

Commercial Terms and Conditions

1 Interpretation

1.1 In these Terms:

"BUSINESS DAY" means a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business.

"C.D.M REGULATIONS" means the Construction Design and Management Regulations 2007;

"CONTRACT" means the contract for the supply of Goods / Services;

"CUSTOMER" means the person who accepts the Supplier's Written Quotation for the supply of the Goods / Services;

"DOCUMENT" includes, in addition to a document in Writing, a map, plan, design, drawing, picture or other image, or any other record of any information in any form;

"FLOOD RISK ASSESSMENT" means a written flood risk assessment provided by the Supplier to the Customer as a Specified Service;

"GOODS/SERVICES" means the goods (including any instalment of the goods or any parts for them) which the Supplier is to supply in accordance with these Terms (and "Goods" shall be interpreted accordingly) and/or the Specified Service to be supplied;

GROUP means in relation to a company, that company, its subsidiaries, its holding companies and their subsidiaries;

"INPUT MATERIAL" means any Documents or other materials, and any data or other information provided by the Client relating to the Goods / Services;

"LOCATION" means the location or locations where Goods shall be installed / used and whether such installation shall be carried out by the Customer or by the Supplier and shall include all buildings and structures thereon;

"OUTPUT MATERIAL" means any Documents or other materials, and any data or other information provided by the Supplier relating to the Specified Services;

"QUOTATION" means the Suppliers Written Quotation (together with the attached documents / schedules (if any) to the Customer for the supply of Goods / Services;

"SUPPLY" shall mean in relation to Goods the sale thereof and in relation to Services the provision thereof in each case by the Supplier

"SPECIFIED SERVICES" means the services to be provided by the Supplier for the Customer and specified in the Quotation;

"SUPPLIER" means UK Flood Barriers Ltd (registered in England under number 06362285);

"TERMS" means the standard terms set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Customer and the Supplier;

"WRITING", and any similar expression, includes post, facsimile transmission, electronic mail and other forms of electronic communication.

1.2 A reference in these Terms to a provision of a statute shall be construed as a reference to that provision as amended, re enacted or extended at the relevant time.

1.3 The headings in these Terms are for convenience only and shall not affect their interpretation.

2 Basis of the Supply

2.1 The Supplier shall supply and the Customer shall purchase the Goods and / or the Supplier shall provide the Specified Services to the Customer in accordance with the Supplier's Written Quotation (or as otherwise agreed between the parties in writing), subject to these Terms, which shall govern the Contract to the exclusion of any other terms subject to which any such Quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Customer.

2.2 No variation to these Terms shall be binding unless agreed in Writing between the authorised representatives of the Customer and the Supplier.

2.3 The Supplier's employees or agents are not authorised to make any representations concerning the Goods / Services unless confirmed by the Supplier in Writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.

2.4 Any advice or recommendation given by the Supplier or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods or as to the provision of the Specified Services which is not confirmed in Writing by the Supplier is followed or acted upon entirely at the Customer's own risk, and accordingly the Supplier shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

3 Orders and specifications

3.1 No order submitted by the Customer shall be deemed to be accepted by the Supplier unless and until confirmed in Writing by the Supplier's authorised representative.

3.2 The Customer shall be responsible to the Supplier for ensuring the accuracy of the terms of any order for Goods / Services (including any applicable specification) and at the Customer's own expense, and for giving the Supplier any necessary information relating to the Goods / Services within a sufficient time to enable the Supplier to perform the Contract in accordance with its terms. The Customer shall ensure the accuracy of all Input Material.

3.3 The quantity, quality and description of the Goods and any specification for them and/ or the provision of the Specified Services shall be as set out in the Quotation (or as otherwise agreed between the parties in writing).

3.4 The Supplier reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or E.U. requirements or, where the Goods are to be supplied to the Supplier's specification, which do not materially affect their quality or performance.

3.5 No order which has been accepted by the Supplier may be cancelled by the Customer except with the agreement in Writing of the Supplier and on terms that the Customer shall indemnify the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of cancellation.

4 Price of the Goods / Services

4.1 The price of the Goods / Services shall be the Supplier's quoted price. All prices quoted are valid for 30 days only or until earlier acceptance by the Customer, after which time they may be altered by the Supplier without giving notice to the Customer.

