POLYDRAIN.

TERMS & CONDITIONS

Customer Copy - UK

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Conditions for the supply of goods and associated services by Polydrain Civils

Contract Terms, Variations and Representations

(a) In these conditions, "the Seller" means Polydrain Civils Limited; "the Buyer" means the individual, firm, company or other party with whom the Seller contracts; "the Goods" means the Goods (including any instalment of the Goods) which the Seller is to supply in accordance with these conditions; "the Services" means the whole or any part of the services which the Seller is to supply or carry out; "the Contract" means any contract under which the Seller provides Services and/or sells the Goods to the Buyer; "Supply" includes (but is not limited to) any supply under a contract of sale and "International Supply Contract" means such a contract as is described in section 26 (3) of the Unfair Contract Terms Act 1977.

(b) No order in pursuance of any quotation or otherwise shall be binding on the Seller unless and until such order is accepted by the Seller. Any Contract made between the Seller and the Buyer shall be subject to these conditions and save as after mentioned no representative or agent of the Seller has authority to agree any terms or make any representations inconsistent with them or to enter into any contract except on the basis of them; any such term representation or contract will bind the Seller only if in writing and signed by an authorised signatory of the Seller.

(c) Unless otherwise agreed in writing by the Seller these conditions shall apply to the exclusion of any terms and conditions stipulated or referred to by the Buyer in his order or pre-contract negotiations or any inconsistent terms implied by law or trade custom, practice or course of dealing.

(d) Any general description contained in the Seller's catalogues or other advertising material shall not form a representation or be part of the Contract.

(e) Where the Seller has not given a written acknowledgment of the Buyer's order these conditions will nonetheless apply to the Contract provided that the Buyer has had prior notice of them.

(f) The Seller reserves the right to correct any clerical or typographical errors made by its employees at any time.

Specification, Instructions or Design

(a) The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods or Services within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

(b) If the Goods are made to a specification, instruction or design supplied by the Buyer or any third party on behalf of the Buyer then **(i)** the suitability and accuracy of that specification, instruction or design will be the Buyer's responsibility;

(ii) the Buyer will indemnify the Seller against any infringement or alleged infringement of any third party's intellectual property rights including but not limited to patent, design right, registered design, trademark, trade name or copyright and any loss, damage or expense which it may incur by reason of any such infringement or alleged infringement in any country; **(iii)** the Buyer will indemnify the Seller against any loss, damage or expense in respect of any liability arising in any country by reason of the Goods being made to such specification, instruction or design.

Quotations and Prices

(a) The Seller shall be entitled to increase its prices at anytime to take account of any increase in the cost to the Seller of purchasing any goods or materials or manufacturing working on or supplying any goods (including but not limited to any such increase arising from any error or inadequacy in any specification, instructions or design provided by the Buyer, any modification carried out by the Seller at the Buyer's request or any change in exchange rates) and such increased prices ruling at the date of despatch by the Seller shall be substituted for the previous Contract price.

(b) All prices quoted are exclusive of any applicable value added tax and the Buyer shall pay any and all taxes duties and other government charges payable in respect of the Goods and/or Services.

Delivery

(a) Unless otherwise agreed in writing by the Seller, the Seller shall deliver the Goods by the means most convenient to the Seller to the address or addresses specified by the Buyer at the time of placing his order or (in the event that the Buyer fails so to specify an address) to any address at which the Buyer resides or carries on business. The Seller shall be entitled to add to the contract price a reasonable charge for packaging and delivery. Off-loading shall be at the Buyer's expense.

(b) If the Contract requires the Buyer to take delivery of the Goods at the Seller's premises the Seller shall notify the Buyer of the collection date (being the date on which the Goods are or will be ready for delivery) and the Buyer shall take delivery of the Goods within 7 days of the collection date. Loading of the Goods shall be at the Buyer's expense.

