

TERMS AND CONDITIONS FOR THE INTERNATIONAL SUPPLY OF PIPES AND SIPHONIC ROOF DRAINAGE SYSTEMS

1. DEFINITIONS AND INTERPRETATION

1.1. In these Terms the following definitions apply:

"Agreed Incoterms" means the Incoterms rules selected and agreed by the parties to apply to the Contract, as set out in the Quotation or the Order Acceptance;

"Business Day" means a day other than a Saturday, Sunday or bank or public holiday in England when banks generally are open for non-automated business in London;

"Confidential Information" means any commercial, financial or technical information, information relating to the Goods, plans, know-how or trade secrets which is confidential in nature or has been identified as confidential, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract;

"Contract" means the agreement between HydroMax and the Customer for the sale and purchase of the Goods, incorporating the Quotation (if any), the Purchase Order, the Order Acceptance, these Terms and the Agreed Incoterms;

"Control" has the meaning given to it in section 1124 of the Corporation Tax Act 2010 and "Controls", "Controlled" and "under common Control" shall be construed accordingly;

"Customer" means the party to this Contract which has agreed to purchase the Goods from HydroMax and whose details are set out in the Quotation or Order Acceptance (as applicable);

"Delivery Location" means the address for delivery of the Goods as set out in the Quotation or Order Acceptance (as applicable);

"Documentation" means any descriptions, specifications, instructions, manuals, literature, technical details or other related materials supplied or made available (whether specifically in connection with the Contract or generally, including by way of information published on HydroMax's website) to the Customer in connection with the Goods;

"Force Majeure" means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under the Contract, in whole or in part, including but not limited to an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, terrorism, threat of terrorism, interruption, pandemic or epidemic, or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Contract, failure of a third party supplier, strike, lockout or boycott or other industrial action including those involving HydroMax's or its suppliers' workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay;

"Goods" means the goods and (to the extent relevant) related accessories, spare parts, Documentation and any other physical material set out in the Quotation or Order Acceptance (as applicable), to be supplied by HydroMax to the Customer in accordance with the Contract;

"HydroMax" means HydroMax Incorporated Limited, a company registered in Scotland with company number SC272732 and having its registered office at 11 Dudhope Terrace, Dundee, United Kingdom DD3 6TS;

"Intellectual Property Rights" means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in software, rights in goodwill, rights in Confidential Information, rights to invention, rights to sue for passing off, domain names and all other intellectual property rights and similar rights and, in each case:

- whether registered or not,
- including any applications to protect or register such rights,
- including all renewals and extensions of such rights or applications,
- whether vested, contingent or future,
- to which the relevant party is or may be entitled, and
- in whichever part of the world existing;

"Incoterms" means the International Commercial Terms 2020 (Incoterms 2020) published by the International Chamber of Commerce (ICC) (or any future revisions or replacement thereof);

"Order Acceptance" means HydroMax's written acceptance of the Customer's Purchase Order containing details of the Goods, price, Agreed Incoterms, Delivery Location and estimated delivery date;

"Price" has the meaning given in clause 3.1;

"Project" means the construction project or installation in connection with which the Customer has ordered the Goods;

"Purchase Order" means an order for the Goods by the Customer;

"Quotation" means a quotation for the Goods issued by HydroMax to the Customer (if any);

"Sanctions" means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time under applicable law in any jurisdiction;

"Sanctioned Person" means, at any time (a) any person listed in any Sanctions-related list maintained by a relevant authority under applicable law; (b) any person operating, organised or resident in a country, region or territory which is itself the subject or target of any Sanctions; or (c) any person Controlled by any such person or persons;

"System" means the HydroMax siphonic roof drainage system into which the Goods are incorporated by the Customer (or on its behalf);

"Terms" means HydroMax's terms and conditions of supply set out in this document;

"Territory" means the country in which the Delivery Location is located;

"VAT" means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Goods; and

"Warranty Period" has the meaning given in clause 8.1.

