

The contract (the "Contract") is made when Wales & West Utilities Ltd ("We/Us") receive (i) a request from the customer ("You/Your") for the diversion of the position of a service pipe and quote for the works from Us (the "Quotation") and (ii) payment in full for the Works (as defined below) (together the "Acceptance"). The Contract consists of the Quotation, the Acceptance and the following terms and conditions.

1. THE WORKS

- 1.1 We will carry out the following works and, in the case of works affecting agricultural land, in accordance with the then current terms contained in the Letter of Undertaking agreed with the National Farmers Union and Country Land Owners and Business Association, (as relevant) (the "Works"):-
- (a) relocate and commission the pipe or above ground installation specified in the Estimate;
 - (b) purge and make permanently safe the original pipe or above ground installation, or, at our choice, remove it;
 - (c) remove any above ground parts of the original pipe or associated apparatus or above ground installation to a depth of not less than one meter or to the top of original pipe depth if less;
 - (d) make good so far as reasonably practicable the surface of the land, including fences, walls, hedges and drainage to a reasonable condition;
 - (e) permanently reinstate access ways paths and other surfaces disturbed during the Works to a condition fit for purpose;
 - (f) carry out any other works included in the Estimate; and
 - (g) supply all materials necessary for the Works.
- 1.2 Where variations to the Works are required, Clauses 6 and 7.2 will apply

2. EXCLUSIONS

- 2.1 The following activities are not included in the Works:-
- (a) the matching of any permanent reinstatement of drives, paths and other surfaces to the existing surface, colour or materials;
 - (b) the reinstatement of fences, walls, landscaping, drainage or special surface finishes of any kind; and
 - (c) any other works expressly excluded from the Estimate.

3. LIABILITIES

- 3.1 We do not seek to exclude or limit our liability if something We do negligently causes death or personal injury.
- 3.2 For the avoidance of doubt nothing contained within these terms and conditions affects Your statutory rights.
- 3.3 In respect of all other loss or damage other than death or personal injury suffered by You under this Contract, where the cause of that loss or damage is our breach of the Contract or negligence, our liability shall not be more than the amount You have paid Us under Clause 7, or, in relation to damage to property only, more than a maximum of one million pounds (£1,000,000).
- 3.4 Under no circumstances do We accept liability for indirect or consequential loss (which includes by way of example only, loss of contracts, loss of profits, losses resulting from a delay in the Works, loss of revenue, increased interest and related costs, or loss of anticipated savings in expenditure or increased costs of work) as a result of our breach of the Contract, breach of statutory duty or our negligence.
- 3.5 You will indemnify Us and hold Us harmless against any claims, proceedings, liabilities, damages, expenses, losses or demands (including legal and surveyors expenses) whatsoever or howsoever suffered by Us to the extent that the same arises as a result of the Works save where arising from our negligence, breach of statutory duty or breach of contract. We shall use reasonable endeavours to mitigate the effects of the works.

4. TIMESCALES

- 4.1 We will:
- (a) take reasonable steps to begin the Works promptly as agreed with You once We receive a valid Acceptance and payment in full, unless paragraph 4.1(d), (e) or (f) applies. We may not be able to start Works until relevant notices or permits that We are required to give to, or receive from, the local highway authority or other third parties have been given or received. We shall not be obliged to start the Works until any appropriate land rights have been obtained;
 - (b) normally carry out the Works between the hours of 08.00 and 17.00 on our normal working days
 - (c) having started the Works, take reasonable steps to complete the Works without undue delay unless delayed or prevented from doing so by circumstances beyond our control, when We will be entitled to reasonable additional time.
 - (d) There may be circumstances where it is not possible or prudent to carry out diversions works in respect of certain categories of pipes or above ground apparatus in certain periods in order to maintain security of gas supplies within the local gas network. There may also be times where ground conditions make it impractical to conduct the Works. We will use reasonable endeavours to advise You as soon as possible to advise You where such a constraint is likely to exist.
 - (e) Where stage payments are listed in the Estimate We will not be obliged to commence a particular stage until the payment for that stage has been received.
 - (f) Where long lead times items are required these will not be ordered until the requirements of Clause 7 are satisfied. Works may not be able to commence until these items have been delivered to the site.

5. INFORMATION AND ACCESS

- 5.1 You will:-
- (a) take reasonable steps to provide accurate information requested for the Estimate and the Works;
 - (b) subject, where appropriate, to reasonable health safety and security requirements, provide uninterrupted access as necessary to Your Property for the Works.

