

Terms & Conditions of Sale

1. TERMS AND CONDITIONS

1.1 In these conditions (“Conditions”) “Seller” means Flood Technology Group Limited and “Customer” means the person entering into the agreement with the Seller. These Conditions extend to the provision of installation and other services (“Services”) as well as Products supplied by the Seller to the Customer (“Products”) and shall also apply to Services executed away from the Seller’s premises whether on the Customer’s own site or elsewhere. These Conditions should be read and construed accordingly. “Agreement” means the agreement for the sale and supply of Products and/or Services (to which these Conditions apply). “Products Specification” means any specification for the Products, including any relevant plans or drawings, that is agreed in writing by the Customer and the Seller. “Order” means the Customer’s order for the supply of Products and/or Services, as set out in the Customer’s written acceptance of the Seller’s quotation. “Service Specification” means the description or specification for the Services (if any, and if separate from the Seller’s quotation) provided in writing by the Seller to the Customer.

1.2 Interpretation:

- (a) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (b) Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. GENERAL

- 2.1 An Order constitutes an offer by the Customer to purchase Products and/or Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Seller issues written acceptance of the Order at which point and on which date the Agreement shall come into existence. For the avoidance of doubt, the Customer’s acceptance of the Seller’s quotation shall not be binding until the Customer’s Order is accepted by the Seller.
- 2.3 Acceptance by the Customer of the Seller’s quotation to supply Products and/or Services includes the acceptance by the Customer of these Conditions.
- 2.4 In all Agreements between the Seller and the Customer these Conditions shall be deemed to be incorporated except to the extent that they may be expressly varied in writing by a Director of the Seller. No other conditions or terms, whether oral or written, regardless of the date or dates upon which they were sent to the Seller or exhibited by the Customer shall affect or vary these Conditions and/or the terms or conditions upon which the Agreement is made. For the avoidance of doubt the Seller shall not be deemed to accept such other conditions nor to waive any of these Conditions by failing to object to provisions contained in any purchase order or any other communication from the Customer.
- 2.5 No representative, agent or salesman who is not a Director of the Seller has any authority to amend or waive any of these Conditions or other provisions of the Agreement and, in accordance with 2.4 above, no amendment by a Director shall be binding on the Seller unless made in writing.
- 2.6 If any provision or part-provision of these Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is

not possible, the relevant provision or part-provision should be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these Conditions.

- 2.7 All of these Conditions shall apply to the supply of both Products and Services except where application to one or the other is specified.

3. LIMITS OF AGREEMENT

- 3.1 All quotations are made subject to acceptance by the Customer within 30 days of the date thereof (unless otherwise stated) and subject to the Products being available and/or the quotation not being withdrawn by the Seller prior to acceptance. All Products and/or Services are liable to be withdrawn from sale without notice.
- 3.2 All quotations relate only to such Products and Services as are specified therein. Drawings, dimensions and weights submitted must be taken to be approximate and do not form part of the Agreement. All extras and accessories ordered but not specified in the Seller's quotation will be charged for separately as will the costs of all alterations, additions and other work undertaken at the request of the Customer.
- 3.3 The acceptance of the Seller's quotation must be accompanied by sufficient information to enable the Seller to proceed with the Order forthwith; otherwise the Seller shall be at liberty to amend the quotation price(s) to cover any increased costs in labour or materials which may take place after acceptance.
- 3.4 The Customer shall not assign or transfer its rights under any Agreement to any third party without prior consent in writing of the Seller.
- 3.5 The Seller will make every effort to execute all Orders at the price indicated (subject to Clauses 3.2 and 3.3 above) (the "Quotation Price") at the time of the acceptance but reserves the right to raise the Quotation Price in the event of any increase in the Seller's costs (including, but not limited to, the cost of raw materials) that may take place between the date of acceptance of the Seller's Quotation and the date such Products are ready for delivery and/or date for provision of Services.
- 3.6 The Products are carefully inspected and submitted to standard tests in accordance with recognised quality assurance standards before despatch. If additional or special tests are required or if the Customer wishes that any test to which the Products are to be subjected take place in the presence of the Customer or its representative and/or at a site designated by the Customer, the Seller reserves the right to charge an additional fee. If requested by the Customer, the Seller shall give the Customer 7 days' notice of when any tests are due to take place on the Products. In the event of the failure of the Customer or its representative attending at the date and time specified by the Seller, the tests shall proceed in their absence, but, any additional fee in respect of those tests shall still be payable by the Customer.
- 3.7 The Seller reserves the right to amend the Products Specification if required by any applicable statutory or regulatory requirement, and the Seller shall notify the Customer in any such event.