1.2. In these Terms, unless the context requires otherwise:

1.2.1. any clause, schedule or other headings in these Terms is included for convenience only and shall have no effect on the interpretation of the Terms;

1.2.2. a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;

1.2.3. a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;

1.2.4. a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;

1.2.5. words in the singular include the plural and vice versa;

1.2.6. any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;

1.2.7. a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form (including email);

1.2.8. a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under the Contract;

1.2.9. a reference to legislation includes all subordinate legislation made from time to time under that legislation; and

1.2.10. a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.

2. APPLICATION OF THESE TERMS

2.1. These Terms apply to and form part of the Contract between HydroMax and the Customer. They supersede any previously issued terms and conditions of purchase or supply.

2.2. These Terms apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Other than these Terms, no standard terms or conditions endorsed on, delivered with, or contained in the Order Acceptance, Purchase Order, the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract, but provided that the Customer and HydroMax may agree specific terms in an Order Acceptance or in a Purchase Order which will form part of the Contract. In the event of any inconsistency between any of the documents forming part of the Contract, the following order of priority shall apply:

2.2.1. the Order Acceptance (including any special terms agreed in writing but excluding any standard terms (as referred to above in this clause 2.2) other than these Terms);

- 2.2.2. the Purchase Order (including any special terms agreed in writing but excluding any standard terms (as referred to above in this clause 2.2));
- 2.2.3. these Terms;
- 2.2.4. the Quotation.
- 2.3. A Purchase Order constitutes an offer by the Customer to purchase the Goods on the terms of the Contract.
- 2.4. HydroMax shall be entitled to accept or reject a Purchase Order at its discretion. A Purchase Order shall not be accepted, and no binding obligation to supply any Goods shall arise, until the earlier of:
- 2.4.1. HydroMax's written acceptance of the Purchase Order by way of an issued Order Acceptance; or
- 2.4.2. HydroMax dispatching the Goods or notifying the Customer that they are available for collection (as the case may be) without an Order Acceptance (in which case the Purchase Order will be deemed to have been accepted at such time, but subject always to clauses 2.1 and 2.2).
- 2.5. Rejection by HydroMax of a Purchase Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
- 2.6. Any Quotation issued by HydroMax is an invitation to treat only. It is not an offer to supply the Goods and is not capable of being accepted by the Customer.
- 2.7. Any samples, drawings, descriptive matter, advertising marketing or promotional materials issued by HydroMax and any descriptions of the Goods contained in HydroMax's catalogues and/or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them and do not form part of the Contract or have any contractual force.
- 2.8. No variation of the Contract (including any issued Order Acceptance, accepted Purchase Order or these Terms) shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of each of HydroMax and the Customer respectively.
- 3. PRICE**
- 3.1. The price for the Goods shall be as set out in the Quotation or Order Acceptance (as applicable) (the "**Price**").
- 3.2. Unless otherwise agreed in writing by the parties (and notwithstanding the applicable Agreed Incoterms), the Price is calculated on an EXW basis and is therefore exclusive of the cost of:
- 3.2.1. packaging;
- 3.2.2. insurance (which shall be paid in accordance with clause 3.3 below);
- 3.2.3. delivery, carriage and shipping costs (which shall be paid in accordance with clause 3.4 below);
- 3.2.4. import and export duties ; and
- 3.2.5. all other related charges,
- all of which shall be paid by the applicable party in accordance with the Agreed Incoterms, but subject to clauses 3.3 and 3.4.
- 3.3. HydroMax will be responsible for implementing and maintaining appropriate insurance for the Goods in accordance with the Agreed Incoterms until the Goods have been delivered in accordance with clause 5.1.
- 3.4. Where (and notwithstanding that) HydroMax is required to pay any additional costs referred to in clause 3.2 pursuant to the Agreed Incoterms, HydroMax shall be entitled to invoice such costs to the Customer in addition to the Price and the Customer shall pay such costs in accordance with the terms of clause 4.