6. VARIATIONS

- 6.1 While You acknowledge that the Estimate is only an estimate and therefore may be subject to revision, up or down, to reflect the actual costs incurred We have taken reasonable steps to ensure that the Estimate is and, any revision to it under this Clause, will be a reasonable assessment of the costs in fact likely to be incurred. You accept that the assessment has been based on a Feasibility Study that You have paid for; however You acknowledge that conditions underground, including the presence or location, even if their general presence is known, of underground apparatus (including ours) is uncertain unless We have specifically determined this as part of the Feasibility Study.
- 6.2 If at any time after acceptance of this estimate You request a variation to the nature, location or scope of the Works You must inform Us as quickly as possible of the proposed variation in writing together with sufficient detail to enable Us to assess the effect of Your requested variation on costs and timescales. We will take reasonable steps to advise You as quickly as possible of any revised costs or timescales for carrying out the Works. We will not carry out any variation requested by You unless You agree in writing to the variation of costs estimate and/or timescales.
- 6.3 If We require a variation to the Works (other than as a result of our or our contractor's failure to act in a reasonable or prudent manner) We will promptly inform You of the nature of the variation, the reason for it, and the expected effect on price of the Works and/or completion of the Works.

7. PAYMENT

- 7.1 You shall make payment of the Estimate (including VAT when applicable) in full with the Acceptance unless the Estimate allows for stage payment in which case You shall make payments in accordance with the stage payments in the Estimate. In the event that stage payments are permitted this will be subject to a credit check that satisfies Us that Your credit status is adequate. If Your credit status is not adequate then You will either make full payment or put in place security to our satisfaction.
- 7.2 Stage payments are likely to be required for long lead time items and Additional Works
- 7.3 In the event that additional work is necessary to complete the Works ("Additional Work") either due to:
- (a) an event which is not reasonably expected to have happened; or
 - (b) a variation under Clause 6;
- then You will pay the charges for any Additional Work or a proportion of them that We consider reasonable in the circumstances (including any VAT on such costs).
- 7.4 We may offer You credit for this Additional Work subject to a satisfactory credit check; if We are not able to offer credit terms then You will be required to make payment for the variation before We continue with the Works that are affected by the variation.

