DE-WATERING SERVICES LIMITED

# TERMS AND CONDITIONS FOR THE HIRE OF EQUIPMENT AND SUPPLY OF SERVICES

*We draw your attention to the following standard conditions some of which contain provisions defining and limiting our liability in respect of any potential default. It is important that the Customer reads and understands these obligations and limitations of liability as contained in these terms and conditions.*

## 1. Definitions and interpretation

The following definitions and rules of interpretation set out in this clause 1 shall apply in these Conditions:

1.1 Definitions:

| | |
|---|---|
| **Business Day** | a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business. |
| **Business Hours** | the period from 9.00 am to 5.00 pm on any Business Day. |
| **Charges** | the charges payable by the Customer to the Supplier for the Equipment and/or Services as set out in the Supplier's Quotation. |
| **Commencement Date** | has the meaning given in clause 2.2. |
| **Conditions** | these terms and conditions as amended from time to time in accordance with clause 21. |
| **Contract** | the contract between the Supplier and the Customer for the supply of Equipment or Services or Equipment and Services in accordance with these Conditions. |
| **Customer** | the person or firm named in the Supplier's Quotation who purchases the Equipment or Services or Equipment and Services from the Supplier. |
| **Delivery** | the transfer of physical possession of the Equipment to the Customer at the Site. |
| **Delivery Date** | as defined in the Supplier's Quotation, or such other date for Delivery as is agreed between the Customer and the Supplier in writing. |
| **Deposit** | the deposit (if requested by the Supplier) as referred to in clauses 2.2 and clause 5. |

| | |
|---|---|
| **Equipment** | the equipment to be provided by the Supplier to the Customer, as set out in the Supplier's Quotation (or as otherwise agreed in writing between the Supplier and the Customer from time to time). |
| **Force Majeure Event** | has the meaning given to it in clause 17. |
| **Intellectual Property Rights** | patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world. |
| **Minimum Rental Term** | the minimum period of hire of the Equipment, which shall be one week unless stated otherwise in the Supplier's Quotation. |
| **Off-Hire Date** | the date on which the Supplier receives written notice from the Customer that it wishes to end the Rental Period. |
| **Order** | the Customer's order for the hire of Equipment and/or the supply of Services as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's Quotation, as the case may be. |
| **Rental Period** | the period of hire of the Equipment as set out in clause 4.1. |
| **Services** | the services to be supplied by the Supplier to the Customer under the Contract, as set out in the Supplier's Quotation (or as otherwise agreed in writing between the Supplier and the Customer from time to time). |
| **Site** | the Customer's premises at which the Equipment will be delivered and installed, |

| | |
|---|---|
| | and/or the Services will be provided, as specified in the Supplier's Quotation. |
| **Supplier** | Alba Dewatering Services Limited (registered in Scotland with company number SC235431). |
| **Supplier's Quotation** | the Supplier's quotation document supplied to the Customer, setting out, amongst other items, a description of the proposed Equipment and Services to be provided to the Customer, the Minimum Rental Term (if relevant) and the applicable Charges. |
| **Supplier's Website** | https://www.albadewatering.co.uk/terms-conditions/ |

1.2 Interpretation:

(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 and permitted assigns.

(c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

(d) Any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

(e) A reference to writing or written excludes fax but includes email.

## 2. Basis of contract

2.1 The Order constitutes an offer by the Customer to hire the Equipment and/or purchase the 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 (and, if required, the Customer pays the Deposit), at which point and on which date the Contract shall come into existence (the "**Commencement Date**").

2.3 These Conditions (together with any additional terms and conditions set out in the Supplier's Quotation) apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.4 The Supplier's Quotation and any other proposal or quotation given by the Supplier, whether written or orally, shall not constitute an offer, and is only valid (unless expressly stated otherwise) for a period of 20 Business Days from its date of issue.

2.5 All of these Conditions shall apply to the supply of both the hiring of Equipment and the provision of Services, except where application to one or the other is specified.

2.6 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

**3. Equipment Hire**

3.1 The Supplier shall hire the Equipment to the Customer for use at the Site, subject to these Conditions.

3.2 The Supplier shall not, other than in the exercise of its rights under the Contract or applicable law, interfere with the Customer's quiet possession of the Equipment.

