

PROPOSAL DOCUMENT

FOR

Ovenden Earthmoving Co Ltd

PROPOSAL NO: 555865
LEAD NO: 68727

Prepared by:

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STATEMENT

Profile Technology Services Ltd regard the information contained in this document as being of a confidential nature. Ovenden Earthmoving Co Ltd are asked to treat this as they would their own confidential material. It always remains the property of Profile Technology Services Ltd

All prices are exclusive of VAT.

EXECUTIVE SUMMARY

COST SUMMARY

Cost Summary		
Item	Description	Cost
1	HP 250 G7 I5 8GB 256GB 15,6" laptop	£580
2	Microsoft Office (if required)	£195
3	Install	£145 call out for first hour and then £95/hour
TOTAL		£ 775.00 + install

PROFILE ORDER TERMS AND CONDITIONS

1. Definitions

- a. 'Profile' shall mean Profile Technology Services Limited.
- b. 'Customer' shall mean the Company or legal entity shown on The Order, Schedule or Invoice associated with these Terms and Conditions.
- c. 'The Parties' shall mean Profile Technology Services Limited and The Customer.
- d. 'The Equipment' shall mean the computer processors, personal computers, printers, data cabling, hubs, modems, databases, back up devices listed in The Schedule associated with The Order.
- e. 'The Software' shall mean the software listed in The Schedule associated with The Order.
- f. 'The Services' shall mean the services to be supplied by Profile to The Customer described in The Order, including planning, project management, data conversion, training and ongoing support and maintenance of The Software and The Equipment.
- g. 'The Contract' shall mean The Customer's Order and Profile's acceptance of it in accordance with Condition 3 below.
- h. 'The Order' shall mean this Profile Order and the Schedules associated with it.
- i. 'The Intellectual Property Rights' shall mean rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation knowhow and trade secrets) and any other intellectual property rights, in which case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and similar or equivalent rights or forms of protection in any part of the world.
- j. 'The Annual Charge' shall mean the value calculated and stated against the heading 'Annual Charge' in The Agreement.
- k. 'Associates' shall mean any Party to The Contract, that Party's employees, agents, subcontractors or authorised representatives.
- l. 'Information' shall mean all information contained in The Software and all information conveyed between The Parties pursuant to the entering into and performance of The Contract.

2. Application of Terms and Conditions

- a. These Terms and Conditions shall apply to and be incorporated in The Contract and shall prevail over any terms or conditions contained or referred to in The Customer's purchase order, confirmation of order or specification or implied by law, trade custom, practice or course of dealing.
- b. No addition to, variation of, exclusion or attempted exclusion of any term of The Contract shall be binding upon Profile unless in writing and signed by a duly authorised representative of Profile.

3. Basis of The Contract

- a. The acceptance of this Contract denoted by the signature of an authorised signatory from each of The Parties will create a contract between Profile and The Customer and will be construed as confirming The Customer's complete acceptance of these Terms and Conditions except as may otherwise be agreed in writing by both Parties.
- b. The Customer shall ensure that its order is complete and accurate.
- c. Once signed by The Customer, no Contract may be cancelled by The Customer, except with the written agreement of Profile and provided that The Customer indemnifies Profile in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Profile as a result of the agreed cancellation.
- d. All Equipment, Software and other goods described in The Schedule remain the Property of Profile, until the total charge shown on The Schedule has been paid in full by The Customer.

4. Status of Pre-contractual Statements

- a. Each of the parties acknowledges and agrees that in entering into The Contract it does not rely on any undertaking, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person relating to the subject matter of this Contract other than expressly set out in The Contract.

5. Third Party Rights

- a. The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assignees and is not intended to benefit, or be enforceable by, anyone else.

6. Delivery and Acceptance

- a. Profile shall use its reasonable endeavours to deliver The Equipment and The Software on the dates specified on The Order but all such dates are approximate only. If no dates are specified then delivery shall be within a reasonable time of the acceptance of The Order as defined above. Time is not of the essence of The Contract as to delivery of The Equipment or The Software and Profile is not liable for any delay in delivery, however caused.
- b. The Equipment or The Software may be delivered by Profile in advance of a quoted delivery date upon giving reasonable notice to The Customer. Delivery shall be made during normal business hours. Profile may levy additional charges for any deliveries made outside such hours at The Customer's request.
- c. The Customer shall be responsible, at The Customer's cost, for preparing the delivery and installation location and environment reasonably required for the delivery and installation of The Equipment and The Software. If Profile is prevented from carrying out delivery and installation on the specified date because no such preparation was carried out, Profile may levy additional charges to recover its loss arising from this event.
- d. The Customer shall be deemed to have accepted The Equipment and The Software, after inspection on the date of delivery Profile shall be responsible for any damage, shortage or loss in transit, provided The Customer notifies it to Profile, in Writing, on the date of delivery and The Equipment and The Software have been handled in accordance with Profile's or the manufacturers stipulations, specifications or guidelines. Any remedy under this Condition shall be limited, at Profile's option, to the replacement or repair of any item which is proven to Profile's satisfaction to have been lost or damaged in transit.
- e. Profile will test and inspect The Equipment and The Software on delivery to ensure that it complies with the requirements of The Contract. If so requested by The Customer, Profile shall give reasonable advance notice of such tests, which The Customer shall be entitled to attend.

