

## Terms and Conditions for the Supply of Services (Feb 2017)

### 1. Interpretation

1.1 The definitions and rules of interpretation in this Condition shall apply in these Conditions.

**Company:** Environet UK Limited and its employees, consultants and subcontractors.

**Conditions:** these Terms and Conditions of Supply.

**Confidential Information:** Any information disclosed by one (the disclosing party) to another (the receiving party) if the disclosing party has notified the receiving party that the information is confidential, or the information could reasonably be supposed to be confidential.

**Contract:** any contract between the Company and the Customer for the supply of Services, incorporating these Conditions.

**Contract Price:** the price for the Services, plus any variation which may arise.

**Customer:** any person, firm, company or other organisation who is the addressee of the Company's quotation or acceptance of order issued by the Company and shall include any parent or subsidiary company of the Customer and any successor-in-title of the Customer and any company or entity arising (wholly or partly) by way of any merger, amalgamation, reorganisation or acquisition of the Customer.

**Customer Representative:** the person or legal entity appointed by the Customer to liaise with the Company on all matters relating to the Contract.

**Dig & Dump:** a Treatment Programme comprising physical excavation and consignment of infested soils to landfill, including haulage.

**Disclose:** provide information to the Company that has a material effect on the Treatment Programme.

**Document:** any document in writing, and any map, plan, graph, drawing or photograph and any film, negative tape or other device or document embodying visual images and any disc, tape or other device or document embodying any other data.

**Encroachment:** Japanese knotweed rhizome extending into the Site from adjoining land or vice versa.

**Guarantee:** the Company's insurance-backed promise to the Guarantee Beneficiary.

**Guarantee Area:** the area of the Site that is covered under the Guarantee.

**Guarantee Beneficiary:** the person(s) or legal entity(ies) who have the benefit of the Guarantee.

**Guarantee Certificate:** the document embodying the Guarantee.

**Guarantee Period:** the specified number of years from the date of commencement of the Treatment Programme that the Guarantee shall remain in force.

**Ground Disturbance:** the physical disturbance of soils and/or sub-soils which is occasioned by human activity.

**Input Material:** any Documents or other materials, and any data or other information provided to the Company by the Customer relating to the Services.

**Intellectual Property Rights:** any design rights, utility models, patents, inventions, logos, business names, trademarks, domain names, copyright, moral rights, rights in databases, source codes, reports, drawings, specifications, know how, trade secrets, rights in software, rights in the nature of unfair competition and the right to sue for passing off and any other equivalent or similar rights to any of the foregoing in any jurisdiction, whether registered or unregistered.

**Output Material:** any Documents or other materials including, without limitation, any data or other information provided by the Company to the Customer relating to the Services.

**Permit to Dig:** a document that must be signed by the Customer or the Customer Representative giving the Company permission to excavate on the Site.

**Personal Data:** Any data which relates to a living individual who may be identified from such data.

**Post Treatment Management Plan:** a document that sets out the precautions to be followed by the Customer upon completion of the Treatment Programme.

**Relevant Facts:** information that the Company relies upon to provide the Customer with a suitable Treatment Programme, including but not limited to details of any previous herbicide or other treatment of Japanese Knotweed at the Site, details of any previous Ground Disturbance, details of any ecological site restraints such as trees with Tree Preservation Order (TPO) status, or the presence of rare or protected species or habitats.

**Root Barrier:** a physical barrier (normally using a proprietary membrane) designed to contain the lateral or vertical spread of Japanese knotweed rhizome.

**Services:** those services referenced in the Company's written acceptance of the Customer's order issued pursuant to Condition 2.3.

**Site:** the place where the Services are to be performed.

**Treatment Programme:** the method used by the Company to control or eradicate Japanese Knotweed.

**Viable Rhizome:** pieces of Japanese knotweed rhizome that have the propensity to re-grow and survive.

**Xtract™:** a Treatment Programme devised by the Company to remove Viable Rhizome from infested soil using special purpose designed and patented technology.

