

Definitions and interpretation

1. Scope and Definition

1.1 These terms and conditions shall apply to all contracts with Draintech Surveys Ltd for the sale of our services. These terms and conditions shall prevail over any communication or form of contract.

1.2 All information contained in our brochures and sales literature and displayed on our website is to the best of our knowledge and accurate at the time of going to press. All information is given in good faith.

1.3 Acceptance of the Contractor's Quotation, either by the Client's Official Order, by email or by Letter of Intent is deemed as acceptance of these Terms and Conditions.

2. Appointment

2.1 The Client appoints the Contractor to undertake the Services in return for the payments.

3. Payment

3.1 Payment for services supplied on a credit account shall be due no later than 30 days from date of invoice.

3.2 If payment is not made by the due date, then Draintech Surveys Ltd may suspend performance of its obligations under any or all contracts with the customer and/or charge interest on any overdue payment at the rate of 8% above the annual base lending rate of the Royal Bank of Scotland compounded quarterly from the due date until payment is made in full. The customer shall further indemnify Draintech Surveys Ltd for all fees, costs and expenses incurred in collecting any sums due.

3.3 For non credit customers, payment shall be made in full either to the engineer on site or on collection of the survey report.

4. Provision of Services – Customers Obligations

4.1 For the provision of services by Draintech Surveys Ltd, our agents or sub contractors the customer shall allow us safe and reasonable access to the site at all times (Access must be pre arranged).

4.2 The price quoted for such services assumes that

(a) the site is ready and suitable for the services to commence at the agreed time.

(b) the necessary permissions have been received from the asset owners if the required work is on their apparatus.

(c) all reasonable steps have been taken to ensure that there are no hazardous deposits and/or illegal discharges within the apparatus

(d) an adequate supply of water is available on site free of charge

(e) access or keys to the site to always be pre arranged by the client.

5. Cancellation

Prior to commencement of the works on site the Client may cancel this agreement at any time by giving the Contractor one week's written notice, and shall then be liable to pay to the Contractor for all work undertaken and expenses incurred in preparing for the works. Upon commencement of the works on site the Client may not cancel this agreement, save as set out in clause 8.

6 VAT

6.1 All sums payable under this agreement unless otherwise stated are exclusive of VAT and other duties or taxes.

6.2 Any VAT or other duties or taxes payable in respect of such sums shall be payable in addition to such sums.

7 Liability and Liquidated damages

7.1 The Contractor shall not be liable to the Client for loss or damage to the Client unless due to the negligence of the Contractor.

7.2 In the event that Contractor is held to be in breach of its obligations under this agreement, due to negligence, the parties agree that the Contractor shall pay to the Client as and by way of agreed liquidated damages an amount equal to the price of the services provided by the Contractor up to the date of breach.

7.3 In the event that the Client disputes the work undertaken by the Contractor, all disputes must be notified to the Contractor within 14 days of the work being carried, or within 14 days of the invoice, whichever is the later. The Client shall be prohibited from disputing the work undertaken or the amount of the invoice after this 14 day period, save where the Client is dealing as a consumer.

7.4 Save as expressly referred to above, and except where the Client is dealing as a consumer (as defined in the Unfair Contract Terms Act 1977 Section 12 as amended and/or the Unfair Terms in Consumer Contracts Regulations 1999 Regulation 3(1)), all other warranties, conditions or terms relating to fitness for purpose, quality or condition of the Goods and/or Services, whether express or implied by statute or common law or otherwise are excluded to the fullest extent permitted by law.

7.5 For the sake of clarity, the Contractor will not be held liable for any consequential losses suffered by the Client as a result of any breach of the Contractors obligations, whether reasonably foreseeable or otherwise.

7.6 The Client shall indemnify defend and hold harmless the Contractor in full against all loss, costs, damages, charges, expenses and other liabilities awarded against or incurred as a result of or in connection with any claim made against the Contractor by a third party in respect of any matter caused by the Client or for which liability has been assumed by the Client.

8. Termination for breach

The following obligations are conditions of this agreement and any breach of them shall be deemed a fundamental breach which shall determine this agreement immediately and the rights and liabilities of the parties shall then be determined in accordance with clause 9:

8.1 Failure on the part of the Client to make punctual payment of all sums due to the Contractor under the terms of this agreement;

8.2 Failure on the part of the Contractor to observe any obligation under this agreement not requiring

Notice to be served and in the case of obligations requiring Notice to be served failure to comply with the terms of any Notice;

8.3 The levying of any distress or execution against the Client or the making by him of any Each party acknowledges that this agreement contains the whole agreement between the parties and composition or arrangement with creditors or being a company the Client's liquidation (other than that it has not relied upon any oral or written representation made to it by the other or its employees or than a members' voluntary liquidation with the written consent of the Client);

9 Termination consequences

In the event of this agreement being determined whether by effluxion of time Notice breach or otherwise:

9.1 The Client shall immediately pay to the Contractor:

9.1.1 all arrears of Payments and any other sums due under the terms of this agreement, and

9.1.2 all further sums which would but for the determination of this agreement have fallen due at the end of the works

9.2 Either party shall be entitled to exercise any one or more of the rights and remedies given to it under the terms of this agreement and the determination of this agreement shall not affect or prejudice such rights and remedies and each party shall be and remain liable to perform all outstanding liabilities under this agreement notwithstanding that the other may have exercised one or more of the rights and remedies against it; and

9.3 Any right or remedy to which either party is or may become entitled under this agreement or in consequence of the other's conduct may be enforced from time to time separately or concurrently

with any right or remedy given by this agreement or now or afterwards provided for and arising by operation of law so that such rights and remedies are not exclusive of the other or others but are cumulative.