4.2 The Supplier reserves the right, by giving written notice to the Customer at any time before delivery of the Goods and / or provision of the Specified Services, to increase the price thereof to reflect any increase in the cost to the Supplier which is due to any factor beyond the control of the Supplier (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs), any change in delivery dates, quantities or specifications for the Goods / Services which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions.

4.3 Except as otherwise stated in the Supplier's written, all prices for Goods are given by the Supplier on an ex works basis, and where the Supplier agrees to deliver the Goods otherwise than at the Supplier's premises, the Customer shall be liable to pay the Supplier's charges for transport, packaging and insurance.

4.4 The price is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to the Supplier.

5 Terms of Payment

5.1 Where Goods only are to be supplied payment in full shall be made when the Supplier confirms the Customer's order;

5.2 Where Goods and Specified Services or Specified Services alone are to be supplied payment of 60% of the total Quotation (inclusive of the price thereof VAT and delivery charges) is payable on acceptance of the

Quotation by the Customer and the balance shall be paid on completion of the Specified Services;

5.3 If the Customer fails to make any payment on the due date then, without limiting any other right or remedy available to the Supplier, the Supplier may:

5.3.1 cancel the contract or suspend the provision of any further supply of Goods / Services to the Customer;

5.3.2 appropriate any payment made by the Customer to such of the Goods / Services (or the goods / services supplied under any other contract between the Customer and the Supplier) as the Supplier may think fit (notwithstanding any purported appropriation by the Customer); and

5.3.3 charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate of 4 per cent per annum above Barclays Bank base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6 Delivery of Goods / Supply of Specified Services

6.1 Delivery of the Goods shall be made by the Customer collecting the Goods at the Supplier's premises at any time after the Supplier has notified the Customer that the Goods are ready for collection or, if some other place for delivery is agreed by the Supplier, by the Supplier delivering the Goods to that place.

6.2 Any dates quoted for delivery of the Goods are approximate only and the Supplier shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Supplier in Writing. The Goods may be delivered by the Supplier in advance of the quoted delivery date on giving reasonable notice to the Customer.

6.3 If the Supplier fails to deliver the Goods for any reason other than any cause beyond the Supplier's reasonable control or the Customer's fault, and the Supplier is accordingly liable to the Customer, the Supplier's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

6.4 If the Customer fails to take delivery of the Goods or fails to give the Supplier adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Supplier's fault) then, without limiting any other right or remedy available to the Supplier, the Supplier may:

6.4.1 store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or

6.4.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

6.5 Where the Supplier is to provide Specified Services to the Customer such services shall be provided in accordance with the Quotation and:

6.5.1 The Customer shall at its own expense supply the Supplier with all necessary Documents or other materials, and all necessary data or other information relating to the Specified Services, within sufficient time to enable the Supplier to provide the Specified Services. The Client shall ensure the accuracy of all Input Material; and

6.5.2 The Customer shall at its own expense retain duplicate copies of Input Material. The Supplier shall have no liability for any such loss or damage, however caused. All Output Material shall be at the sole risk of the Customer from the time of delivery to or to the order of the Customer.

7 Risk and Property

7.1 Risk of damage to or loss of the Goods shall pass to the Customer:

7.1.1 in the case of Goods to be delivered at the Supplier's premises, at the time when the Supplier notifies the Customer that the Goods are available for collection; or

7.1.2 in the case of Goods to be delivered otherwise than at the Supplier's premises, at the time of delivery or, if the Customer fails to take delivery of the Goods, the time when the Supplier has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, the property in the Goods shall not pass to the Customer until the Supplier has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Supplier to the Customer

for which payment is then due.

7.3 Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as the Supplier's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Supplier's property, but the Customer may resell or use the Goods in the ordinary course of its business.

7.4 Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold), the Supplier may at any time require the Customer to deliver up the Goods to the Supplier and, if the Customer fails to do so forthwith, enter on any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

7.5 The Customer shall not be entitled to pledge, create a lien over or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Supplier, but if the Customer does so all moneys owing by the Customer to the Supplier shall (without limiting any other right or remedy of the Supplier) forthwith become due and payable.