- 1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.2 Any reference to "**parties**" means the parties to the Contract and "**party**" shall be construed accordingly.
- 1.3 Words in the singular include the plural and in the plural include the singular.
- 1.4 A reference to one gender includes a reference to the other gender.
- 1.5 Condition headings do not affect the interpretation of these Conditions.
- 1.6 These Conditions shall apply both to Customers who are (a) business customers and (b) consumers, save where otherwise stated. A Customer is a business customer if the Customer purchases Services from the Company for the purposes of the Customer's business, trade or profession, rather than for private use. All other Customers are consumers. Nothing in these Conditions shall affect the statutory rights of any consumer.

## 2. Application of terms

- 2.1 The Company will submit a proposal or quotation to the Customer which shall remain valid for the period stated in the proposal or quotation, or if no period is stated therein, for a period of 30 days from the date on which the proposal or quotation was issued.

- 2.2 The Company's proposal or quotation will be deemed to have been accepted when the Customer places a corresponding order with the Company.
- 2.3 No Contract shall be deemed to have arisen unless and until the Company accepts the Customer's order in writing.
- 2.4 The Customer acknowledges and agrees that the Company may commence performance of the Services upon issuance of the Company's written acceptance of the Customer's order pursuant to Condition 2.3 above.
- 2.5 Unless otherwise agreed in writing by the Company and subject to any variation under Condition 2.6, the Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply).
- 2.6 Subject to Condition 2.5, these Conditions apply to the supply of all Services by the Company and any variation to these Conditions and any variation to or representations about any Services shall have no effect unless expressly agreed in writing by the Company.
- 2.7 Where the Customer is contracting with the Company at a distance as a consumer, the Contract will be subject to the Consumer Protection (Distance Selling) Regulations 2000 (the '**Regulations**'). Under the Regulations, the Customer would have the right to cancel the Contract in writing within a period of 7 working days beginning on the day following the day on which the Company issued its written acceptance of the Customer's order pursuant to Condition 2.3. However, in acknowledging in Condition 2.4 above that the Company may commence performance of the Services upon issuance of the Company's written acceptance of the Customer's order pursuant to Condition 2.3, the Customer is agreeing that the Company has permission to start work on the Customer's behalf immediately, thus avoiding any delay, and that the Company does not have to wait for the cancellation period under the Regulations to expire.
- 2.8 Unless the Customer is contracting with the Company at a distance as a consumer and the Customer cancels the Contract in writing (i) prior to commencement of performance of the Services and (ii) within a period of 7 working days beginning on the day following the day on which the Company issued its written acceptance of the Customer's order pursuant to Condition 2.3, the Contract may not be cancelled by the Customer without the Company's written consent and subject to the payment to the Company of the greater of:
- (a) 25% of the Contract Price; or
  - (b) all costs, charges and expenses incurred by the Company in connection with the Contract.

- 2.9 The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this Condition 2.9 shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.10 All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's website, catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services described in them and they shall not form part of the Contract.
- 2.11 Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, price list, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

### **3. Obligations of the parties**

- 3.1 The Company warrants (subject to the other provisions of these Conditions) that the Services will be performed with reasonable skill and care.
- 3.2 The Company's liability pursuant to Condition 3.1 shall be limited to re-performing any Services found not to have been performed with reasonable skill and care, provided that the deficiency in the performance of the Services is notified to the Company within 72 hours from completion of performance of the Services; otherwise, the Services shall be deemed to have been satisfactorily performed.
- 3.3 The Company shall use its reasonable endeavours to meet any performance dates specified by the Customer, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.4 Prior to supplying the Services to the Customer, the Company may undertake a survey of the Site, although the Company shall not be obliged to do so. The Customer acknowledges and agrees that the Company shall be entitled to rely upon the results of any such survey in determining the Company's obligations under the Contract and that any conditions (or variations thereto) at the Site which were not reasonably apparent to the Company at the time of the survey (or which occur or manifest themselves thereafter), shall be treated as a variation to the Contract for which the Customer agrees to assume sole liability, including but not limited to any and all liability for any additional costs, charges or expenses.
- 3.5 Where the Company carries out a survey of the Site, the Company will endeavour to collect accurate data based upon a non-intrusive visual inspection of the Site. The Customer acknowledges that it is not possible for the Company to precisely identify the area and volume

of infested soils at the Site without deploying intrusive inspection methods, which would not be in the Customer's best interests. Accordingly, the Customer agrees that where areas or volumes of infested soils at the Site are specified by the Company during or following any survey, any such areas or volumes so specified are only estimates which have been arrived at using the Company's professional judgment and may subsequently be revised.