4. DELIVERY & INSTALLATION

- 4.1 Except where otherwise stated Products are deemed delivered when supplied and installed at the address designated by the Customer.
- 4.2 The Seller shall be solely responsible for the proper unloading and installation of the Products.
- 4.3 Products supplied and installed at the address designated by the Customer, shall be deemed to be at the Customer's risk from the time the installation is complete and the 'Installation Certificate' has been signed by both parties. The Customer is advised to insure the Products from the time that risk in them transfers to it.

- 4.4 Products sold delivered (rather than ex-works) will be despatched by any means of transport at the Seller's option unless otherwise agreed in writing. All unloading and demurrage charges which may be incurred will be charged to the Customer. It is an implied condition that where the Seller sells Products delivered to the Customer's premises or site that adequate facilities exist for so doing by road and/or rail and for unloading.
- 4.5 The Seller reserves the right to make delivery by instalments, unless otherwise expressly agreed in writing. The period during which instalments may be delivered and the quantity of Products delivered in each instalment shall be at the Seller's discretion. Where Products are delivered in instalments, each delivery shall constitute a separate Agreement (to which these Conditions apply) and failure by the Seller to deliver any one or more of the instalments or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Agreement as repudiated.
- 4.6 The Customer is responsible for ensuring that the installation site is adequately prepared and accessible for the Seller to undertake the installation of the Product. This includes, but is not limited to, providing clear, safe, and unobstructed access to the installation area, and ensuring that any necessary permits, permissions, or site preparations are completed prior to the agreed installation date.
- 4.7 If, upon arrival at the site, the Seller determines that the access is inadequate, unsafe, or otherwise not suitable for installation, the Seller reserves the right to:
- (a) Delay installation until adequate access is provided; and/or
 - (b) Charge the Customer for any additional costs incurred as a result of such inadequate access. These costs may include, but are not limited to, additional labour, equipment hire, and rescheduling fees.

Any such costs will be recharged to the Customer, and the Seller will provide an itemised invoice detailing these charges.

5. TIME FOR DELIVERY

- 5.1 Delivery times where given will be approximate and date from the acceptance of the Customer's Order by the Seller; under no circumstances shall delivery times be, or be capable of being, made of the essence of the Agreement.
- 5.2 Delivery times are calculated from receipt by the Seller of the Customer's Order providing all details and full approvals to enable the Seller to proceed without interruption to manufacture and/or supply the Products.
- 5.3 Lead times quoted are estimated based on the Seller's workload at the point of receipt of the Customer's Order.
- 5.4 Delivery and installation times when given are subject to the payment provisions contained in clause 13 below.
- 5.5 The Seller will subject to clause 9.1, not be liable for any loss, damage, loss of profit or expense whether direct, indirect or consequential and which may be suffered by the Customer by reason of late delivery of the Products whatsoever or howsoever arising from any such late delivery. Furthermore, the Seller shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event or the Customer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 5.6 If the Seller does not receive payment of the Quotation Price (or relevant part thereof) within 14 days of notification that the Products are available for delivery and installation (as agreed) the Seller shall be at liberty to arrange storage either at the Seller's works or elsewhere at the Customer's risk and charge reasonable costs for storage, insurance and demurrage from the date of notification that the Products are available for delivery and installation until actual delivery and installation. The storage costs, insurance and demurrage incurred by the Seller will be notified and invoiced to the Customer on a weekly basis.