8 Rights in Input Material and Output Material

8.1 The property and any copyright or other intellectual property rights in:

8.1.1 any Input Material shall belong to the Customer

8.1.2 any Output Material shall, unless otherwise agreed in Writing between the Customer and the Supplier, belong to the Supplier, subject only to the right of the Customer to use the Output Material for the purposes of utilising the Specified Services.

8.2 The Customer warrants that any Input Material and its use by the Supplier for the purpose of providing the Specified Services will not infringe the copyright or other rights of any third party, and the Customer shall indemnify the Supplier against any loss, damages, costs, expenses or other claims arising from any such infringement.

8.3 Subject to paragraph 8.2, the Supplier warrants that any Output Material and its use by the Customer for the purposes of utilising the Specified Services will not infringe the intellectual property rights of any third party, and the Supplier shall indemnify the Customer against any loss, damages, costs, expenses or other claims arising from any such infringement.

9 Warranties and Liability

9.1 Subject to the following provisions the Supplier warrants that Goods / Services will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 24 months from the date of their initial use or 24 months from delivery, whichever is the first to expire.

9.2 The above warranty is given by the Supplier subject to the following conditions:

9.2.1 The Supplier shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Supplier's instructions (whether oral or in Writing), misuse or alteration or repair of the Goods without the Supplier's approval, failure to store the Goods properly, failure to deploy and / or incorrect deployment of the Goods;

9.2.2 The Supplier shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods and / or any Specified Services has not been paid by the due date for payment;

9.2.3 The above warranty does not extend to parts, materials or equipment not manufactured by the Supplier, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Supplier and which is capable of being assigned by the by the Supplier to the Customer.

9.3 The Supplier warrants to the Customer that the Specified Services will be provided using reasonable care and skill and, as far as reasonably possible, in accordance with the Quotation and at the intervals and within the times referred to in the Quotation (or as otherwise agreed between the parties in writing).

9.4 Subject as expressly provided in these Terms, and except where the Goods / Services are provided to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

9.5 Where the Goods / Services are provided under a consumer transaction (as defined by the Consumer

Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Terms.

9.6 A claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to the Supplier within seven days from the date of delivery. Following such notification the Customer shall at its own expense return such Goods to the Supplier for examination. If upon examination the Goods shall be defective or shall fail to correspond with specification then the Supplier shall (in addition to the other provisions of these Terms) refund the reasonable costs of such carriage to the Customer. If delivery is not refused, and the Customer does not notify the Supplier accordingly, the Customer shall not be entitled to reject the Goods and the Supplier shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

9.7 Where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods or their failure to meet specification is notified to the Supplier in accordance with these Terms, the Supplier may replace the Goods (or the part in question) free of charge or, at the Supplier's sole discretion, refund to the Customer the price of the Goods (or a proportionate part of the price), in which case the Supplier shall have no further liability to the Customer.

9.8 The Supplier shall have no liability to the Customer whether under the warranties contained at 9.1 or 9.3 or otherwise for any loss, damage, costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by the Customer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Customer.

9.9 It shall be the responsibility of the Customer at all times to ensure that the Goods shall be properly used, maintained and repaired at all times in such a way that the use by the Customer of the Goods shall not cause any damage or loss to the Location.

The Supplier shall be under no liability to the Customer for any loss or consequential loss arising from the Customer's failure to comply with this provision.

9.10 Except in respect of: (i) death or personal injury caused by the Supplier's negligence; (ii) liability for defective products under Section 2 of the Consumer Protection Act 1987; (iii) breach of the terms implied by Section 2 of the Supply of Goods and Services Act 1982; or (iv) breach of the terms implied by Section 12 of the Sale of Goods Act 1979, and except as otherwise set out in these Terms, 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, or (in particular but without limiting the severability of this clause) in respect of any damage or loss caused by overwhelming / overtopping flooding, impact damage, third party intervention (e.g. vandalism), for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Supplier, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods / Services (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use by the Customer, and the entire liability of the Supplier under or in connection with the Contract shall not exceed the price of the Goods / Services, except as expressly provided in these Terms.

