

1 Definitions and interpretation

- 1.1 The following terms shall have the following meanings for the purposes of this agreement:
- 1.1.1 'Services' means those specified in the Contractor's Quotation or other documentation, subject to amendment.
- 1.1.2 'Contractor' means Drain Devils (Grampian) Ltd. Part of Lanes Group plc
- 1.1.3 'Employer' means the person, firm or Company for whom works are carried out
- 1.1.4 'Engineer' means the person agreed by the Contractor and Employer or, failing agreement, nominated by the Contractor
- 1.2 Headings contained in this agreement are for reference purposes only and should not be incorporated into this agreement and shall not be deemed to be any indication of the meaning of the clauses to which they relate.
- 1.3 All agreements on the part of either of the parties which comprise more than one person or entity shall be joint and several and the neuter singular gender throughout this agreement shall include all genders and the plural and the successor in title to the parties.
- 1.4 Acceptance of the Contractor's Quotation, either by Employer's Official Order or by Letter of Intent is deemed as acceptance of these Terms and Conditions.

2 Appointment

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

3 The Contractor's obligations

3.1 Delegation

Not to delegate any duties or obligations arising under this agreement otherwise than may be expressly permitted under its terms.

3.2 Notice

To comply with the terms of any Notice specifying a breach of the provisions of this agreement and requiring the breach to be remedied so far as it may be but nothing in this clause is intended to require the Employer to serve notice of any breach before taking action in respect of it.

4 The Employer's obligations

- 4.1 In consideration of the services to be rendered by the Contractor under this agreement the Employer agrees to make the Payments promptly without demand deduction or set-off.
- 4.2 Payment of the Price and VAT shall be due within 30 days of the date of the invoice. Time for payment shall be of the essence. Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 8% above the Bank of England Base Rate from time to time in force and shall accrue at such a rate after as well as before any judgment. In the event that the Employer is acting in the course of a business, the Contractor reserves the right to claim compensation for late payment pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.3 The Employer shall make available to the Contractor the whole of the site of the proposed works at the commencement on site unless otherwise agreed in writing.

5 Cancellation

Prior to commencement of the works on site the Employer 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 Employer 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 Employer for loss or damage to the Employer 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 Employer 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 Employer 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 Employer shall be prohibited from disputing the work undertaken or the amount of the invoice after this 14 day period, save where the Employer is dealing as a consumer.
- 7.4 Save as expressly referred to above, and except where the Employer 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 Employer as a result of any breach of the Contractors obligations, whether reasonably foreseeable or otherwise.
- 7.6 The Employer 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 Employer or for which liability has been assumed by the Employer.

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 Employer 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 Employer or the making by him of any composition or arrangement with creditors or being a company the Client's liquidation (other 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 Employer 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 08:00 and 16:30 unless agreed prior to commencement and allowed for and agreed in

the Contractor's quotation. In the event that the Employer changes the hours within which the works are to be undertaken, the Employer 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 Employer, his Representative or by other Contractors employed by the Employer, or by sewer surcharge caused by storm, flood, tidal or pump failure, the Employer 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 Employer 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 Employer 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 Employer'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 Employer for the required additional safety equipment.

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 Employer. 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 Employer 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 Disposal
Unless otherwise stated the Contractor has not quoted for the removal of waste or debris from site. If disposal is found to be necessary the Employer will be responsible for the additional costs incurred by the Contractor in the removal, transporting and disposal of waste to a registered site, together with additional administrative costs.
- 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 Employer 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 Employer will be liable for the additional costs incurred should new linings be required in any event.
- 11.6 Excavation
11.6.1 The Contractor must rely upon Utility Company records as to the location of underground services before undertaking any excavation work. The Employer is placed on notice that the accuracy of the Utility Company records may be suspect; however the Contractor must rely upon them. In the event that the Utility Company Records are inaccurate and damage is caused to an underground service, the Employer will hold the Contractor fully indemnified in respect of any claim which may arise from such damage.
- 11.6.2 The Contractor may rely upon scans of the area before undertaking excavation. A scan will not identify an obstruction such as, but not limited to, concrete, bedrock or other such obstructions. Likewise a scan will not show whether a pipe is encased in concrete. In the event that the Contractor discovers such an obstruction the Employer shall be liable for any additional costs incurred.
- 11.6.3 In the event that a pipe being excavated is encased in concrete, further damage may be caused to pipework connect to the section being excavated, due to shockwaves travelling down the concrete. Such damage is unavoidable. The Employer will be liable for the additional costs incurred in repairing any pipework so damaged.

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

Each 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:

- in the case of a notice delivered personally, at the time of delivery;
- in the case of a notice sent inland by first class prepaid post, 2 clear business days after the date of dispatch;
- in the case of a telex, cable or facsimile transmission, if sent during normal business hours then at the time of transmission and if sent outside normal business hours then on the next following business day provided (in each case) that a confirmatory copy is sent by first class prepaid post or by hand by the end of the next business day.

Each notice shall be addressed to the address of the party concerned set out in this agreement or to such other address as that party shall have previously notified to the sender.

13.6 Proper law and jurisdiction

This agreement shall be governed by and construed in accordance with the law of Scotland and each party agrees to submit to the exclusive of the courts of Scotland.

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.