- 3.5. The Price is exclusive of VAT (or equivalent sales tax). The Customer shall pay any applicable VAT (or equivalent sales tax) to HydroMax on receipt of a valid VAT invoice.
- 4. PAYMENT**
- 4.1. HydroMax shall be entitled to invoice the Customer for the Goods, partially or in full, at any time following acceptance (or deemed acceptance) of the Purchase Order.
- 4.2. The Customer shall pay all invoices in full without deduction or set-off, in cleared funds within such period as HydroMax and the Customer agree in writing, or if no period is agreed, within thirty (30) Business Days of the date of each invoice to a bank account nominated by HydroMax.
- 4.3. Where sums due under these Terms are not paid in full by the due date:
- 4.3.1. HydroMax may, without limiting its other rights, charge interest on such sums at four per cent (4%) per year above the base rate of the Bank of England from time to time in force, and
- 4.3.2. interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.
- 4.4. Time for payment shall be of the essence.
- 5. DELIVERY**
- 5.1. HydroMax, or its nominated carrier, shall deliver the Goods (or, as the case may be, make the Goods available for collection):
- 5.1.1. in accordance with the Agreed Incoterms; and
- 5.1.2. to or at the Delivery Location on the date(s) specified in the Contract (subject to clause 5.4).
- 5.2. Delivery of the Goods shall be completed in accordance with the Agreed Incoterms at the Delivery Location. Any arrangement by which the Goods are collected by the Customer shall be agreed by the parties in writing.
- 5.3. HydroMax may deliver the Goods in instalments. Any delay or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5.4. Time of delivery is not of the essence and the Customer acknowledges that it may not be possible to meet any delivery date requested by the Customer. HydroMax shall use its reasonable endeavours to meet any delivery dates specified in the Order Acceptance but such dates are indicative only and are subject to availability of Goods.
- 5.5. HydroMax shall not be liable for any delay in or failure of delivery caused by:
- 5.5.1. the Customer's failure to make the Delivery Location available;
- 5.5.2. the Customer's failure to prepare the Delivery Location in accordance with HydroMax's instructions or as required for delivery of the Goods;
- 5.5.3. the Customer's failure to provide HydroMax with adequate instructions for delivery and installation or otherwise relating to the Goods; or
- 5.5.4. Force Majeure.
- 5.6. The Customer shall accept delivery of the Goods at the Delivery Location at the time specified in the Contract (or, if later, at the time HydroMax delivers the Goods (or, as the case may be, makes the Goods available for collection)). If the Customer fails to accept delivery of the Goods then (without limiting HydroMax's other rights and remedies under this Contract) HydroMax shall store and insure the Goods pending delivery, and the Customer shall pay all costs and expenses incurred by HydroMax in doing so.
- 5.7. If 30 Business Days following the due date for delivery or collection of the Goods, the Customer has not taken delivery of or collected the Goods, HydroMax may resell or otherwise dispose of the Goods without any obligation or liability to the Customer, except as provided for in clauses 5.7.1 and 5.7.2. HydroMax shall:
- 5.7.1. deduct all reasonable storage charges and costs of resale; and
- 5.7.2. account to the Customer for any excess of the resale price over, or invoice the Customer for any shortfall of the resale price below, the price paid by the Customer for the Goods.
- 6. RISK**
- Risk in the Goods shall pass to the Customer in accordance with the Agreed Incoterms.
- 7. TITLE**
- 7.1. Title to the Goods shall pass to the Customer once HydroMax has received payment in full and cleared funds for the Goods, notwithstanding that they may have been delivered and/or risk may have passed at an earlier time.
- 7.2. Until title to the Goods has passed to the Customer, the Customer shall:
- 7.2.1. hold the Goods as bailee for HydroMax;
- 7.2.2. store the Goods separately from all other material in the Customer's possession, and not incorporate them into any other goods or services;
- 7.2.3. take all reasonable care of the Goods and keep them in the condition in which they were delivered;
- 7.2.4. insure the Goods from the date of delivery: (i) with a reputable insurer (ii) against all risks (iii) for an amount at least equal to their Price (iv) noting HydroMax's interest on the policy;
- 7.2.5. ensure that the Goods are clearly identifiable as belonging to HydroMax;
- 7.2.6. not remove or alter any mark on or packaging of the Goods;