- 3.6 The Customer shall Disclose any and all Relevant Facts which may affect the Company's obligations hereunder (including but not limited to the Company's selection of Treatment Programme) as soon as the Customer is aware or becomes aware of any such Relevant Facts. For the avoidance of doubt, the Company shall be free to select whichever Treatment Programme the Company deems to be most effective in the Customer's particular circumstances. The obligation to Disclose Relevant Facts placed on the Customer by this Condition 3.6 shall endure for the duration of the Contract. If it becomes apparent at any time that any and all Relevant Facts have not been Disclosed, or are incorrect, inaccurate or incomplete, the Company will notify the Customer and will apprise the Customer of any additional costs, charges or expenses which may be payable, for which the Customer will be solely liable.
- 3.7 Subject to and without limiting the generality of the provisions of Conditions 3.4 - 3.6, the Company shall be entitled to make the following assumptions and to levy additional charges if any such assumptions prove to be incorrect:
- (a) the estimated area or volume of knotweed identified in the Company's proposal or quotation reflects the conditions existing at the Site as at the date of the earlier of (i) the survey of the Site by the Company, or (ii) the Company's proposal or quotation (with any significant increase in said area or volume that could not reasonably be foreseen by the Company to be charged pro rata, less 10%);
  - (b) the existing condition of the Site shall be deemed to be the condition of the Site existing as at the date of the earlier of (i) the survey of the Site by the Company, or (ii) the Company's proposal or quotation and no works within 7 metres of any area of visible knotweed shall have taken place prior to commencement of performance of the Services, unless otherwise agreed by the Company in writing; and
  - (c) where the Company deploys physical removal methods in its choice of Treatment Programme:
    - (i) infested soils will not be contaminated with other materials that put human health or the environment at risk;
    - (ii) all infested soil can be physically excavated without the work being prevented or constrained by underground obstructions, including, without limitation, any underground services, tanks, or tree roots; and

(iii) no groundwater will be encountered during excavation.

3.8 With respect to the Company's attendance at the Site, the Customer shall:

- (a) ensure that the Customer Representative provides the Company with all information, co-operation and support and access to such facilities, resources and utilities at the Site as may be required to enable the Company to carry out its obligations to the Customer;
- (b) where any excavation is to take place at the Site, ensure that the Customer Representative signs the Permit to Dig prior to commencement of the works;
- (c) be responsible for preparing and maintaining any relevant part of the Site for the performance of the Services and for reinstating any such part of the Site and undertaking any required making good and clean-up work once performance of the Services has been completed;
- (d) provide facilities at the Site for the off-loading and storage of the Company's tools, equipment, plant and materials in a secure area protected from theft and damage and shall be solely responsible for the safekeeping of the Company's tools, equipment, plant and materials whilst the same are stored at the Site;
- (e) take all steps to ensure the health and safety of the personnel of the Company whilst they are in attendance at the Site in connection with the performance of the Services and be solely responsible for ensuring the safety of any and all persons who are or may be present at the Site during the performance of the Services, including but not limited to restricting access to those areas of the Site where the Services are or are to be performed to those individuals engaged in performing the Services;
- (f) provide prompt and unobstructed access to and egress from the Site;
- (g) report any unusual conditions or obstacles to the performance of the Services at the Site to the Company;
- (h) at all times during the performance of the Services ensure, insofar as it is reasonably practicable to do so, that other trades or operations are not undertaken on that part of the Site where the performance of the Services is to take place, so as to ensure that the Services can be performed in one continuous, uninterrupted operation during the Company's normal working hours;
- (i) be responsible at its own cost (other than for statutory obligations placed solely on the Company) for obtaining all consents, permissions, easements and licences required for the performance of the Services in accordance with these Conditions and for complying with all Statutes and Orders, Regulations and By-Laws which are

applicable at any time to the Services and shall indemnify and keep indemnified the Company against any actions, proceedings, costs, charges, claims or demands arising out of or in connection with any breach of this Condition 3.8 (i); and

- (j) effect and maintain appropriate insurance at the Site on an all risks basis and in an adequate amount.