(c) Should the Seller be delayed in or prevented from making delivery of the Goods or carrying out the Services due to any cause whatsoever beyond the reasonable control of the Seller the Seller shall be at liberty to terminate the Contract or suspend the order placed by the Buyer without incurring any liability for any loss or damage arising there from, but without prejudice in any such case to rights accrued to the Seller in respect of deliveries already made.

(d) While the Seller will endeavour to deliver the Goods or complete the Services by any date or within any period agreed upon, such dates and periods are estimates only given in good faith and the Seller will not be liable for any failure to deliver the Goods or carry out the Services by such a date or within such a period. Time for delivery shall not be of the essence of the Contract. Moreover, the Seller shall be entitled to defer delivery until any monies due from the Buyer have been received.

(e) Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these conditions or any claim by the Buyer in respect of any one or more instalment shall not entitle the Buyer to treat the Contract as a whole as repudiated.

(f) If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may at its option; (i) store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage or; (ii) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract. The Buyer shall pay such shortfall to the Seller within 28 days of the date of the Seller's demand therefore.

Risk in the Goods

(a) Save in the case of International Supply Contracts and subject to any agreement in writing by the Seller, the risk in Goods which the Seller agrees to supply shall pass to the Buyer on **(i)** delivery or **(ii)** the date on which, the Goods being ready for delivery, delivery is postponed at the Buyer's request, whichever shall first occur. Delivery shall be deemed to be completed before off-loading or (in the case of delivery at the Seller's premises) loading of the Goods.

(b) All other goods shall be at the Buyer's sole risk at all times, and the Seller shall not be liable for any loss of or damage sustained by any goods left with the Seller howsoever caused and whether or not attributable to negligence on the part of the Seller or negligence or wilful default on the part of any servant or agent of the Seller.

Payment

(a) Unless otherwise specified in writing by the Seller payment of the Seller's invoices shall be made by the Buyer net cash not later than the 1st of the month following month of delivery or collection of Goods in which the relevant invoice date falls notwithstanding that property in the Goods has not passed to the Buyer and any separate payment agreed for the Services shall be made not later than 30 days after the date of which such Services are completed or, in the event that the Services cannot be carried out due to the act or default of the Buyer, its servants or agents, when the Seller is ready to carry out the Services. Time for payment shall be of the essence of the Contract. Without prejudice to any other rights of the Seller interest will be payable on all overdue accounts at Lloyds Bank Plc base rate plus 4% and for the purposes of clauses 7 and 9 hereof the full purchase price of the Goods or the Services shall include all interest payable hereunder.

Failure to Pay, Canellation or Deferment

(a) For the purposes of this clause "an intervening event" shall mean any such event as is described in sub-clause **(c)** hereof.

(b) If there shall be an intervening event the Seller may, within a reasonable time thereafter, defer or cancel any further deliveries or services, stop any Goods in transit and treat the Contract of which these conditions form part as determined but without prejudice to its rights to the full purchase price for Goods delivered and Services performed and damages for any loss suffered in consequence of such determination.

(c) An intervening event shall be any of the following, **(i)** failure by the Buyer to make any payment when it becomes due; **(ii)** breach by the Buyer of any of the terms or conditions of the Contract; (iii) the Buyer's proposal for or entry into any composition or arrangement with creditors. **(iv)** the presentation against the Buyer of any Petition for a Bankruptcy Order, Administration Order, Winding-Up Order, or similar process; **(v)** the appointment of an Administrative Receiver or Receiver in respect of the business or any part of the assets of the Buyer; **(vi)** the Seller forming the reasonable opinion that the Buyer has become or is likely in the immediate future to be-come unable to pay his, her or its debts (adopting, in the case of a Company, the definition of that term set out in Section 123 of the Insolvency Act 1986).

(d) Cancellation by the Buyer will only be accepted at the discretion of the Seller and in any case on condition that any costs or expenses incurred by the Seller up to the date of cancellation and all loss or damage resulting to the Seller by reason of such cancellation will be paid by the Buyer to the Seller forthwith. Acceptance of such cancellation will only be binding on the Seller if in writing and signed by an authorised signatory of the Seller.

