

Watermills (Water Services) Ltd Terms & Conditions of Business

1. Definitions

- 1.1 "Buyer" means the organisation or person who buys Goods and Services from the Seller;
- 1.2 "Conditions" means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller;
- 1.3 "Delivery date" means the date specified by the Seller when the Goods are to be delivered;
- 1.4 "Goods and Services" means the equipment and labour to be supplied to the Buyer by the Seller;
- 1.6 "Price" means the price set out in the list of prices of the Goods and Services maintained by the Seller as amended from time to time or such other price as the parties may agree in writing plus such carriage, packing, insurance or other charges or interest on such as may be quoted by the Seller or as may apply in accordance with these conditions;
- 1.7 "Seller" means Watermills (Water Services) Ltd of 92 Nore Road, Portishead, Bristol, BS20 8DA.

2. General

- 2.1 These conditions shall apply to all contracts for the sale of Goods and Services by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may seek to apply under any purchase order, order confirmation or similar document.
- 2.2 All orders for Goods and Services shall be deemed to be an offer by the Buyer to purchase Goods and Services pursuant to these Conditions.
- 2.3 Acceptance of delivery of the Goods and Services shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 Any variation to these Conditions (including any special terms and conditions agreed between the parties including without limitation as to discounts) shall be inapplicable unless agreed in writing by the Seller.
- 2.5 Any advice, recommendation or representation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage of water and equipment, or application or use of the Goods and Services or otherwise which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and, accordingly, the Seller shall not be liable for any such advice, recommendation or representation which is not so confirmed.
- 2.6 Nothing in these Conditions shall affect the statutory rights of any Buyer dealing as a consumer.

3. Price and Payment

- 3.1 Payment of the Price is to be strictly payable prior to the delivery of Goods and Services, unless a credit account has been established with the Seller in which event payment of the Price is due 30 days following the date of invoice, unless otherwise specified by the Seller, in writing.
- 3.2 The Seller shall be entitled to charge interest on overdue invoices from the date when payment becomes due interest to accrue from day to day until the date of payment at a rate of 2% per annum above the base rate of the Bank of England from time to time.
- 3.3 The Seller reserves the right to grant, refuse restrict, cancel or alter credit terms at its sole discretion at any time.
- 3.4 If payment of the Price or any part thereof is not made by the due date, the Seller shall be entitled to:
- 3.4.1 require payment in advance of delivery in relation to any Goods and Services not previously delivered.

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3.4.2 refuse to make delivery of any undelivered Goods and Services whether ordered under the contract or not and without incurring any liability whatever to the Buyer for non-delivery or any delay in delivery;

3.4.3 appropriate any payment made by the Buyer to such of the Goods (or Goods supplied under any other contract) as the Seller may think fit;

3.4.4 terminate the contract without incurring any liability whatever to the Buyer for doing so.

4. Description

Any description given or applied to the Goods and Services is given by way of identification only and the use of such description shall not constitute a sale by description. For the avoidance of doubt, the Buyer hereby affirms that it does not in any way rely on any description when entering into the contract.

5. Sample

Where a sample of the Goods is shown to and inspected by the Buyer, the parties hereto accept that such a sample is so shown and inspected for the sole purpose of enabling the Buyer to judge for itself the quality of the bulk, and not so far as to constitute a sale by sample.

6. Delivery

6.1 Unless otherwise agreed in writing, delivery of the Goods shall take place at the address specified by the Buyer on the date specified by the Seller. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.

6.2 The time of delivery specified by the Seller is an estimate only. Time for delivery shall not be of the essence of the contract and while every reasonable effort will be made to comply with such dates compliance is not guaranteed and the Buyer shall have no right to damages or to cancel the order for failure for any cause to meet any delivery time stated.

6.3 If the Seller is unable to deliver the Goods and Services for reasons beyond its control, due to issues at the Buyer's site, then the Seller shall be entitled to make charge for the aborted delivery.

8. Acceptance – Goods and Services

8.1 Upon completion of any installation at the Buyer's site, the Buyer shall inspect the works along with a senior member of the Seller's installation team to ensure that the works have been carried out in accordance with the site plan. All equipment will be tested by the Seller and signed for, as satisfactory by the Buyer.