3.9 The Customer shall not, without the prior written consent of the Company, at any time from the date of the Contract to the expiry of 12 months after the last date of supply of the Services or termination of the Contract, as applicable, solicit or entice away from the Company or employ (or attempt to employ) or otherwise engage or attempt to engage the services of any person who is, or has been, engaged as an employee, consultant or subcontractor of the Company in the provision of the Services.

3.10 Any consent given by the Company in accordance with Condition 3.9 shall be subject to the Customer paying to the Company a sum equivalent to 15 % of the then current annual remuneration of the Company's employee, consultant or subcontractor.

#### **4. Contract Price**

4.1 The Contract Price shall be the price set forth in the Company's written acceptance of the Customer's order issued pursuant to Condition 2.3, plus any variation which may arise.

4.2 Unless otherwise stated, the Contract Price will be exclusive of Value Added Tax which will be charged at the rate which is applicable at the date of commencement of performance of the Services. No Value Added Tax will be charged if the Customer notifies the Company that the Customer's project is zero or reduced rated for VAT purposes, but if that information proves to be incorrect, the Customer shall indemnify the Company for the full value of the Customer's VAT liability, together with all costs and penalties in connection therewith which may be incurred by the Company, within 7 days of the date of the Company's invoice therefor.

4.3 Without limiting the application of any provision of Conditions 3.4-3.7, the Company reserves the right to increase the Contract Price to reflect any increase in costs to the Company which is due to any factor beyond the control of the Company (including, without limitation, any increase in the costs of labour, materials or other costs of supply), any change in performance dates for the Services which is requested by the Customer and accepted by the Company and any other cause attributable to the Customer, including but not limited to any delay caused by the Customer, or any failure of the Customer to give the Company adequate, accurate or complete information or instructions.



4.4 The Company reserves the right to charge the Customer for any Output Material provided to the Customer.

## 5. Payment

5.1 The Company credit checks all new business customers prior to commencing performance of the Services. The results of the credit check shall determine the Company's payment terms with the Customer. Consumers should contact the Company to ascertain the Company's payment terms for consumers.

5.2 The Company has a credit limit set as standard at £ 15,000.00 net. The Company will notify the Customer if the Company either raises or reduces the Customer's credit limit, depending upon the results of the credit check and the Customer's payment history. If at any time the Customer's account exceeds the Customer's credit limit, the Customer will be required to make an interim payment to cover the excess amount. The Company reserves the right to delay or suspend any further works at the Site until such time that the Customer's account falls below the Customer's credit limit.

5.3 Notwithstanding the provisions of Condition 5.2 above, unless otherwise agreed in writing by the Company, invoices shall be raised and payments shall be made by the Customer in accordance with the schedule below:

- (a) Where herbicide treatment is the chosen Treatment Programme and the guarantee is required prior to commencement of performance of the Services:
  - (i) a payment of 100% of the Contract Price shall be payable upon issuance of the Company's written acceptance of the Customer's order pursuant to Condition 2.3.
- (b) Where herbicide treatment is the chosen Treatment Programme and the guarantee is not required until the completion of the Treatment Programme:
  - (i) a non-refundable deposit payment of 10% of the Contract Price shall be payable upon issuance of the Company's written acceptance of the Customer's order pursuant to Condition 2.3; and
  - (ii) an initial interim payment of a further 40% of the Contract Price shall be payable upon commencement of performance of the Services after the first visit to Site; and
  - (iii) a subsequent interim payment of a further 40% of the Contract Price shall be payable after the third visit to Site; and

- (iv) a final payment of the remaining 10% of the Contract Price shall be payable upon completion of the Treatment Programme.
  - (c) Where a physical treatment method such as Dig & Dump, Resi-Dig-Out™ or Xtract™ is the chosen Treatment Programme:
    - (i) a non-refundable deposit payment of 25% of the Contract Price shall be payable upon issuance of the Company's written acceptance of the Customer's order pursuant to Condition 2.3 (and in any event, prior to commencement of performance of the Services); and
    - (ii) the balance of 75 % of the Contract Price shall be payable upon completion of the Treatment Programme, but the Company reserves the right to raise interim invoices to reflect the percentage of work completed at any time during the Treatment Programme, depending upon the scale and scope of the works.
- 5.4 All charges in this Condition 5 shall be paid by the Customer to the Company within 30 days of the date of the corresponding invoice.
- 5.5 Time for payment shall be of the essence.
- 5.6 No payment shall be deemed to have been received until the Company has received cleared funds. In the event that the Customer tenders payment by cheque and said cheque is returned unpaid to the Company, the Customer shall reimburse the Company for any bank charges incurred by the Company.
- 5.7 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 5.8 The Customer shall make all payments due under the Contract in full 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 by the Company to the Customer.
- 5.9 The Company will not accept deductions for any retention.
- 5.10 If the Customer fails to pay the Company any sum due pursuant to the Contract, the Customer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 5 % above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act

