

## TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

**1. Interpretation**

1.1 In these Conditions the following words shall have the following meanings:

'Buyer'	the person, firm or company who purchases Goods and/or Services from H2O;
'H2O'	H2O (NW) Limited of Unit 13 Haydock Cross, 580 Kilbuck Lane, Haydock, St Helens WA11 9WG;
'Conditions'	the terms and conditions set out in this document;
'Contract'	any contract between H2O and the Buyer for the sale and purchase of the Goods and/or the Services, incorporating these Conditions;
'Goods'	any goods agreed in the Contract to be supplied to the Buyer by H2O (including any part or parts of them);
'Services'	the services to be provided by H2O under the Contract, together with any other services which H2O provides, or agrees to provide, to the Buyer;
'Site'	the Buyer's premises at which delivery of the Goods and/or the supply of the Services takes place.

1.2 Words in the singular include the plural and in the plural include the singular and a reference to one gender includes a reference to the other gender.

1.3 Condition headings do not affect the interpretation of these Conditions.

**2. Application of terms**

2.1 Subject to any variation under condition 2.3 the Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These Conditions apply to all H2O's sales and any variation to these Conditions and any representations about the Goods or the Services shall have no effect unless expressly agreed in writing and signed by a director of H2O. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of H2O which is not set out in the Contract.

2.4 Each order or acceptance of a quotation for Goods or Services by the Buyer from H2O shall be deemed to be an offer by the Buyer to buy Goods or Services subject to these Conditions.

2.5 No order placed by the Buyer shall be deemed to be accepted by H2O until a written acknowledgement of order is issued by H2O or (if earlier) H2O delivers the Goods or supplies the Services to the Buyer.

**3. Description of Goods**

3.1 The quantity and description of the Goods shall be as set out in H2O's quotation or acknowledgement of order.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by H2O are issued for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

**4. Buyer's obligations with regard to the Services and the Site**

4.1 The Buyer shall:

4.1.1 provide to H2O, in a timely manner, such information as H2O may require in relation to the supply of the Goods and the Services and ensure that it is accurate in all material respects;

4.1.2 be responsible (at its own cost) for preparing and maintaining the Site for the supply of the Services.

4.2 If H2O's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Buyer, its agents, subcontractors, consultants or employees, H2O shall not be liable for any costs, charges or losses sustained or incurred by the Buyer arising from such prevention or delay.

**5. Delivery**

5.1 Unless otherwise agreed in writing by H2O, delivery of the Goods and the supply of the Services shall take place at the Site.

5.2 The Buyer shall take delivery of the Goods within 3 days of H2O giving it notice that the Goods are ready for delivery.

5.3 Any dates specified by H2O for delivery of the Goods or the supply of the Services are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

5.4 Subject to the other provisions of these Conditions, H2O shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by H2O's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 3 months.

5.5 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or H2O is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

5.5.1 risk in the Goods shall pass to the Buyer (including for loss or damage caused by H2O's negligence);

5.5.2 the Goods shall be deemed to have been delivered; and

5.5.3 H2O may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

5.6 H2O may deliver the Goods and provide the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

5.7 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

**6. Non-delivery of Goods**

6.1 The quantity of any consignment of Goods as recorded by H2O as having been delivered to the Site and/or installed on Site shall be conclusive evidence of the quantity received by the Buyer unless the Buyer can provide conclusive evidence proving the contrary.

6.2 H2O shall not be liable for any non-delivery of Goods (even if caused by H2O's negligence) unless the Buyer gives written notice to H2O of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received.

6.3 Any liability of H2O for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

**7. Risk/title**

7.1 The Goods are at the risk of the Buyer from the time of delivery.

7.2 Ownership of the Goods shall not pass to the Buyer until H2O has received in full (in cash or cleared funds) all sums due to it in respect of:

7.2.1 the Goods; and

7.2.2 all other sums which are or which become due to H2O from the Buyer on any account.

