics have not been identified at the time of the VMSSL quotation the following criteria is assumed and shall be included in the quotation price. Support services shall include but not be limited to the following general items:
 - Site Contact
 - Delivery receipt, unloading and safe/secure storage
 - Car parking on site free of charge
 - Toilet and canteen facility
 - First aider and first aid facility
 - Fax and photocopy machine for occasional use only
 - Safe and secure storage facilities
 - Waste disposal facilities
 - Safe access to the areas of the work activities
 - Site induction and emergency procedures
 - Any required access or lifting equipment to properly and safely complete the work
 - Safe access above suspended ceilings
 - Safe access to all structural areas through which VMSSL would need to pass
 - Permanent and adequate lighting
 - Permanent and adequate site power
- The client will ensure that safe access for the VMSSL ongoing service, calibration and maintenance is incorporated into the facility design and layout in accordance with CDM regulations.
- The client will manage and control all system and services isolations required to allow the correct delivery of the works by VMSSL.
- In the event that uninterrupted and continuous access is not granted to VMSSL during VMSSL attendance at site during the conduct of the works, then delays for said interrupted access shall be charged at the prevailing rate per man hour of delay or waiting. Such delay which causes operations to not be completed by the end of normal working hours, 5pm, may result in return the following working day, subject to availability of resources, charged at the prevailing rate per man day. Constant ongoing record or notification by VMSSL of such delay may not be practical so may be notified in retrospect at time of invoice.

5. Abortive Visit

In the event that the client has instructed VMSSL to attend site and perform the works and it is found that the site is not ready for VMSSL to perform and complete the works resulting in either an abortive visit or the need for a return visit then VMSSL will charge the Purchaser additional costs at the appropriate rates.

6. VMSSL Obligations

VMSSL shall carry out and complete the works in accordance with the purchase agreement in a good and workmanlike manner using materials up to the standard required by the purchase agreement and of a satisfactory quality. VMSSL shall at all times act in a fair and reasonable manner towards the Purchaser.

7. Commencement

The commencement of the service contract for the Environmental Monitoring System is subject to the complete performance of the following conditions precedent:

Receipt by VMSSL of payment as detailed in the quotation price and payment terms. VMSSL shall not commit resources or procure any materials before payment is received as cleared funds. Thereafter, VMSSL will commence the service contract and the Purchaser shall pay VMSSL in accordance with the agreed payment terms.

All visits will be arranged via planning schedule and agreed with the client point of contact.

Service engineers will visit the site at pre-determined intervals, in line with the pre-agreed work schedule.

1. Storage of materials on site

Any materials required for the works that are held in storage by the Purchaser and are found to be damaged shall be notified to the Purchaser. If upon further inspection the damaged item is considered not usable it shall be replaced by VMSSL and additional costs for the replacement materials will be charged accordingly.

13. WEEE B2B Financing Obligations

The Customer shall:

- be responsible for financing the collection, treatment, recovery and environmentally sound disposal of:
 - all WEEE arising or deriving from the Products; and
 - all WEEE arising or deriving from products placed on the market prior to 13 August 2005 where such products are to be replaced by the Products and the Products are of an equivalent type or are fulfilling the same function as that of such products;
 - comply with all additional obligations placed upon the Customer by the WEEE Regulations by virtue of the Customer accepting the responsibility set out here; and
 - provide the Seller's WEEE compliance scheme operator with such data, documents, information and other assistance as such scheme operator may from time to time reasonably require to enable such operator to satisfy the obligations assumed by it as a result of the Seller's membership of the operator's compliance scheme.

The Customer shall be responsible for all costs and expenses arising from and relating to its obligations under WEEE.

Further information in respect of the arrangements set out here can be found at www.electrolink.eu.com by clicking on the 'WEEE FINAL USERS' button and quoting WEEE registration number [WEE/FE2806UU] where prompted.

14. The Contract Price and Price Adjustment

The lump sum price set out in the quotation shall not be subject to fluctuations for a period of 90 days from the date of the quotation.

