

J M ADVENTURE LIMITED

STANDARD TERMS & CONDITIONS for the supply and construction of ROPES COURSES

1. DEFINITIONS

In these Terms and Conditions:

“**Contract**” the contract between JMA and the Client for the design and construction of ropes course consisting of the Order Form and these Terms and Conditions and any variation of them made in accordance with these Terms and Conditions;

“**Costs**” means the costs payable by the Client to JMA for the Works as set out in the Contract;

“**Client**” means the party engaging JMA to undertake the Works as named in the Order Form;

“**ERCA**” means the European Ropes Course Association;

“**Force Majeure**” means, in relation to either party, any circumstances beyond the reasonable control of that party (including, without limitation, any strike, lock-out or other form of industrial action but excluding lack of available funds);

“**Intellectual Property**” means any patent, copyright, registered design, trade mark or other industrial or intellectual property right subsisting in the Products or the designs and documents relating to the Works and/or produced as part of the Contract, and applications for any of the foregoing;

“**JMA**” means J M Adventure Limited, company no 04417937, whose address for correspondence is Anvil Barn, Southcliffe Road, Swanage BH19 2JG;

“**Order Form**” means the order form for the Works as signed by both parties containing amongst other matters, the agreed specification and costs for the Works;

“**Products**” means items supplied by JMA that form high and low ropes courses;

“**Ropes Course**” means the ropes course supplied by JMA under the Contract

“**Site**” means the Client’s site on which the Ropes Course is to be constructed;

“**Terms and Conditions**” these Terms and Conditions which are JMA’s standard Terms and Conditions for the supply and construction of high and low ropes courses;

“**Variation**” means a variation to the Contract agreed in accordance with clauses 4.1-4.3 of these Terms and Conditions;

“**Works**” means the design and construction of the ropes course and the supply of all related goods and services to be provided by JMA to the Client as set out in the Contract.

2. CONTRACT FORMATION

The Contract shall come into effect upon agreement and signature of the Order Form by an authorised representative of each of JMA and the Client and all terms and conditions purporting to apply to the Works inconsistent with these Terms and Conditions are excluded.

3. GENERAL OBLIGATIONS

3.1 JMA’s Obligations: JMA shall:

(a) supply the ropes course as specified in the Order Form;

(b) exercise reasonable skill and care in the performance of the Works;

(c) ensure that the design and construction of the Products supplied under the Contract shall comply with all statutory requirements and regulations relating the Products and the Works in force at the time when the Works are carried out;

(d) take reasonable precautions to minimise damage to the ground on the Site whilst working with vehicles plant and machinery. The Client accepts that if such damage occurs, then unless expressly agreed otherwise and documented in the Contract, JMA is under no obligation to make good such damage.

3.2 Client’s Obligations: The Client shall:

(a) inform JMA in writing prior to commencement of the Works of any tree preservation orders, underground services or conduits, planning conditions or other conditions, restrictions or regulations which could affect the Works;

(b) ensure that there is proper drainage on the Site;

(c) give JMA safe access and egress to the Site (and where required mains water and electricity) as reasonably required by JMA to enable it to carry out and complete the Works without interference by the Client or other contractor(s) of the Client;

(d) allow JMA to store all materials for the Works on the Site;

(e) allow JMA to install a security fence at the Site during construction the costs of which shall be included in the Costs of the Works;

(f) obtain a tree survey before the start of the Works in respect of any trees that will form part of the Ropes Course;

(g) provide welfare facilities for JMA’s staff while on the Site (including toilets, drinking water and facilities for making hot drinks).

3.3 Safe Operation Obligations:

The Client acknowledges that:

(a) ropes courses are potentially dangerous and carry a risk of serious injury/death;

(b) the Client and not JMA is responsible and liable for the safe operation and proper maintenance of the Ropes Course and the proper training of its staff;

(c) JMA strongly recommends that:

a. The Ropes Course is used strictly in accordance with current European standard EN15567-1 & 2, in accordance with JMA’s user manual (which will be supplied to the Client on completion) and in accordance with site specific risk assessments (created by the client);

b. The Client’s staff should be trained, assessed and certified at a full site specific training course by Vertex Instructor Training Limited or other JMA approved ropes course training company and should be given plenty of opportunity to familiarise themselves with the Ropes Course after training. Such training is not included in the Contract however JMA can organise such training for the Client on request.

c. Staff training should be booked as soon as JMA has provided an estimated start and completion date for the Works.

d. An ERCA qualified trainer should be engaged as a technical adviser to advise on the safety of the Ropes Course on an ongoing basis in accordance with applicable Health and Safety legislation. For more information please contact JMA, MIA & MIC qualifications are not sufficient on their own to allow someone to become a technical advisor on a JMA ropes course.

4. VARIATION

4.1 If the Client wishes to vary any of the specifications for the Works as contained in the Contract, it shall inform JMA who will, as soon as practicable, notify the Client of the estimated cost of the variation and the effect on the proposed timescale for the Works, if any.

