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ROOF MAINTENANCE
ROOF DRAINAGE SPECIALISTS

Terms and Conditions for Supply of Services

Revised July 2023



Suite 4, Mile House Business Park,
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The Customer's attention is particularly drawn to the provisions of clause 8.

1. Interpretation

Definitions. In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday, or a public holiday) when banks in London are open for business.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 11.8.

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions as evidenced by the Supplier's written acceptance of the Order. For the avoidance of doubt, the Contract documents are the Supplier's written acceptance of the Order.

Customer: the person or firm who purchases the Services from the Supplier.

Site Location: has the meaning set out in the Contract.

Force Majeure Event: has the meaning given to it in clause 11.1(a).

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade-marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Order: the Customer's order for the supply of Services, as set out in the Customer's written acceptance of the Supplier's quotation.

Services: the services supplied by the Supplier to the Customer as set out in the Service Specification.

Service Specification: the description or specification for the Services provided in writing by the Supplier to the Customer within the Contract.

Supplier: Total Gutter Maintenance Limited trading as TGM registered in England and Wales with company number 3408642.

Supplier Materials: has the meaning set out in clause 4.1(f).

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1.1 Construction. In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its [personal representatives,] successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes [and e-mails].

2. Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point, and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter, or advertising issued by the Supplier and any illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any quotation given by the Supplier shall not constitute an offer and is only valid for a period of 14 Business Days from its date of issue.
- 2.7 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

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3. Supply of Services

- 3.1 The Supplier shall provide the Services to the Customer in accordance with the Service Specification in all material respects.
- 3.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Contract, but any such dates shall be estimates only.
- 3.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 3.4 Following the performance of the Services by the Supplier, the Supplier shall inform the Customer of any areas that were inaccessible rendering performance of the Services at those areas impossible.
- 3.5 For the avoidance of doubt, gutter joint treatments are not guaranteed.
- 3.6 Where any property at the site location has as asbestos roof, the Customer must be registered with the Environment Agency in relation to the Control of Asbestos Regulations 2006. Where the Supplier is required to dispose of asbestos this will be done in accordance with clause 3.7. The customer must provide the Supplier with its Environment Agency registration number.
- 3.7 Where any property at the site location has an asbestos roof, the waste taken from these gutters shall be classed as hazardous and will be bagged and tagged in accordance with the supplier waste policy.
- 3.8 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

4. Customer's obligations

- 4.1 The Customer shall:
 - (a) ensure that the terms of the Order are complete and accurate;
 - (b) co-operate with the Supplier in all matters relating to the Services;
 - (c) provide the Supplier, it's employees, agents, consultants, and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
 - (d) prepare the Customer's premises for the supply of the Services;
 - (e) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

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- (f) keep and maintain all materials, equipment, documents, and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- (g) upon receipt of the Contract, confirm to the Supplier the Site Location at which the Services shall be performed, details of the Site Location contact and telephone number.
- (h) be responsible for the spoil removed from any gutters at the Site Location (whether hazardous and non-hazardous) unless agreed that the Supplier will organise this as part of the contract (see clauses 3.6, 3.7 & 5.2 d).
- (i) provide, prior to the Services being performed, evidence to the Supplier that any safety wire system fitted at the Site Location holds current and valid certification.
- (j) advise the Supplier of the desired location of any skip ordered through the Supplier, prior to delivery of the same.

4.2 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation or any other health and safety issue (**Customer Default**):

- (a) the Supplier shall without limiting its other rights or remedies has the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default and/or cancellation of works. In any event, an abortive charge will be levied and any delay caused by a Customer Default will attract further charges. The Supplier will determine the abortive charge by calculating the costs incurred for items such as materials, re-routing of the schedule, access equipment, plant, traffic management fees, accommodation, and labour.

4.3 Should a Council Road permit/traffic management be required in order for the Supplier to provide the Service, delays of several weeks may be experienced. In such an event, the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer.