6. LOSS OR DAMAGE IN TRANSIT

- 6.1 Subject to clause 9.1, in the event of loss or damage of Products in transit from any cause whatsoever (including causes which might be considered fundamental breach of Agreement) the liability of the Seller shall be limited (at the Seller's option) to replacing or repairing the Products or refunding the purchase money. In no circumstances shall the Seller be liable for any loss, damage, loss of profit or expense whether direct, indirect or consequential and which may be sustained by the Customer as a result of the Products being lost or damaged in transit.

7. PRODUCT WARRANTY

- 7.1 All Products come with a 1-year Warranty. This Warranty is effective from the installation date stated in the Sales Agreement.
- 7.2 The Seller may, at its discretion, extend this Warranty on an annual basis, for up to a maximum of 15 years from the installation date, subject to the following obligations being met.
- 7.2.1 The installation of the Products was undertaken by the Seller or its licensed partners and a valid 'Installation Certificate' has been issued for all Products.
- 7.2.2 A valid 'Service Agreement' is in place for all Products subject to an annual test and inspection in accordance with the Lifting Operations and Lifting Equipment Regulations (LOLER), 1998.
- 7.3 The following exceptions apply to the Warranty:
- 7.3.1 The Warranty does not extend to any object or structure sited on the Product.
- 7.3.2 The Warranty does not extend to any chassis or frame supporting any object or structure sited on the Product.
- 7.3.3 The Warranty does not extend to the ground screws, piles or foundations supporting the Product.
- 7.3.4 Any damage caused to any part of the Product by abuse, neglect or misuse (including by third parties) will invalidate the Warranty.
- 7.3.5 The Warranty is invalidated if the Product is decoupled, removed, relocated, or replaced by any party other than the Supplier or its licensed partners.
- 7.3.6 The Product Warranty is invalidated if alterations are made to any object or structure sited on the Product, that compromise its overall operation.
- 7.4 If the Customer wishes to decouple, remove, relocate, or replace the Product, or make alterations or connect or affix any object or structure to the Product, this should be arranged through the Supplier only.
- 7.5 Upon reaching a period of 15 years from the installation date, the Seller will conduct a comprehensive inspection of the Product to determine whether the Warranty can be further extended. Any costs associated with this inspection, including labour, travel, and any required testing or equipment, will be borne by the Customer. The Seller will provide the Customer with a detailed quote for these costs prior to the inspection. Warranty extension, if applicable, will be at the Seller's discretion and may be subject to additional terms and conditions.
- 7.6 For further information on Customer rights and obligations, as well as limitations and exclusions that may apply, refer to the Product Warranty included with the Sales Agreement.

8. SUPPLY OF SERVICES AND CUSTOMER OBLIGATIONS

- 8.1 The Seller shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 8.2 The Seller shall use all reasonable endeavours to meet any performance dates for the Services specified in the Customer's Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 8.3 The Seller reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Seller shall notify the Customer in any such event.
- 8.4 The Seller warrants to the Customer that the Services will be provided using reasonable care and skill.
- 8.5 The Customer shall:
- (c) ensure that the terms of its Order and any information it provides in the Service Specification and the Products Specification are complete and accurate;
 - (d) co-operate with the Seller in all matters relating to the Services;
 - (e) provide the Seller, its employees, agents, consultants and sub-Agreementors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Seller to provide the Services;
 - (f) provide the Seller with such information and materials as the Seller may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - (g) prepare the Customer's premises for the supply of the Services;
 - (h) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - (i) comply with all applicable laws, including health and safety laws;
 - (j) keep all materials, equipment, documents and other property of the Seller (Seller Materials) at the Customer's premises in safe custody at its own risk, maintain the Seller Materials in good condition until returned to the Seller, and not dispose of or use the Seller Materials other than in accordance with the Seller's written instructions or authorisation; and
 - (k) comply with any additional obligations as set out in the Service Specification and the Products Specification.
- 8.6 If the Seller's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):
- (a) without limiting or affecting any other right or remedy available to it, the Seller shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Seller's performance of any of its obligations;
 - (b) the Seller shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Seller's failure or delay to perform any of its obligations as set out in this clause 8.6; and
 - (c) the Customer shall reimburse the Seller on written demand for any costs or losses sustained or incurred by the Seller arising directly or indirectly from the Customer Default.

