

Damian Sweeps Ltd



Terms and Conditions of Supply

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Terms and Conditions of Supply

The Customer and the Supplier (individually the "Party" and collectively the "Parties" to this Contract) agree as follows:

1 Definitions

1.1 Words and expressions used in the Contract shall have the meanings ascribed to them as follows:

Affiliate: any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Confidential Information: all information (however recorded or preserved) disclosed by a Party or its employees, officers or advisers to the other Party in connection with the Contract which is identified by the disclosing Party as being confidential or would be regarded as confidential by a reasonable business person, relating to:

- (a) the business, assets, affairs, customers, suppliers, partners or plans of the disclosing Party (or of any Affiliate of the disclosing Party); and
- (b) (b) the operations, processes, product information, know-how, designs, trade secrets, capabilities or Intellectual Property Rights of the disclosing Party (or of any Affiliate of the disclosing Party).

Contract: means the contract for the delivery of the Goods and/or provision of the Services and/or carrying out of the Works, which shall comprise (1) these General Conditions of Supply, (2) the Supplementary Conditions, (3) the Specification (if any), (4) the Order including any attachments to the Order, and (5) the Quotation, and in the event of any conflict or ambiguity between any of the terms and conditions within the documents which comprise the Contract, the documents shall take precedence in the order listed herein.

Control: the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and controls, controlled and the expression change of control shall be construed accordingly.

Customer: means the company in whose name the Order is issued and, where applicable, such definition shall be construed to include any of the Customer's Affiliates who order Goods and/or Services and/or Works under this Contract.

Customer Materials: all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier under the terms of the Contract.

Deliverables: all documents, products and materials developed by the Supplier or its agents, sub-contractors and personnel as part of or in relation to the Services and/or Works in any form, including without limitation computer programs, data, reports and specifications (including drafts).

Goods: means plant, vehicles, equipment, and other items (including any instalment of them or any part of them), as specified on the Order, to be supplied by the Supplier in accordance with the terms and conditions of the Contract to which additional specific clauses in the Supplementary Conditions shall apply.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Laws: all legislation, statutes, statutory instruments, orders, resolutions, regulations, notices, judgments, determinations, rules of court, bye laws, directives, codes of conduct or other instrument in each case as issued by HM Parliament, the legislative making institutions of the United Kingdom (to the extent that such laws apply in England), any court, tribunal or other person or body exercising judicial functions or Commission of Inquiry, local authority, relevant authority or any other body or person having such powers and any exercise of the Royal Prerogative and having the force of law from time to time in England and Wales and any other laws or regulations, regulatory policies or codes which apply to the provision of the Goods and/or Services and/or Works or to the Supplier.

Mandatory Requirements: all applicable Laws relating to anti-bribery, anti-corruption, antislavery, human trafficking, anti-facilitation of tax evasion, personal data protection and protection of employment including the Bribery Act 2010, the Modern Slavery Act 2015, the General Data Protection Regulation 2016/679 and the Data Protection Act 2018, the Criminal Finances Act 2017 and the Transfer of Undertakings (Protection of Employment) Regulations 2006.

Normal Working Hours: means 07.00am – 5.00pm on Monday to Friday (excluding Bank and Public Holidays) or such hours as the Parties may otherwise agree in writing.

Order: means a written instruction and purchase order issued by the Customer to the Supplier for the delivery of the Goods and/or the provision of the Services and/or carrying out of the Works which has been agreed to in writing by an authorised representative of the Supplier.

Price: means the price as specified in the Order.

Programme: means any programme or times for the delivery of the Goods and/or provision of the Services and/or carrying out of the Works agreed between the Customer and the Supplier.

Quotation: means the written quotation submitted by the Supplier to the Customer in respect of the delivery of the Goods and/or provision of the Services and/or carrying out of the Works.

Senior Officer: means a Director of the Customer or a Director or the Chief Operating Officer of the Supplier, as applicable.

Services: means the new and/or existing services including without limitation any Deliverables, as specified on the Order, to be provided by the Supplier in accordance with the terms and conditions of the Contract to which additional specific clauses in the Supplementary Conditions shall apply.

Site(s): means the location(s) at which the Goods are to be delivered, and/or the Services are to be provided and/or the Works are to be carried out as stated in the Order.

Specification: means any plans, drawings, data, samples or other descriptions or information relating to the Goods and/or Services and/or Works to which the Supplier must comply.

Supplementary Conditions: means the supplementary conditions comprising additions or amendments to the General Conditions of Supply.

Supplier: means Damian Sweeps Ltd. Company 10744022, whose registered office is Melbourne, Clock Lane, Bickenhill, Solihull, B92 0DX.

Supplier's Correspondence Address: means Damian Sweeps Ltd., Melbourne, Clock Lane, Bickenhill, Solihull, B92 0DX.

Supplier IPRs: all Intellectual Property Rights either arising, obtained or developed by the Supplier independently of the Contract, whether before or after the date of the Order.

VAT: means value added tax.

Works: means the carrying out of services such as installation, erection, modification or repair, ground surface cleaning and jetting, removal of silt/debris, excavation, inspection, relining, including without limitation any Deliverables, as specified on the Order, to be carried out by the Supplier in accordance with the terms and conditions of the Contract to which additional specific clauses in the Supplementary Conditions shall apply.

1.2 Interpretation:

(a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

(b) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;

(c) a reference to writing or written includes email; and

(d) The headings in these General Conditions of Supply are for convenience only and shall not affect their interpretation.

