

ENGINEERING INSPECTION SERVICES

TERMS AND CONDITIONS



BRITISH
ENGINEERING
SERVICES

Interpretation

These terms and conditions, along with the Contract/Renewal Schedule, Plant Schedule and our published schedule of Fees form the contract (the Contract) between:

- you, the customer or insured named in the Contract/Renewal Schedule; and
- us, British Engineering Services. Registered office: British Engineering Services Limited, 5 New York Street, Manchester, M1 4JB. Tel: 0345 678 2985, info@briteng.co.uk, britishengineeringservices.co.uk

This document sets out the terms and conditions under which we provide inspection services to you. It is an important document and you should keep it in a safe place. It comprises the following sections:

- Definitions
- Our responsibilities
- Your responsibilities
- General provisions
- Exclusions and additional charges

If there is any conflict between the Contract/Renewal Schedule and any other provision of these terms and conditions, the Contract/Renewal Schedule will prevail. We only provide services to you on these terms and conditions. These terms and conditions will apply to any supply of services by us to you (even if you subsequently send us your terms and conditions) unless we agree otherwise in writing.

Please read these terms and conditions carefully to ensure your requirements are met.

Definitions

The following words and terms have the meanings shown wherever they appear in the Contract.

“Contract/Renewal Schedule” means the document setting out your details, the period of the Contract, where the Inspection Service is to be carried out, the Fee, and where applicable, the insurance policy memorandum and the insurance cover.

“Engineer Surveyor” means an engineer surveyor or an approved sub-contractor authorised by us to perform the Inspection Service.

“Examination” means the inspection of equipment or machinery.

“Existing Overdue Position” means in relation to any Plant, that such Plant is (or is due to become) overdue for statutory inspection:

- a) as at the start date of the Contract;
- b) as at the date which such Plant is added to the Plant Schedule; or
- c) within four weeks of the dates set out in (a) and (b) above.

“Fee” means our fees for performing the Inspection Service, which are payable and may be adjusted under clause 6. This Fee covers Examinations at recognised national standard frequencies on a per-inspection completed basis or as per the Written Scheme of Examination.

“Inspection Service” is the service that we provide to you, which includes:

- a) providing you with an Engineer Surveyor to perform the periodical Examination of that Plant which is safely accessible and appropriately prepared for examination;
- b) providing you with an Examination report which complies with applicable statutory requirements; and
- c) our staff complying with your local site requirements and health and safety procedures.

“Moved About Plant” means any item of Plant that may be inspected at various locations.

“Plant” means all machinery and equipment on which we have agreed to carry out Examinations for you to the extent of the Scope of Examination.

“Plant Schedule” means the document listing all the Plant and next inspection due dates for such Plant.

“PSSR 2000” means the Pressure Systems Safety Regulations 2000.

“Scope of Examination” means the extent of Examination we agree to carry out. The Scope of the Examination will be in accordance with:

- a) the requirements of any applicable statutory regulation(s) where identified by you or alternatively;
- b) the scope as instructed by you and agreed by us and as recorded/referenced in the Examination report.

“Written Scheme of Examination” (major, intermediate or minor, as appropriate) has the same meaning as set out in the PSSR 2000 or the Lifting Operations and Lifting Equipment Regulations 1998.

References to a “working day” shall mean any day other than a Saturday, Sunday or any bank or local public holiday in the United Kingdom.

Our Responsibilities

1. Examination

- 1.1 We will carry out the Examination of the Plant with all due care in a safe manner. Where required by law we will forward a copy of the Examination report to the relevant enforcing authority. We will provide you with electronic Examination reports. If you require us to send you paper copies of Examination reports, we will charge you for this at our published rates (as varied from time to time).
- 1.2 If you receive Examination reports through our e-reporting web portal, it is your responsibility to download copies of such reports. If you have not downloaded copies of such reports before the Contract terminates, we will charge an administration fee for providing those reports to you.
- 1.3 Examination reports will identify the results of the Inspection Service based solely upon the written information provided to us by you prior to the performance of the Inspection Service. The Examination reports will reflect our findings only at the time of performance of the Inspection Service. We will not be obliged to update the Examination reports after issue except as specified otherwise in the Contract.