4.2 Unless the Client withdraws its request for a Variation to the Contract, when the Client receives JMA’s revised estimate for the variation, the Costs will be adjusted in accordance with JMA’s estimate (or as otherwise agreed between the Client and JMA) and an appropriate extension of time for the estimated completion date of the Works shall be agreed.

4.3 If a Variation is made orally, either JMA or the Client will confirm it in writing within 5 working days. If such a Variation is not confirmed in writing it shall be deemed to not have been issued. It must then be re-issued if still required.

4.4 JMA will notify the Client if it encounters any difficulties which it could not have reasonably foreseen before entering into the Contract and in those circumstances, a fair and reasonable adjustment to the Costs and proposed timetable

will be made. Unforeseen circumstances include the following:

- Changing weather conditions preventing or restricting working hours;
- Damage to detected underground services if not shown on service maps provided by the Client or previously notified to JMA by the Client;
- Delays caused by the actions of the Client;
- Delays caused by other contractors on the Client's premises;
- Delays caused by theft or damage to plant machinery or materials by a third party;
- Discovery of tree preservation orders, underground services or conduits, planning conditions or other conditions, restrictions or regulations which could affect the Works unknown to JMA at the date of the Contract.

JMA recommends that the Client should make provision to cover additional cost arising due to such unforeseen circumstances.

4.5 Unless express provision has been made for it in the Contract, there will be additional costs if JMA is required to:

- (a) remove trees or dead wood from the Site;
- (b) landscape or turf areas affected by the Works;
- (c) remove spoil from the Site;
- (d) top soil and reseed the Site;
- (e) make its staff and/or contractors available to attend site health and safety inductions

and the parties shall agree a Variation in respect of any such work as is required by the Client.

4.6 JMA reserves the right to decline any requests for a variation which would increase the value of the Works by more than 25% of the original Costs.

4.7 Any timescales and time schedules for the Works are likely to be affected by unforeseen matters as listed above, therefore any timescales given by JMA to the Client are indicative only. Where delays are reasonably attributable to such factors, failure to adhere to such timescales/schedules shall not constitute a breach of the contract.

4.8 If actions or in-actions of the Client result in delay, JMA reserves the right to revise the timetable in order to fit into JMA's own schedule taking into account its commitments to other Clients.

5. COSTS & PAYMENT

5.1 The Costs are as stated in the Contract and they may be varied in accordance with these Terms and Conditions.

5.2 The Client shall pay JMA the Costs in accordance with the timetable for payments set out in the Contract. When payment falls due, JMA shall issue the Client with an invoice for the amount due. All invoices shall be paid in accordance with the date on the invoice. JMA may suspend further performance of the Works if any payment is overdue without liability to the Client for any resulting losses.

5.3 For the avoidance of doubt, JMA understands and may exercise its statutory right to claim interest and compensation for debt recovery costs under the applicable late payment legislation if payment is not made according to the payment terms agreed in the Contract.

6. INSURANCE

6.1 JMA shall maintain the following insurances in respect of the Works (except as otherwise agreed or stated in the Contract):

- Construction: All Risks insurance for the full reinstatement value of the Works
- Public Liability Insurance £10,000,000.
- Employer's Liability Insurance £10,000,000.

6.2 On occasion, the nature and/or location of the Site will require special insurance cover for risks not covered under JMA's normal insurances (for example, if there were a gas main located under the Site). In such cases, the Client shall reimburse JMA for the additional premiums payable for such special insurance.

6.3 JMA will provide the Client upon request during the period during which JMA is carrying out the Works, evidence that the insurances are in place and that premiums have been paid up to date.

7. HANDOVER, WARRANTY & DEFECTS LIABILITY

7.1 JMA warrants to the Client that the Works will be carried out using reasonable care and skill and, as far as reasonably possible, in accordance with the design and specification as set out in the Contract.

7.2 JMA shall give the Client notice of its intention to hand over the Works and give the Client the opportunity to inspect the Works prior to handover. JMA will confirm the date of handover to the Client in writing. On handover, the Works will be certified by an independent approved Type A inspector and will meet their minimum standards for design and construction in particular standard EN 15567-1 "safety requirements and test methods" (or any amended, updated or revised version of such standard in effect at the date of the hand over).

7.3 JMA shall be responsible for remedying defects in workmanship which appear within 5 years from the date of handover and which are notified to JMA by the Client within no longer than 30 days of such defects coming to the attention of the Client who shall give JMA full access to carry out any remedial works.

7.4 Nothing in the Agreement shall limit JMA's liability in respect of claims for death or personal injury caused by:

- (a) the negligent or willful acts or omissions of JMA its servants, agents or contractors in supplying, delivering and installing the Products or in carrying out the Works;
- (b) the breach of any provision of the Contract by JMA;
- (c) any defect in the workmanship, materials or design of the Products.

