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Drains In Motion Full Terms & Conditions

1. Parties, Definitions and Interpretation

In these terms and conditions (which are referred to in this document as “these terms”), “Customer” means the customer for whom the Works are to be carried out by DRAINS IN MOTION LTD. “Contract” means the agreement between the Customer and DRAINS IN MOTION LTD to carry out the Works of which these terms form a part and (where these terms are a schedule to a signed agreement between the Customer and DRAINS IN MOTION LTD (“the Agreement”)) the Agreement, “Works” means the works described in DRAINS IN MOTION LTD estimate and/or as referred to in DRAINS IN MOTION Work Detail Sheet or any other document or email issued by DRAINS IN MOTION, as may be varied by agreement in writing between the parties. For the purposes of these terms, “in writing” includes by email and any document which is set out in a hand held device and any signature on a hand held screen shall be treated as in writing. In these terms words importing the masculine gender also include the neuter and the feminine gender and words importing the singular number include also the plural number, where the context so requires.

2. General

2.1 The Customer will be treated as an Account Customer or a Non-Account Customer, according to DRAINS IN MOTION reasonable discretion.

2.2 All estimates given by DRAINS IN MOTION, all orders and instructions given by the Customer, and all work authorisations, are governed by these terms. They supersede any other terms appearing elsewhere and override and exclude any other terms stipulated or incorporated or referred to by the Customer, whether in the order or instructions or in any negotiations or in

any course of dealing established between DRAINS IN MOTION and the Customer, except where these terms are a schedule to a signed

Agreement between the Customer and DRAINS IN MOTION, in which event these terms apply only to the extent not inconsistent with that Agreement.

2.3 The Customer acknowledges that DRAINS IN MOTION has not made any representations (other than any expressly stated in the Contract and/or in DRAINS IN MOTION estimate) which have induced it to enter into the Contract and the Contract shall constitute the entire understanding between the Customer and DRAINS IN MOTION for the performance of the Works (and detailed in paragraph 4 below).

2.4 No modification to the Contract shall be effective unless made by an express written agreement or email exchange between the parties. The signing on behalf of DRAINS IN MOTION of any documentation of the Customer shall not imply any modification of the Contract.

2.5 Nothing in this Contract is intended to confer on any person any right to enforce any term which that person would not have but for The Contracts (Rights of Third Parties) Act 1999. Accordingly, a person who is not a party to this Contract shall have no rights under that Act to enforce any of its terms, but this does not affect any right or remedy of such person which exists or is available apart from that Act.

3. Estimates and variations to the price

3.1 Any estimate by DRAINS IN MOTION is subject to withdrawal by DRAINS IN MOTION at any time before receipt of an unqualified acceptance from the Customer and shall be deemed to be withdrawn unless so accepted within 28 days from its date.

3.2 Unless otherwise specified by DRAINS IN MOTION in the relevant estimate, an estimate is not a firm or fixed price quotation. It is an estimate of the likely minimum cost of the Works, based on the information made available to DRAINS IN MOTION. DRAINS IN MOTION final price will be calculated on the basis specified in the estimate, if any, or, if none, in

accordance with DRAINS IN MOTION standard Account Rate Card applicable at the time the Works are carried out and may be increased above (but not reduced below) the specified price. Furthermore, DRAINS IN MOTION reserves the right to increase the price before carrying out the Works by an amount equivalent to any increase to DRAINS IN MOTION in the cost of relevant materials, labour, equipment hire or transport since the date upon which DRAINS IN MOTION estimate, written, emailed or oral, was given, save that if this would increase the estimated price by more than 10%, the Customer may cancel the Contract provided it does so before the Works are begun, any relevant materials are ordered or any relevant equipment is hired.

3.3 DRAINS IN MOTION reserves the right to charge a fee for the collection of materials from its supplier except with respect to works for which there is an estimate. If the collection occurs whilst DRAINS IN MOTION is on site, the time taken will be treated as an addition to the Works and charged at the relevant rate. If the materials are ordered for subsequent collection and delivery, a charge may be made by DRAINS IN MOTION of £50 plus VAT. Materials will be supplied at cost net after DRAINS IN MOTION discounts plus DRAINS IN MOTION normal mark-up to cover handling, stock maintenance, etc.

3.4 DRAINS IN MOTION standard Account Rate Card is available for inspection at DRAINS IN MOTION premises during normal business hours. The Account Rate Card specifies half hourly rates. There is a minimum charge of one hour per visit. Subject to that, charges are made by the half hour, rounded up to the next half hour.

4. The Works

All descriptions, illustrations etc. contained in any catalogues, price lists or advertisements, or otherwise communicated to the Customer, are intended merely to present a general idea of the Works and nothing contained in any of them shall form a part of the Contract.