9. LIMITATION OF LIABILITY: The Customer's attention is particularly drawn to this clause.

9.1 Nothing in these Conditions shall limit or exclude the Seller's liability for:

- (d) Death or personal injury caused by its negligence, or the negligence of its employees, agents or sub-Agreementors;
- (e) Fraud or fraudulent misrepresentation;
- (f) Breach of the terms implied by Section 2 of the Supply of Products and Services Act 1982 (title and quiet possession);
- (g) Breach of the terms implied by Section 12 of the Sale of Products Act 1979 (title and quiet possession);
- (h) Defective products under the Consumer Protection Act 1987; or
- (i) any other liability which cannot be limited or excluded as a matter of law

9.2 Subject to clause 9.1:

- (a) The Seller shall under no circumstances whatever be liable to the Customer or any third party, whether in Agreement, tort (including negligence), breach of statutory duty, or otherwise for any;
 - loss or damage to any premises, stocks or other property;
 - loss of profit
 - loss of goodwill
 - loss of Agreement or opportunity
 - pure economic loss; or
 - any indirect or consequential loss and
- (b) The Seller's total liability to the Customer in respect of all other losses arising under or in connection with the Agreement whether in Agreement, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% (One hundred percent) of the price of the Products or Services provided by the Seller under the Agreement arising under or in connection with which the claim is made.

9.3 The terms implied by Sections 13 to 15 of the Sale of Products Act 1979 and the terms implied by Sections 3 to 5 of the Supply of Products and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.

9.4 This clause 9 shall survive termination of the Agreement.

10. PRODUCTS ON HIRE

10.1 Notwithstanding the other provisions of these Conditions, the Seller may supply Products on hire to the Customer ("Hired Products").

10.2 Any hire of the Hired Products shall be on the Seller's terms of hire.

11. CANCELLATION AND VARIATION BY THE CUSTOMER

11.1 Orders accepted by the Seller cannot be varied or cancelled without the Seller's written consent. The Seller reserves the right to make charges to cover overheads, profit and direct costs incurred by the Seller to the date of cancellation or to cover any amendments to the Products and/or Services or otherwise of the Products ordered as requested by the Customer.

12. CANCELLATION BY THE SELLER

- 12.1 If, owing to hostilities (whether war has been declared or not), government restrictions, strikes, riots, or civil commotion, difficulty or inability to obtain suitable raw materials, epidemic, pandemic, Covid-19, devaluation, major movements in international exchange rates, force majeure or causes of any other nature beyond the Seller's reasonable control (any such event being a "Force Majeure Event"), the Seller decides it to be unreasonable or uneconomical to deliver the whole or any part of an Order, the Seller shall have the right on giving notice in writing to the Customer to cancel the Order or any undelivered balance of the Order.
- 12.2 In the event of cancellation under this clause 12 the Customer shall not be entitled to make any claim arising from such cancellation other than a refund (without interest) of any advance payment made or a reasonable proportion thereof in respect of the cancellation of part of such Order as the case may be.