1998. The Customer shall reimburse the Company for any and all costs incurred by the Company in recovering payment pursuant to this Condition 5. The Customer shall additionally be liable to pay the Company £ 20.00 plus VAT for each email reminder that the Company sends to the Customer with respect to any overdue debt.

- 5.11 Without prejudice to Condition 5.10, any failure by the Customer to pay the Company any sum by the due date for payment and/or the occurrence of any one or more of the events set forth in Condition 9.1 (b)-(e) in relation to the Customer shall entitle the Company, at any time and without notice to the Customer and without limitation to any other remedy available to the Company under these Conditions, the Contract, or otherwise:
- (a) to suspend or cancel the performance of the Services;
  - (b) to take the action detailed in Condition 7.8, with respect to any Guarantee;
  - (c) to withdraw or reduce any agreed monthly credit limit; and
  - (d) to treat the Contract as having been repudiated by the Customer.

## **6. Confidential information and Intellectual property rights**

- 6.1 The Customer and the Company agree that in the course of the Company providing Services to the Customer, the parties may disclose to each other certain Confidential Information. The Customer and the Company agree that each party will not use the Confidential Information other than to perform their obligations under the Contract. Each party will maintain the Confidential Information's confidentiality and not disseminate it to any third party without the disclosing party's prior written consent, save that this obligation shall not apply to any Confidential Information that either party has a duty (whether legal or otherwise) to communicate or that is in the public domain or is already in the receiving party's possession through no fault of the receiving party.
- 6.2 The Customer acknowledges the Company's ownership of any Intellectual Property Rights in any Output Material and in any Services provided to the Customer pursuant to the Contract and agrees not to contest the Company's ownership or use of any such Intellectual Property Rights. Without limitation, the Customer shall not acquire any such Intellectual Property Rights or any licence or grant of rights therein, nor shall the Customer register or attempt or permit to be registered, any such Intellectual Property Rights or any licence or grant of rights therein. The Customer further acknowledges that, without limitation, any and all Intellectual Property Rights developed by the Company in performing the Services shall become vested and shall vest in the Company absolutely and shall also be subject to the other provisions of this Condition 6.2.

**7. Limitation of liability, guarantees and indemnity - THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION**

7.1 Subject always to any additional limitation of the Company's liability elsewhere in these Conditions, this Condition 7 sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Customer in respect of:

- (a) any breach of the Contract;
- (b) any use made by the Customer of the Services, the Output Material, or any part of them or it; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

7.2 With respect to the Company's liability hereunder, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

7.3 Nothing in these Conditions limits or excludes the liability of the Company:

- (a) for death or personal injury resulting from negligence; or
- (b) for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Company; or
- (c) for any liability incurred by the Customer as a result of any breach by the Company of the conditions implied by section 2 of the Supply of Goods and Services Act 1982.

7.4 Subject to Condition 7.2 and Condition 7.3:

- (a) the Company shall not be liable for:
  - (i) loss of profits; or
  - (ii) loss of business; or
  - (iii) depletion of goodwill and/or similar losses; or
  - (iv) loss of anticipated savings; or
  - (v) loss of goods; or
  - (vi) loss of contract; or
  - (vii) loss of use; or