(e) Any costs incurred by the Seller due to suspension or deferment of any order by the Buyer or in the event that the Buyer defaults in collecting, or giving instructions for the delivery of, any Goods will be payable by the Buyer forthwith on demand.

Limitation of Liability

(a) The Seller will have no liability for damage in transit, shortage of delivery or loss of Goods unless the Buyer shall have given to the Seller written notice of such damage, shortage or loss with reasonable particulars thereof within 7 days of receipt of the Goods or (in the case of total loss) of receipt of the invoice or other notification of despatch. The Seller's liability, if any, shall be limited to replacing or (in its discretion) repairing such Goods and it shall be a condition precedent to any such liability that the Buyer shall if so requested provide authority for the Seller's servants or agents to inspect any damaged Goods within 14 days of such request.

(b) The Seller will have no liability for any consequential loss arising out of any damage in transit shortage of delivery or loss of Goods.

(c) (i) Save as otherwise provided in these conditions the Seller's liability in respect of any defect in or failure of Goods whether the Supplier's own branded Goods or third party Goods procured and supplied by the Supplier to the Buyer is limited to replacing or (in its discretion) repairing or paying for the repair or replacement of such Goods which, (in the case of defects apparent upon inspection) within 21 days of delivery and (in the case of defects not so apparent) within 12 months of delivery to the Buyer are found to be defective or fail or are unable to perform in accordance with the Contract

by reason of faulty or incorrect design workmanship parts or materials. **(ii)** In the event of any error in any weight, dimension, capacity, performance or other description which has formed a representation or is part of a contract the Seller's liability in respect of any direct loss or damage sustained by the Buyer as a result of such error shall not exceed the price of the Goods in respect of which the description is incorrect. **(iii)** The Seller shall honour the terms of any guarantee provided by the third party manufacturer of which the Buyer has the benefit by virtue of it having purchased such Goods PROVIDED ALWAYS that the Buyer shall have complied with all and any terms imposed by the manufacturer's guarantee. **(iv)** The Seller shall have no other or further liability in respect of any direct or consequential loss or damage sustained by the Buyer arising from or in connection with any such defect failure or error as aforesaid.

(d) Where the Seller agrees to repair or replace Goods in accordance with the foregoing provisions of this clause 8 or otherwise any time specified for delivery under the Contract shall be extended for such period as the Seller may reasonably require.

(e) All Goods sold by the Seller are supplied with the benefit of the terms implied by section 12 of the Sale of Goods Act 1979. Subject thereto, and whether or not the Contract is a contract of sale, all other conditions, warranties and other terms express or implied, statutory or otherwise, are expressly excluded, save insofar as contained herein or as otherwise expressly agreed by the Seller in writing PROVIDED that if and insofar as any legislation or any order made there under shall make or have made it unlawful to exclude or purport to exclude from the Contract any term or shall have made unenforceable any attempt to exclude any such term, the foregoing provisions of this paragraph will not apply to any such term.

(f) Nothing in these conditions shall exclude or restrict any liability that the Seller may have by virtue of the Consumer Protection Act 1987.

(g) Subject to the foregoing and to the provisions of section 2(i) of the Unfair Contracts Terms Act 1977 the Seller shall have no liability to the Buyer in the event of any negligence or wilful default on the part of its servants or agents in or in connection with the supply of any Goods or the design or manufacture thereof or in the carrying out of any Services.

Retention of Title

(a) The following provisions shall apply to all contracts other than International Supply Contracts and to all Goods which under the Contract the Seller agrees to supply to the Buyer. No failure by the Seller to enforce strict compliance by the Buyer with such provisions shall constitute a waiver thereof and no termination of the Contract shall prejudice limit or extinguish the Seller's rights under this paragraph. **(i)** Upon delivery of the Goods the Buyer shall hold the Goods solely as bailee for the Seller and the Goods shall remain the property of the Seller until such time as the Buyer shall have paid to the Seller and the Seller shall have cleared funds for the full purchase price thereof. Until such time the Seller shall be entitled to recover the Goods or any part thereof and for the purpose of exercising such rights the Buyer hereby grants a licence to the Seller its employees and agents with appropriate transport to enter upon the Buyer's premises and any other location where the Goods are situated and remove the Goods.