13. PAYMENT

- 13.1 Unless otherwise agreed in writing, payment of the Quotation Price for the Products and/or Services shall be in made in three instalments, or as agreed with the Customer, and in cash or cleared funds within 30 days of issue of invoice by the Seller to the Customer.
- 13.2 The first instalment of 35% of the Quotation Price, shall be due at the point of Order.
- 13.3 The second instalment of 35% of the Quotation Price, shall be due on confirmation of the installation date.
- 13.4 The third instalment of 30% of the Quotation Price shall be due on completion of the installation.
- 13.5 Payment of all invoices shall be via BACS to:
- Flood Technology Group Limited
Sort code: 40-22-19
Account Number: 12156415
- 13.6 Prices for Products and Services will be quoted by the Seller as exclusive of Value Added Tax (VAT) unless otherwise stated in writing on behalf of the Seller. Where applicable, VAT will be added to the Seller's invoice(s) at the appropriate rate prevailing at the time of raising the invoice(s) or otherwise as required by the relevant VAT statutory regulations.
- 13.7 Notwithstanding delivery and the passing of risk in the Products to the Customer, or any other provision of these Conditions, the property in the Products shall not pass to the Customer until the Seller has received in cash or cleared funds payment in full of the price of Products and all other Products agreed to be sold by the Seller to the Customer for which payment is then due, together with any interest or other sums payable under the relevant Agreement in respect of the Products and such other Products.
- 13.8 Until such time as the property in the Products passes to the Customer (and provided the Products are still in existence and have not been resold) the Seller shall be entitled at any time to require the Customer to deliver up the Products to the Seller and, if the Customer fails to do so, forthwith to enter upon any premises of the Customer or any third party where the Products are stored and repossess the Products.
- 13.9 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products which remain the property of the Seller, but if the Customer does so all monies owing by the Customer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

- 13.10 The Seller shall have a general lien on all Products and property of the Customer in its possession until payment is made in full and shall be entitled on the expiration of 14 days' notice to dispose of such Products or property as the Seller thinks fit and apply any proceeds towards such debts.
- 13.11 No disputes as to quality or performance of the Products or Services shall entitle the Customer to delay payment unless the Seller shall agree in writing liability thereon in an agreed sum.
- 13.12 In the event of the Customer failing to comply with the Seller's terms of payment the Seller (without prejudice to any legal rights of action) reserves the right without notice to discontinue forthwith the provision to the Customer of any further Products and/or Services
- 13.13 When delivery of the Products is made by instalments the Seller may invoice the Customer for each instalment.
- 13.14 The Seller does not accept any set-off or retention against the price(s) invoiced for Products, and/or Services supplied unless agreed in writing by the Seller prior to acceptance of the Customer's Order/s.
- 13.15 The Seller reserves the right at any time before proceeding or proceeding further with an Order to demand full or partial payment of monies due and payable under the Agreement and any other Agreement between the Seller and the Customer.
- 13.16 If the Customer defaults in any payment the Seller may, in addition to exercising any of the rights set out above, suspend work, delay or withhold delivery under or cancel either the Agreement and/or any other Agreement between the Seller and the Customer and to retain any progress payments or payments on account already received under either the Agreement or under any other Agreement between the Seller and the Customer.
- 13.17 The Seller reserves the right to charge interest at the annual rate of four per cent above the base rate of HSBC Bank Plc from time to time on all overdue monies.
- 13.18 All rights and remedies afforded to the Seller in these Conditions for non-payment shall be in addition and without prejudice to all other rights and remedies available to the Seller under the Agreement or at law.
- 13.19 The Seller may issue and proceed with court action against the Customer for payment of the price for Products when due notwithstanding the fact that property in the Products may not have passed to the Customer.
- 14. RETURN AND RESALE**
- 14.1 Products may only be returned with the prior agreement in writing of the Seller. Any Products returned without the prior agreement of the Seller may be returned to the Customer and a reasonable charge for handling plus all carriage costs will be made.
- 14.2 The Supplier owns all intellectual property and an exclusive global licence for the manufacture, assembly, sale, installation and maintenance of the Products and is therefore the de facto reseller. Should the Products be resold directly by the Customer, the Product Warranty will be invalidated, and the Supplier accepts no liability for the operation or performance of the Products.
- 15. INTELLECTUAL PROPERTY RIGHTS**
- 15.1 For the purposes of this clause 15 Intellectual Property Rights means: any patent rights, registered designs, copyright, trade marks (and service marks), business names or domain names, rights in get-up, goodwill and the right to sue for passing-off, rights in designs, database rights or any other intellectual property rights, in each case whether registered or not and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