- 7.5 If You are required to make payment for the Additional Work then You will do so within 30 days of Us sending You an invoice for them. If You fail to make payment within that period We may charge interest on any outstanding sum at a rate of 3% above Barclays Bank plc base lending rate as set by that bank from time to time.
- 7.6 If following the completion of the Works, the actual costs of them is less than the Estimate (and any additional charges invoiced, if any) then We will promptly refund the balance to You.
- 7.7 We will at Your reasonable request supply a breakdown of how the costs of the Works are calculated.
- 7.8 Where You may benefit from statutory discounts in respect of the provision of the New Roads and Street Works Act 1991 or other legislation then our Estimate will take account of this
- 7.9 We will provide reasonable information for You to verify that the price You are required to pay is properly calculated.
- 8. LAND RIGHTS**
- 8.1 This Clause applies where We (at our absolute discretion) require a land right in connection with the Works (whether or not at the same time disposing of an existing land right).
- 8.2 In this Clause "land right" means
- in respect of pipes and associated apparatus, a permanent legal easement; and/or
 - in respect of above ground apparatus where We require sole possession of any portion of land, a legal grant of land in fee simple (or, at our discretion, a legal lease for a period of not less than 125 years (or less at our absolute discretion) from the date of completion of the Works, or in the case of above ground apparatus already the subject of an existing lease, a period ending not later than the date of the existing lease).
- 8.3 Where We require a land right in land not owned by You:
- we will negotiate directly the acquisition of the land right with the relevant owner of the land concerned;
 - we will not be obliged to exercise (but may) our rights of compulsory acquisition of the land right;
 - we will at Your request keep You informed of the progress of any such negotiations and will have regard to Your representations but shall not be obliged to engage You in, nor shall You be attempt to engage (save with our consent), in direct negotiations with the land owner concerned;
 - the terms on which we agree the new land right shall be at our sole discretion but We will inform You of the proposed cost of the new land right (including, so far as known, our and the landowner's proposed legal and surveyors costs in obtaining the land right) before completing it;
- We will take reasonable steps to obtain (and keep updated) the estimate of the proposed costs of acquiring any new land right (including solicitors and surveyors costs).
- 8.4 Where We require a land right in land owned by You:
- You will grant to Us a new land right at no cost to Us in the form approved by Us (if not attached to the Estimate) in the location shown on the plan attached to the Estimate within 14 days of our written request to You;
 - You and We agree that the location of the new land right shown on the plan is approximate only, but We will take reasonable steps to ensure that the Works are positioned as closely as possible, having regard to all the circumstances, to that shown on the plan; and You and We will complete within 14 days of our written request the new land right or any amendment/rectification to it in the location actually positioned in accordance with this subclause;
 - at Your request and cost We will surrender any existing land right to the extent that it is superseded by the land right granted under subclause 8.4(a) above with effect from the date of the grant of the new land right;
 - You and We agree that any existing pipes or other apparatus no longer required by Us may remain in the ground, to be removed by You at Your cost if You so wish, unless We agree to remove them at Your cost following the carrying out of the Works.
- 9. DATA PROTECTION**
- 9.1 In this clause "Data Protection Legislation" means the Data Protection Act 2018 (as amended), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended), and all other data protection laws, regulations, codes of practice and statutory instruments as may be in force in the United Kingdom from time to time including, from 25 May 2018, the General Data Protection Regulation.
- 9.2 To the extent that We are acting as a Data Controller and/or Data Processor (as defined in Data Protection Legislation) We will comply with all applicable requirements of the Data Protection Legislation.
- 9.3 When processing Personal Data (as defined in Data Protection Legislation) We shall have in place appropriate technical and organisational measures to protect such Personal Data processed by Us against unauthorised or unlawful processing and against accidental loss, destruction, or damage.
- 9.4 When processing Personal Data We will do so solely in order to meet its obligations under this Contract.
- 9.5 If we engage a sub-contractor to complete any Works under this contract we shall impose obligations on the sub-contractor that are substantially the same as the obligations imposed on Us under Clause 9.3 and 9.4.
- 9.6 Any Personal Data that We be processed in accordance with our Privacy Notice which can be found at www.wutilities.co.uk/Legal.
- 10. TERMINATION**
- 10.1 You may terminate this Contract or a request delay to the Works at any time before We make the relocated gas apparatus operational by giving at least 95 full working days' notice but must pay to Us all costs and liabilities (including VAT when applicable) reasonably incurred by Us which We cannot reasonably avoid up to the date of Your termination in the normal course of the works or as a result of Your termination or delay except where the Contract is terminated pursuant to our breach of the Contract.
- 10.2 We may terminate the Contract, or at our discretion, suspend the Works where You are in breach of the Contract or become insolvent.
- 11. USE OF CONTRACTORS**
- 11.1 We may sub-contract the whole or any part of the Works but will still remain responsible to You for carrying out the Works.
- 12. OWNERSHIP**
- 12.1 The relocated Works shall at all times belong to Us.
- 13. CONFLICT, NOTICES AND JURISDICTION**
- 13.1 If there is or appears to be any conflict or ambiguity between the Estimate and these terms and conditions, the Estimate will take precedence.
- 13.2 Any notice must be served by prepaid post or fax on Us or You at the addresses shown on the Estimate.
- 13.3 The Contract is governed by the laws of England and Wales and it is agreed that the courts of England and Wales have jurisdiction to settle any disputes which may arise out of or in connection with the Contract.
- 14. THIRD PARTY RIGHTS**
- 14.1 Unless expressly provided in this Agreement, no term of this Agreement is enforceable pursuant to the Contract (Rights of Third Parties) Act 1999 by any person who is not a party to it.
- 15. GENERAL**
- 15.1 If any part of this contract is or becomes invalid, unenforceable or illegal or is declared so by a court this shall not affect the remaining parts of this contract which shall continue to be fully effective. Any provisions of this contract that by its nature or from their context it is intended to continue after the termination of this contract shall do so.
- 15.2 No variation to this contract shall be effective unless it is made in writing and signed by You and Us.
- 15.3 No failure or delay by either of Us enforcing the terms of this contract shall adversely affect our ability to do so at a later time or in respect of further non-compliance by either of Us of its terms.
- 15.4 This contract sets out all the terms of the agreement between Us and supersedes any previous negotiations, statements or representations made by either Us (but not including fraudulent representations or statements).