(ii) The Buyer is hereby granted a licence by the Seller to incorporate the Goods in any other products. **(iii)** The licence granted under sub-clause **(i)** hereof shall extend to detaching the Goods from any property to which they are attached or into which they have been incorporated or from any other products or Goods to which they have been attached pursuant to the licence granted under sub-clause **(ii)** hereof. **(iv)** The Buyer is hereby licensed to agree to sell on the Goods and any products incorporating any of them on condition that the Buyer shall inform its customer of the provisions of sub-clauses **(i)-(iii)** hereof. The Buyer acts as the Seller's bailee in respect of any such sale and shall, immediately upon receipt of the proceeds of sale, and whether or not payment has become due under clause 6 hereof, remit to the Seller the full purchase price of the Goods sold on less any part thereof which has already been paid and until such amount has been so remitted shall hold such amount as trustee and agent for the Seller. **(v)** The Buyer shall maintain all appropriate insurance in respect of the Goods from the date or dates on which the risk therein passes to him. In the event of any loss or damage occurring while the Goods remain the property of the Seller the Buyer shall immediately on receipt of the insurance monies, remit to the Seller the full purchase price of the Goods lost or damaged less any part thereof which has already been paid and until such mount has been so remitted shall hold such amount as trustee and agent for the Seller. For the avoidance of doubt the provisions of this sub-clause do not affect the Buyer's obligations under clause 6 hereof. **(vi)** The licences granted under subclauses **(ii)** and **(iv)** above shall be terminable forthwith at any time upon notice by the Seller to the Buyer. In the case of International Supply Contracts property in the Goods shall pass to the Buyer on delivery.

Use and Safe Handling

(a) The Buyer warrants that it will pass on to all third parties to whom it may supply the Goods or any of them all information as to the use and safe handling of such Goods as may have been provided to the Buyer by the Seller.

Testing

(a) If the Seller agrees that any tests shall be carried out in the presence of the Buyer or his representative the Seller shall notify the Buyer of the date on which it is or will be ready to carry out such tests and the Buyer undertakes that he or his representative will attend at the premises where the Goods are situate on the date specified by the Seller for the purpose of witnessing the tests and agrees that in default of such attendance the Seller may proceed with the tests in his absence and he shall be bound by the results thereof.

(b) If the Buyer wishes to test the Goods otherwise then at the Seller's premises or otherwise than in the presence of the Seller's employees, agents or representatives, the Buyer shall first obtain written details from the Seller of its recommended testing procedure for such Goods (which shall not be unreasonably withheld). The Seller shall have no liability for any damage which occurs to such Goods during or as a result of such testing not being in accordance with the Seller's recommended testing procedure nor from any direct or consequential damage incurred by the Buyer during or as a result of such testing not being in accordance with the Seller's recommended testing procedure.

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Export

(a) If the Contract is an International Supply Contract it shall be deemed to incorporate the latest edition of Incoterms current at the date of the Contract save that in the event of any inconsistency between Incoterms and any express term of the Contract the latter shall prevail. The Seller shall be under no obligation to give the Buyer the notice specified in section 32 (3) of the Sale of Goods Act 1979.

(b) The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.

General

(a) The proper law of all contracts with the Seller shall be English law which shall govern in all respects the construction and effect of such contracts and of these conditions. The Buyer agrees that in the event of any dispute arising out of the Contract or the performance thereof he will submit to the jurisdiction of the English court.

(b) The headings to the paragraphs of these conditions are for ease of reference only and shall not affect the interpretation or construction thereof.

(c) If any provision of these conditions is or becomes illegal, void or unenforceable for any reason, the validity of the remaining provisions shall not be affected.

(d) Failure by the Seller to enforce strict compliance with these conditions by the Buyer will not constitute a waiver of any of the provisions of these conditions.

(e) Any reference in these conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

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