

SWARM Water Management

Terms of Trading

1 Definitions

1.1 In these terms, the following definitions apply:

“you” means the person or firm who orders goods from us.

“we/our/us” means SWARM Water Management, Company Number 1081248 of 41 Wheatfields,
Aldington, Ashford, Kent TN25 7GF

2 Basis of contract

2.1 An order constitutes an offer by you to purchase goods from us in accordance with these terms.

2.2 Your order shall only be deemed to be accepted when we receive your order or we commence the supply of goods and/or services, whichever is the earlier, at which point and on which date a binding contract shall come into existence between you and us.

2.3 These terms apply to the contract between you and us to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4 You acknowledge that you have not relied on any statement, promise, representation, assurance or warranty which is not set out in these terms.

2.5 All of these terms shall apply to the supply of goods.

3 Price

3.1 The price for the goods shall be the price set out in our quote.

3.2 The price quoted excludes VAT (unless otherwise stated). VAT will be charged at the rate applying at the time of delivery or performance of the services.

3.3 Any quotation given by us shall not constitute an offer and all quotations shall lapse after 30 days (unless otherwise stated).

3.4 The price quoted includes delivery of goods (unless otherwise stated).

3.5 Rates of tax on the goods will be those applying at the time of delivery.

4 Delivery of Goods

4.1 All delivery times quoted for goods are estimates only and time of delivery is not of the essence. We shall not be liable for any delay in delivery of the goods that is caused by a Force Majeure (see clause 15) or your failure to provide us with adequate delivery instructions that are relevant to the supply of goods.

4.2 If we fail to deliver within a reasonable time after the quoted delivery time, you may (by informing us in writing) cancel the order, however:

4.2.1 you may not cancel if we receive your notice after the goods have been despatched;

4.2.2 you may not cancel if we have made goods to your specification; and

4.2.2 if you cancel the contract, you can have no further claim against us under that contract.

4.3 If you accept delivery of goods after the estimated delivery time, it will be on the basis that you have no claim against us for delay (including indirect or consequential loss, or increase in the price of the goods).

4.4 We may deliver the goods in instalments where agreed. Each instalment is treated as a separate contract.

4.5 We may decline to deliver goods if:

4.5.1 we believe that it would be unsafe, unlawful or unreasonably difficult to do so; or

4.5.2 The premises (or the access to them) are unsuitable for our carrier's vehicle.

5 Risk

5.1 Goods are at your risk from the time of delivery.

5.2 Delivery takes at your premises or address specified by you (if we are arranging carriage).

5.3 A signed carrier's note or single delivery note will be proof of delivery for the whole shipment.

5.3 You must inspect the goods on delivery. You must inform us of any shortages at the time of delivery by making a note on the delivery/carrier's note before signing. Where it is not possible to count items on delivery you must inform us of any shortages as soon as possible and in any event within three days of delivery. If any goods are damaged, you must write to tell us (and provide proof of damage) as soon as possible and in any event within three days of delivery. If packaging is damaged or contents are visibly damaged before unpacking, you must also note this when signing for the delivery. You must give us (and any carrier) a fair chance to inspect the damaged goods. We shall not be liable to you, pursuant to clause 8 or otherwise, for damage or loss if you fail to comply with the provisions of this clause 5.3.

6 Payment Terms

6.1 We may invoice you for goods at the time of despatch.

6.2 If you have an approved credit account, payment is due no later than 30 days after the date of our invoice, unless otherwise agreed in writing.

6.3 If you fail to pay us in full on the due date we may:

- 6.3.1 suspend or cancel any outstanding and/or future deliveries and contracts;
- 6.3.2 cancel any discount offered to you;
- 6.3.3 charge you interest on any overdue amounts at the rate set under section 6 of the Late Payment of Commercial Debts (Interest) Act 1998;
 - a. calculated (on a daily basis) from the date of our invoice until payment;
 - b. before and after any judgment (unless a court orders otherwise);
- 6.3.4 claim fixed sum compensation from you under section 5A of that Act to cover our credit control overhead costs; and
- 6.3.5 recover (under clause 6.7) the cost of taking legal action to make you pay.
- 6.4 If you have an approved credit account, we may withdraw it or reduce your credit limit or bring forward your due date for all payments if any invoice is overdue. We may do any of these at any time without notice.
- 6.5 You do not have the right to set off any money you may claim from us against anything you may owe us.
- 6.6 While you owe money to us, we have a lien and power of sale on any of your property in our possession.
- 6.7 You are to indemnify us in full and hold us harmless from all expenses and liabilities we may incur (whether directly or indirectly including financing costs, including legal costs, on a full indemnity basis and the cost of instructing a debt recovery agency to recover a debt due to us, if any) following any breach by you of any of your obligations under these terms.