2 Contract

2.1 Subject to clause 2.5, the Supplier will only enter into contracts on the basis of the General Conditions of Supply and Supplementary Conditions that form part of the Contract or in any documents expressly incorporated into the Contract. Any other terms and conditions (whether or not the same are signed by a representative of the Supplier), or in any correspondence, are expressly excluded and have no contractual force.

2.2 Subject to clause 2.5, this Contract shall apply to the exclusion of, and shall prevail over, any terms and conditions contained in or referred to in any documentation submitted by the Supplier or in any correspondence or elsewhere or implied by trade custom, practice or course of dealing or any terms and conditions that appear or are referred to on the Supplier's website.

2.3 Subject to clause 2.5 and notwithstanding the absence of any express reference to "goods" and/or "services" and/or "works" on the face of the Order, the Contract shall apply to all agreements for (i) the delivery of goods; (ii) the provision of services and (iii) the carrying out of any works or any combination of (i), (ii) and (iii).

2.4 Subject to clause 2.5, the Contract shall supersede all previous communications or agreements between the Supplier and the Customer whether oral or written relating to the Goods and/or the Services and/or the Works.

2.5 Where another set of separate terms and conditions (relating to the same Goods and/or Services and/or Works) are signed by the Supplier and the Customer, then those terms and conditions shall supersede this Contract and shall apply retrospectively to the relevant Goods and/or Services and/or Works and this Contract shall have no further effect.

- 2.6 The Order constitutes the Customer's acceptance of the Supplier's offer to deliver the Goods and/or provide the Services and/or carry out the Works specified therein in accordance with the Contract.
- 2.7 The Customer may, provided that it is prior to the Supplier commencing the Order requirements, amend or cancel an Order by providing 24 hours' written notice to the Supplier at the Supplier's Correspondence Address. If the Customer amends or cancels an Order, the Customer shall be liable to pay the Supplier for all costs incurred by the Supplier, including any abortive costs or pre-agreed cancellation fees as applicable, in fulfilling the Order up until the date of receipt of the notice of amendment or cancellation.
- 2.8 Subject to clause 2.5, no variation to the Contract shall be binding unless expressly agreed to be a variation in writing between authorised representatives of the Customer and the Supplier. No indulgence shown by either Party shall prevent that Party subsequently relying upon its rights and remedies under the Contract.
- 2.9 Except as otherwise agreed in writing between the Customer and the Supplier in advance, neither the Customer nor the Supplier shall make any press announcements or publicise the Contract or its contents in any way.

3 Supply of Goods, Services and Works

- 3.1 The Supplier shall deliver the Goods and/or provide the Services and/or carry out the Works in accordance with the Programme agreed with the Customer, provided that the Supplier shall not be liable to the Customer for non-performance or delay or defective performance of the Supplier's obligations herein to the extent that the same was caused by factors entirely beyond its control, including labour disputes whether or not involving either Party's employees. Time shall not be of the essence in respect of the Supplier's performance pursuant to this Contract.
- 3.2 In delivering the Goods and/or providing the Services and/or carrying out the Works, the Supplier shall:
- (a) unless otherwise agreed in writing, perform the Order requirements during Normal Working Hours.
 - (b) perform with a reasonable level of care, skill and diligence in accordance with good industry practice in the Supplier's industry, profession or trade;
 - (c) co-operate with the Customer and comply with all reasonable instructions, provided that the Supplier's operators are not authorised to accept any addition, alteration or variation to the Order. Additions, alterations or variations to the Order requirements shall only be valid once the Customer has provided an amendment request in writing that states what additional work is required of the Supplier and an authorised representative of the Supplier has agreed to such additional work;
 - (d) appoint or, at the reasonable written request of the Customer replace without delay, a manager who shall have authority to contractually bind the Supplier on all matters relating to the Order;
 - (e) only use personnel who are suitably skilled and trained to perform the tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled;
 - (f) comply with all applicable Laws and ensure that it obtains, and maintains all consents, licences and permissions which are necessary to comply with its obligations in this Contract;

(g) provide all equipment (including adequate personal protective equipment), tools, vehicles and other items required to provide the Order requirements;

(h) ensure that any vehicles or equipment supplied in the performance of the Order requirements corresponds with the Specification, is of reasonable quality and fit for any purpose held out by the Supplier or made known to the Supplier on or before the date of the Order;

(i) observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises (including the Sites) from time to time;

(j) notify the Customer in writing immediately upon the occurrence of a change of Control of the Supplier; and

(k) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission.

4 Customer's obligations

4.1 The Customer shall:

(a) provide adequate written notice to the Supplier of its Order requirements. Adequate notice shall comprise a written email instruction with a minimum of 48 hours' notice (except in the case of emergency requests) to include purchase order number, full address of the Site, Site contact name and contact details, proper description of the Order requirements, the anticipated work length of the Order requirements and, as applicable, tipping instructions (on-Site tipping or off-Site disposal need);

(b) provide such information as the Supplier may reasonably request in order to carry out the Order requirements in a timely manner. Where the Order requirements have been based upon inaccurate information and/or samples supplied by the Customer, the Supplier reserves the right to renegotiate the applicable Price and the Customer agrees to pay all costs incurred as a result of providing inaccurate information and/or samples;

(c) not cause the Supplier to remove, store, carry or dispose of:

(i) waste which contains substances to which the Hazardous Waste Regulations 2005 apply unless the removal is accompanied by a consignment note as defined under the aforementioned Regulations;

(ii) explosive or dangerous materials or any articles or substances likely to cause injury or damage in the course of its removal, storage, carriage or disposal, unless this condition is specifically excluded by the prior written consent of the Supplier and signed by a Senior Officer of the Supplier.