- 1.4 Our inspection of the Plant is limited to the Scope of Examination. We have no responsibility to examine items forming part of the Plant which are outside the Scope of Examination or Plant Schedule.
- 1.5 Our inspection does not replicate or replace the work required by designers or installers of plant nor does it replace the requirement to maintain or inspect the equipment between Examinations.
- 1.6 We will not examine chimneys, masonry, brickwork, foundations or supporting structures (unless any are expressly included in our published schedule of Fees or in the Scope of Examination).

2. Working Hours

We will provide the Inspection Service during standard working hours (09.00 - 17.00) on working days, except by prior written agreement with you. We will charge you, in addition to the Fee, for any work you request us to carry out outside these hours. If an engineer's time exceeds 8 hours at one site in one day (including any travel), overtime will be charged at our published rates.

3. Your Responsibilities

- 3.1 Although we will seek to carry out Examination of the Plant listed in the Plant Schedule at intervals agreed with you, where the Examination is to be carried out in accordance with any statutory regulation(s), it is your legal obligation (and not ours) to ensure that the Plant is examined within any prescribed inspection interval.
- 3.2 It is your responsibility to advise us of the next due Examination date(s) of any Plant added to your Plant Schedule. If you fail to advise us of such due date(s) we will aim to mutually agree a timetable for Examination. If we do not reach a mutual agreement, we will apply a due date of at least 120 days from the date the relevant Plant was added to the Plant Schedule.
- 3.3 Where you are a new customer with Plant which is in an Existing Overdue Position or where you are an existing customer with additional Plant which you wish to add to an existing Plant Schedule and such additional Plant is in an Existing Overdue Position, we will liaise with you to agree a timetable for inspection of such Plant. It is your responsibility to notify us of any such Plant that is in an Existing Overdue Position. Should you require this Existing Overdue Plant to be inspected within four weeks of the date of the Contract (where you are a new customer) or within four weeks of the date the Plant is added to the existing Plant Schedule (where you are an existing customer), we will charge an additional fee at our published rates (as varied from time to time) for prioritising these inspections unless we agree otherwise at our discretion.
- 3.4 By agreeing the Plant Schedule or inspection timetable with us, you agree to waive any rights you may have, now or in the future, against us arising out of or in connection with Plant which is in an Existing Overdue Position or Plant being added to the Contract which is in an Existing Overdue Position. You agree to indemnify us for any liability, costs, claims or expenses however incurred, arising out of or in connection with Plant which is in an

Existing Overdue Position or Plant being added to the Contract which is in an Existing Overdue Position.

- 3.5 You are responsible for the care, custody and control of the Plant at all times.
- 3.6 Before each Examination you will inform us of any matter, including any misuse or incident involving or affecting the Plant, or modification to the Plant, which is relevant for the purposes of our Examination.

4. Plant Preparation

To enable completion of the Inspection Service you must:

- agree with us the date for the Examination of each piece of Plant;
- at your expense, cool, clean, prepare or open out all Plant to the condition agreed with us before the Examination is due;
- at your expense, provide safe access to all Plant (by providing work platforms, scaffolds, ladders, lighting, gas free certificates, preventative barriers, test weights etc.) and provide any staff we need to perform the Inspection Service;
- provide any help, information or documentation requested by the Engineer Surveyor while performing the Inspection Service;
- at your expense, reassemble the Plant following completion of the Examination;
- in the case of Moved About Plant, provide full details of the Plant to be inspected, its precise location and a site contact at least ten working days prior to the requested Examination date;
- in the case of Moved About Plant, ensure that the item is made available for Examination at the location notified in an area safe from traffic or other site conditions, otherwise additional travel, time, expenses or re-visit fees will be applied;
- contact us to rearrange the Examination of any Plant that was not made available to us on the agreed Examination date. If we have to make any additional visit(s) to inspect such Plant, we will make a charge in addition to the Fee for any such additional visit(s) in accordance with our published schedule of Fees; and
- if you fail to make any item of Plant available for Examination at the agreed Examination date and/or at the agreed Examination location, we will issue a notice confirming that the Plant was not available for Examination, for which we will issue a charge as per our published rates (as varied from time to time). If we have to make any additional visit(s) to inspect such Plant, we will make a charge in addition to the Fee for any such additional visit(s).