- 15.2 The Seller and/or its licensors, shall retain ownership of all Intellectual Property Rights in the Products and/or Services.
- 15.3 If any claim is made against the Customer alleging that Products, and/or Services infringe third party Intellectual Property Rights:
- (a) the Customer shall forthwith notify the Seller with full particulars, and
 - (b) the Seller or its suppliers or licensors (as case may be) shall be at liberty at their expense to conduct all negotiations and/or litigation in respect thereof and (if necessary) in the name of the Customer, and
 - (c) the Customer shall not pay or accept any such claim or compromise any proceedings without the consent of the Seller (which shall not be unreasonably withheld or delayed) and if as a result of such negotiations or litigation, the Customer shall be unable to use the Products and/or Services substantially for the purpose for which they were bought the Seller shall (except where clause 15.4 below applies) take them back and refund the price thereof and such refund shall be in full satisfaction of all claims by the Customer against the Seller.
- 15.4 The Customer shall indemnify the Seller against all actions costs (including reasonable cost of defending legal proceedings) claims proceedings and demands in respect of any infringement or alleged infringement by the Seller of Intellectual Property Rights attributable to the Seller complying with any special instructions from or requirements of the Customer relating to the Products and/or Services provided always that the Customer shall use its best endeavours to mitigate any such costs, claims proceedings and demands and any losses and/or damages in relation to them.

16. PRODUCTS OFFERED WHICH ARE NOT THE SELLERS OWN PROPERTY

- 16.1 Any information supplied by the Seller concerning the location and other matters in respect of Products offered for sale by the Seller but which are not the Seller's property is given on the understanding that the Customer/enquirer will not make a direct approach to purchase the Products from any third party owners but will purchase them through the Seller.
- 16.2 The Customer agrees not to make any direct approach to any such third party owner and undertakes to indemnify the Seller in respect of any loss of commission or other loss which may result to the Seller as a breach of this clause.

17. INSTALLATION NOTES AND QUALIFICATIONS

In the event that the Seller offers to carry out installation and/or site works the following clauses will apply:

- 17.1 The Seller only offers to carry out installation works specifically as detailed within the Seller's quotation. Any further works not detailed in the quotation will be quoted as extra and charged at additional cost.
- 17.2 All prices stated in the Seller's quotation are estimated until a fully detailed site survey including detailed measurement has been carried out.
- 17.3 Whilst the Seller endeavours to give a fully detailed best engineered solution, unless the Seller provides a quotation specifically agreed and stated to be a "design quotation", the Seller accepts no responsibility for the design. If the Customer requires and requests a detailed design, a separate quotation specifically stated to be a "design quotation" will be provided by the Seller.
- 17.4 The Seller's quotation does not include any provision for any liaison with the Distribution Network Operator (DNO) unless expressly stated otherwise.

- 17.5 It is the responsibility of the Customer to advise the DNO of any increase in power requirements and to arrange for adjustment of the Allowed Supply Capacity (ASC). Further, it is the Customer's responsibility to arrange suitable tariffs/charges with the meter operator.
- 17.6 Any costs associated or connected with upgrading the distribution network or metering equipment are not included in the Seller's quotation unless specifically detailed therein.
- 17.7 The Seller's quotation allows for normal working hours being from 9.00am to 5.00pm Monday to Friday; any work carried out beyond these times will be charged additionally at normal day work or overtime rates as appropriate unless stated otherwise in writing by the Seller.
- 17.8 Any waiting time incurred by the Seller's employees, not due to the fault of the Seller, will be charged at normal day work or overtime rates as appropriate.