If the Customer shall be in breach of this clause the Customer shall indemnify the Supplier in respect of any loss or damage or any liability arising therefrom;

(d) comply with all relevant Laws with regard to the waste that the Customer produces, holds or wants to have removed or processed;

(e) observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Supplier's premises (including the Sites) from time to time;

(f) provide at all times during the provision of the Order requirements a convenient and unobstructed means of access suitable for use by the Supplier's vehicles, equipment and

personnel to carry out the Order requirements. In the event of any delay caused to the Supplier as a result of the Customer's failure to provide suitable and unobstructed access in accordance with this clause, the Customer shall be liable for any additional substantiated and reasonable costs the Supplier may thereby incur;

(g) ensure that where the provision of the Order requirements needs to integrate with the activities of any other suppliers or sub-contractors, full co-operation is maintained as far as reasonably practical. In the event that the Supplier should incur any additional expense as a result of failure by the Customer to fully integrate the Order requirements with the activities of any other suppliers or sub-contractors, the Customer shall be liable for any additional substantiated and reasonable costs the Supplier may thereby incur;

(h) obtain permission/s for the Supplier to enter onto property not belonging to the Customer to carry out the Order requirements requested by the Customer, and shall indemnify and hold harmless the Supplier in respect of any actions arising therefrom;

(i) pay additional charges arising from any unreasonable delay or interruption in the delivery of the Goods and/or the provision of the Services and/or the carrying out of the Works, caused by the Customer or its servants/agents;

(j) provide to the Supplier, within 48 hours of the Supplier's performance of the Order requirements, details of any complaint or damage caused. Should the Customer fail to notify the Supplier within the stated period the Supplier shall have no liability whatsoever; and

(k) where defects are reported in drainage systems or other property for which the Customer is responsible, undertake to effect the remedial works necessary to enable the Supplier to carry out or complete the Order requirements and agrees that the Supplier shall have no liability for the condition of, or the repair to, the defects, or any incident arising from the Supplier being prevented from carrying out the whole or part of the Order requirements as a consequence of the defects. The Customer agrees to pay and the Supplier reserves the right to charge for:

(i) the relevant Price, or agreed charges, for the full performance of the relevant Order requirements in respect of an incomplete provision of the Order requirements resulting from reported defects;

plus

(ii) the quoted or agreed Price or such other additional charges as necessary to complete the Order requirements.

5 Customer remedies

5.1 Subject to clause 3.1, if the Supplier fails to perform the Order requirements in accordance with the Programme, or if the Supplier breaches any of the terms in clause 3.2, then the Customer may exercise any one or more of the following remedies:

(a) refuse to accept any subsequent performance of the relevant Order requirement;

and

(b) purchase substitute services from elsewhere for the relevant Order requirement; provided that the Customer's remedies in clause 5.1 shall only apply to the specific Order requirement in respect of which the Supplier has failed to perform in accordance with the Programme or for which the Supplier has breached any of the terms in clause 3.2.

- 5.2 The Customer's rights and remedies under this Contract are in addition to its rights and remedies implied by statute and common law and exercise of any remedy under clause 5.1 shall not limit any of its other rights or remedies.

6 Charges and payment

- 6.1 The Customer shall pay the Supplier the Price as stated on the Order.
- 6.2 The Price shall be exclusive of any applicable VAT (which shall be payable by the Customer subject to receipt of a VAT invoice).
- 6.3 The Customer shall pay each invoice which is properly due and submitted to it within 30 days of receipt of the Supplier's invoice (the "Due Date"). Payment shall be made to the bank account nominated in writing by the Supplier.
- 6.3.1 The Supplier will inform the Customer of any changes to bank details in writing.
- 6.3.2 It is the Customer's responsibility to confirm any changes in bank details by contacting the accounts team via the Damian Sweeps office phone number 01675 443585.
- 6.4 The Customer shall make all payments due under this Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid.
- 6.5 Any queries on an invoice must be raised in writing by the Customer within 15 days of the invoice date, otherwise the invoiced amount shall be deemed to be accepted by the Customer.
- 6.6 If the Customer fails to make any payment due to the Supplier by the Due Date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above HSBC Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the Due Date until actual payment, whether before or after judgment. This clause shall not apply to payments the Customer disputes in good faith.
- 6.7 In relation to payments disputed in good faith, interest under clause 6.6 is payable only after the dispute is resolved, on sums found or agreed to be due, from 7 days after the dispute is resolved until payment.

7 Intellectual property

- 7.1 The Supplier and its licensors shall retain ownership of all Supplier IPRs except as otherwise provided in clause 7.3. The Customer and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials.
- 7.2 The Supplier grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free, licence to use, copy and modify the Supplier IPRs for the purpose of the Order requirements and the Customer may sublicense the rights granted to Affiliates.
- 7.3 The Supplier assigns to the Customer, with full title guarantee and free from all third-party rights, all Intellectual Property Rights and all other rights in the Deliverables.
- 7.4 At its own expense, the Supplier shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this Contract, including securing for the Customer all rights assigned to the Customer in accordance with clause 7.3.