- 7.2.7. inform HydroMax immediately if it becomes subject to any of the events or circumstances set out in clauses 15.1.1 to 15.1.4 or 15.2.1 to 15.2.14 or 15.4; and
- 7.2.8. on reasonable notice permit HydroMax to inspect the Goods during the Customer's normal business hours and provide HydroMax with such information concerning the Goods as HydroMax may request from time to time.
- 7.3. If, at any time before title to the Goods has passed to the Customer, the Customer informs HydroMax, or HydroMax reasonably believes, that the Customer has or is likely to become subject to any of the events specified in clauses 15.1.1 to 15.1.4 or 15.2.1 to 15.2.14 or 15.4, HydroMax may:
- 7.3.1. require the Customer (at the Customer's expense) to re-deliver the Goods to HydroMax; and
- 7.3.2. if the Customer fails to do so promptly, enter any premises where the Goods are stored and repossess them.
- 8. WARRANTY**
- 8.1. HydroMax warrants that the Goods purchased under the Contract shall, for a period of ten (10) years from the date of the documentation signed by the engineer of record for the Project confirming the correct completion of the design and installation of the System (the "**Warranty Period**") be free from material defects in materials or production.
- 8.2. The Customer warrants that it has provided HydroMax in writing with all relevant, full and accurate information as to the Customer's business and needs.
- 8.3. As the Customer's sole and exclusive remedy, HydroMax shall, at its sole option, repair, replace, or refund the Price of any of the Goods that do not comply with clause 8.1, provided that (as conditions of a valid warranty claim) the Customer:
- 8.3.1. serves a written notice on HydroMax:
- (a) during the Warranty Period; and
- (b) within one month from the date on which the Customer became aware (or should reasonably have become aware) of the defect;
- 8.3.2. has provided HydroMax with a copy of the documentation signed by the engineer of record for the Project confirming the correct completion of the design and installation of the System, within thirty (30) days of the date of signature thereof;
- 8.3.3. provides HydroMax with such information as HydroMax may require as to the nature and extent of the defects and the uses to which the Goods had been put prior to the defect arising;
- 8.3.4. gives HydroMax a reasonable opportunity to examine the defective Goods; and
- 8.3.5. returns the defective Goods to HydroMax.
- 8.4. The provisions of these Terms, including the warranties set out in clause 8.1 and the Agreed Incoterms and original Delivery Location, shall apply to any of the Goods that are repaired or replaced (and to any warranty replacement Goods) with effect from the date of delivery of the repaired or replacement Goods, provided that the warranty period for the repaired or replacement Goods shall end on the same date as that originally applicable to the defective Goods.
- 8.5. HydroMax shall not be liable for any failure of the Goods to comply with clause 8.1:
- 8.5.1. where such failure arises by reason of wear and tear, wilful damage, negligence, or as a result of the normal course of use of the Goods;
- 8.5.2. to the extent caused by the Customer's failure to comply with HydroMax's instructions in relation to the Goods as set out in HydroMax's Installation Training Manual (as updated from time to time), including any instructions on transportation, installation, testing, operation, storage or maintenance;
- 8.5.3. to the extent caused by HydroMax following any specification, instruction or requirement of or given by the Customer in relation to the Goods;
- 8.5.4. where the Customer modifies, alters or adapts any Goods, or uses them for any purpose other than that for which they were supplied, without HydroMax's prior written consent or, having received such consent, not in accordance with HydroMax's instructions;
