

JD Drains Ltd. Services Agreement

General Terms and Conditions

IMPORTANT THESE TERMS AND CONDITIONS TOGETHER WITH THE AGREEMENT LETTER GOVERN AND FORM THE AGREEMENT BETWEEN THE SUPPLIER AND THE CUSTOMER RELATING TO THE PROVISION OF THE SERVICES BY THE SUPPLIER TO THE CUSTOMER

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Agreement:

Agreement: the agreement between the Supplier and the Customer for the provision of Services, such agreement being embodied in the Agreement Letter and these General Terms and Conditions;

Agreement Letter: the letter issued in duplicate by the Supplier (accompanied by these General Terms and Conditions) identifying the Customer and containing certain additional terms of the Agreement, one copy of which has been countersigned by the Customer signifying such agreement;

Fee: such fee, payable by the Customer to the Supplier in consideration of the provision of the Services as is set out in the Agreement Letter;

Cancellation Fee: shall have the meaning ascribed to it in clause 6.2;

Clean Date(s): the dates as set out in the Agreement Letter on which the Services are to be provided by the Supplier to the Customer at the Premises or if, no specific dates are specified, the frequency at which the Services are to be provided to the Customer at the Premises and as agreed between the Customer and the Supplier;

Commencement Date: the date specified in the Agreement Letter;

Customer: a person, firm company or other entity to whom Services are supplied by the Supplier and whose details are set out in the Agreement Letter;

Customer's Equipment: any products, equipment, tools or facilities provided by the Customer and used directly or indirectly in the supply of the Services;

Customer's Property: all equipment, furniture, fixtures and fittings and other property of the Customer located at the Premises, including the Customer's Equipment;

Notice Period: the notice period specified in the Agreement Letter;

Premises: the premises at which the Services are to be carried out as set out in the Agreement Letter;

Services: the services to be provided by the Supplier under this Agreement as set out in Part 1 of the Schedule, together with any other services which the Supplier provides or agrees to provide to the Customer;

Supplier: JD Drains Ltd. incorporated and registered in England and Wales with company number 10305095 whose registered office is at 2 City Limits Danehill Reading Berkshire RG6 4UP;

Supplier's Equipment: any products, equipment or tools provided by the Supplier or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate Agreement between the parties under which title passes to the Customer;

Term: the term specified in the Agreement Letter, or if none, then the term of this Agreement as determined in accordance with clause 2.2; and

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

- 1.1. 1.2 Clause and schedule headings shall not affect the interpretation of this Agreement.
- 1.2. 1.3 Should any term of the Agreement Letter conflict with any of these general conditions, the term set out in the Agreement Letter shall prevail.
- 1.3. 1.4 The Schedule and Agreement Letter form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedule and the Agreement Letter.
- 1.4. 1.5 Words in the singular shall include the plural and vice versa.
- 1.5. 1.6 The words "include," "includes," and "including" will be deemed to be followed by "without limitation."
- 1.6. 1.7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7. 1.8 A reference to writing or written includes faxes but not e-mail.

2. COMMENCEMENT AND DURATION

- 2.1 The Supplier shall provide the Services to the Customer on the terms and conditions of this Agreement from the Commencement Date.
- 2.2 The Services supplied under this Agreement shall continue to be supplied on the Clean Dates for the Term, or if none is specified in the Agreement Letter then the Term shall be deemed to be a period of 1 year from the Commencement Date (where the Agreement Letter provides for one Clean Date the Term is deemed to terminate the day after that Clean Date) and, after that, unless either party has given written notice to terminate to the other not later than six months before the first anniversary of the Commencement Date, the Services shall continue to be supplied and the Term shall continue unless this Agreement is terminated by one of the parties giving to the other not less than the Notice Period, unless this Agreement is terminated in accordance with clause 10.

3. SUPPLIER'S OBLIGATIONS

- 3.1 The Supplier shall use reasonable endeavours to provide the Services to the Customer, in accordance with the Schedule in all material respects.