- 7.5 The Supplier shall obtain waivers of any moral rights in the Deliverables to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

8 Indemnity and liability

- 8.1 The following provisions set out the Parties' entire liability (including any liability for the acts or omissions of their respective employees, agents or sub-contractors) to each other in respect of:
- 8.1.1 any breach of their respective obligations under this Contract; and/or
 - 8.1.2 any representation, statement or tortious act or omission, including negligence, or otherwise arising under or in connection with this Contract.
- 8.2 Nothing in this Contract limits either Party's liability for:
- 8.2.1 death or personal injury caused by negligence; and
 - 8.2.2 wilful misconduct or fraud committed by a Party.
- 8.3 The Supplier shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss of anticipated savings, business revenues, or profits (whether categorised as direct or indirect) or any indirect, special or consequential loss (including losses arising from business interruption, wasted management time, loss of goodwill, data and all other such loss whether or not arising in the normal course of business), damages, costs, expenses or other claims (whether caused by the negligence of the Supplier, its servants or agents or otherwise) which arise out of or in connection with the provision of the Goods and/or Services and/or Works or their use by the Customer.
- 8.4 The entire liability of the Supplier to the Customer under or in connection with the Contract shall not in any event exceed the amount of the Price paid by the Customer for the provision of the Goods and/or Services and/or Works.
- 8.5 The Customer acknowledges that the Supplier has obtained public liability insurance arising in connection with the provision or contemplated provision of the Goods and/or Services and/or Works under the Contract and that in the alternative to clause 8.4, in the event that the same is rendered unenforceable, void or voidable, the Supplier's total liability shall be limited to £10,000,000 (£10 million).
- 8.6 For the avoidance of doubt the sums referred to in this clause 8 are inclusive of all legal and other professional fees, costs and expenses incurred by the Customer in establishing and presenting any claim against the Supplier.
- 8.7 The Supplier shall not be liable to the Customer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 8.8 The Customer agrees to indemnify and keep the Supplier fully indemnified from and against any loss, claim, legal or professional costs or any liability whatsoever incurred or suffered by the Supplier as a result of negligence or any default by the Customer (or its employees, agents or representatives) of its obligations however arising in connection with the Contract, together with expense, claim, loss or damage which the Supplier (or any of its employees, agents, sub-contractors and other clients) may suffer due to the negligence or breach of the Customer (or its employees, agents or sub-contractors).

- 8.9 Each Party acknowledges that it considers the provisions of this Clause 8 to be reasonable, taking account of the other terms of this Contract and its ability to insure against the losses which might arise from a breach of this Contract.
- 8.10 The provisions of this Clause 8 shall survive the expiry or termination of this Contract.

9 Insurance

- 9.1 During the term of the Contract each Party shall take out and maintain any and all insurance as is necessary to cover its liability in respect of personal injury or death and in respect of injury or damage to property real or personal arising out of or in the course of or caused by the carrying out of its operations in connection with the Order requirements.
- 9.2 The Customer and the Supplier shall each maintain public liability insurance with a minimum limit of £10,000,000 (£10 million) for the duration of the Contract term.
- 9.3 Each Party shall on request produce for inspection the policies and receipts for the current premiums.

10 Compliance with Mandatory Requirements

- 10.1 Each Party shall comply with the Mandatory Requirements.

11 Termination

- 11.1 Without affecting any other right or remedy, either Party may terminate this Contract with immediate effect by giving written notice to the other Party if:
- (a) the other Party's financial position deteriorates to such an extent that in the terminating Party's opinion the other Party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
 - (b) the other Party commits a material breach of any term of the Contract which is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - (c) the other Party takes any step or action in connection with its entering administration provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring) being wound up (whether voluntary or by order of court unless for the purpose of a solvent restructuring) having a receiver appointed to any of its assets or ceasing to carry on business or, if the step in or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (d) the other Party suspends or threatens to suspend or ceases or threatens to cease to carry on all or a substantial part of its business.
- 11.2 If the Customer or the Supplier exercises its right to terminate the Contract under clause 11.1 the Customer shall pay the Supplier such proportion of the Price as it is fair and reasonable to pay for the actual quantity of the Goods supplied and/or the Services provided and/or the Works carried out as at the date of termination.
- 11.3 Termination of the Contract shall not affect either of the Parties' rights and remedies that have accrued prior to termination.

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

12 Exit arrangements

- 12.1 On termination of this Contract for whatever reason the Supplier shall deliver to the Customer any Deliverables whether or not then complete and return any Customer Materials.

13 Force Majeure

- 13.1 "Force Majeure Event" means any circumstance not within a Party's reasonable control including, without limitation: acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; cyber-attack; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition; collapse of buildings, fire, explosion or accident; any labour or trade dispute, strikes, industrial action or lockouts and interruption or failure of utility service.

- 13.2 Provided it has complied with clause 13.4, if a Party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay. The time for performance shall be extended accordingly.

- 13.3 The corresponding obligations of the other Party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

- 13.4 The Affected Party shall:

- (a) as soon as reasonably practicable notify the other Party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations;

and

- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

14 Assignment and Sub-contracting

- 14.1 Neither Party shall, without the other Party's prior written consent, assign, transfer, mortgage, charge or sub-contract this Contract or any part thereof. If the Customer consents to any sub-contracting by the Supplier, the Supplier shall remain responsible for all acts and omissions of its sub-contractors as if they were its own.

15 Confidentiality

- 15.1 Except as permitted by clause 15.2 or where clause 15.2 applies, each Party undertakes that:

- (a) it shall only use the other Party's Confidential Information for the purposes of exercising its rights or carrying out its obligations under or in connection with this Contract;

- (b) it shall not at any time, without the other Party's prior written consent, disclose to any person any Confidential Information of that Party.

