



## DW UTILITY SERVICES LTD

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### TERMS AND CONDITIONS

#### 1. THE CONTRACT

- 1.1 Unless otherwise agreed, the sale and purchase of goods (the "Service") to be supplied by DW Utility Services Ltd ("the Company") to the buyer ("the Buyer") shall be on these conditions ("the Contract") 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. ORDERS AND SPECIFICATIONS

- 2.1 Each order or acceptance of a quotation for the service by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy the Service subject to these conditions. No order placed by the Buyer shall be deemed to be accepted by the Company until the Company delivers the Service to the Buyer. The Buyer shall ensure that the terms of its order and any applicable specifications are complete and accurate.
- 2.2 Unless otherwise agreed, any quotation is valid for a period of sixty (60) days only from its date, provided the Company has not withdrawn it.
- 2.3 If the Service is to be manufactured or any process is to be applied to the Service by the Company in accordance with a specification submitted by the Buyer, the Buyer shall indemnify and hold harmless the Company, its directors, officers, employees, shareholders, successors and assigns against all loss, damages, costs and expenses incurred in connection with any claim which results from the Company's use of the Buyer's specification.
- 2.4 The Company reserves the right to make changes to the specification of the Service which are required to conform to any applicable laws, rules or regulations, or, where the Service is to be supplied to the Company's specification, which do not materially affect its quality or performance.

#### 3 DESCRIPTION

- 3.1 The description of the service shall be as set out in the Company's quotation. Any typographical, clerical or other error or omission on any document issued by the Company shall be subject to correction by the Company, without incurring any liability.
- 3.2 Any advice or recommendation given by, or statement or representation made by, the Company or its employees or agents to the Buyer or its employees or agents, relating to the Service, which is not confirmed in writing in this Contract, is followed or acted upon entirely at the Buyer's own risk, and the Company shall not be liable for any unconfirmed advice or recommendation.
- 3.3 The Service may include but it not limited to provision of any or all of the following items: labour, plant, materials, provision of design and consultancy services.

#### 4 DELIVERY

- 4.1 Delivery of the Service shall be made by the Company completing the Service as per quotation plus any additional Services provided to the Contract.
- 4.2 Any times specified by the Company for the delivery of the Service are intended to be an estimate only and the time for the delivery shall not be made of the essence by notice.
- 4.3 If the Company fails to deliver the Service (or any instalment) for any reason other than any cause beyond the Company's reasonable control or the Buyer's fault, and the Company is accordingly liable to the Buyer, the Company's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar Services to be delivered over the price of the Service.
- 4.4 The quantity of the Service as recorded by the Company shall be conclusive evidence of the Service received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

#### 5 TITLE

- 5.1 Ownership of the Service shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due in respect of (a) the Service, and (b) all other sums which are or which become due to the Company from the Buyer on any account.
- 5.2 Until ownership of the Service has passed to the Buyer, the Buyer shall, to the extent that is possible to do so keep the Service insured on the Company's behalf for its full price against all risks to the reasonable satisfaction of the Company.
- 5.4 The Buyer's right to possession of the Service shall terminate immediately if the Buyer goes into liquidation or a receiver or administrator, or similar is appointed over all or substantially all of the assets of the Buyer, or anything analogous to any of the above under the laws of any applicable jurisdiction occurs in relation to the Buyer. The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter the Buyer's site where the Service has been delivered in order to inspect them, or, where the Buyer's right to possession has terminated, to recover or take charge of them.

#### 6 PRICE AND PAYMENT

- 6.1 Unless otherwise agreed, the price for the Service shall be the Company's quotation plus additional Services requested, provided and recorded by the Company and notified to the Buyer.

- 6.2 The Company shall be entitled to invoice the Buyer for the price of the Service after deliver of the Service and at monthly interim stages if agreed by both parties. Some accounts may be subject to a credit charge, which will be agreed in advance between the Company and the Buyer.
- 6.3 Payment of the price for the Service shall be due in euro and shall be due within thirty (30) days of the invoice in accordance with the instructions of the Company. Time for payment shall be the essence. Claims in relation to errors in invoicing must be notified to the Company within seven (7) days of the date of invoice. No payment shall be deemed to have been received until the Company has received cleared funds.
- 6.4 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.
- 6.5 If the Buyer fails to pay the Company any sum due to pursuant to the Contract, the Company shall be entitled to cancel or suspend any further Services to the Buyer and charge interest from the due date for payment at the annual rate of 3% above the refinancing base rate from time to time of Allied Irish Banks Plc, accruing on a daily basis until payment is made, whether before or after any judgment.

7 **WARRANTIES**

- 7.1 The Company warrants that the Service will comply with the Service specifications at the time of delivery. The Company can only accept liability for breach of this warranty where (a) the Buyer has notified the Company within seven (7) days of the delivery of the Service of its failure to comply with the specification and (b) the Company has been given the opportunity of investigating any alleged defect and of making representations as to any remedial action to be taken.

8 **LIMITATION OF LIABILITY**

- 8.1 The Buyer has been provided with copies of the Company's health and safety and Services information guidelines, and acknowledges and agrees that it has read and understood all matters set out therein. The Company shall not be liable to the Buyer for any failure of the part of the Buyer to adhere to such guidelines, and the Buyer hereby agrees to indemnify and hold harmless the Company, its directors, officers, employees, shareholders, successors and assigns against all loss, damage, costs and expenses awarded against or incurred by the Company in connection with a failure by the Buyer to adhere to such guidelines.
- 8.2 Subject to conditions of 8.1 and without prejudice to condition 4.3 the Company's total liability in contract, tort, (including negligence or breach of statutory duty), or otherwise, arising in connection with the performance or contemplated performance of the Contract, or the use or resale of the Service by the Buyer shall be limited to the Contract price plus any additional instructed Services provided. The Company shall not be liable to the Buyer for economic loss, 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 (however cause) which arise out of or in connection with the Contract, or the use or resale of the Service.

9 **GENERAL**

- 9.1 The Company may assign the Contract or any part of it to any person, firm or company and shall not be entitled to assign the Contract or any part of it without the prior written consent.
- 9.2 Each right or remedy of the Company under the Contract is without prejudice to any right or remedy of the Company whether under the Contract or not.
- 9.3 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, unenforceable or unreasonable it shall be to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 9.4 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or its formation (including non-contractual disputes or claims) shall be covered by and construed in accordance with the laws of Ireland and the parties submit to the exclusive jurisdiction of the Irish Courts.

10 **COMMUNICATION**

- 10.1 All communications between the parties about the Contract shall be in writing and sent by pre-paid post to the registered office of the recipient or other such address as shall have been notified to one party by the other, and shall be deemed to have been received if sent by pre-paid post, two working days after posting.