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- 3.2. The Supplier shall use reasonable endeavours to meet any performance dates (including the Flushing Project Dates) as agreed with the Customer in writing, but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this Agreement.
- 3.3. The Supplier shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Premises and that have been communicated to the Supplier under clause 4.1(d), provided that the Supplier shall not be liable under this Agreement if, as a result of such observation, it is in breach of any of its obligations under this Agreement.

4. CUSTOMER'S OBLIGATIONS

4.1. The Customer shall:

- (a) co-operate with the Supplier in all matters relating to the Services;
 - (b) comply with the provisions of Part 2 of the Schedule;
 - (c) provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Premises to enable the Supplier to perform the Services on the Flushing Project Date; and
 - (d) give the Supplier reasonable notice of all health and safety rules and regulations and any other reasonable security requirements that apply at the Premises.
- 4.2. Without prejudice to clause 4.3, if the Supplier's ability to perform all or any part of the Services in accordance with the terms of this Agreement is effected by the Customer failing to comply with clause 4.1 or where a "No Show" notice is used by the Customer and the Supplier has not agreed to a variation of the Services and/or the Fee prior to the Flushing Date, the Customer shall remain fully liable for the Fee.
- 4.3. If the Supplier's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.
- 4.4. The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this Agreement, subject to the Supplier confirming such costs, charges and losses to the Customer in writing.

5. CHARGES AND PAYMENT

- 5.1. In consideration of the provision of the Services by the Supplier, the Customer shall pay the charges as set out in the Agreement Letter, which shall be payable by the Customer as set out in the Agreement Letter.
- 5.2. The Fee as set out in the Agreement Letter shall be exclusive of VAT, which the Supplier shall add to its invoices at the appropriate rate.
- 5.3. The Supplier shall invoice the Customer in arrears for all Services provided to the Customer during the preceding agreed period and any applicable Cancellation Fees payable by the Customer.
- 5.4. The parties agree that the Supplier may review and increase the Fee set out in the Agreement Letter, provided that such charges cannot be increased more than once in any 12 month period. The Supplier shall give the Customer written notice of any such increase two months before the proposed date of that increase. If such increase is not acceptable to the Customer, it may, within 20 days of such notice being received or deemed to have been received in accordance with clause 19, terminate the Agreement by giving one months written notice to the Supplier, such notice to expire on the day preceding the date upon which the proposed Fee increase was due to become effective.
- 5.5. Each invoice submitted by the Supplier to the Customer shall be paid by the Customer in full (without deduction or set-off) in cleared funds within 30 days of the date of the invoice by cheque or bank transfer to a bank account nominated in writing by the Supplier.
- 5.6. Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may:
- (a) charge interest on such sum from the due date for payment at the annual rate of four per cent above the base lending rate from time to time of HSBC PLC, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Supplier may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 and the Customer shall pay the interest immediately on demand; and
 - (b) suspend all Services until payment has been made in full.
- 5.7. Time for payment shall be of the essence of this Agreement.
- 5.8. All sums payable to the Supplier under this Agreement shall become due immediately on its termination, despite any other provision. This clause 5.8 is without prejudice to any right to claim for interest under the law, or any such right under this Agreement.
- 5.9. The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

6. FLUSHING DATES AND CANCELLATION

- 6.1. Flushing Dates shall be agreed between the Supplier and Customer (either by email or verbally) and where possible set out in the Agreement Letter.
- 6.2. Where a Flushing Date is specified in the Agreement Letter or has been agreed between the Supplier and the Customer, the Customer must give the Supplier notice in writing of the cancellation or postponement of such Flushing Date and where such notice is given, the following cancellation or postponement charges will apply and be payable by the Customer ("**Cancellation Fee**"):
- (a) less than 48 hours' notice: 90% of the Fee payable for the applicable Flushing Date;

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- (b) less than one weeks' notice: 50% of the Fee payable for the applicable Flushing Date;
- (i) less than two weeks' notice: 25% of the Fee payable for the applicable Flushing Date; and
- (c) more than two weeks' notice: no Cancellation Fee is payable.