15.2 Each Party may disclose the other Party's Confidential Information:

- (a) to its employees, Affiliates, sub-contractors 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 this Contract. Each Party shall ensure that such employees, Affiliates, sub-contractors or advisers to whom it discloses the other Party's Confidential Information comply with this clause 15; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority or recognised stock exchange having jurisdiction over either Party or the subject matter of the Confidential Information.

15.3 The provisions of clause 15.1 shall not apply to any Confidential Information that:

- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving Party or its representatives in breach of this clause);
- (b) was available to the receiving Party on a non-confidential basis before disclosure by the disclosing Party;
- (c) was, is or becomes available to the receiving Party on a non-confidential basis from a person who, to the receiving Party's knowledge, is not bound by a confidentiality agreement with the disclosing Party or otherwise prohibited from disclosing the information to the receiving Party;
- (d) the Parties agree in writing is not confidential or may be disclosed; or
- (e) is developed by or for the receiving Party independently of the information disclosed by the disclosing Party.

16 Disputes

16.1 If a dispute arises out of or in connection with this Contract 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 Supplier's relevant operational manager and the Customer's relevant operational manager shall attempt in good faith to resolve the Dispute;
- (b) if the Supplier's relevant operational manager and the Customer's relevant operational manager are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Senior Officer of the Supplier and Senior Officer of the Customer who shall attempt in good faith to resolve it.

16.2 Although the Parties are to use all reasonable endeavours to resolve Disputes in accordance with clause 16.1, the commencement of any mediation and/or Dispute resolution process shall not prevent the Parties commencing or continuing court proceedings in relation to the Dispute.

17 Entire agreement

- 17.1 Subject always to clause 2.5 the Contract constitutes the whole agreement between the Parties relating to the transactions contemplated by this Contract and supersedes all previous agreements between the Parties relating to these transactions.

18 Variation

- 18.1 No variation of this Contract shall be effective unless it is in writing and signed by authorised representatives of the Parties.

19 Waiver

- 19.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or partial exercise shall not waive any right or remedy or prevent or restrict the further exercise of any right or remedy.

20 Severance

- 20.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable or, if not possible, the relevant provision or part-provision shall be deemed deleted. Any modification or deletion shall not affect the validity and enforceability of the rest of the Contract.

21 Notices

- 21.1 Any notice or other communication given to a Party in connection with the Contract shall be in writing, addressed to that Party at its registered office (if it is a company) or its principal place of business (in any case) and shall be delivered personally, or sent by prepaid first class post or other next working day delivery service, commercial courier or email to the receiving Party's relevant operational manager or Senior Officer, or to the email address otherwise specified in writing by the Parties.
- 21.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 21.1; if sent by pre-paid first class post or other next working day delivery service, on the second Business Day after posting; if delivered by courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
- 21.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

22 Third party rights

- 22.1 A person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract, except for the Customer's Affiliates who may enforce the terms of this Contract to the extent that those Affiliates have ordered Goods and/or Services and/or Works under this Contract.

23 No partnership or agency

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

24 Governing law

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

25 Jurisdiction

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

Damian Sweeps Ltd



Supplementary Conditions – Services

1 Definitions

- 1.1 Words and expressions used in the Supplementary Conditions shall have the meanings ascribed to them as follows:

Consignment Note: a note required by Part 6 (Movement of Hazardous Waste) of the Hazardous Waste (England and Wales) Regulations 2005.

Dangerous Goods: dangerous substances listed by the Health and Safety Commission in Part 1 of the Authorised and Approved List of Dangerous Substances, explosives, radioactive substances and any other substance presenting a similar hazard.

Duty of Care: the duty of care for the disposal of waste set out in s34 of the Environmental Protection Act 1990 and the Environmental Protection (Duty of Care) Regulations 1991.

Hazardous Waste: has the meaning given by Regulation 6 of the Hazardous Waste (England and Wales) Regulations 2005.

Notification: the notification of premises made to the Environment Agency as required by the Hazardous Waste (England and Wales) Regulations 2005.

Notification Period: the period of twelve months during which the Notification is effective.

Waste: the material to be addressed by the Supplier as specified within the Specification and/or Order.

Waste Transfer Note: the waste transfer note completed by the Customer and transferred to the Supplier as required by the Environmental Protection Act (Duty of Care) Regulations 1991.

2 The Services

2.1 General

- 2.1.1 The Services have been priced to be carried out during Normal Working Hours unless agreed in writing between the Customer and the Supplier prior to the commencement of the Services and allowed for and agreed in the Supplier's Quotation. In the event that the Customer changes the hours within which the Services are to be undertaken, the Customer shall be liable for the Supplier's additional costs.

- 2.1.2 Unless otherwise agreed in writing by the Supplier, the Customer warrants that it has complied with and will continue to comply with every obligation imposed by law (including without limitation any obligation imposed by any statute, statutory instrument or regulation), upon it in relation to the Waste and all relevant Laws including but not limited to:

- 2.1.2.1 the statutory duty of care imposed by the EPA and the Environmental Protection (Duty of Care) Regulations 1991;
- 2.1.2.2 the Hazardous Waste Regulations 2005;
- 2.1.2.3 the Environmental Protection Act 1990;
- 2.1.2.4 the Carriage of Dangerous Goods by Road Regulations 1996;