**4. Rental Period**

4.1 The Rental Period starts on the Delivery Date and shall continue, unless terminated earlier in accordance with clause 14 or otherwise specified in the Supplier's Quotation, until the date on which Customer issues the Supplier with written notice that it wishes to end the Rental Period (the "**Off-Hire Date**"), provided that the Rental Period shall not terminate or otherwise end before expiry of the Minimum Rental Term.

**5. Deposit**

5.1 Where the Supplier's Quotation states that a Deposit is due, the Customer shall pay the Deposit, in the amount set out in the Supplier's Quotation, on the Commencement Date.

5.2 The Deposit is a deposit against default by the Customer of payment of any Charges or any loss of or damage caused to the Equipment.

5.3 If the Customer fails to make payment of any Charges in accordance with the Supplier's Quotation and/or the terms of the Contract, or causes any loss or damage to the Equipment (in whole or in part), the Supplier shall be entitled to apply the Deposit against such default, loss, or damage. The Customer's liability shall not be limited to the amount of the Deposit. If the defaulted Charges, cost of repair or replacement of the Equipment exceeds the Deposit amount:

(a) the Supplier shall provide the Customer with an itemised invoice of the total shortfall in settling the default Charges, and the application of the Deposit; and

(b) the Customer shall pay the remaining balance to the Supplier immediately upon receipt of said invoice.

5.4 Where the Supplier has applied the Deposit under clause 5.3 above, the Customer shall pay to the Supplier any sums deducted from the Deposit within ten Business Days of a demand for the same.

5.5 Provided that no Charges or other costs are due to the Supplier (in which case the Supplier shall have the right to withhold refund of the Deposit until such Charges and/or other costs have been paid in full) the Deposit (or balance of the Deposit) shall be refunded to the Customer within 10 Business Days of the end of the Rental Period.

## 6. Delivery and installation

6.1 Delivery of the Equipment shall be made by the Supplier to the Site.

6.2 The Supplier shall use reasonable endeavours to effect Delivery of the Equipment by the Delivery Date. However, the Customer acknowledges that the Delivery Date is an estimate only and that time for Delivery is not of the essence. The Supplier shall not be liable for any delay in Delivery that is caused by a Force Majeure Event or by any act or omission of the Customer including, without limitation, the Customer failing to carry out any of its obligations under the Contract.

6.3 If stated in the Order, the Supplier shall, at the Customer's expense, install the Equipment at the Site. The Customer shall procure that a duly authorised representative of the Customer shall be present at the Delivery and, if applicable, the installation of the Equipment. Acceptance by such representative of the Delivery and, if applicable, the installation of the Equipment shall constitute conclusive evidence that the Customer has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended (save as regards any latent defects not reasonably apparent on inspection). If required by the Supplier, the Customer's duly authorised representative shall sign a receipt confirming such acceptance.

6.4 The Customer shall, at its sole expense, provide all requisite materials, facilities, access and suitable working conditions required to facilitate and enable Delivery and installation to be carried out safely and expeditiously, including any materials, facilities, access, working conditions and any other pre-requisites specified in the Supplier's Quotation.

6.5 If the Customer fails to accept Delivery of the Equipment on the Delivery Date then, except where such failure is caused by the Supplier's failure to comply with its obligations under the Contract:

(a) the Equipment shall be deemed to have been delivered at 9.00 am on the Delivery Date; and

(b) the Supplier shall store the Equipment until Delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

## 7. Supply of Services

7.1 The Supplier shall supply the Services to the Customer in accordance with the specification set out in the Supplier's Quotation in all material respects.

7.2 The Supplier shall use reasonable endeavours to meet any performance dates for the Services specified in the Supplier's Quotation, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 The Supplier reserves the right to amend the specification of the Services if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

## 8. Title, risk and insurance

8.1 The Equipment shall at all times remain the property of the Supplier, and the Customer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms and conditions of the Contract).

8.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Customer on Delivery. The Equipment shall remain at the sole risk of the Customer during the Rental Period and any further term during which the Equipment is in the possession, custody or control of the Customer (the "**Risk Period**") until such time as the Equipment is collected by, or redelivered to, the Supplier. During the Rental Period and the Risk Period, the Customer shall, at its own expense, obtain and maintain the following insurances:

(a) insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Supplier may from time to time nominate in writing;

(b) insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as the Supplier may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and

(c) insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as the

Supplier may from time to time consider reasonably necessary and advise to the Customer in writing.

