

TERMS AND CONDITIONS FOR THE SUPPLY OF DRAIN CLEANING SERVICES

(TERMS AND CONDITIONS ONLY APPLY TO COMMERCIAL AND BUSINESS CONTRACTS)

1. DEFINITIONS:

- 1.1 "Conditions" shall mean the standard terms and conditions set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and Drainco
- 1.2 "Contract" shall mean the contract for the provision of the Services
- 1.3 "Customer" means the person or party whose request for the provision of the Services is accepted by Drainco
- 1.4 "Drainco" shall mean the provider of the Services
- 1.5 "Price" shall mean the price as set out in any quotation, confirmation of order or otherwise set out in writing or calculated in accordance with Drainco's current rates and charges (or when no price has been quoted a reasonable price) excluding VAT
- 1.6 "Services" shall mean the provision of drain inspection, cleaning and related services which Drainco is to carry out in accordance with the Conditions and as may be set out in any quotation, order or otherwise specified in writing to the Customer which Drainco is to carry out in accordance with these Conditions.

2. CONDITIONS APPLICABLE:

- 2.1 Drainco shall supply the Services in accordance with the terms agreed orally or in writing with the Customer subject in either case to these Conditions which shall govern the Contract to the exclusion of any terms and conditions
- 2.2 No variation to these Conditions shall be binding unless agreed in writing between the authorised representative of Drainco and the Customer
- 2.3 Any representation made by Drainco's employees or agents concerning the Services shall not be incorporated into the Contract unless confirmed by Drainco in writing and entering into the Contract the Customer acknowledges that it does not rely on and waives any claim for breach of such representations which are not so confirmed
- 2.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other documentation or information issued by Drainco shall be subject to correction without any liability on the part of Drainco unless such correction fundamentally changes the Customer's obligations under the Contract to the Customer's detriment in which case the Customer shall be entitled to cancel the Contract within seven (7) days of notification by Drainco of such fundamental change
- 2.5 Any quotation given by Drainco may be withdrawn any time prior to acceptance by the Customer and in any event shall lapse after ninety (90) days.

3. ORDERS AND SPECIFICATIONS:

- 3.1 No order form or Service Contract shall be deemed to be accepted by Drainco until signed by both the Customer and Drainco's authorised representative
- 3.2 Save as otherwise provided no order which has been accepted by Drainco may be cancelled by the Customer except with the agreement in writing of Drainco and on terms that the Customer shall at Drainco's discretion indemnify Drainco in full against all loss (including loss of profit) including the costs of all labour and materials used, damages, charges and expenses incurred by Drainco as a result of such cancellation
- 3.3 Any dates given for the commencement and completion of the Services are estimates only and time shall not be of the essence of the Contract.

4. PRICE:

- 4.1 If at any time before the performance of the Services Drainco deems it necessary to increase the Price to give effect to any increase in the cost to Drainco which is due to any factor beyond the control of Drainco, it shall have the right to give written notice of such increase to the Customer increasing the Price. The Customer shall have the right to cancel the contract within seven (7) days of the receipt of such notice in the event that such notice increases the Price by more than ten percent (10%) failing which such increase shall be added to the Price
- 4.2 Notwithstanding the provisions of clause 4.1 above any increase in the cost to Drainco necessitating an increase in the Price which is a result of any change in specification of the Services which is requested by the Customer or as a result of any delay caused by any instructions of the Customer or failure of the Customer to give Drainco adequate information or instructions shall not entitle the Customer to cancel the Contract on receipt of a written notice of such increase in the Price

5. PAYMENT:

- 5.1 Subject to any special terms agreed in writing between Drainco and the Customer Drainco shall be entitled to invoice the Customer for the Price and VAT at the rate prevailing on the date of Drainco's invoice before, on or at any time after the performance of the Services
- 5.2 The Customer shall pay the Price and VAT either on receipt of Drainco's invoice or (if specifically notified by Drainco) within thirty (30) days of the date of the invoice ("the Due Date")
- 5.3 Time of payment of the Price and VAT shall be the essence of the Contract
- 5.4 If the Customer fails to make payment on the Due Date then without prejudice to any other right or remedy available to Drainco, Drainco shall be entitled to:
 - (a) cancel the Contract and/or suspend the provision of any further Services to the Customer, and
 - (b) charge the Customer interest (before and after any judgment) on the amount unpaid at the rate of four per cent (4%) per annum above bank base rate from time to time until payment in full is made (a part of the month being treated as a full month for the purpose of calculating interest).