- 2.1.2.5 the Carriage of Dangerous Goods (Classification, Packaging and Labelling) and Use of Transportable Pressure Receptacles Regulations 2004;
- 2.1.2.6 the Waste (England and Wales) Regulations 2011;
- 2.1.2.7 the Waste Management Licensing Regulations 1994 (as amended);
- 2.1.2.8 to comply with the duties imposed by virtue of the Health and Safety at Work etc. Act 1974 and the Control of Substances Hazardous to Health Regulations 2002; and
- 2.1.2.9 any other relevant legislation.
- 2.1.3 Waste ownership
 - 2.1.3.1 The Customer warrants that it is the owner of the Waste.
 - 2.1.3.2 Title to Waste that is in accordance with its description and/or any prior approved sample shall pass to the Supplier upon the Supplier's acceptance of the Waste.
 - 2.1.3.3 Title to, risk of loss and liability for any waste or material that is not in accordance with its waste description and/or any approved sample or is in excess of that declared on accompanying documentation shall remain with the Customer and the Customer shall indemnify the Supplier against all costs and expenses connected with the delivery, temporary storage and return of such waste or material.
 - 2.1.3.4 The Customer shall comply with all record keeping obligations under the Duty of Care and Law and shall provide to the Supplier a true copy of such record upon demand.
- 2.1.4 The Supplier shall have exclusive right to supply all Services as set out within the Order in respect of all Waste which is in the possession or control of the Customer or the safe disposal of which is the responsibility of the Customer provided that this clause shall only apply if the Supplier may deal with it under the terms of a waste management licence, environmental permit, or other consent under the Laws owned by the Supplier and/or its sub-contractor.
- 2.1.5 The Customer shall not allow or permit any third party to empty or move any Waste unless specifically authorised by the Supplier to do so.
- 2.1.6 In the event that the Waste when collected by the Supplier is in the opinion of the Supplier different from that envisaged at the time of the Order the Supplier may in its absolute discretion:
 - 2.1.6.1 refuse to accept or collect all or any part of the Waste;
 - 2.1.6.2 make such increase in the Price it sees fit;
 - 2.1.6.3 terminate the Contract;
 - 2.1.6.4 require the Customer at its own expense to remove the Waste from the Supplier's vehicles, equipment and/or premises;
 - 2.1.6.5 require the Customer to pay the Supplier's charges for returning the waste to the Customer; and/or
 - 2.1.6.6 dispose of the Waste in such manner as the Supplier thinks fit according to the Duty of Care under the relevant Laws, in which event the Customer shall indemnify the Supplier against any loss or expense arising or incurred by the Supplier in doing so. The Supplier shall not be liable to the Customer in any way

whatsoever for the Customer's loss, damage, cost and expense however arising whether direct or indirect in connection with the Supplier's rejection of the Waste.

2.2 Waste Collection

2.2.1 Where the Supplier is to collect Waste, the Customer shall ensure that the Supplier has unobstructed vehicular access to the Site(s) on which the Waste is located, and shall ensure that the Waste and the Site(s) are safely and reasonably accessible by the Supplier's personnel, equipment and vehicles for the purpose of collection and providing the Services. If access is required onto private land, it shall be the Customer's responsibility to ensure all relevant permissions and any required permits have been obtained.

2.2.2 In the event that the Supplier's equipment and/or vehicles cannot be moved or removed from any Site(s) any additional costs associated with the Services and with the inability of the Supplier to use the vehicle or equipment shall be charged to the Customer and be payable on demand.

2.2.3 The Supplier shall be entitled to levy a waiting time charge at the rate of £45 per hour or part thereof, or pro rata to the Price in the Quotation per hour or part thereof (whichever is the higher) if any of the Supplier's vehicles or personnel has to wait at the Site(s) in excess of 30 minutes, such fee representing a genuine pre-estimate of costs incurred by the Supplier as a result of not being able to complete the Services at the time agreed with the Customer.

2.2.4 The Customer shall be liable to the Supplier for any loss and damage sustained by the Supplier in respect of any vehicle or equipment damage suffered in the course of providing the Services. Such liability shall include and extend to:

2.2.4.1 the cost of retrieving the vehicle and/or equipment or the cost of instructing third parties to retrieve the container, vehicle and/or equipment;

and/or

2.2.4.2 the cost of repairing or replacing the vehicle and/or equipment.

The Customer shall be liable for the Supplier's time in respect of retrieval at the same rates as agreed in respect of the Services.

2.2.5 The Supplier accepts no liability for damage caused to any Customer property, surfaces, driveways, drainage or other services over which access is required as part of the supply of the Services (unless such damage is caused by the Supplier's negligence).

2.2.6 Unless otherwise agreed in writing between the Customer and the Supplier, the Customer shall be responsible for providing traffic management on the Site(s), in accordance with good industry practice, for the duration of the Services.

2.2.7 It is the Customer's legal duty to inform the Supplier of any known asbestos within any areas within which the Services are to be undertaken. In the event of any suspected asbestos material being found on the Site(s) the Supplier must, in accordance with the "Control of Asbestos at Work Regulations", cease the Services immediately, identify the hazard and take action accordingly. The Customer shall be liable for the Supplier's additional costs incurred.

2.2.9 Dangerous Goods must be disclosed by the Customer and if the Supplier agrees to accept them for carriage they must be classified, packed and labelled in accordance with the statutory regulations for the carriage by road of the substance declared Transport Emergency Cards (Tremcards) or information in writing in the manner required by the relevant statutory provisions must be provided by the Customer in respect of each substance and must accompany the load.

2.3 Waste Delivery

2.3.1 Documentation

2.3.1.1 On arrival at the Supplier's premises, the Supplier's staff shall inspect the Waste Transfer Note presented by the Customer to confirm it includes as a minimum:

- (a) conforming European Waste Catalogue ("EWC") code and description of the Waste;
- (b) source of Waste;
- (c) destination of Waste; and
- (d) waste carriers licence number.