The contract price shall be the sum set out in the purchase agreement together with a fair and reasonable sum for instructions, variations, storage, interest, fluctuations, where applicable, and direct loss and/or expense.

15. Payment

The Purchaser shall pay VMSSL the contract price without any deductions or set-off.

The Final Date for Payment of all payments shall be no more than 12 calendar days from the Due Dates for Payment.

VAT, where applicable, will be added to the contract price at the prevailing rate.

No retention will be deducted from the contract price, or any other sum due and payable under the contract.

VMSSL will charge the Purchaser interest on all late payments in accordance with the late Payment of Commercial Debts (interest) Act 1998.

The Purchaser is not entitled to deduct any discount unless the same appears within the purchase agreement.

16. Suspension

If any payment has not been received in full by VMSSL by the Final Date for Payment, then:-

VMSSL may serve a notice of intention in writing on the Purchaser to suspend all work and the further performance of the contract and VMSSL shall be entitled 7 calendar days after the service of such a notice to suspend work and further performance of the contract until such payment has been received by VMSSL.

The Purchaser shall allow VMSSL a reasonable period of time in which to re-commence performance of the sub-contract works after payment.

The period of suspension shall not be a period of delay or a period of delay for which VMSSL is responsible.

17. Cancellation

The Purchaser may terminate this contract at any time by giving VMSSL 3 months written notice.

It is assumed, that should this contract (once agreed and order received by VMSSL), be cancelled by the client, prior to completion, the client will pay for all services, installations, materials and equipment on site or in the possession of VMSSL at the time of cancellation together with a cancellation fee of 20% of the outstanding contract value at the time of cancellation.

18. Damage and Misuse

Deterioration or damage to any part of the Environmental Monitoring System caused by exterior forces is not covered by this contract.

Misuse or incorrect operation of equipment is not covered by the scope or not covered by the scope of this contract.

19. Retention of Title

All goods delivered to site for incorporation into the Works shall at all times remain the property of VMSSL until payment in full has been received by VMSSL.

20. Loss and/or Expense

If the regular progress of the Works is either prolonged and/or disrupted and/or otherwise materially affected by any act, omission or default either on the part of the Purchaser (including those for whom the Purchaser is responsible) then VMSSL shall notify the Purchaser in writing within a reasonable period of time of such matters and provide details of the direct loss and/or expense incurred by VMSSL. The direct loss and/or expense incurred by VMSSL shall be added to the contract price and shall be paid by the Purchaser to VMSSL in the payment due to VMSSL immediately following the notification referred to herein.

21. **Extension of Time**
If the preparation, performance or completion of the works is delayed, disrupted or hindered by any event, circumstance or cause beyond VMSL control then the period for the completion of the Works shall be extended as a minimum by the same period of time as the period of delay, disruption or hindrance. VMSL reserve the right to reschedule the Works following such delay subject to any other existing commitments. VMSL shall constantly use his best endeavours to prevent delay to the progress of the Works.
22. **Damages / Performance Bonds and Guarantees**
Under no circumstance shall VMSL be liable for liquidated and ascertained damages.
Under no circumstance shall VMSL be liable for damages at large.
Under no circumstance shall VMSL be required to provide performance bonds or guarantees.
23. **Consequential Loss**
Under no circumstance shall VMSL be liable for consequential loss of any nature.
24. **Notices**
Any notice or document may be served on the other party by any effective means.
The effective means are a properly addressed, pre-paid notice served by first class post at the last known business address of the other party.
25. **Adjudication**
Either party may at any time refer any dispute arising out of the purchase agreement to adjudication in accordance with The Scheme for Construction Contracts (England and Wales) Regulations 1998.
The Adjudicator Nominating Body under the Scheme shall be the Confederation of Construction Specialists.
26. **Third Party Rights**
Nothing in the purchase agreement shall confer or purport to confer upon any third party any benefit or right against VMSL or the Purchaser.
27. **Law**
The law of England shall apply to this contract.