- 8.5.5. where the Customer introduces or uses any accessories, spare parts or other physical material in or with the Goods which have not been supplied to it by HydroMax;
- 8.5.6. where the Goods are not used as part of a system built only with original parts supplied by HydroMax;
- 8.5.7. where the Customer uses any of the Goods after notifying HydroMax that they do not comply with clause 8.1; or
- 8.5.8. the failure is due to the Customer's breach of contract.
- 8.6. No warranty is given in respect of the installation of the Goods.
- 8.7. Except as set out in this clause 8:
- 8.7.1. HydroMax gives no warranties and makes no representations in relation to the Goods; and
- 8.7.2. shall have no liability for its failure to comply with the warranty in clause 8.1
- and all warranties and conditions (including the conditions implied by sections 13–15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.
- 9. ANTI-BRIBERY, ANTI-SLAVERY AND SANCTIONS**
- 9.1. The Customer shall:
- 9.1.1. comply with all applicable laws relating to anti-bribery, anti-corruption and anti-slavery including but not limited to the Bribery Act 2010 and the Modern Slavery Act 2015 ("**Relevant Requirements**");
- 9.1.2. ensure that any person associated with it (including its officers, employees, agents and sub-contractors) complies with the Relevant Requirements;
- 9.1.3. implement and maintain adequate procedures to prevent bribery and slavery; and
- 9.1.4. co-operate fully with any investigation or enquiry by or on behalf of HydroMax or any governmental, regulatory or other body in relation to any allegation or suspicion of any offence under the Relevant Requirements, in connection with the performance of the Contract.
- 9.2. Without limitation to clause 9.1, neither party shall make or receive any bribe (which shall be construed in accordance with the Bribery Act 2010) or other improper payment or advantage or allow any such bribe or improper payment or advantage to be made or received on its behalf, either in the United Kingdom or elsewhere and shall implement and maintain adequate procedures to ensure that such bribes or improper payments or advantages are not made or received directly or indirectly on its behalf.
- 9.3. The Customer warrants, represents and undertakes to HydroMax that neither the Customer nor any of its officers, employees, affiliates, agents or sub-contractors:
- 9.3.1. has committed an offence under the Modern Slavery Act 2015 (an "**MSA Offence**");
- 9.3.2. has been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
- 9.3.3. is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
- 9.3.4. is a Sanctioned Person; and/or
- 9.3.5. is in breach of, nor shall breach, any Sanctions.
- 9.4. The Customer shall immediately notify HydroMax in writing (including full details of the circumstances) if it becomes aware or has reason to believe that that it, or any of its officers, employees, agents or sub-contractors have breached or potentially breached any of the Customer's obligations under this clause 9. If HydroMax reasonably suspects a breach, the Customer will provide reasonable information promptly on request to enable HydroMax to satisfy itself.
- 9.5. Any breach of this clause 9 by the Customer shall be deemed a material breach of the Contract and shall entitle HydroMax to terminate the Contract with immediate effect.
- 10. INDEMNITY AND INSURANCE**
- The Customer shall indemnify HydroMax from and against any losses, damages, liability, costs (including legal fees) and expenses which HydroMax may suffer or incur directly or indirectly from the Customer's breach of any of its obligations under the Contract.
- 11. LIMITATION OF LIABILITY**
- 11.1. Except in respect of the Customer's remedy set out in clause 8, the extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 11.