2.3.2 If the required documentation is completed in accordance with clause 2.3.1 the vehicle will be directed by the Supplier's staff to the dedicated Customer tipping point.

2.3.3 If the required documentation is not completed in accordance with clause 2.3.1, the vehicle will be directed by the Supplier's staff to park safely whilst the Customer's driver seeks to resolve the omissions or errors with an authorised person in the Customer organisation. If the omissions or errors can be resolved to satisfactorily comply with the requirements of clause 2.3.1 whilst the vehicle is on the Supplier's premises, it will proceed with the tipping procedure.

2.3.4 The Waste will be observed by the Supplier's staff as it is unloaded by the Customer. Provided that the Supplier's staff are satisfied that the Waste they are able to see conforms with the relevant EWC code (200303) and description of the Waste and contains, in the view of the Supplier's staff and not being unreasonably assessed, no more than 10% by volume per load of non-conforming Waste, based on a visual inspection, the vehicle will be directed to exit the Supplier's premises.

2.3.5 Non-conforming loads of Waste identified at the point of delivery

2.3.5.1 Non-conforming loads of Waste (based on a visual inspection, loads able to be seen at the point of delivery as containing more than 10% by volume per load of non-conforming Waste, in the view of the Supplier's staff and not being unreasonably assessed), shall be identified to the Customer's driver immediately.

2.3.5.2 The Supplier's staff shall then complete a rejected load form and follow the Supplier's internal procedures to comply with its environmental management plan.

2.3.5.3 The Supplier shall contact the Customer at once to agree actions with an authorised person in the Customer organisation whilst the vehicle remains on the Supplier's premises. Such actions shall include the Supplier immediately returning the non-conforming waste to the Customer or the Supplier arranging removal and disposal of the load of nonconforming Waste to an appropriately licensed disposal facility.

2.3.5.4 In the event that the Supplier arranges removal and disposal of the nonconforming load of Waste to an appropriately licensed disposal facility, the Customer shall be liable for the cost of managing, loading, transportation and disposal plus 10% margin.

2.3.6 Non-conforming loads of Waste identified after the point of delivery

- 2.3.6.1 If the Customer delivers a load containing more than 10% of non-conforming Waste which was not identified at the time of Waste delivery by the Customer, the Supplier shall, immediately on identifying the non-conforming Waste, contact the Customer, providing photographic evidence, to agree actions with an authorised person in the Customer organisation.
- 2.3.6.2 In the event the Customer wishes to view the non-conforming Waste at the Supplier's premises, the Supplier shall set the non-conforming Waste aside and make it available to view by the Customer during Normal Working Hours for twenty-four hours from the initial notification to the Customer.
- 2.3.6.3 Once the non-conforming Waste has been viewed by the Customer, both Parties shall agree actions to remove the non-conforming Waste at the Customer's expense.
- 2.3.6.4 If the Customer has not visited the Supplier's premises to view the nonconforming Waste at the end of twenty-four hours from the initial notification to the Customer, the Supplier shall, unless otherwise agreed with the Customer, arrange removal and disposal of the non-conforming load of Waste to an appropriately licensed disposal facility.
- 2.3.6.5 In the event that the Supplier arranges removal and disposal of the nonconforming load of Waste to an appropriately licensed disposal facility, the Customer shall be liable for the cost of managing, loading, transportation and disposal plus 10% margin.
- 2.3.7 Asbestos contamination
 - 2.3.7.1 In the event that asbestos is identified, or suspected, as being present in the load the Supplier shall immediately isolate the load and contact the Customer at once to notify them of the identified or suspected asbestos contamination, taking photos and emailing them to a nominated address of the Customer.
 - 2.3.7.2 The Supplier shall invoke its asbestos handling policy, based on the Health & Safety Executive protocol 'Disposal of Asbestos Waste'. This defines the procedure to follow to safely isolate and package the suspected asbestos including the specific personal protective equipment to be used and the process to double wrap and label the suspected asbestos.
 - 2.3.7.3 Double wrapped and labelled suspected asbestos will be placed in quarantine whilst arrangements are made for its transportation and disposal at a licensed disposal facility.
 - 2.3.7.4 The Customer shall be liable for the cost of managing, loading, transportation and disposal plus 10% margin.
- 2.3.8 The Customer shall not be entitled to levy a waiting time charge.

2.4 Waste Processing

- 2.4.1 Before the Supplier shall accept Waste material for disposal the Customer shall provide to the Supplier, either an accurate written description ("Description") of the Waste or a sample of the Waste at the sole discretion of the Supplier not less than seven (7) days before the date on which the Supplier is due to accept the Waste for disposal ("Acceptance Date") in order that the Supplier may treat, keep and dispose of the Waste in an authorised and appropriate manner.