8.3 All insurance policies procured by the Customer shall be endorsed to provide the Supplier with at least 10 Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall on the Supplier's request name the Supplier on the policies as a loss payee in relation to any claim relating to the Equipment. The Customer shall be responsible for paying any deductibles due on any claims under such insurance policies.

8.4 If the Customer fails to effect or maintain any of the insurances required under the Contract, the Supplier shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Customer.

8.5 The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Supplier and proof of premium payment to the Supplier to confirm the insurance arrangements.

8.6 The Customer shall give immediate written notice to the Supplier in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Customer's possession or use of the Equipment.

**9. Customer's obligations**

9.1 The Customer shall during the term of the Contract:

(a) ensure that the terms of the Order are complete and accurate;

(b) co-operate with the Supplier in all matters relating to the Equipment and the Services;

(c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to enable it to effect Delivery of the Equipment and provide the Services;

(d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Equipment and the Services, and ensure that such information is complete and accurate in all material respects;

(e) prepare the Customer's premises for the Delivery and, if applicable, the installation of the Equipment and the supply of the Services, including (without limitation) carrying out (in all material respects) requirements set out in the Supplier’s Quotation;

(f) obtain and maintain all necessary licences, permissions and consents which may be required for the Delivery and, if applicable, the installation of the Equipment, and the Services, before the Delivery Date;

(g) ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions provided by the Supplier;

(h) take such steps (including compliance with all safety and usage instructions provided by the Supplier) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;

(i) maintain at its own expense the Equipment in good and substantial repair in order to keep it in as good an operating condition as it was on the Delivery Date (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Equipment;

(j) make no alteration to the Equipment and shall not remove any existing component (or components) from the Equipment without the prior written consent of the Supplier unless the component (or components) is (or are) replaced immediately (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of a similar make and model or an improved or advanced version of it. Title in all substitutions, replacements, renewals made in or to the Equipment shall vest in the Supplier immediately on installation;

(k) keep the Supplier fully informed of all material matters relating to the Equipment;

(l) keep the Equipment at all times at the Site and shall not move or attempt to move any part of the Equipment to any other location without the Supplier's prior written consent;

(m) permit the Supplier or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter on the Site or any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;

(n) maintain operating and maintenance records of the Equipment and make copies of such records readily available to the Supplier, together with such additional information as the Supplier may reasonably require;

(o) not, without the prior written consent of the Supplier, part with control of (including for the purposes of repair or maintenance), sell or offer for

sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;

(p) not without the prior written consent of the Supplier, attach the Equipment to any land or building so as to cause the Equipment to become a permanent or immovable fixture on such land or building. If the Equipment does become affixed to any land or building then the Equipment must be capable of being removed without material injury to such land or building and the Customer shall repair and make good any damage caused by the affixation or removal of the Equipment from any land or building and indemnify the Supplier against all losses, costs or expenses incurred as a result of such affixation or removal;

(q) not do or permit to be done any act or thing which will or may jeopardise the right, title or interest of the Supplier in the Equipment and, where the Equipment has become affixed to any land or building, the Customer must take all necessary steps to ensure that the Supplier may enter such land or building and recover the Equipment both during the term of the Contract and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the Supplier of any rights such person may have or acquire in the Equipment and a right for the Supplier to enter onto such land or building to remove the Equipment;

(r) not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Customer shall notify the Supplier and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify the Supplier on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;

(s) not use the Equipment for any unlawful purpose;

(t) ensure that at all times the Equipment remains identifiable as being the Supplier's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment;

(u) allow the Supplier or its representatives, on request, access to the Site or any premises where the Equipment is located for the purpose of removing the Equipment at the end of the Rental Period; and

(v) not do or permit to be done anything which could invalidate the insurances referred to in clause 8.2.

9.2 The Customer acknowledges that the Supplier shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Customer or its officers, employees, agents and contractors, and the Customer shall indemnify the Supplier in full against all liabilities, costs, expenses,

damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of, or in connection with any failure by the Customer to comply with its obligations under clause 9.1.