9.11 The Supplier shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Supplier's obligations in relation to the Goods / Services, if the delay or failure was due to any cause beyond the Supplier's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Supplier's reasonable control:

9.11.1 Act of God, explosion, tempest, fire or accident;

9.11.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

9.11.3 acts, restrictions, regulations, bye laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

9.11.4 import or export regulations or embargoes;

9.11.5 strikes, lock outs or other industrial actions or trade disputes (whether involving employees of the Supplier or of a third party);

9.11.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;

9.11.7 power failure or breakdown in machinery.

10 Indemnity / Access to Premises / CDM Regulations

10.1 If a claim is made against the Customer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of a drawing, design or specification supplied by the Customer, the Supplier shall indemnify the Customer against all loss, damages, costs and expenses awarded against or incurred by the Customer in connection with the claim, or paid or agreed to be paid by the Customer in settlement of the claim, provided that:

10.1.1 the Supplier is given full control of any proceedings or negotiations in connection with the claim;

10.1.2 the Customer shall give the Supplier all reasonable assistance for the purposes of any such proceedings or negotiations;

10.1.3 except pursuant to a final award, the Customer shall not pay or accept the claim, or compromise any such proceedings without the consent of the Supplier (which shall not be unreasonably withheld);

10.1.4 the Customer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Customer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Customer recovers any sums under any such policy or cover (which the Customer shall use its best endeavours to do);

10.1.5 the Supplier shall be entitled to the benefit of, and the Customer shall accordingly account to the Supplier for, all damages and costs (if any) awarded in favour of the Customer which are payable by, or agreed with the consent of the Customer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and

10.1.6 without limiting any duty of the Customer at common law, the Supplier may require the Customer to take such steps as the Supplier may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Supplier is liable to indemnify the Customer under this clause.

10.2 If the Specified Services are to be provided at the Customer's premises the Customer shall allow the Supplier sufficient access to such premises to allow the Supplier to perform the contract. The Customer shall compensate the Supplier in full for all loss damage or injury caused to the Supplier its employees contractors or otherwise in connection with the supply of the Specified Services upon the Customers premises and shall effect and maintain adequate insurance in respect thereof.

10.3 Where applicable the Customer undertakes to comply with the CDM Regulations.

11 Termination

11.1 In the event that:

11.1.1 the Customer makes a composition or voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) enters administration or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or a moratorium comes into force in respect of the Customer (within the meaning of the Insolvency Act 1986); or

11.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or

11.1.3 the Customer ceases, or threatens to cease, to carry on business; or

11.1.4 the Supplier reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly; or

11.1.5 the Customer commits a breach of any material term of the Contract which is not capable of remedy or, if capable of remedy, is not remedied within 14 days of the Supplier notifying the Customer in writing of such breach, then, without limiting any other right or remedy available to the Supplier, the Supplier may immediately cancel the Contract or suspend any further supply of Goods / Services under the Contract without any liability to the Customer, and if the Goods / Services have been supplied but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

12 Consequences of Termination

12.1 On termination of the Contract for any reason the following further terms shall apply:

12.1.1 the Customer shall return all of the Supplier's materials which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any

purpose not connected with this Contract;

12.1.2 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

12.1.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

13 General

Assignment and Other Dealings

13.1 Neither party shall, without the prior written consent of the other (such consent not to be unreasonably withheld, conditioned or delayed), assign, transfer, mortgage, charge, declare a trust of or deal in any other manner with the Contract or any of its rights and obligations under or arising out of the Contract (or any document referred to in it), or purport to do any of the same, or sub-contract or delegate in any manner any or all of its obligations under the Contract to any third party or agent. However, each party shall be free to deal in such a manner with other companies in its Group without requiring the prior written consent of the other party.

Notices

13.2 A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

13.3 Any notice shall be deemed to have been duly received:

13.3.1 if delivered personally, when left at the address referred to in this clause; or

13.3.2 if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; or

13.3.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or

13.3.4 if sent by fax or e-mail, on the next Business Day after transmission.

13.4 The provisions of clauses 13.2 and 13.3 shall not apply to the service of any proceedings or other documents in any legal action.

Waiver

13.5 No waiver by the Supplier of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

Severance

13.6 If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.

13.7 If a provision of the Contract (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

Governing Law

13.8 The Contract shall be governed by the laws of England, and the Customer agrees to submit to the exclusive jurisdiction of the English courts.

No Partnership

13.9 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

Third Parties

13.10 A person who is not a party to the Contract shall not have any rights under or in connection with it.