7 Title

- 7.1 Title to the goods shall not pass to you until we receive payment in full (in cash or cleared funds) for the goods and any other goods that we have supplied to you in respect of which payment has become due, in which case title to the goods shall pass at the time of payment of all such sums.
- 7.2 Until title to the goods has passed to you, you shall, unless the goods are sold by you in the ordinary course of business:
 - 7.2.1 store the goods separately from all other goods you hold so that they remain readily identifiable as our property;
 - 7.2.2 not remove, deface or obscure any identifying mark or packaging on or relating to the goods;
 - 7.2.3 maintain the goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; and

7.2.4 give us such information relating to the goods as we may require from time to time.

7.3 If before title to the goods passes to you, you become insolvent (see clause 16.4) then without limiting any other right or remedy we may have:

7.3.1 your right to resell the goods or use them in the ordinary course of business ceases immediately and we may at any time:

- a. require you to deliver up the goods in your possession which have not been resold, or irrevocably incorporated into another product; and
- b. if you fail to do so promptly, enter any of your premises, or the premises of a third party where the goods are stored, in order to recover the goods.

7.4 You must inform us (in writing) immediately if you become insolvent (see clause 16.4).

7.5 Despite our retention of title to the goods, we have the right to take legal proceedings to recover the price of goods supplied, should you not pay us by the due date.

7.6 You are not our agent. You have no authority to make any contract on our behalf, or in our name.

8 Warranties

8.1 We warrant that the goods will for a period of 12 months:

8.1.1 comply with their description on our quotation form; and

8.1.2 are free from material defect at the time of delivery (as long as you comply with clause 8.3).

8.2 We give no other warranty (and exclude any warranty, term or condition that would otherwise be implied) as to the quality of the goods or their fitness for any purpose. The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the contract.

8.3 If you believe that we have delivered goods that are defective in materials or workmanship, you must:

8.3.1 inform us (in writing), with full details, as soon as possible after you have identified the defect in the goods.

8.3.2 allow us to investigate (we may need access to your premises and/or product samples in order to do this, and we may require you to return the goods or a sample to us for inspection where in our opinion this would be more practicable. You must meet the cost of returning any goods or samples to us).

8.4 If the goods are found to be defective in material or workmanship (following our investigations), and you have complied with those conditions (in clause 8.5) in full, we will (at our option) repair the goods, replace the goods or refund the price.

8.5 We shall under no circumstances be liable to you, 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.

8.6 Our total liability to you in respect of all losses arising under or in connection with the contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the invoiced price of the goods or services.

8.7 Nothing in these terms restricts or limits our liability for death or personal injury resulting from negligence.

8.9 Nothing in these terms affects or limits our liability for fraudulent misrepresentation.

8.10 We shall not be liable for goods' failure to comply with the warranty set out in clause 8.2 in any of the following events:

8.10.1 you make any further use of such goods after giving notice in accordance with clause 8.5;

8.10.2 the defect arises because you failed to follow our oral or written instructions as to the storage, installation, use and maintenance of the goods (or if there are none) good trade practice regarding the same;

8.10.3 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

8.11 This clause 8 shall survive termination of the contract.

9 Customer Obligations

9.1 You shall:

9.1.1 ensure that the terms of the order and any goods specifications you provide to us are complete and accurate;

10 Return of Goods

10.1 We will accept the return of goods from you only:

10.1.1 by our prior agreement (confirmed in writing);

11 Cancellation

11.1 You may not cancel the order unless we agree in writing (and clauses 4.3.2 and 13.2 then apply).

11.2 If the order is cancelled (for any reason) you are to pay us on demand (or otherwise agreed in writing) for all stock (finished or unfinished) that we may then hold (or to which we are committed) for the order. If we have manufactured goods to your order and you cancel the order then you must pay us for the full price of the goods.