6. PERFORMANCE:

- 6.1 Any dates quoted or given for the performance of the Services are approximate only and Drainco shall not be liable for any reasonable delay the performance of the Services and time for the performance of the Services shall not be of the essence unless previously agreed with Drainco in writing
- 6.2 The Customer shall provide clear access to all drains, sewer inspection covers and manholes to enable Drainco to perform the Services and shall provide (if possible) a plan showing drain layouts

6.3 The Customer shall be responsible for obtaining any permissions and consents in respect of land or property occupied or owned by third parties as may be required by Drainco to perform the Services

6.4 The Customer shall notify Drainco prior to the performance of the Services of any particular regulations or legislative provisions applicable to the place where the Services are to be performed and which may affect the provision of the Services

6.5 The Customer shall inform Drainco prior to the date for the performance of the Services of all dangerous gases, liquids and other materials of any nature whatsoever which are present on the premises or in the locality where the Services are to be performed and which could constitute danger to any employee or agent of Drainco whilst engaged in the performance of the Services. The Customer shall in addition ensure that Drainco is notified of all precautions which need to be taken due to the presence of such dangerous gases, liquids and materials. The Customer shall also ensure that (where necessary) qualified and competent safety personnel are present during the performance of the Services to advise Drainco's agents and employees in respect of all necessary precautions to be taken.

7. WARRANTIES AND LIABILITIES:

- 7.1 Subject as expressly provided in these Conditions Drainco warrants that the Services will be performed in accordance with the Contract and will be free from defects in workmanship for a period of thirty (30) days
- 7.2 Drainco shall not be liable for any fracturing of frozen pipes and does not guarantee to clear blockages occurring in a frozen pipe or drain or in damaged or broken pipes, and shall not be liable for any leakage due to broken or damaged pipework
- 7.3 The Customer acknowledges that the provision of the Services may require the use of equipment and methods to investigate the cause of blockages to drains and (without limitation) other drainage problems and that in such cases there is a risk that the use of such equipment and methods may result in further damage or drainage problems. The Customer acknowledges and agrees that Drainco shall be under no liability in respect of such damage or problems arising from the use of such equipment and methods except in circumstances where such damage or problems arise from any breach of warranty by Drainco under these Conditions
- 7.4 Any warranty given by Drainco in respect of the performance of the Services shall be subject to the following conditions:
 - (a) Drainco shall be under no liability in respect of any defects arising from misuse or faulty workmanship by the Customer, its employees, sub-contractors or any other third party working for or under the direction of the Customer
 - (b) Drainco shall be under no liability, under any warranty condition or guarantee if the Price has not been paid by the Due Date
- 7.5 Drainco shall not be liable by reason of any representation or any implied warranty, condition or other term or any duty at common law or under the express terms of the Contract for any consequential loss or damage (whether for loss of profit or otherwise) costs, expenses or other claims through consequential compensation whatsoever (and whether caused by the negligence of Drainco, its employees or agents or otherwise) which arise out of or in connection with the supply of Services except as expressly provided in these Conditions
- 7.6 Any liability of Drainco hereunder for any delay in performing or any failure to perform any of Drainco's obligations in relation to the Services shall be limited to the excess (if any) of the cost to the Customer in the cheapest available market of similar services to replace those not performed over the Price
- 7.7 Where the Services are supplied under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by the Customer
- 7.8 Notwithstanding clauses 7.3, 7.4 and 7.5 above, nothing contained herein is intended nor will limit Drainco's liability in respect of death or personal injury caused by Drainco, its employees or agents

8. TERMINATION:

Without prejudice to any other right or remedy available to Drainco, Drainco shall be entitled to cancel the Contract or suspend any further performance under the Contract without any liability on the part of Drainco to the Customer and, if Services have been performed but not paid for, the Price and VAT shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary in the event that -

- (a) the Customer make any voluntary arrangement with its creditors or becomes subject to any administration order or (being an individual or a firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction)
- (b) an encumbrancer takes possession or a receiver is appointed over any of the property or assets of the Customer
- (c) if the Customer (if not a consumer within the meaning of the Unfair Contract Terms Act 1977) ceases or threatens to cease to carry on the business
- (d) if the Customer breaches any of the Conditions
- (e) if Drainco reasonably apprehends that any of these events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly

9. FORCE MAJEURE:-

Neither party shall be liable for any default due to any act of God, war, strike, lock-out, industrial action, fire, flood, drought, tempest or any other event beyond the reasonable control of either party