- 2.4.2 If it is impossible to obtain a sample of the Waste in situ the Supplier may at its sole discretion provide a budget Quotation based upon the Customer's description of the Waste. If the Waste received varies significantly from that description for which a budget Quotation was given the Supplier may refuse to accept the Waste or, if permitted by Law to accept the Waste, may adjust the Price according to the revised description. In relation to this clause a significant variation includes a variation in quantity, state or constituents.
- 2.4.3 The Customer undertakes that the Waste shall accord with the Description in each and every respect and the Waste shall be contained and labelled in accordance with all relevant Laws, rules and regulations. Containers of the Waste shall be fit for the purpose and sufficiently durable to prevent harm and health or pollution of the environment and the Customer's personnel shall be technically competent to handle the Waste.
- 2.4.4 At the Supplier's discretion the Waste shall be delivered to the Supplier's facility 24 hours prior to the Acceptance Date in order that the Supplier may test the Waste for conformity with the Description.
- 2.4.5 The Customer warrants that the Waste delivered to the Supplier shall be stable and shall conform to the Description and/or the sample previously supplied.
- 2.4.6 The Supplier shall verify the quantity of the Waste when the Waste is accepted at the Supplier's facility and in particular the weight of Waste delivered.
- 2.4.7 The Waste shall be discharged at the Supplier's premises under supervision of the Supplier's personnel and the Customer and its agents hereby agrees to comply with all operating procedures and safety arrangements existing at the Supplier's premises.
- 2.4.8 Where the Customer arranges for third parties to deliver the Waste to the Supplier's premises, or the Supplier's nominated third party premises, the Customer shall remain fully responsible under the terms and conditions of the Contract.
- 2.5 Supply of Containers
- 2.5.1 In respect of a container(s) supplied by the Supplier (and in this connection the definition of a container shall include a road sweeper, tanker, Vehicle, or receptacle of any type), the Customer agrees:
- 2.5.1.1 To obtain where necessary permission from the Highway Authority in accordance with the Highways Act 1980 and shall comply with Section 139(4)(a) and (d) thereof and/or any additional conditions imposed by any Highway Authority authorising containers to be placed on the highway. The Supplier shall provide the Customer with instructions as to the use and positioning of warning lights and cones, with which the Customer agrees to comply.
- 2.5.1.2 Not to fill the container higher than level with its sides or specified/marked fill limit, and if the container is overloaded or loaded in an unsafe manner, to be responsible for making the container and its load safe for collection and transportation.
- 2.5.1.3 That no materials that may react so as to self-ignite are deposited in the container and that no fires are to be lit in a container.
- 2.5.1.4 That a container is not to be moved by the Customer from the position of its deposit without the prior consent of the Supplier.

- 2.5.1.5 To indemnify and hold harmless the Supplier against all claims, demands or actions howsoever arising in respect of the container or its contents.
- 2.5.1.6 To reimburse the Supplier with any repair or replacement costs arising from damage caused to a container for whatever reason (fair wear and tear excluded) during the period commencing from the delivery of a container to the Customer and its removal from the Site(s) of the Customer by the Supplier.

Damian Sweeps Ltd



Supplementary Conditions – Works

1 The Works

- 1.1 The Customer shall make available to the Supplier the whole of the Site(s) of the proposed Works at the commencement of Works on the Site(s) unless otherwise agreed in writing between the Customer and the Supplier.
- 1.2 The Works have been priced to be carried out during Normal Working Hours unless agreed in writing between the Customer and the Supplier prior to the commencement of the Works and allowed for and agreed in the Supplier's Quotation. In the event that the Customer changes the hours within which the Works are to be undertaken, the Customer shall be liable for the Supplier's additional costs.
- 1.3 In the event that working time is lost on the Site(s) due to delays caused either by the actions of the Customer, his representative, or by other contractors employed by the Customer, caused by storm or flood, the Customer shall be liable for the additional costs incurred by the Supplier. In addition, in the event that the Supplier experiences delays to the carrying out of the Works for which the Supplier is not responsible, the Customer shall be liable for the Supplier's additional costs in relation to the additional setting up or out of sequence working.
- 1.4 Unless otherwise agreed in writing between the Customer and the Supplier it is assumed that unrestricted vehicle(s), equipment and personnel access is possible to all areas within which the Works are being undertaken. In the event that this is not possible the Customer shall be liable for any extra cost incurred by the Supplier due to lack of access.
- 1.5 If access is required onto private land, it shall be the Customer's responsibility to ensure all relevant permissions and any required permits have been obtained.
- 1.6 The Customer shall be responsible for providing adequate access and egress, parking and welfare facilities for use by the Supplier during the carrying out of the Works.
- 1.7 Unless otherwise agreed in writing between the Customer and the Supplier, the Customer shall be responsible for providing traffic management on the Site(s), in accordance with good industry practice, for the duration of the Works.
- 1.8 It is the Customer's legal duty to inform the Supplier of any known asbestos within any areas within which the Works are to be undertaken. In the event of any suspected asbestos material being found on the Site(s) the Supplier must, in accordance with the "Control of Asbestos at Work Regulations", cease the Works immediately, identify the hazard and take action accordingly. The Customer shall be liable for the Supplier's additional costs incurred.

2 Specific Works

2.1 Cleaning

Removal of silt/debris in excess of 10%, or which requires additional equipment for the removal of oil or fuel spillages, concrete, builders' rubble or roots will be charged additionally unless otherwise stated in writing by the Supplier.

2.2 Waste Disposal

Unless otherwise stated the Supplier has not quoted for the removal of waste or debris from the Site(s). If disposal is found to be necessary the Customer shall be responsible for the additional costs incurred by the Supplier in the removal, transporting and disposal of waste to a registered site, together with additional administrative costs.

3 Damage or Loss to Equipment

- 3.1 If damage or loss is sustained to the Supplier's equipment due to reasons beyond the Supplier's control, or due to the condition of the site or some other known or unknown risk, the Supplier reserves the right to charge the Customer for the costs in retrieving the equipment, including the instruction of another contractor and/or the costs of replacing the equipment. The Supplier also reserves the right to charge for loss of profits and down-time whilst the equipment is recovered or replaced.