7.5 Where JMA supplies in connection with the provision of the Works any goods supplied by a third party, JMA does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise and such conditions implied by statute are expressly excluded, however, where possible, assign to the Client the benefit of any warranty, guarantee or indemnity given by the person supplying the goods to JMA.

7.6 JMA shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from:

- (a) any instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, which constitute a misunderstanding or miscommunication between the Client or from any other fault of the Client.
- (b) use of the Products other than in accordance with JMA user manual, manufactures manuals/guidelines, EN15567 (both parts) and European Ropes Course Association recommendations.
- (c) the Client's failure to inform JMA in writing prior to commencement of the Works of any tree preservation orders, underground services or conduits, planning conditions or other conditions, restrictions or regulations which could affect the Works.

7.7 Except in respect of death or personal injury caused by JMA's negligence, or as expressly provided in these Terms and Conditions, JMA shall not be liable to the Client by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss, damage, costs, expenses or other claims including but not limited to loss of profit or loss of use (whether caused by the negligence of JMA, its servants or agents or otherwise) which arise out of or in connection with the Works (including any delay in providing or failure to provide

the Works).

8. INTELLECTUAL PROPERTY RIGHTS JM Adventure retains all of its intellectual property rights in its drawings, designs, diagrams and other documents for the Products and the Works but grants the Client a limited licence to use and make copies of its drawings and designs for purposes relating to the performance of the Works by JMA.

9. FORCE MAJEURE

9.1 If either party is affected by Force Majeure it shall forthwith notify the other party of the nature and extent thereof.

9.2 Neither party shall be deemed to be in breach of the Contract, or otherwise be liable to the other, by reason of any delay in performance, or non-performance, of any of its obligations under the Contract to the extent that such delay or non-performance is due to any Force Majeure of which it has notified the other party, and the time for performance of that obligation shall be extended accordingly.

9.3 If the Force Majeure in question prevails for a continuous period in excess of six months, the parties shall enter into bona fide discussions with a view to alleviating its effects, or to agreeing upon such alternative arrangements as may be fair and reasonable.

10. TERMINATION

10.1 JMA shall be entitled to terminate the Contract forthwith giving by written notice to the Client before the completion of the Works if the Client fails to make any payment within 30 days of the due date or commits any other material breach of the Contract.

10.2 Either party shall be entitled to terminate the Contract immediately by giving written notice to the other party if the other party commits a material breach of the Contract, except that, in the case of a breach capable of remedy, the Contract shall only terminate after 30 days from receipt by the party in breach, of written notice from the other party requiring the breach to be remedied and if the party in breach fails to remedy the breach within that period.

For the purposes of this clause, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance.

10.3 Either party may terminate the Contract forthwith by written notice to the other party if the other party becomes insolvent or has a receiver, manager or administrative receiver or liquidator appointed.

10.4 Any waiver by either party of a breach of any provision of this Contract shall not be considered as a waiver of any subsequent breach of the same or any other provision of the Contract.

10.5 Termination will not affect the accrued rights and liabilities of the parties at the termination date.

11. ENTIRE AGREEMENT

The Order Form and these Terms and Conditions and any variation of those made in accordance with these Terms and Conditions constitute the only agreement between the parties and supersede any previous arrangements, agreements or understandings relating to the Works.

12. NOTICES AND SERVICE

12.1 Any notice or other information required or authorised by the Contract to be given by either party to the other may be given by hand or sent (by first class pre-paid post, cable, facsimile transmission, e-mail or comparable means of communication) to the other party at the address referred to in clause 12.4.

12.2 Any notice or other information given by post under clause 12.1 which is not returned to the sender as undelivered shall be deemed to have been given on the third normal working day after the envelope containing the same was so posted; and proof that the envelope containing any such notice or information was properly addressed, pre-paid, registered and posted, and that it has not been so returned to the sender, shall be sufficient evidence that such notice or information has been duly given.

12.3 Any notice or other information sent by fax, e-mail or comparable means of communication shall be deemed to have been duly sent on the date of transmission, provided that a confirming copy is sent by first class pre-paid post to the other party at the address referred to in clause 12.4 within 24 hours after transmission.

12.4 Service of any legal proceedings concerning or arising out of this Agreement and/or any Project Contract shall be effected by causing the same to be delivered to Managing MD or CEO of the party to be served at its principal place of business or to such other address provided on the Order Form or as may from time to time be notified in writing by the party concerned.

13. ARBITRATION AND PROPER LAW

13.1 Any dispute arising out of or in connection with the Contract shall be referred to the arbitration in London of a single arbitrator appointed by agreement between the parties or, in default of agreement, nominated on the application of either party by the President for the time being of The Law Society.

13.2 The Contract shall be governed by and construed in all respects in accordance with the Laws of England, and each party hereby submits to the exclusive jurisdiction of the English Courts.