9.3 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (a "**Customer Default**"):

(a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend Delivery of the Equipment and/or 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 in each case 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 9.3; 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.

## 10. Charges and payment

10.1 The Customer shall pay the Charges in accordance with the Supplier's Quotation and this clause 10. The Charges shall be paid in cleared funds to the back account nominated in writing by the Supplier from time to time.

10.2 The Charges are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Customer at the rate and in the manner from time to time prescribed by law.

10.3 In respect of the hire of the Equipment, the Supplier shall invoice the Customer on a monthly basis, provided that the Supplier reserves the right at its sole discretion, on written notice to the Customer, to invoice the Customer on a more frequent basis. In respect of Services, the Supplier shall invoice the Customer on completion of the Services.

10.4 The Customer shall pay each invoice submitted by the Supplier within 30 days of the date of the invoice and time for payment shall be of the essence of the Contract.

10.5 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

10.6 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting any of the Supplier's other rights or remedies under the Contract, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

10.7 If at any time during the Contract or after the Rental Period the Customer causes any loss or damage to the Equipment or any part of it, then, notwithstanding the provisions of clause 5.3, the Supplier shall be entitled to charge the Customer for the cost of replacement or repair, and the Customer shall pay such sums immediately on receipt of an invoice.

10.8 The Supplier reserves the right to increase the Charges:

(a) on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Consumer Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Consumer Prices Index;

(b) by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of supplying the Equipment or the Services that is due to:

(a) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

(b) any request by the Customer to change an Order; or

(c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

**11. Warranty**

11.1 The Supplier warrants to the Customer that:

(a) the Services will be provided using reasonable skill and care, and shall substantially confirm with their specification (as made available by the Supplier); and

(b) the Equipment shall substantially conform to its specification (as made available by the Supplier), be of satisfactory quality and fit for any purpose held out by the Supplier. The Supplier shall use all reasonable endeavours to remedy, free of charge, any material defect in the Equipment which manifests itself within twelve months from Delivery, provided that:

(a) the Customer notifies the Supplier of any defect in writing within ten Business Days of the defect occurring;

(b) the Supplier is permitted to make a full examination of the alleged defect;

(c) the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than the Supplier's authorised personnel;

(d) the defect did not arise out of any information, design or any other assistance supplied or furnished by the Customer or on its behalf; and

(e) the defect is directly attributable to defective material, workmanship or design.

11.2 Insofar as the Equipment comprises or contains equipment or components which were not manufactured or produced by the Supplier, the Customer shall be entitled only to such warranty or other benefit as the Supplier has received from the manufacturer.

11.3 If the Supplier fails to remedy any material defect in the Equipment in accordance with clause 11.1, the Supplier shall, at the Customer's request, accept the return of part or all of the Equipment and make an appropriate reduction to the Charges payable during the remaining term of the Contract.

**12. Intellectual property rights**

12.1 All Intellectual Property Rights in or arising out of or in connection with the Equipment and/or the Services shall be owned by the Supplier.

**13. Limitation of liability**

13.1 A reference to liability in this clause 13 includes every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

13.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

(a) death or personal injury caused by negligence;

(b) fraud or fraudulent misrepresentation; and

(c) breach of the terms implied by section 2 and section 7 of the Supply of Goods and Services Act 1982.

13.3 Subject to clause 13.2, the Supplier's total aggregate liability to the Customer shall not exceed the Charges actually paid to the Supplier by the Customer in the 12 months immediately preceding the event giving rise to such liability.

13.4 Subject to clause 13.2, neither party shall be liable to the other for any:

(a) loss of profits;

(b) loss of sales or business;

(c) loss of agreements or contracts;

(d) loss of anticipated savings;

(e) loss of use or corruption of software, data or information;

(f) loss of or damage to goodwill; and

(g) indirect or consequential loss.

13.5 The Supplier has given commitments as to compliance of the Equipment and Services with relevant specifications in clause 11.1. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982, and all implied terms and conditions as to the quality or performance of the Equipment are, to the fullest extent permitted by law, excluded from the Contract.