- (viii) loss of corruption of data or information; or
  - (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
  - (b) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of the Contract shall be limited to the price paid for the Services and no individual liability shall attach to any claim.
- 7.5 Without limiting the application of the foregoing provisions of this Condition 7, the Company offers the Customer two types of Guarantee, both of which cover the costs up to the amount of the Contract Price for the additional treatment of any re-growth of Japanese Knotweed, (which treatment will be undertaken by the Company in the Guarantee Area during the Guarantee Period), but which each offer differing levels of coverage, as follows:
- (a) the Guarantee Area under the Standard Guarantee includes the treatment areas identified in the Company's proposal or quotation plus a 7 metre buffer zone, where this is within the boundary of the Site. In addition, where the Xtract™ method is used, the working area is also included (i.e. where soils are stockpiled prior to or after processing); whilst
  - (b) the Guarantee Area under the Platinum Guarantee covers the defined and agreed Site area.
- 7.6 For the avoidance of doubt, neither type of Guarantee shall cover land or property on any site which is adjacent to the Site.
- 7.7 The Guarantee Period is defined on the Guarantee Certificate and is typically 5 years, but may be extended to 10 years upon request.
- 7.8 The Guarantee shall be automatically validated upon receipt of full payment of the Contract Price. If full payment is not made by the due payment date, the Company reserves the right to temporarily or permanently invalidate the Guarantee without notice to the Customer. The Company may similarly invalidate the Guarantee if the Customer is in breach of any provision of the Contract, or if during the Guarantee Period the Customer fails to follow any recommendation contained within the Post Treatment Management Plan.
- 7.9 The Company shall have no obligation to reinstate the Guarantee following invalidation pursuant to the provisions of Condition 7.8, but may elect to do so upon request, provided that reinstatement is preceded by full payment of the Contract Price and/or the remedy of the Customer's breach or failure to follow the Company's recommendations (as applicable),

together with the payment of such fees for reinstatement of the Guarantee as the Company may charge from time to time.

7.10 In order to make a claim on the Guarantee, the Customer must:

- (a) notify the Company promptly following the emergence of any regrowth, but in any event, no later than 3 months after the emergence of the regrowth;
- (b) provide the Company with all required information, co-operation and support, together with full, unencumbered access to the Site and to such facilities, resources and utilities as may be required to enable the Company to carry out its obligations to the Customer; and
- (c) comply with the requirements specified within the Post Treatment Management Plan.

7.11 The Guarantee shall not cover the following matters:

- (a) any indirect or consequential losses that may be incurred by the Guarantee Beneficiary or any other third party;
- (b) any regrowth directly or indirectly attributable to the intentional or unintentional import of new knotweed infested material to the Site by human activity;
- (c) any regrowth directly or indirectly attributable to the import of new knotweed infested material (rhizome or vegetation) to the Site by natural means, including but not limited to import by flood and normal water flow, by animal carriage or by seed dispersal.

7.12 The Guarantee will cover Encroachment from adjoining land, if:

- (a) the Guarantee Area is protected with a vertical Root Barrier as part of the Contract (in which case the Guarantee Area shall be defined at the Root Barrier position);
- (b) the adjoining land also benefits from a valid Guarantee (which, for the avoidance of doubt, shall be an Environet Guarantee); or
- (c) Encroachment from the adjoining land is specifically identified in the Guarantee Certificate as being covered under the Guarantee;

7.13 The Guarantee will also cover Encroachment in all other situations, subject to the following conditions:

- (a) the Customer is able to obtain permission for the Company to treat the knotweed in the adjoining land and the Company is able to gain access to the adjoining land at the same time that the Company is in attendance at the Site;
  - (b) the application of herbicide to encroaching knotweed at the Site shall be limited to a single application, with any further treatment being chargeable at the Company's standard treatment rate from time to time; and
  - (c) following treatment of the Encroachment, the Customer notifies the adjoining landowner of the Encroachment and the risk of action if the Encroachment is allowed to continue.
- 7.14 Both the Standard and Platinum Guarantees are for the benefit of the Guarantee Beneficiary only. The Guarantee Beneficiary is specified on the Guarantee Certificate, which is to be found within the Post Treatment Management Plan.
- 7.15 Upon completion of the Treatment Programme, a Post Treatment Management Plan will be issued which includes the Guarantee Certificate and includes details of any precautions that need to be taken during the Guarantee Period.
- 7.16 The Guarantee may be assigned from the Guarantee Beneficiary upon request, to new owners of the site or to others for an additional fee, generally calculated at 10% of the Contract Price for each assignment, with a minimum fee of £350.00 + VAT per assignment at current prices. In certain circumstances, land covered by the Guarantee may be sub-divided into separate land/property parcels (referred to as plots), for subsequent sale to new owners. If new owners of such plots require the benefit of the Guarantee then a new Guarantee will need to be provided for the plot, listing the new owner as the Guarantee Beneficiary, and defining the boundaries of the plot. The cost for a new Guarantee is based upon the Guarantee type (i.e. Standard or Platinum), the duration (i.e. the Guarantee Period) and the number of plots requiring a new Guarantee. For sub-dividing an existing Guarantee into up to 10 separate new Guarantees, each Standard Guarantee with a 5 year Guarantee Period costs a minimum of £1100.00 + VAT at current prices. Platinum Guarantees, or Guarantees with a longer Guarantee Period will cost more. Where existing Guarantees need to be sub-divided into more than 10 separate new Guarantees, a discount on the above rates may be offered and the Customer should contact the Company in order to receive a quotation. Any price mentioned in this Condition 7.16 is mentioned for information purposes only, shall not bind the Company and is subject to change.
- 7.17 If the Company's performance of its obligations under the Contract is prevented, suspended, delayed, or otherwise adversely affected by any act, omission or delay of (or occasioned by) the Customer, the Company shall not be liable for any costs, charges or losses incurred by the