9. Insurance

9.1 Risk of damage or loss of the Goods shall pass to the Buyer in the case of Goods to be delivered at the Seller's premises, once the Goods arrive at the Buyer's site, irrespective of the Goods forming a cash transaction, or part of a Goods and Services (i.e. supply and installation) package.

10. Insolvency of Buyer

10.1 If the Buyer fails to make payment for the Goods in accordance with the contract of sale or commits any other breach of this contract of sale or if any distress or execution shall be levied upon any of the Buyer's property or the Goods or if the Buyer offers to make any arrangement with its creditors or commits an act of bankruptcy or if any petition in bankruptcy is presented against the Buyer or the Buyer is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind up the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver, administrator administrative receiver or manager shall be appointed over the whole or any part of the Buyer's business or assets or if the Buyer shall suffer any analogous proceedings under foreign law or if any such matter as provided for in this clause is reasonably apprehended by the Seller all sums outstanding in respect of the Goods and Services shall become payable immediately.

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10.2 The Seller may in the circumstances set out in clause 9.1 above also in its absolute discretion, and without prejudice to any other rights which it may have, exercise any of its rights pursuant to clause 8 above.

11. Warranty

11.1 Where the Goods are found to be defective, the Seller shall, replace defective Goods free of charge.

12. Liability

12.1 No liability of any nature shall be incurred or accepted by the Seller in respect of any representation made by the Seller, or on its behalf, to the Buyer, or to any party acting on its behalf, prior to the making of this contract where such representations were made or given in relation to:-

12.1.1. the correspondence of the Goods with any description or sample;

12.1.2. the quality of the Goods; or

12.1.3. the fitness of the Goods for any purpose whatsoever.

12.2 No liability of any nature shall be accepted by the Seller to the Buyer in respect of any express term of this contract where such term relates in any way to:

12.2.1. the correspondence of the Goods with any description;

12.2.2. the quality of the Goods; or

12.2.3. the fitness of the Goods for any purpose whatsoever.

12.3 Except where the Buyer deals as a consumer all other warranties, conditions or terms relating to fitness for purpose, quality or condition of the Goods, whether express or implied by statute or common law or otherwise are hereby excluded from the contract to the fullest extent permitted by law.

12.4 For the avoidance of doubt the Seller will not accept any claim for consequential or financial loss of any kind however caused.

13. Limitation of Liability

13.1 Where any court or arbitrator determines that any part of Clause 12 above is, for whatever reason, unenforceable, the Seller shall be liable for all loss or damage suffered by the Buyer but in an amount not exceeding the Price.

13.2 Nothing contained in these Conditions shall be construed so as to limit or exclude the liability of the Seller for death or personal injury as a result of the Seller's negligence or that of its employees or agents.

14. Deposits

Deposits may be taken against future works. Unless otherwise stated within the Seller's original quotation, any deposit taken is deemed as non-refundable.

15. Force Majeure

The Seller shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the Seller shall be entitled to a reasonable extension of its obligations. If the delay persists for such time as the Seller considers unreasonable, it may without liability on its part, terminate the contract or any part of it. In the event of a cancellation due to an epidemic, pandemic or act of government the buyer shall be responsible for the charges below.

Cancellation of event more than 71 days before - cancellation charge of 25% will be payable
Cancellation of event 57 to 70 days before - cancellation charge of 50% will be payable
Cancellation of event 56 to 43 days before - cancellation charge of 75% will be payable
Cancellation of event 42 days or less before - payment in full

16. Relationship of Parties

Nothing contained in these Conditions shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these Conditions shall be deemed to construe either of the parties as the agent of the other.

17. Waiver

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

18. Severability

If any term or provision of these Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

19. No Set Off

The Buyer may not withhold payment of any invoice or other amount due to the Seller by reason of any right of set-off or counterclaim which the Buyer may have or allege to have for any reason whatsoever.

20. Entire Agreement

These Conditions and any documents incorporating them or incorporated by them constitute the entire agreement and understanding between the parties.

21. Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.