13.6 This clause 13 shall survive termination of the Contract.

**14. Termination**

14.1 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

(a) the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified to make such payment;

(b) the Customer commits a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified to do so;

(c) the Customer repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;

(d) the Customer 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 or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (IA 1986) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2)

of the IA 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

(e) the Customer 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;

(f) the Customer applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;

(g) 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 Customer (being a company, limited liability partnership or partnership);

(h) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the Customer (being a company);

(i) the holder of a qualifying floating charge over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;

(j) a person becomes entitled to appoint a receiver over all or any of the assets of the Customer or a receiver is appointed over all or any of the assets of the Customer;

(k) a creditor or encumbrancer of the Customer 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 the Customer's assets and such attachment or process is not discharged within 14 days;

(l) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.1(d) to clause 14.1(k) (inclusive);

(m) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy; or

(n) the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

## 15. Consequences of termination

15.1 On expiry or termination of the Contract, however caused:

(a) the Supplier's consent to the Customer's possession of the Equipment shall terminate;

(b) the Supplier may, by its authorised representatives, without notice and at the Customer's expense, retake possession of the Equipment and for this purpose may enter the Site or any premises at which the Equipment is located;

(c) the Customer shall ensure the safe and proper storage of the Equipment until it has been collected by the Supplier; and

(d) without prejudice to any other rights or remedies of the Customer, the Customer shall pay to the Supplier on demand:

(a) all Charges and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 10.6;

(b) any costs and expenses incurred by the Supplier in recovering the Equipment or in collecting any sums due under the Contract (including any storage, insurance, repair, transport, legal and remarketing costs); and

(c) any sums payable by the Customer due to loss or damage to the Equipment or any part of it pursuant to clause 10.7 and/or clause 5.3.

15.2 On termination of the Contract pursuant to clause 14.1, without prejudice to any other rights or remedies of the Supplier, the Customer shall pay to the Supplier on demand a sum equal to the whole of the Charges that would (but for the termination) have been payable if the Contract had continued from the date of such demand to the end of the Rental Period.

15.3 The sums payable pursuant to clause 15.2 shall be agreed compensation for the Supplier's loss and shall be payable in addition to the sums payable pursuant to clause 15.1(d). Such sums may be partly or wholly recovered from any Deposit.

15.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

15.5 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, 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.

## 16. Confidentiality

16.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 16.2.

16.2 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 16; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

16.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## 17. Force majeure

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 90 days, the party not affected may terminate the Contract by giving 30 days' written notice to the affected party.

## 18. Entire agreement

18.1 The Contract constitutes the entire agreement between the parties.

18.2 Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

## 19. Assignment and other dealings

19.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

19.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

**20. No partnership or agency**

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

**21. Variation**

Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

**22. Waiver**

22.1 Except as set out in clause 2.6, a waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

22.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

**23. Severance**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 23 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

**24. Notices**

24.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

(a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

(b) sent by email to the following addresses (or an address substituted in writing by the party to be served):

Supplier: office@albadewatering.co.uk.

Customer: the email address set out in the Supplier's Quotation or, if no email address is set out in the Supplier's Quotation, the address to which the Supplier sends the Supplier Quotation.

24.2 Any notice shall be deemed to have been received:

(a) if delivered by hand, at the time the notice is left at the proper address;

(b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

(c) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

(d) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**25. Third party rights**

25.1 The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

25.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**26. Multi-tiered dispute resolution procedure**

26.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**), then the parties shall follow the procedure set out in this clause:

(a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the sales director of the Supplier and the managing director of the Customer shall attempt in good faith to resolve the Dispute;

(b) if the sales director of the Supplier and the managing director of the Customer are for any reason unable to resolve the Dispute within 14 days of service of the Dispute Notice, either party may (but are not obliged to) refer the Dispute to mediation. Where the parties agree to mediate, the mediation shall be conducted in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR. Unless otherwise agreed between the parties, the mediation will start not later than 21 days after the date of the ADR notice.

(c) For the avoidance of doubt, the Supplier shall not be required to enter into mediation for any Dispute relating to the non-payment of fees or any other sums due to the Supplier under the Contract.

26.2 Nothing in this clause 26 shall prevent or restrict the Supplier from commencing court proceedings at any time for the recovery of any unpaid fees or other sums due from the Customer

**27. Governing law and jurisdiction**

27.1 The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

27.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.