5. Health and Safety

You have responsibilities under the Health and Safety at Work Act 1974 and the Management of Health and Safety at Work Regulations 1999 to provide a safe working environment for the Engineer Surveyor. We will carry out a site-specific risk assessment to ensure the safety of our staff and may refuse to carry out the Inspection Service (at no cost to us) if our risk assessment reveals

unacceptable hazards. You must notify the Engineer Surveyor of any site-specific hazards together with the measures you propose to control the risks posed by those hazards prior to any Examination. If as a result of a site-specific risk assessment we refuse to carry out an Examination, the Fee is still payable.

6. Payment of Fee

6.1 You agree to pay the estimated annual Fee by the start of the Contract and each year after that during the Contract period (unless we agree otherwise in writing).

6.2 The estimated annual Fee is calculated using the Plant Schedule, based on the optimum number of site visits and frequency. Should the Engineer Surveyor be required to visit your site(s) more frequently to suit your operational needs we will charge in addition to the Fee. The actual Fee will be calculated and adjusted at the end of the Contract period to take account of any changes you make to the Plant Schedule. Where a significant change is made to the Plant Schedule an interim adjustment during the Contract period may be applied. Any adjustments will take into account any Examinations we have already carried out. If you do not notify us of any local site requirements (or change these following the date of the Contract), which would result in us incurring additional costs or disbursements in performing the Inspection Service, we will charge you for those in addition to the Fee.

6.3 The Fee will not include the following activities, which will be charged at our published rates (as varied from time to time) or as a separate fee that may be agreed between you and us:

- delay time exceeding 20 minutes on site caused by events outside of the control of the Engineer Surveyor (including but not limited to your production requirements, permits to work, inductions, non-availability of Plant, any failure of the Plant, any failure of a third party contracted by you to prepare the Plant, or non-availability of a site contact at the scheduled time);
- witnessing or carrying out of any pre-commissioning examinations or any proof load, stability, anchorage, hydraulic or other similar testing;
- design approval or verification of design to relevant standards;
- arranging or carrying out any ultrasonic, radiographic or other non-destructive examinations;
- examination of property, equipment or machinery prior to purchase;
- maintenance or repair of the Plant or return visits following the repair of Plant found to be defective or in need of further investigation;
- return visits as a result of you failing to make any Plant available, having agreed with us in advance the date for the Examination;
- carrying out the Inspection Service on days that are not working days, or outside the standard working hours of 09:00 - 17:00; a PO number must be provided by the end customer before any inspections are completed;
- return visits required to examine internal parts of various types of equipment and machinery;
- examining Plant after it has been moved to a new fixed location, after a change in guarding systems or after exceptional circumstances;
- producing, altering or amending Written Schemes of Examination for Intermediate or Major Systems in accordance with Regulation 8 of the PSSR 2000 or any Written Schemes of Examination for machinery;
- performing Examinations on any machinery or equipment which is not included in the Plant Schedule or which contains hazardous chemicals;
- site surveys to establish any Plant owned by you which may require Examination;
- the provision of an additional Engineer Surveyor if more than one person is required to safely carry out the Examination;
- the cost of the time required for our Engineer Surveyor to undergo site-specific training or inductions or gain security clearances that you may require;
- the cost of non-standard personal protective equipment that you may require our Engineer Surveyor to wear (for example, fire-retardant overalls, transponders etc.);
- the cost of travel for remote or offshore locations (and accommodation as necessary);
- the cost of any tagging (asset identification and confirmation of Examination) requirements that you may have;
- any additional Examinations requested by you over and above the agreed annual contractual frequency;
- any requests for reports that are not already accessible on our e-reporting web portal or any manually-collated management information that you may require;
- any requests for a technical specialist to attend a site which will incur a technical consultancy charge; or
- any request for an Engineer Surveyor to be present on-site for any time other than the period during which the relevant item of Plant has been taken out of service to enable the Examination to take place.