7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as H2O's fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as H2O's property, but the Buyer may resell or use the Goods in the ordinary course of its business.

7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), H2O may at any time require the Buyer to deliver up the Goods to

H2O and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

7.5 The Buyer shall not be entitled to pledge, create a lien over or in any way charge by way of security for any indebtedness any of the Goods which remain the property of H2O, but if the Buyer does so all monies owing by the Buyer to H2O shall (without limiting any other right or remedy of H2O) forthwith become due and payable.

**8. Price**

8.1 Unless otherwise agreed by H2O in writing, the price for the Goods and the Services shall be the price set out in H2O's quotation. H2O reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods and/or the Services to reflect any increase in the cost of H2O which is due to any factor beyond the control of H2O or any change in delivery dates or specifications for the Goods or Services which is requested by the Buyer (including without limitation changes to the supplier which H2O must use in relation to the Goods), or any delay caused by any instructions of the Buyer or failure of the Buyer to give H2O adequate information or instructions.

8.2 The price for the Goods or the Services shall be exclusive of any value added tax, which the Buyer shall pay in addition when it is due to pay for the Goods or the Services.

**9. Payment**

9.1 Subject to conditions 9.4 and 9.5, payment of the price for the Goods and the Services is due within 30 days of the date of H2O's invoice unless otherwise agreed in writing by H2O.

9.2 Time for payment shall be of the essence.

9.3 No payment shall be deemed to have been received until H2O has received cleared funds.

9.4 Where H2O has agreed to a retention of 5% (or such other percentage as is agreed between H2O and the Buyer) of the price, half of the retention shall be released and paid by the Buyer to H2O upon completion of the Contract by H2O and the balance shall be released and paid 12 months later. The retention shall be released by the Buyer without demand and will not be subject to written application by H2O.

9.5 All payments payable to H2O under the Contract shall become due immediately on its termination despite any other provision.

9.6 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by H2O to the Buyer.

9.7 If the Buyer fails to pay H2O any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to H2O on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of Royal Bank of Scotland plc, accruing on a daily basis until payment is made, whether before or after any judgment. H2O reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

**10. Quality**

10.1 H2O warrants that (subject to the other provisions of these Conditions) on delivery the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979 and that the Services will be provided using reasonable care and skill.

10.2 H2O shall not be liable for a breach of the warranty relating to the Goods in condition 10.2 unless the Buyer gives written notice of the defect to H2O within 7 days of the time when the Buyer discovers or ought to have discovered the defect and H2O is given a reasonable opportunity after receiving the notice of examining such Goods.

10.3 Subject to condition 10.2, if any of the Goods do not conform with the warranty in condition 10.1, H2O shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate.

10.4 If H2O complies with condition 10.3 it shall have no further liability for a breach of the warranty in condition 10.1 in respect of such Goods.

**11. Limitation of liability**

11.1 The following provisions set out the entire financial liability of H2O (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

11.1.1 any breach of the Contract;

11.1.2 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods;

11.1.3 any use made by the Buyer of the Services or any part of them; and

11.1.4 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

11.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

11.3 Nothing in these Conditions excludes or limits the liability of H2O for death or personal injury caused by its negligence or under section 2(3) Consumer Protection Act 1987 or for fraud or fraudulent misrepresentation.

11.4 Subject to condition 11.2 and condition 11.3:

11.4.1 H2O'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 Contract price; and

11.4.2 H2O shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

**12. Assignment**

H2O may assign the Contract or any part of it to any person, firm or company. The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of H2O.

**13. Force majeure**

H2O shall not be liable to the Buyer or deemed to be in breach of Contract if it is prevented from or delayed in the carrying on of its business due to circumstances beyond its reasonable control.

**14. General**

14.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision.

14.2 Each right or remedy of H2O under the Contract is without prejudice to any other right or remedy of H2O whether under the Contract or not.

14.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

14.4 Failure or delay by H2O in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

14.5 Any waiver by H2O of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

14.6 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

14.7 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.