5. The Price

The price payable by the Customer is calculated as specified in paragraph 3 above. Unless otherwise stated, the price and all estimates provided by

DRAINS IN MOTION are shown exclusive of Value Added Tax which will be payable in addition where properly chargeable.

6. Payment

6.1 Non-Account Customers: Payment by the Customer is due on completion of the Works. Payment must be made on such completion.

6.2 Account Customers: DRAINS IN MOTION will seek to submit invoices to the Customer within 14 days of completion of the Works and, subject to paragraph 8 below, payment must be made by the Customer within 30 days after the date of issue of the invoice.

6.3 Snagging: Where the Works have been completed subject to snagging, 95% of all amounts outstanding must be paid on such completion and the Customer must provide access to DRAINS IN MOTION without delay to enable the snagging to be finalised. The balance of 5% will become payable upon the finalisation of the snagging or, if access has not been made available to carry out the snagging within 14 days of completion, at the expiry of such 14 day period.

6.4 Where the Customer is represented by a third party (such as a managing agent, contractor or other representative), in the event of non-payment by the Customer, the third party will be responsible for payment unless DRAINS IN MOTION has agreed otherwise in writing.

6.5 DRAINS IN MOTION shall be entitled to interest on a daily basis on any amount not paid on the due date for payment from such due date until payment in full at 4% above the Bank of England base rate at the relevant time.

6.6 DRAINS IN MOTION shall not be required to issue or deliver any certificates, guarantees or other similar documents regarding the Works until payment has been made in full.

7. Commencement and Completion Dates

Dates specified for the commencement and completion of the Works are estimates only. DRAINS IN MOTION shall use all reasonable endeavours

to ensure that it will attend on the date agreed and within two hours of the time given for standard weekday attendance. However, DRAINS IN MOTION accepts no liability in respect of non-attendance or late attendance on site, or for the late or non-delivery of materials.

Time shall not be of the essence of the Contract except as provided in paragraph 16 below.

8. Inspection of Works

The Customer shall inspect the Works as far as it is reasonably possible to do so immediately upon their completion (though failure to countersign the relevant Works Detail Sheet shall not imply rejection of the Works) and if it considers that the Works or any part thereof are not in accordance with the Contract, it shall within 7 days from the date of inspection give detailed notice in writing thereof. In the absence of any such notice, the Works shall be conclusively presumed to be complete and free from any defect which would be apparent on reasonable examination.

9. Indemnity

The Customer shall indemnify DRAINS IN MOTION against all actions, suits, claims, demands, losses, charges, costs and expenses which DRAINS IN MOTION may suffer or incur in connection with a claim by any third party resulting from a breach of the Customer's obligations, undertakings, representations and warranties in connection with this Contract.

10. Whole agreement and Exclusion of liability

These terms set out DRAINS IN MOTION entire liability in respect of the Works and DRAINS IN MOTION liability under them shall be in lieu and to the exclusion of all other warranties, conditions, terms and liabilities, expressed or implied, in respect of the Works and the quality thereof.

11. Limitation of Liability, and Liability of DRAINS IN MOTION

DRAINS IN MOTION liability shall be limited to:

11.1 the repair or making good of any defect pursuant to its undertaking in paragraph 13 below and subject always to paragraph 8 above;

11.2 liability for death or personal injury resulting from negligence in the course of carrying out DRAINS IN MOTION duties, and

11.3 the reasonable costs of repair or reinstatement of any loss or damage to the Customer's property if such loss or damage results from DRAINS IN MOTION negligence or that of its employees, agents or sub-contractors and the Customer incurs such costs.

12. Access

The Customer shall provide clear access to enable DRAINS IN MOTION to undertake the Works and will make all necessary arrangements with the proper persons or authorities for any traffic controls and signals or other permits or permissions required in connection with the carrying out of the Works. The Customer will at all times provide a safe working environment for DRAINS IN MOTION and its employees, agents and sub-contractors for the purposes of carrying out the Works. Where applicable to drainage works, the Customer will provide, if possible, a plan showing drain layouts. If this is not available, DRAINS IN MOTION reserves the right to render additional charges at the relevant applicable rate in accordance with paragraph 3.2 above if blockages occur in drains not covered by the specifications or if it is necessary to trace unidentified drains to complete the Works. The Customer must obtain any permission for DRAINS IN MOTION to proceed over property belonging to third parties if this is necessary for the proper execution of the Works and shall obtain any permission necessary to carry out work on property belonging to third parties. The Customer shall indemnify DRAINS IN MOTION against all claims of whatsoever nature made by third parties arising out of the presence of DRAINS IN MOTION its employees, agents or sub-contractors on the Customer's property save where such claim results directly from negligence on DRAINS IN MOTION part. The Customer shall be liable to DRAINS IN MOTION for all loss or damage whether direct, indirect or consequential which is suffered by DRAINS IN MOTION as a result of failure or delay by the Customer in performing the obligations referred to above