6.4 You agree to pay each of our invoices in the currency stated on the invoice within a period of 30 days from the date of the invoice (unless we agree otherwise in writing). Methods of payment we accept will be detailed on the remittance advice attached to the invoice.

6.5 The Fee is based on information you have told us about as at the date of the Contract. If you do not notify us of any local site requirements (or change these following

the date of the Contract), which would result in us incurring additional costs or disbursements in performing the Inspection Service, we will charge you for those in addition to the Fee.

- 6.6 We will send you a new Contract/Renewal Schedule five weeks prior to the end of the term of the Contract. In the event that you do not notify us that you intend to terminate the Contract prior to the renewal date, the Contract will automatically be renewed for a further period of 12 months and the Fee payable by you shall be the Fee stated in the new Contract/ Renewal Schedule.
- 6.7 If you are late in paying any invoice or providing any purchase order, we shall be entitled (in addition to any other right we may have) to suspend provision of any Inspection Service to you until such time as that invoice has been paid in full or purchase order provided (as applicable), provided that we will charge you for any Inspection Services provided up to the date of such suspension. We shall have no liability to you arising out of or in connection with such suspension (including any pieces of Plant becoming overdue for statutory inspection). You acknowledge that where we have suspended provision of the Inspection Service to you under this clause that even when we recommence the provision of an Inspection Service to you, due to other commitments and/or the build up of items requiring Examination, this may mean that we are unable to provide the Inspection Service in relation to Plant prior to its required inspection date (and again, we shall have no liability to you arising out of or in connection with such suspension).
- 6.8 If you are late in paying any invoice, we shall be entitled (in addition to any other right we may have) to charge interest on any overdue sum at 12% per annum above the base rate of HSBC Bank from time to time, such interest to accrue from the date the sum became overdue until the date the sum is paid.
- 6.9 Where you request that our Engineer Surveyor undertake an unscheduled inspection while the Engineer Surveyor is at your site, we shall be entitled to charge an additional fee for any such unscheduled inspection provided at our published rates (as varied from time to time).
- 6.10 You must inform us of any issue with any invoice provided by us within 15 working days of the date of receipt of the invoice, otherwise, the invoice shall be deemed to be accepted in full by you.
- 6.11 If you fail to pay any undisputed invoice in accordance with the terms of the Contract, we shall be entitled (without prejudice to any other rights we may have) to recover from you as a debt any litigation costs and associated expenses we incur in recovering the relevant sums from you.

7. Your Legal Obligations

Our provision of an Inspection Service under the terms and conditions of the Contract does not remove your legal obligation to have your machinery or equipment subjected to periodical examination. Should an Examination reveal defects affecting the safety of any Plant you will need to take appropriate action, which may include removing the relevant item from service and notifying your insurers.

General Provisions

8. Termination of Contract

- 8.1 Either party may end the Contract immediately by giving written notice to the other party if the other party:
- has not met any of its responsibilities under the Contract and has not put the matter right within 30 days of receiving written notice of the problem; or
 - goes into liquidation (whether voluntary or compulsory) or has a receiver, administrator or administrative receiver appointed over all or part of its assets.
- 8.2 We may end the Contract at any time by giving you 30 days' written notice.
- 8.3 You must give 90 days' notice, in writing to lapse a contract mid-term. You will be charged for any inspections completed prior to the cancellation date (including the 90 days' notice period) & 25% of the pro rata'd contract value.
- 8.4 We may end the Contract immediately by giving written notice to you where continuing to provide the Inspection Service to you would breach any prohibition or restriction imposed by law or regulation (including without limitation should you appear on the Consolidated List of Financial Sanctions Targets in the UK, as amended or updated from time to time).
- 8.5 When the Contract ends, you must settle your account with us in full and pay all Fees for the Inspection Service we have provided (plus any taxes, our expenses and disbursements or any additional costs incurred pursuant to clauses 6.4, 6.6 or otherwise).