- 11.2. Subject to clause 11.6, HydroMax's total liability under any Contract shall not exceed an amount equivalent to the Price under the relevant Contract.
- 11.3. Subject to clauses 11.5 and 11.6, neither party shall be liable for consequential, indirect or special losses.
- 11.4. Subject to clause 11.6, HydroMax shall not be liable for any of the following (whether direct or indirect):
- 11.4.1. loss of profit;
 - 11.4.2. loss of revenue;
 - 11.4.3. loss or corruption of data;
 - 11.4.4. loss or corruption of software or systems;
 - 11.4.5. loss or damage to equipment;
 - 11.4.6. loss of use;
 - 11.4.7. loss of production;
 - 11.4.8. loss of contract;
 - 11.4.9. loss of commercial opportunity;
 - 11.4.10. loss of savings, discount or rebate (whether actual or anticipated);
 - 11.4.11. harm to reputation or loss of goodwill; and/or
 - 11.4.12. wasted expenditure.
- 11.5. The limitations of liability set out in clause 11.3 shall not apply in respect of any indemnities given by the Customer under the Contract.
- 11.6. Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 11.6.1. death or personal injury caused by negligence;
 - 11.6.2. fraud or fraudulent misrepresentation; and/or
 - 11.6.3. any other losses which cannot be excluded or limited by applicable law.
- 12. INTELLECTUAL PROPERTY RIGHTS**
- 12.1. All Intellectual Property Rights and all other rights in the Goods shall be owned by HydroMax or its licensors. HydroMax licenses such rights to the Customer on a non-exclusive basis in the Territory to such extent as is necessary to enable the Customer to make reasonable use of the Goods. This licence will automatically terminate on termination or expiry of the Contract.
- 13. CONFIDENTIALITY AND ANNOUNCEMENTS**
- 13.1. The Customer shall keep confidential all Confidential Information of HydroMax and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:
- 13.1.1. any information which was in the public domain at the date of the Contract;
 - 13.1.2. any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
 - 13.1.3. any information which is independently developed by the Customer without using information supplied by HydroMax; or
 - 13.1.4. any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- 13.2. This clause 13 shall remain in force for a period of five (5) years from the date of the Contract and, if longer, three (3) years after termination of the Contract.
- 13.3. The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.
- 14. FORCE MAJEURE**
- 14.1. Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from Force Majeure. The party subject to the Force Majeure event shall promptly notify the other party in writing when such the event causes a delay or failure in performance and when it ceases to do so.
- 14.2. If the Force Majeure event continues for a continuous period of more than ninety (90) days, either party may terminate the Contract by written notice to the other party.
- 15. TERMINATION**
- 15.1. HydroMax may terminate the Contract at any time by giving notice in writing to the Customer if:
- 15.1.1. the Customer commits a material breach of the Contract and such breach is not remediable;
 - 15.1.2. the Customer commits a material breach of the Contract which is not remedied within fourteen (14) Business Days of receiving written notice of such breach;
 - 15.1.3. the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid ten (10) days after the date that HydroMax has given notification to the Customer that the payment is overdue; or
 - 15.1.4. any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.
- 15.2. HydroMax may terminate the Contract at any time by giving notice in writing to the Customer if the Customer:
- 15.2.1. stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
 - 15.2.2. is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if HydroMax reasonably believes that to be the case;
 - 15.2.3. becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
 - 15.2.4. becomes subject to a moratorium under Part A1 of the Insolvency Act 1986;
 - 15.2.5. becomes subject to a restructuring plan under Part 26A of the Companies Act 2006;
 - 15.2.6. becomes subject to a scheme of arrangement under Part 26 of the Companies Act 2006;
 - 15.2.7. has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
 - 15.2.8. has a resolution passed for its winding up;
 - 15.2.9. has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
 - 15.2.10. is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
 - 15.2.11. has a freezing order made against it;
 - 15.2.12. is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items;
 - 15.2.13. is subject to any events or circumstances analogous to those in clauses 15.2.1 to 15.2.12 in any jurisdiction; or
 - 15.2.14. takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 15.2.1 to 15.2.13 including giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 15.3. The right of HydroMax to terminate the Contract pursuant to clause 15.2 shall not apply to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) of the Customer where the amalgamated, reconstructed or merged entity agrees to adhere to the Contract.
- 15.4. HydroMax may terminate the Contract any time by giving not less than four (4) weeks' notice in writing to the Customer if the Customer undergoes a change of Control (provided that, in the event that the Customer undergoes a change of Control in favour of a competitor of HydroMax, HydroMax shall be entitled to terminate the Contract with immediate effect).
- 15.5. If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle HydroMax to terminate the Contract under this clause 15, it shall immediately notify HydroMax in writing.
- 15.6. Termination or expiry of the Contract shall not affect any accrued rights and liabilities of HydroMax at any time up to the date of termination.
- 16. NOTICES**
- 16.1. Any notice or other communication given by a party under these Terms shall:
- 16.1.1. be in writing and in English;
 - 16.1.2. be signed by, or on behalf of, the party giving it (except for notices sent by email); and