13. Defects

Subject to paragraph 8 above and the exclusions listed below, DRAINS IN MOTION undertakes to repair or make good any defect in completed work which appears within six months of completion of the same to the extent that such defect arises from a breach of DRAINS IN MOTION obligations under this Contract and provided that details of the defect are notified by the Customer to DRAINS IN MOTION in writing within such period and that DRAINS IN MOTION and its insurers are given the opportunity of inspecting the work and the alleged defect. This undertaking shall only apply to work carried out and completed and invoiced by DRAINS IN MOTION and which is paid for by the Customer by the due date for payment ascertained in accordance with paragraph 6 above. If DRAINS IN MOTION returns to the site at the Customer's request to review a claim under this undertaking and it transpires that the defect had not arisen as a result of a breach of this Contract on the part of DRAINS IN MOTION, DRAINS IN MOTION reserves the right to charge the Customer for the visit at its standard rate as per paragraph 3 above. DRAINS IN MOTION reserves the right not to carry out any work under this paragraph 13 where the Customer cannot evidence that the work was originally carried out and completed by DRAINS IN MOTION or where payment has not been made in full for such work. Exclusions are:

- Parts and materials will be provided only with the benefit of the manufacturer's / supplier's guarantee, and is not guaranteed by DRAINS IN MOTION.
- Systems or structures not installed by DRAINS IN MOTION.
- Any recall arising from circumstances or factors known to the Customer but not notified or disclosed to DRAINS IN MOTION prior to the work having been undertaken.
- Defects resulting from misuse, wilful act, or faulty workmanship by the Customer or anyone working for or under the direction of the Customer (other than DRAINS IN MOTION).

- Structural defects encompassing but not limited to subsidence and its resultant effect.
- Damage to drainage systems caused by root penetration or any other outside force.
- Any roofing work where DRAINS IN MOTION advises that the overall condition of the roof is poor and is in need of more extensive work and the work to be undertaken involves less than 20% of the area of the roof.
- Any work to repair an existing lock, or to fit any lock not supplied by DRAINS IN MOTION.

14. Force Majeure

DRAINS IN MOTION will use all reasonable endeavours to carry out the Works on the agreed dates but shall not be under any liability to the Customer if it should be either impossible or impracticable to carry out the Works on

the agreed dates or at all, by reason of strike, lock out, industrial dispute, act of god or any other event or occurrence beyond DRAINS IN MOTION' control.

15. Customer's Liability

The Customer shall be liable for:

- Any loss, damage or injury, whether direct or indirect or consequential, resulting from failure or delay in the performance of the Customer's obligations under these terms.
- Providing all necessary power and a clean water supply for DRAINS IN MOTION use in the execution of the contracted works.
- The safety of plant and machinery belonging to or hired in by DRAINS IN MOTION or its employees, agents or sub-contractors and shall indemnify DRAINS IN MOTION against its loss, theft or damage.

16. Cancellation

16.1 If the Customer cancels the Contract without DRAINS IN MOTION consent other than pursuant to paragraph 3.2 above, the Customer shall indemnify DRAINS IN MOTION against all loss, damage, claims or actions arising out of such cancellation unless otherwise agreed in writing, and for the avoidance of doubt any such cancellation is without prejudice to DRAINS IN MOTION right to payment in accordance with paragraph 6 above.

16.2 If the Customer wishes to cancel an appointment for a visit by DRAINS IN MOTION, the Customer will incur a cancellation fee of £10 (plus VAT) if the cancellation is made less than 24 hours (but more than 2 hours) before the time scheduled for the appointment. If the cancellation is made 2 hours or less before the scheduled appointment time the fee will increase to £50 (plus VAT).

16.3 If the Customer cancels work to be undertaken pursuant to an estimate accepted by the Customer, subject to paragraph 3.2 above the Customer will be liable for a cancellation charge of 5% of the estimate price if the cancellation is made less than 14 days prior to the specified commencement date for the Works, 10% of the estimate price if the cancellation is made less than 7 days prior to the said specified commencement date and 20% of the estimate price if the cancellation is made less than 2 days prior to the said specified commencement date.

17. Removal of Waste Materials

Unless agreed in writing between the parties, the Customer will be responsible for the removal from site of all waste materials resulting from the Works.

18. Frozen Pipes

DRAINS IN MOTION will not be liable for any fracture found in frozen pipes attended by DRAINS IN MOTION. DRAINS IN MOTION will not guarantee to clear blockages occurring in a frozen pipe or drain.

19. Waiver, Variation etc.

No waiver by DRAINS IN MOTION of any breach by the Customer shall operate as a waiver of any preceding or subsequent breach by the Customer. No variation shall be effective against DRAINS IN MOTION unless sanctioned in writing by DRAINS IN MOTION. No forbearance or delay on DRAINS IN MOTION part shall prejudice DRAINS IN MOTION rights and remedies under this Contract.