11.3 We may suspend or cancel the order or terminate the contract with immediate effect, by written notice, if:

11.3.1 you fail to pay us any money when due (under the order or otherwise);

11.3.2 you become insolvent (see clause 16.4);

11.3.3 you fail to honour your obligations under these terms.

11.4 On termination of the contract for any reason, you shall:

11.4.1 immediately pay us all of our outstanding unpaid invoices and interest; and

11.4.2 you shall return all goods that have not been fully paid for. If you fail to do so, then we may enter your premises and take possession of them. Until they have been returned, you shall be solely responsible for their safekeeping and will not use them for any purpose not connected with the contract;

11.4.3 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 cancellation; and

11.4.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

12 Waiver and Variations

12.1 Any waiver or variation of these terms is binding only if:

14.1.1 made (or recorded) in writing;

14.1.2 signed on behalf of each party; and

14.1.3 expressly stating an intention to vary these terms.

12.2 All orders that you place with us will be on these terms (or any that we may issue to replace them). By placing an order with us, you are expressly waiving any printed terms you may have to the extent that they are inconsistent with our terms.

12.3 No failure or delay by a party in exercising any right or remedy under these terms shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13 Force Majeure

13.1 If we are unable to perform our obligations to you (or able to perform them only at unreasonable cost) because of circumstances beyond our reasonable control (a "Force Majeure"), we may cancel or suspend any of our obligations to you, without liability.

13.2 Examples of a Force Majeure circumstance include, but are not limited to, an act of God, accident, explosion, war, terrorism, fire, flood, transport delays, strike and other industrial disputes and difficulty in obtaining supplies.

14 General

14.1 English law is applicable to any contract made under these terms. The English and Welsh courts have exclusive jurisdiction.

14.2 If you are more than one person, each of you has joint and several obligations under these terms.

14.3 If any of these terms are unenforceable, invalid or illegal as drafted:

16.3.1 it will not affect the validity and enforceability of any other of these terms; and

14.3.2 if it would be enforceable if amended, it will be treated as so amended to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provisions under this clause shall not affect the validity and enforceability of the rest of the contract.

14.4 We may treat you as insolvent if:

14.4.1 you are unable to pay your debts as they fall due;

14.4.2 you admit inability to pay your debts (including if you suspend, or threaten to suspend, payment of your debts); or

14.4.2 if your financial position deteriorates to such an extent that in our reasonable opinion your capability to adequately fulfil your obligations under the contract has been placed in jeopardy;

14.4.2 you (or any item of your property) become the subject of:

- a. any formal insolvency procedure (examples of which include receivership, liquidation, administration, voluntary arrangements (including a moratorium) or bankruptcy);
- b. any application or proposal for any formal insolvency procedure; or
- c. any application, procedure or proposal overseas with similar effect or purpose.

14.5 All brochures, catalogues and other promotional materials are to be treated as illustrative only. Their contents form no part of any contract between us, and you should not rely on them in entering into any contract with us.

14.6 Any notice by either of us, which is to be served under these terms may be served by leaving it at, or by delivering it to (by first class post or by fax or email) the other's registered office or principal place of business. All such notices must be signed.

- 14.7 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 16.6; if sent by pre-paid first class post or other next working day delivery service, at 9.00am on the second business day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by by fax or e-mail, one business day after transmission.
- 14.8 No contract will create any right enforceable (by virtue of the Contracts (Rights of Third Parties) Act 1999) by any person not identified as the buyer or seller.
- 14.9 The only statements upon which you may rely in making the contract with us, are those made in writing by someone who is our authorised representative and either;
- 14.9.1 contained in our estimate (or any covering letter) and not withdrawn before the contract is made; or
 - 14.9.2 which expressly state that you may rely on them when entering into the contract.
- 14.10 We reserve the right to record telephone calls, e-mails and any other communication between us and use such recordings to monitor compliance with our systems and as evidence in court, if required. In particular, we may use recordings as evidence of proof of delivery, if required.
- 14.11 Please note that we may transfer personal information about you to those we may appoint to administer your account or recover amounts owing. That may include, for example, passing information about you to our insurers, debt recovery agents and solicitors, if you fail to pay us.