7. Risk and Property

- a. The Equipment and The Software shall be at the risk of Profile until delivery to The Customer at the place of delivery specified. The Supplier shall offload The Equipment and The Software at The Customer's risk.
- b. Ownership of The Equipment and The Software shall pass to The Customer on the later of completion of delivery, including off-loading, or when Profile has received in full in cleared funds, all sums due to it in respect of The Order and all other sums which are or which become due to Profile on any other account.
- c. Until ownership of The Equipment and The Software has passed to The Customer, The Customer shall hold them on a fiduciary basis as Profile's bailee and store The Equipment and The Software, at no cost to Profile, in satisfactory conditions and separately from all The Customer's other equipment or software or that of any third party, so that it remains readily identified as Profile's property. The Customer will not destroy, deface or obscure any identifying mark or packaging on or relating to The Equipment and The Software. The Customer will keep The Equipment and The Software insured on Profile's behalf for its full price against all risks to the reasonable satisfaction of Profile and will hold the proceeds of such insurance on trust for Profile and not mix them with any other monies nor pay the proceeds into an overdrawn bank account.
- d. If The Contract is terminated, The Customer's right to the possession of The Equipment and The Software shall terminate immediately, as it will if The Customer encumbers or in any way charges The Equipment or The Software or if The Customer fails to make any payment to Profile on a due date.
- e. The Customer grants Profile, its employees and agents an irrevocable licence at any time to enter any premises where The Equipment and The Software is stored in order to inspect it, or where The Customer's right to possession has terminated, to remove it. All costs incurred by Profile in repossessing The Equipment and The Software shall be borne by The Customer.
- f. Profile may appropriate payments by The Customer to such Equipment or Software as it thinks fit, notwithstanding any purported appropriation by The Customer to the contrary and may make such appropriation at any time.
- g. On termination of The Contract for any reason, Profile's, but not The Customer's, rights in this Condition shall remain in effect.

8. Remedies

- a. Profile shall not be liable for any non-delivery of Equipment, Software or Services even if caused by Profile's negligence, unless The Customer notifies Profile in writing of the failure to deliver within twenty four hours of the scheduled delivery date. Any liability of Profile for non-delivery of The Equipment or The Software shall be limited to replacing them within a reasonable time.
- b. If Profile's performance of its obligations under The Contract is prevented or delayed by any act or omission of The Customer, other than by reason of a Force Majeure Event, The Customer shall be liable to pay to Profile any reasonable costs, charges or losses sustained by it as a result.
- c. In the event of The Customer making a claim under any warranty given by Profile or a Third Party, The Customer shall notify Profile in writing of the alleged defect. Profile shall have the option of testing or inspecting The Equipment or The Software at its current location or moving it to Profile's premises or its agents or contractors. If The Customer's claim is subsequently found by Profile to be outside the scope or duration of the warranty, the costs of transportation, investigation and repair shall be borne by The Customer.

9. Warranties

- a. Profile warrants to The Customer that The Equipment and The Software is free from defects of workmanship and materials and undertakes, subject to the other Conditions in The Contract, to replace or repair The Equipment or The Software which is found to be defective as a result of faulty materials or workmanship, within the period from the date of delivery incorporated in the warranties accorded by the manufacturers of The Software or The Equipment and included in the price. Further services will be subject to separate contracts or agreements with Profile.
- b. Profile shall not be liable for a breach of a warranty unless The Customer gives written Notice of the defect to Profile within twenty four hours of the time when The Customer discovers or ought to have discovered the defect and, after such Notice Profile is given a reasonable opportunity of examining The Equipment or The Software, and if asked to do so by Profile, returns The Equipment or The Software to Profile's place of business for the examination to take place.

- c. Profile shall not be liable for a breach of a warranty if The Customer makes use of Equipment or Software in respect of which it has given written Notice under the above Condition, or the defect arises because The Customer failed to follow Profile's oral or written instructions as to the storage, installation, commissioning, use or maintenance of The Equipment or The Software or, if there are none, good trade practice, or if The Customer alters or repairs The Equipment or The Software without the written consent of Profile.
- d. Any repaired or replacement Equipment or Software shall be under warranty for the unexpired portion of the manufacturer's warranty period.
- e. Profile shall not be liable for any damage or defect to The Equipment or The Software caused by improper use outside normal application of The Equipment or The Software.