- 16.1.3. be sent to the relevant party at the address or email address (as applicable) set out in the Contract.
- 16.2. Notices may be given, and are deemed received:
- 16.2.1. by hand: on receipt of a signature at the time of delivery;
- 16.2.2. by Royal Mail Recorded Signed For post: at 9.00 am on the second Business Day after posting;
- 16.2.3. by Royal Mail International Tracked & Signed post: at 9.00 am on the fourth Business Day after posting; and
- 16.2.4. by email, on receipt of a delivery receipt email from the correct email address.

16.3. Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 16.1 and shall be effective:

- 16.3.1. on the date specified in the notice as being the date of such change; or
- 16.3.2. if no date is so specified, ten (10) Business Days after the notice is deemed to be received.

16.4. This clause 16 does not apply to notices given in legal proceedings or arbitration.

17. CUMULATIVE REMEDIES

The rights and remedies provided in the Contract for HydroMax only are cumulative and not exclusive of any rights and remedies provided by law.

18. FURTHER ASSURANCE

The Customer shall at the request of HydroMax, and at the Customer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

19. ENTIRE AGREEMENT

19.1. The parties agree that the Contract constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

19.2. Each party acknowledges that it has not entered into the Contract in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.

20. VARIATION

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Terms and is duly signed or executed by, or on behalf of, each party.

21. ASSIGNMENT

21.1. The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without HydroMax's prior written consent (such consent not to be unreasonably withheld or delayed).

22. SET-OFF

- 22.1. HydroMax shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract.
- 22.2. The Customer shall pay all sums that it owes to HydroMax under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

23. NO PARTNERSHIP OR AGENCY

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

24. EQUITABLE RELIEF

The Customer recognises that any breach or threatened breach of the Contract may cause HydroMax irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to HydroMax, the Customer acknowledges and agrees that HydroMax is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

25. SEVERANCE

- 25.1. If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.
- 25.2. If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with the minimum such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

26. WAIVER

- 26.1. No failure, delay or omission by HydroMax in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 26.2. No single or partial exercise of any right, power or remedy provided by law or under the Contract by HydroMax shall prevent any future exercise of it or the exercise of any other right, power or remedy by HydroMax.
- 26.3. A waiver of any term, provision, condition or breach of the Contract by HydroMax shall only be effective if given in writing and signed by HydroMax, and then only in the instance and for the purpose for which it is given.

27. COMPLIANCE WITH LAW

The Customer shall comply with all applicable laws and shall maintain such licences, authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

28. COSTS AND EXPENSES

Each party pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract.

29. THIRD PARTY RIGHTS

A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

30. DISPUTE RESOLUTION

- 30.1. Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 30.
- 30.2. The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- 30.3. Within five (5) Business Days of service of the notice, a director (or person of equivalent seniority) of each of the parties shall meet (either in person, by telephone or virtually by video call) to discuss the dispute and attempt to resolve it.
- 30.4. Either party may issue formal legal proceedings at any time whether or not the step referred to in clause 30.3 has been completed.

31. GOVERNING LAW

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