9. Force Majeure

We will not be liable for any delay or the consequences of delay in provision of the Inspection Service if such delay is due to matters outside our control. We will be entitled to a reasonable period of time to perform the Inspection Service in such circumstances. If such delay extends beyond 20 working days the Contract may be terminated by us in accordance with clause 8.

10. Jurisdiction and Choice of Law

The Contract will be governed by English Law (unless we have specifically agreed otherwise with you in writing). The parties submit to the non-exclusive jurisdiction of the Courts of England and Wales.

11. Confidentiality

Unless you and we have agreed otherwise in writing, we will both keep confidential the terms of the Inspection Service and all information gained about the other party in connection with the Contract. Neither party may use information about the other for any purpose other than to meet your or our responsibilities under the Contract unless otherwise required by law.

12. Limitation of our Liability

This clause 12 sets out our financial liability (including any liability for the actions or failings of our officers, employees, agents and sub-contractors) if:

- we break any term of the Contract;
- we are negligent in any statement or action we make in connection with the Contract; or
- we are found to be liable in any other way in connection with the Contract

(and each of the limitations of liability contained in this clause 12 shall apply to any loss suffered as a result of any such act or omission by us).

- 12.2 Nothing in these terms limits or removes our liability for death or personal injury caused by our negligence or fraudulent statements or any other liability which cannot be limited or excluded by law.
- 12.3 If we are liable to you for any reason in connection with the Contract, that liability will be limited in the aggregate to a maximum of £10,000,000 (ten million pounds).
- 12.4 We will not be liable to you for any damage sustained to an item of Plant or surrounding property as a result of the failure of such item of Plant to withstand a test applied as part of the Examination.
- 12.5 We will not be liable to you for any loss of profit.
- 12.6 We will not be liable to you for any loss of revenue, loss of goodwill, loss of opportunity or loss of business suffered in connection with the Contract.
- 12.7 We will not be liable to you for any indirect or consequential loss or damage (however incurred).
- 12.8 We will have no liability to you for any failure or delay in providing the Inspection Service to you which is caused by your acts or omissions, including without limitation any error, omission or inaccuracy in an Examination report where you have given erroneous or incomplete information to us.
- 12.9 This clause shall survive termination of the Contract.

13. Indemnity

You shall indemnify and keep us indemnified in respect of any proceeding, action or claim of any nature whatsoever made or brought against us and all loss, penalties, damages, costs and expenses suffered or incurred by us as a result of any third party claim including but not limited to, a claim by our employee(s) or your employee(s) arising out of your negligence or that of your employees, agents or sub-contractors, your failure to comply with your obligations under the Contract or your failure to ensure that items of Plant are examined within any prescribed inspection interval.

14. Deductions or Set-off from our Fee

You must make payments you owe us under the Contract without taking off, setting off or holding back any amount to reflect a refund we owe you or a responsibility that you believe we have not met.

15. Employees

We shall not be obliged to employ any of your employees (or any employees of a third party contractor appointed by you) as a result of or in connection with the Contract or us providing the Inspection Service, and you agree to indemnify us against any costs, liabilities and expenses incurred by us as a result of any claim (including for dismissal) or demand of any nature by any such employee against us.

16. Not Exercising Rights

Failure or delay by a party to exercise any of its rights under the Contract will not preclude that party from exercising that right in the future.

17. Illegal or Unenforceable Terms

If any court or other authority finds that any term (including a sub-clause or part thereof) of the Contract is illegal or cannot be enforced, that will not affect the other terms of the Contract. The other terms will remain in force. If a term is found to be illegal or cannot be enforced, you and we must agree on a substitute term that achieves (as far as possible) the aim of the term that is illegal or cannot be enforced.

18. Our Relationship

Nothing in the Contract creates a partnership or joint venture between you and us.

19. Notices

Any notice that has to be given in connection with the Contract must be in writing and either be delivered by hand or sent by fax or post to the relevant party's address or fax number set out in the Contract/Renewal Schedule, or any other subsequent address reported to the other party.