Customer arising directly or indirectly from the prevention or suspension of, or delay in or adverse effect on, the performance of the Company's obligations, but the Customer shall be liable for any costs, charges or losses so incurred by the Company (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to the Company confirming such costs, charges and losses to the Customer in writing.

7.18 The Customer shall be liable to pay to the Company, on demand, all costs, charges or losses incurred by the Company (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Customer in writing.

7.19 The Customer shall hold the Company harmless and keep the Company indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with any claim made against the Company in respect of any liability, loss, damage, injury, cost or expense sustained by any third party to the extent that such liability, loss, damage, injury, cost or expense arises directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Customer in writing.

## 8. Data protection

The Customer acknowledges that any Personal Data contained in any of the Input Material may be processed by and on behalf of the Company in connection with the Services, whether or not the Personal Data relates to the Customer (which, for the purposes of this Condition 8, includes any employee, servant or agent of the Customer) or to another third party data subject. The Customer hereby expressly consents to any processing of the Customer's Personal Data by the Company and undertakes to procure the consent of any other relevant third party data subject to any processing of their Personal Data, and shall provide such proof of said third party data subject's consent to such processing as may be requested by the Company.



## **9. Termination**

9.1 Either party shall be entitled to immediately terminate the Contract on giving written notice to the other if:

- (a) the other party commits any material breach of any of these Conditions and in the case of such a breach which is capable of remedy, fails to remedy the same within 14 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied (for the avoidance of doubt any late payment or failure to pay by the Customer any sums due shall be a material breach); or
- (b) an incumbrancer takes possession or a receiver is appointed over any of the property or assets of the other party; or
- (c) the other party makes a voluntary arrangement with its creditors or becomes the subject of an administration order; or
- (d) the other party has a bankruptcy order made against it or goes into liquidation (except for the purposes of amalgamation, reconstruction or other reorganisation); or
- (e) the other party ceases or threatens to cease to carry on its business.

9.2 Termination of the Contract shall be without prejudice to any accrued rights and remedies of either party.

## **10. Force majeure**

The Company shall have no liability to the Customer under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, Act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of any suppliers or subcontractors.

## **11. Changes**

11.1 Notwithstanding the provisions of Condition 2.6 (which shall not apply to this Condition 11), the Company reserves the right without prior approval from or notice to the Customer to make any changes to the Services which are required to conform to any applicable safety or other statutory

or regulatory requirements or which, in the reasonable opinion of the Company, do not materially affect the specification of the Services.

## **12. General**

- 12.1 No forbearance or indulgence granted by the Company to the Customer shall in any way limit the rights of the Company under these Conditions.
- 12.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business.
- 12.3 Neither the Company nor the Customer intends that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 12.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 12.5 The Contract constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements and understandings between the parties.
- 12.6 Any dispute arising under or in connection with the Contract shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application by either party to the President for the time being of the Law Society whose decision as to the type, qualifications and experience of such arbitrator shall be final and binding on the parties. The costs of the arbitrator shall be borne by the parties as he directs and his decision on the issue in dispute shall be final.
- 12.7 These Conditions shall be subject to and construed under English Law and the parties hereby submit to the exclusive jurisdiction of the English courts for that purpose.

**End**