10 The Works

10.1 The works, unless otherwise notified, have been priced to be carried out between the hours of 08:30 and 16:30 unless agreed prior to commencement and allowed for and agreed in the Contractor's quotation. In the event that the Client changes the hours within which the works are to be undertaken, the Client shall be liable for the Contractor's additional costs.

10.2 In the event that working time is lost on site due to delays caused either by the actions of the Client, his Representative or by other Contractors employed by the Client, or by sewer surcharge caused by storm, flood, tidal or pump failure, the Client shall be liable for the additional costs incurred by the Contractor. In addition, in the event that the Contractor experiences delays for which they are not responsible, the Client shall be liable for the Contractor's additional costs in relation to the additional setting up or out of sequence working.

10.3 Unless otherwise stated in writing it is assumed that vehicular access is possible to all manholes on every sewer length on which work is being undertaken. In the event that this is not possible the Client shall be liable for an extra costs incurred due to lack of access.

10.4 If access is required onto private land it will be the Client's responsibility to ensure all relevant permissions have been obtained

10.5 In the event that the Contractor is required to work in any confined spaces as defined by the Health and Safety at Work Act or any manhole deeper than 1.4 metres the Contractor reserves the right to charge the Client for the required additional safety equipment. This may at some time consist of a fully trained and equipped onsite rescue team.

11 Specific Works (to be read in conjunction with the above Conditions)

11.1 Cleaning

Removal of silt/debris in excess of 10%, or which requires additional equipment for the removal of fat deposits, grout, encrustation, concrete, builders rubble or roots will be charged additionally unless otherwise stated in writing.

11.2 CCTV/Sonar Inspection Works

Due to the nature of CCTV inspection, the Contractor cannot guarantee the accuracy of any CCTV inspection or measurement. A CCTV Survey will only show the interior of the sewer or pipe, and will not show the exterior. Alternatively Sonar may be used to track the route of a pipe, however Sonar by its nature may be up to 1 metre out in accuracy. Any interpretation and advice as a result of CCTV inspection shall not be binding on the Contractor, and is the sole responsibility of the Client. In the

event that the measurements or advice given is inaccurate, the Contractor shall not be responsible for any loss or damage howsoever caused.

11.3 Sewer Condition

Where information is provided or implied either verbally or in writing or through CCTV recordings concerning the condition of the sewers and this is found to be inaccurate or out of date the Client shall be responsible for any extras costs incurred for additional work that may be required to complete the works. The Contractor shall not be liable for any deterioration, structural or otherwise, that develops or becomes apparent on any pipe they are working on howsoever caused.

11.4 Waste Material

4.1 Waste material such as silt, debris or sewerage removed from the customer's site will be disposed of by Draintech Surveys Ltd at an approved waste disposal site.

4.2 Payment for all charges relating to the removal and disposal of such waste, including travel costs to and from the waste disposal site, tipping costs and any license fee will be the responsibility of the customer.

11.5 Re-lining

Due to the nature of relining there can be no delays once the linings have been impregnated. In the event that there are delays beyond the Contractor's control any linings impregnated may have to be discarded and new linings provided. Further the Client warrants that the sewers or pipes will be free of live water prior to the works being undertaken by the Contractor. In the event that live water is present, the linings used by the Contractor will not function. The Client will be liable for the additional costs incurred should new linings be required in any event.

12. Damage or Loss to Equipment

If damage or loss is sustained to the Contractors equipment due to reasons beyond their control, or due to the condition of the pipe work or some other known or unknown risk, the Contractor reserves the right to charge for the costs in retrieving the Equipment, including the instruction of another contractor and/or the costs of replacing the Equipment. The Contractor also reserves the right to charge for loss of profits and down time whilst the items are recovered or replaced.

13 Miscellaneous

13.1 Warranty

Each of the parties warrants its power to enter into this agreement and has obtained all necessary approvals to do so.

13.2 Force majeure

In the event of national emergency, war, prohibitive governmental regulation or any other cause beyond the control of the parties ('force majeure event') the obligations of the parties shall be suspended for so long as the force majeure event renders performance of the agreement impossible and upon the occurrence of a force majeure event all money then due to the Contractor shall be paid immediately

13.3 Severance

If any provision of this agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable or indications to that effect are received by either of the parties from any competent authority the remaining provisions of this agreement shall remain in full force and effect unless the Contractor in the Contractor's discretion decides that the effect of such declaration is to defeat the original intention of the parties in which event the Contractor shall be entitled to terminate this agreement by 30 days notice to the Client and the provisions of clause 10 shall apply accordingly.

13.4 Whole agreement party acknowledges that this agreement contains the whole agreement between the parties and that it has not relied upon any oral or written representation made to it by the other or its employees or agents and has made its own independent investigations into all matters relevant to it.

13.5 Notices

All notices to be given under this agreement shall be in writing and shall either be delivered

Personally or sent by first class or airmail prepaid post or by telex, cable or facsimile transmission and shall be deemed duly served:

13.6 Proper law and jurisdiction

This agreement shall be governed by and construed in accordance with the law of England and

Wales and each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

13.7 Waiver

The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this agreement.

13.8 Third party rights

A person who is not a party to this agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this agreement.