10. Payment

- a. Subject to any special Terms and Conditions agreed in writing between Profile and the Customer all charges shown on The Schedule are due for payment upon signature of this Contract and Profile will invoice The Customer upon signature.
- b. If any Charge payable under these Terms and Conditions becomes overdue Profile reserves the right to charge interest at a rate of three percent above the Bank Rate in force from time to time on a day to day basis from the Due Date to receipt of the payment by Profile.
- c. The time for Payment of the charges on The Schedule shall be the essence of The Contract.
- d. If Payment is not received by the due date, Profile shall be entitled to terminate The Contract forthwith and the total amount outstanding shall become due immediately and payable any without prejudice to any other right or remedy available to Profile and may appropriate any payment made by The Customer as it thinks fit and make storage charges at its current rates from time to time.
- e. The Contract may be terminated or suspended by Profile, should any monies be overdue on The Customers account with Profile.

11. Prices

- a. All prices shall be as stated in The Schedules and are exclusive of delivery, packaging, packing, shipping, carriage, Insurance, VAT and other charges and duties.
- b. Profile shall charge the customer for the mileage undertaken, to The customer's site or elsewhere as agreed, plus reasonable travel, accommodation, subsistence and out of pocket expenses. The prices are based upon the rate prevailing or Profile's published rates at the date of the signature of The Order and Profile may increase the prices at any time to cover any increases due to market conditions, including, but not limited to, increases in foreign exchange rates.
- c. The Customer shall pay the price for The Equipment, The Software and The Services in pounds sterling.

12. Quantity and Description

- a. The quantity and description of The Equipment, The Software and The Services shall be as set out in The Schedule. All samples, drawings, descriptive matter, specifications and advertising issued by Profile and any descriptions or illustrations contained in Profile's or any third party's catalogues or brochures are issued or published for illustrative purpose only and do not form part of The Contract.
- b. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, invoice, other document or information issued by Profile shall be subject to correction without any liability on the part of Profile.
- c. Profile reserves the right but does not assume the obligation to make any changes in the specification of The Equipment or The Software which are required to conform with any applicable legislation, or where supplied to The Customer's specification, do not materially affect their quality or performance. Where Profile is not the manufacturer of The Equipment or The Software, Profile shall use reasonable endeavours to transfer to The Customer the benefit of any warranty or guarantee given by the manufacturer to Profile.
- d. Profile's employees, contractors or agents are not authorised to make any contractually binding representations concerning The Equipment, The Software or The Services. In entering into The Contract The Customer acknowledges that it does not rely upon and waives any claim for breach of any such representations which have not been incorporated in The Contract.
- e. Any advice or recommendation given by Profile or its employees, contractors or agents to The Customer or its employees, contractors or agents about the specifications or use of The Equipment or The Software is followed or acted upon entirely at The Customer's risk.

13. Third Party Supply

- a. Profile is able to supply goods and services to The Customer under The Contract by the provision of The Software, The Equipment and The Services from its Suppliers. Should the supply of such items become unavailable then Profile reserves the right to amend or terminate The Contract.
- b. Profile shall be entitled to carry out any Service covered by this Contract by appointment at its absolute discretion. Profile may also assign to any Third Party any or all of its rights or obligations under this Contract. All other provisions of The Contract are to be construed accordingly and in the event of any conflict between such provision and this Clause the latter shall prevail.