5. Charges and payment

5.1 The charges for Services shall be as set out in the Contract.

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- 5.2 The following additional charges will be payable by the Customer where relevant:
- (a) Access equipment, machinery and skips which are hired from third parties.
 - (b) If incurred, road permit/traffic management charges.
 - (c) Minor leakage may occur following a clean due to existing holes being exposed after removal of the spoil. These leaks will be treated as remedial works and charged for over and above the charges detailed in the Contract.
 - (d) Should the Customer require the Supplier to dispose of spoil produced during the provision of the Services, a skip can be arranged on the Customer's behalf.
 - (e) Where an order is placed for a multi-site contract and the site list is provided after the Contract is produced, additional charges as reimbursement for international travel costs for sites not on UK mainland will be payable to the Supplier by the Customer.
- 5.3 Emergency call-outs attract a minimum charge which will be quoted prior to attendance and the full cost shall be determined following the call-out. Where the Supplier is unable to resolve the issue due to access issues or a requirement to order materials, a full survey will be undertaken, and a quote will be sent to the Customer for authorisation.
- 5.4 The Supplier reserves the right to increase its standard daily fee rates.
- 5.5 The Supplier reserves the right to amend the charges set out in the Contract due to unforeseen circumstances that could not have been anticipated during the initial evaluation. Examples of such circumstances include but are not limited to health & safety issues, the severity of the clean required and the need for additional materials or equipment to fully perform the services. Any such amendments will be discussed in full with the Customer and the additional services or required goods will not be ordered without authorisation from the Customer.
- 5.6 In respect of Services, the Supplier shall invoice the Customer weekly in arrears.
- 5.7 The Customer shall pay each invoice submitted by the Supplier:
- (a) Within 30 days of the date of the invoice; and
 - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and
- 5.8 Time for payment shall be of the essence of the Contract.
- 5.9 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

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- 5.10 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**Due Date**), the Supplier shall have the right to charge interest on the overdue amount at the rate of 8 per cent per annum above the then current Bank of England base rate, accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 5.11 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 5.12 Certificates of Guarantee will not be issued until full payment for the Services is received in cleared funds by the Supplier.

6. Intellectual property rights

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.
- 6.2 The Customer acknowledges that, in respect of any third-party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 6.3 All Supplier Materials are the exclusive property of the Supplier until full payment for the materials is received in cleared funds by the supplier.

7. Confidentiality

- 7.1 A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes, or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents, or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 7 shall survive termination of the Contract.

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8. Limitation of liability:

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

8.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- (e) defective products under the Consumer Protection Act 1987.

8.2 Subject to clause 8.1:

- (a) the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, including losses caused by a deliberate breach of the Contract by the Supplier, its employees, agents, or subcontractors shall not exceed the price of the Services as defined in the Contract.

8.3 Except as set out in these Conditions, all warranties, conditions, and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

8.4 This clause 8 shall survive termination of the Contract.

9. Termination

9.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 21 days after receipt of notice in writing of the breach;

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- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party];
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration, or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.1(b) to clause 9.1(i) (inclusive);
- (k) the other party suspends, threatens to suspend, ceases, or threatens to cease to carry on, all or substantially the whole of its business; or
- (l) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

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9.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract:

- (a) by giving the Customer 14 days' written notice;
- (b) with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

9.3 The Customer may terminate the Contract by giving the Supplier not less than 28 day's written notice.

9.4 Without limiting its other rights or remedies, the Supplier shall have the right to suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if:

- (a) the Customer fails to make pay any amount due under this Contract on the due date for payment; or
- (b) the Customer becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(l), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

10. Consequences of termination

10.1 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

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11. General

11.1 Force majeure:

- (a) For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- (b) The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents the Supplier from providing any of the Services for more than four weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

11.2 Assignment and subcontracting:

- (a) The Supplier may at any time assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- (b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights or obligations under the Contract.

11.3 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by e mail, or sent by fax to the other party's main fax number.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by e mail, when a confirmation e mail has been returned stating the notice has been received, or if sent by fax, on the next Business Day after transmission.
- (c) This clause 11.3 shall not apply to the service of any proceedings or other documents in any legal action.

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11.4 Waiver and cumulative remedies:

- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.

11.5 Severance:

- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable, and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

11.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

11.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

11.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Supplier.

11.9 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

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