20. Rights of Third Parties

A person who has not entered into the Contract and is not named in the Contract/Renewal Schedule has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of the Contract. This does not affect any right a third party has other than under that act.

21. Sub-contracting and Assignment

- 21.1 We may under some circumstances appoint an appropriately qualified and accredited sub-contractor to perform the Inspection Service.
- 21.2 We will remain responsible for the acts and omissions of any sub-contractor retained to complete the Inspection Service. If you require this provision to be altered or deleted, you may agree this with us and the remaining provisions will remain in force.
- 21.3 This provision will only be deemed altered or deleted if we have agreed this in writing before entering into the Contract.
- 21.4 You will not transfer or assign your rights in this Contract. We shall be entitled to transfer or assign our interest in this Contract to any subsidiary of British Engineering Services or any holding company of British Engineering Services or any subsidiary of such holding company ("holding" and "subsidiary" company being interpreted in accordance with section 1159 of the Companies Act 2006).

22. Changing this Document

The Contract can only be changed if both parties agree to the changes in writing.

23. Complaints

We aim to provide you with a first class service. If we have not delivered the service you expect, or you are concerned with the service provided, we would like to put things right. We will fully investigate your complaint, keep you informed, do everything possible to resolve your complaint and use this information to continually improve our service. If you have any concerns these should be raised in the first instance with your usual business contact.

24. Entire Agreement

- 24.1 The Contract forms your and our entire understanding of the Inspection Service and the arrangement between us. It replaces all previous agreements, understandings and representations about the Inspection Service.
- 24.2 Each party acknowledges and agrees that in entering into this Contract it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person that is not expressly set out in this Contract.

25. Intellectual Property Rights and Data Protection

- 25.1 You shall make available to us such of your intellectual property rights as we may reasonably require to perform the Inspection Service, provided that nothing in the Contract shall oblige you to act in breach of any confidentiality obligation owed to any third party. You hereby grant to us and our permitted affiliates, agents and sub-contractors a non-exclusive, royalty-free right and license to make use of such intellectual property rights for the duration of the Contract and for the sole purpose of performing the Inspection Service.

- 25.3 You warrant that our use of your intellectual property rights in the performance of the Inspection Service will not infringe the intellectual property rights of any third party.
- 25.4 You acknowledge that all intellectual property rights created during and/or related to the performance of the Contract, including but not limited to the names, service marks, trade marks, inventions, logos and copyrights of us and our affiliates (collectively, the “Rights”) are and shall remain the sole property of us or our affiliates and shall not be used by you, except solely to the extent that you obtain our prior written approval and then only in the manner prescribed by us. If we terminate the Agreement, any such approval or license shall automatically terminate. You shall not contest the validity of the Rights or take any action that might impair the value or goodwill associated with the Rights or the image of reputation of us or our affiliates.
- 25.5 Each Party shall retain ownership of their respective intellectual property rights.
- 25.6 Each Party shall take all necessary steps to ensure that it operates at all times in accordance with all applicable data protection laws and regulations.

Schedule of Fees

a) Inspections within the hours of 7:00pm – 07:00am <u>or weekends & bank holidays</u>	£120/hr
b) Plant Not Available revisit within 4 weeks of PNA notice where we attended site	£120/hr
c) Waiting time over and above the first 20 minutes (including the first 20 minutes)	£90/hr
d) Inspect an item more than standard frequency	Inspection Price
e) Late payment <u>(above the Bank of England Base Rate)</u>	12% per annum
f) Major& intermediate written schemes (Special Service)	£110/hr
g) Monitoring repairs (Special Service)	£110/hr
h) Inherited Overdue or additional plant requiring less than 4 week scheduling	£90/hr
i) Site Surveys	£90/hr
j) Paper reporting requests	£3 per page
k) Cancellation of booked appointments within 48 hours of appointment (PNA6)	£90 fixed

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BRITISH00100C
March 2020

**MAKING BRITAIN
A SAFER PLACE.**



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**LEAVE NOTHING
TO CHANCE**



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