14. Software Licences and Intellectual Property Rights

- a. If Profile refers to a software Licence in The Order, the price for The Software or The Equipment includes the licence fee for The Customer's right to use The Software. If The Customer is provided with any operating system software licence in respect of The Software, The Customer shall sign and return it to Profile within seven days of its installation.
- b. If Profile manufactures The Equipment or The Software, or applies any process to it, in accordance with a specification submitted or prepared by The Customer, or any other information provided by The Customer, The Customer shall indemnify and keep indemnified Profile against all losses, damages, costs, claims, demands, liabilities and expenses, including without limitation consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses, awarded against or incurred by Profile in connection with, or paid or agreed to be paid by Profile in settlement of any claim for infringement of any Third Party Intellectual Property Rights which results from Profile's use of The Customers specification or such other information. The indemnity shall apply whether or not The Customer has been negligent or at fault and does not limit any further compensation rights of Profile.
- c. The Customer acknowledges that all Intellectual Property Rights used by or subsisting in The Equipment and The Software are and shall remain the sole property of Profile or, as the case maybe, of the Third Party rights owner.
- d. Profile shall retain the property and copyright in all documents supplied to The Customer in connection with The Contract and it shall be a condition of such supply that the contents of such documents shall not be communicated either directly or indirectly to any other person, firm or company without the prior written consent of Profile.
- e. Profile's Intellectual Property Rights in and relating to The Equipment and The Software shall remain the exclusive property of Profile and The Customer shall not at any time make any unauthorised use of such Intellectual Property Rights nor authorise or permit any of its agents or contractors or any other person to do so.
- f. In relation to The Software The Customer acknowledges that it is buying only the media on which The Software is recorded and the accompanying manuals, that nothing in these Conditions shall be construed as an assignment of any Intellectual Property Rights in The Software or the user manuals and The Customer shall be subject to the rights and Restrictions imposed by the owner of the Intellectual Property Rights in The Software and user manuals and Specifications and shall comply with all licence agreements, terms of use and registration requirements relating to them.

15. Confidentiality

- a. All trade and professional secrets or other information supplied by either Party to the other shall be kept confidential and such supply shall not imply any transfer of property.

16. Recruitment

- a. The Customer agrees that during the Term of The Agreement and for a period of twelve months after its termination it will not employ or engage any member of Profiles staff without the written consent of Profile.

17. Limitation of Liability

- a. The following provisions set out the entire financial liability of Profile, including any liability for the acts and omissions of its employees, contractors and agents, to The Customer in respect of any breach of The Contract and any representation, statement or tortious act or omission, including negligence arising out of or in connection with The Contract.
- b. All warranties, conditions and other terms implied by statute or common law are excluded from The Contract to the fullest extent permitted by law.
- c. Profile shall not be liable, whether in tort, contract, misrepresentation or otherwise for loss of profits, business, depletion of goodwill, anticipated savings, goods, contracts, use, data or information or corruption of same, charges, costs, losses, damages or expenses.
- d. Profile'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 paid for The Equipment, The Software and The Services in The Schedules.

18. Assignment

- a. The Customer shall not assign The Contract without the express written permission of Profile. Profile may assign the rights, obligations, burdens and benefits of The Agreement at any time.

19. Termination

- a. Profile may terminate The Contract immediately and all sums payable to Profile under The Contract shall be payable immediately, despite any other provision of The Contract, if The Customer:-
 - Defaults or commits a breach of its obligations under The Contract.
 - Has an order or resolution passed or made in relation to it for the winding up of The Customer.
 - Is subject to an order for the appointment of an Administrator to manage affairs.
 - Has or appoints a Receiver of any of The Customer's assets or if a creditor or any other person appoints a Receiver or Manager or takes possession of or sells The Customer's assets.
 - Makes any arrangement or composition with its creditors, makes application to protect its creditors.
 - Becomes bankrupt, ceases, or threatens to cease trade or takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- b. This Condition is without prejudice to any right to claim interest under the law, or any right under The Contract.

20. Severability

- a. If any Clause of The Agreement shall be deemed or held to be unreasonable under the Unfair Contract Terms Act 1977 and such Clause or sub-Clause deemed severable, the remainder of The Agreement shall remain fully effective but read as if such offending Clause were not present.

21. Waiver

- a. A waiver of any right under The Contract is only effective if it is in writing and signed by or on behalf of the waiving party and applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
- b. Unless specifically provided otherwise, rights arising under The Contract are cumulative and do not exclude rights provided by law.

22. Notices

- a. Any notice required to be given pursuant to this Contract shall be in writing and shall be delivered by hand or sent by pre-paid first class post or recorded delivery post to the address of the party as set out in these Terms and Conditions or at such address as may be notified by one party to the other. A notice delivered by hand is deemed to have been received when delivered (or if delivery is not in business hours, 9am. On the first business day following delivery). A correctly addressed notice sent by pre-paid first class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

23. Force Majeure

- a. Profile reserves the right to defer the date of delivery, or to cancel The Contract if it is prevented from, or delayed, in 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 Profile 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 sub-contractors.

24. Jurisdiction

- a. This Agreement shall be governed by and construed in accordance with English Law.
- b. A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

LEAD NO: 68727

CONTRACT SIGN OFF: Proposal No. 555865

Total Amount Payable (excl VAT)

£775 + install at £145 for 1st hour then £95/hour

Payment terms:

100% payment with Order acceptance

Leasing options available on request

PROFILE TECHNOLOGY SERVICES.....

Ovenden Earthmoving Co
Ltd.....

DATE

Please sign and return the last page to confirm your acceptance

Either by scan/email or by Fax: 01442 236337

FAO: Karen Gregson