18. INSOLVENCY OF THE CUSTOMER

- 18.1 Without affecting any other right or remedy available to it, the Seller may terminate the Agreement with immediate effect by giving written notice to the Customer if:
- 18.1.1 the Customer becomes insolvent; or
- 18.1.2 the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 18.1.3 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
- 18.1.4 the Customer ceases, or threatens to cease, to carry on business; or
- 18.1.5 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly; or
- 18.1.6 the Customer fails to pay any amount due under the Agreement by the due date for payment.
- 18.2 If any of the events set out in clause 18.1 occur, without prejudice to any other right or remedy available to the Seller:
- 18.2.1 the Seller shall be entitled to suspend work, delay or withhold delivery under or cancel the Agreement without any liability to the Customer;
- 18.2.2 if the Products have been delivered but not paid for; the Products shall be immediately be returned back to the Seller, and the Seller shall have a right to enter the Customer's site (and if appropriate, the Customer shall procure approval from the owner of any third party land at which Products are located, for the Seller to enter such land) to reclaim the Products;
- 18.2.3 the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 18.3 Without affecting any other right or remedy available to it, the Seller may suspend the supply of Services or all further deliveries of Products under the Agreement or any other Agreement between the Customer and the Seller if the Customer fails to pay any amount due under the Agreement on the due date for payment, the Customer becomes subject to any of the events listed in clause 18.1.1 to clause 18.1.4 or the Seller reasonably believes that the Customer is about to become subject to any of them.

18.4 On termination of the Agreement:

18.4.1 the Customer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of Services and Products supplied but for which no invoice has been submitted, the Seller shall submit an invoice, which shall be payable by the Customer immediately on receipt;

18.4.2 the Customer shall return all of the Seller Materials and any Products which have not been fully paid for. If the Customer fails to do so, then the Seller may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Agreement.

18.5 Termination or expiry of the Agreement shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

18.6 Any provision of the Agreement that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

19. SURVIVAL OF PROVISIONS

19.1 The expiration or determination of an Agreement, howsoever arising, shall be without prejudice to any provisions thereof (including these Conditions) which are to have effect after the date of expiration or determination.

20. WAIVER

20.1 No waiver by the Seller or any breach or obligation of the Customer pursuant to the Agreement shall constitute a waiver of any other prior to subsequent breach or obligation.

21. NOTICES

21.1 Any notice given to a party under or in connection with the Agreement shall be in writing and shall be delivered by pre-paid first-class post or other next day working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

21.2 Any notice shall be deemed to have been received on the second working day after posting or at the time recorded by the delivery service.

22. HEADINGS

22.1 The headings to these Conditions are for convenience or reference only and shall have no effect on the construction of the Conditions.

23. DATA PROTECTION

23.1 Both parties shall comply with applicable requirements of data protection legislation. This clause 23 does not relieve, remove or replace a party's obligations or rights under data protection legislation.

24. CONFIDENTIALITY

24.1 Each party undertakes that it shall not at any time during this agreement and for a period of five years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients, or suppliers of the other party except as permitted by clause 24.2.

24.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives or advisors who need to know such information for the purposes of exercising the other party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives, or advisors to whom it discloses the other party's confidential information comply with this clause 24; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

25. THIRD PARTY RIGHTS

25.1 The parties to this agreement do not intend that any of its terms will be enforceable by virtue of the Agreements (Rights of Third Parties) Act 1999 by any person not a party to it.

26. ENTIRE AGREEMENT

- 26.1 The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 26.2 Each party acknowledges that in entering into the Agreement it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Agreement.
- 26.3 Nothing in this clause shall limit or exclude any liability for fraud.

27. VARIATION

27.1 Except as set out in these Conditions, no variation of the Agreement shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

28. ENGLISH LAW

- 28.1 The Agreement and any dispute or claim (including non-Agreementual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 28.2 The Seller and the Customer hereby irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-Agreementual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.

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