7. CONFIDENTIALITY AND THE SUPPLIER'S PROPERTY

- 7.1. The Customer 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 Customer by the Supplier, its employees, agents, consultants or subcontractors and any other confidential information concerning the Supplier's business or its products which the Customer may obtain.
- 7.2. All products, materials, equipment and tools supplied by the Supplier to the Customer (including the Supplier's Equipment) shall, at all times, be and remain as between the Supplier and the Customer the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

8. LIMITATION OF LIABILITY - THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

8.1. This clause 8 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Customer in respect of:

- (a) any breach of this Agreement;
- (b) any use made by the Customer of the Services; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement and/or the provision of the Services.

8.2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

8.3. Nothing in this Agreement limits or excludes the liability of the Supplier:

- (a) for death or personal injury resulting from negligence; or
- (b) for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Supplier.

8.4. Subject to clause 8:

- (a) the Supplier shall not be liable for:
 - (i) loss of profits; or
 - (ii) loss of business; or
 - (iii) depletion of goodwill and/or similar losses; or
 - (iv) loss of anticipated savings; or
 - (v) loss of goods; or
 - (vi) loss of contract; or
 - (vii) loss of use; or
 - (viii) loss of corruption of data or information; or
 - (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
- (b) the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Agreement shall be limited to £1,000,000.00 (one million pounds).

9. DATA PROTECTION

The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Supplier in connection with the Services.

10. TERMINATION

10.1. Without prejudice to any other rights or remedies which the parties may have, either party may terminate this Agreement without liability to the other immediately on giving notice to the other if:

- (a) the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 21 days after being notified in writing to make such payment; or
- (b) the other party commits a material breach of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (c) the other party has a receiving order made against it, makes an arrangement with its creditors generally or takes or suffers any similar action as a result of debt or, being a company, convenes a meeting of its creditors or suffers a petition to be presented or a meeting to be convened or the action to be taken with a view to its liquidation except for the purpose of and followed by a solvent amalgamation or reconstruction.

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10.2. On termination of this Agreement 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 been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- (b) the Customer shall, return all of the Supplier's Equipment that is at the Premises (if any). If the Customer fails to do so, then the Supplier may enter the Premises and take possession of it. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and
- (c) the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

10.3. On termination of this Agreement (however arising) clauses 5, 6, 7, 8, 9 and 12 shall survive and continue in full force and effect:

11. FORCE MAJEURE

Save in respect of any payment obligation, neither party will be liable for any delay in performing or failure to perform its obligations under this Agreement due to causes outside its reasonable control and it will not constitute a breach of this Agreement. The time for performance of the affected obligation will be extended by such period as is reasonable.

12. GENERAL

- 12.1. Subject to clause 5.6 no variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 12.2. No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. 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.
- 12.3. If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Agreement, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 12.4. If a provision of this Agreement (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 12.5. This Agreement is the complete and exclusive statement of the contract between the parties relating to the subject matter of this Agreement (save in respect of any fraudulent representation) and supersedes all previous communications, representations and other arrangements, oral or written. The Customer acknowledges that no reliance is placed by it on any representation made but not embodied in this Agreement. The printed terms and conditions of any purchase order or other correspondence and documents of the Customer issued in connection with this Agreement will not apply unless expressly accepted in writing by the Supplier.
- 12.6. The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement. The Supplier may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement. Each party that has rights under this Agreement is acting on its own behalf and not for the benefit of another person.
- 12.7. Nothing in this Agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 12.8. A person who is not a party to this Agreement shall not have any rights under or in connection with it.
- 12.9. All notices which are required to be given under this Agreement will be in writing and will be sent to the address of the recipient set out in the Agreement Letter or such other address as the recipient may designate by notice given in accordance with this condition. Any such notice may be delivered personally, by first class pre-paid letter or facsimile transmission and will be deemed to have been received:
 - (a) by hand delivery, at the time of delivery;
 - (b) by first class post, 48 hours after the date of mailing;
 - (c) by facsimile transmission, immediately on transmission provided a successful transmission report is achieved and a confirmatory copy is sent by first class pre-paid post or by hand by the end of the next Business Day.
- 12.10. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales and each party irrevocably submits to the exclusive jurisdiction of the courts of England and Wales.

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The Schedule

Part 1: The Services

Tanker service, removing waste water from storage tanks and disposing in the correct manner..