

## **PRIVATE DRAINAGE SURVEYS TERMS AND CONDITIONS**

All contracts for the supply of a private drainage survey will be governed by these terms and conditions and no variation to them will be valid unless agreed in writing by a director of the Company.

### **Definitions**

'Client' means the person, company or body who is the intended recipient of the Survey with an actual or potential interest in the Property.

'Company' means Envirotec Corporate Solutions Group Ltd t/a Envirotec Survey Solutions, the company producing the Survey.

'Customer' means the person, company, firm or other legal body placing the Survey Request, either on their own behalf as Client, or as an agent for a Client.

'Data Provider' means any third party source (including without limitation Ordnance Survey and the owner or occupier of any Property) from whom the Company obtains data in relation to a Survey.

'Property' means the address or location supplied by the Customer in the Survey Request.

'Survey' means the private drainage report prepared by the Company in respect of the Property including all and any information, data and other materials provided by the Company in such Survey (including, without limitation, Ordnance Survey plans and Digital Video Discs).

'Survey Request' means any request completed by the Customer requesting the Survey.

### **Agreement**

1. The Company agrees to supply the Survey to the Customer and the Client subject to these terms. The scope and limitations of the Survey are described in paragraph 2 of these terms. Where the Customer is acting as an agent for the Client then the Customer shall be responsible for bringing these terms to the attention of the Client.

The Customer and the Client agree that the placing of a Survey Request for a Survey indicates their acceptance of these terms.

### **The Survey**

2. Whilst the Company will use reasonable care and skill in producing the Survey, it is provided to the Customer and the Client on the basis that they acknowledge and agree to the following:-
  - 2.1. The information contained in the Survey can change on a regular basis so the Company cannot be responsible to the Customer or the Client for any change in the information contained in the Survey after the date on which the Survey was produced and sent to the Client.
  - 2.2. The information contained in the Survey is based upon the accuracy of the address supplied by the Customer or Client. The location of Property boundaries are based upon Ordnance Survey plans and the Company cannot ensure that such plans are accurate, complete or valid and accepts no liability therefore.
  - 2.3. The Survey provides information as to the location, connection and general condition of existing private drainage services and should not be relied on for (a) determining the suitability of the Property for any particular purpose, (b) as a basis for construction or engineering works, (c) as a factor in assessing saleability or value of the Property or (d) for any other purpose. Whilst the Company has taken reasonable care to determine the location of drainage and ancillary assets the Company does not warrant either (a) the position or extent of underground pipework or assets or (b) that the pipework propagates in a linear manner between particular node points and no liability is accepted for issues resulting from any reliance on the site infrastructure plan provided in the Survey. The Survey may contain opinions or general advice to the Customer and the Client and the Company cannot ensure that any such opinion or general advice is accurate, complete or valid and accepts no liability therefore.
  - 2.4. The position and depth of drainage assets shown on any maps attached to the Survey are approximate, and are furnished as a general guide only and no warranty as to its correctness is given or implied. The exact positions and depths should be obtained by excavation trial holes and the maps must not be relied on in the event of excavation or other works made in the vicinity of the drainage assets.
  - 2.5. The Asset Condition Scoring assessment of private drains and sewers provides an overview of the general condition of existing private drainage services for non-specialists and does not, and should not be relied on to, give any indication of (a) operational performance, (b) reliability and/or (c) future maintenance or investment requirements. In particular the Asset Condition Scoring assessment system does not, and does not purport to, conform with either the UK Industry Standard (as specified in the Manual of Sewer Condition Classification 4<sup>th</sup> Ed WRC 2204) or BS EN 13508-2 (CEN 2003).

- 2.6 In relation to mechanical and electrical apparatus associated with any private drainage system or ancillary assets serving the Property the Survey only provides an overview of the general condition of such apparatus which is apparent from a visual inspection and should not be relied upon for any other purpose. Electrical assets/apparatus have not been tested or inspected as part of the Survey. Power consumption estimates given in the Survey are for indicative purposes only and no warranty is given as to their accuracy. Further advice and information from appropriate mechanical and electrical engineers and professionals should always be sought.

- 2.7 The Survey contains opinions on the indicative remedial works (and associated estimated costs) considered by the Company to be necessary to any private drains and sewers on the Property and any ancillary drainage assets serving the Property. Such opinions are not prescriptive and should not be relied upon when assessing operational risk or for financial or budgeting purposes. Detailed maintenance requirements and exact costings are dependant upon numerous factors, including ground conditions, and are outside of the scope of the Survey.

- 2.8 The Survey provides for a Closed Circuit Television ("CCTV") survey of the private sewers within the vicinity of the Property curtilage to determine asset condition. CCTV is limited to sewers or drains within the Property curtilage excepting the private connection to the public sewer which may extend beyond the curtilage boundary. CCTV of this connecting pipe-length will be undertaken however CCTV will be limited to a total length of 50 metres. Connecting pipe-lengths exceeding 50 metres will be subject to additional charge. Rising mains, pumped sludge mains and other similar pressurised or pumped systems will not be assessed or surveyed (whether using CCTV or other methods) and are outside of the scope of the Survey.

- 2.9 The Company shall be entitled to refuse to accept or complete, or to revise its price for, any Survey Request, without any liability to the Customer in respect thereof, if in its opinion any of the following exist or could exist as a result of the Company carrying out the Survey:-

2.9.1 access to the Property cannot be arranged, confirmed or agreed;

2.9.2 the Property represents a risk to the health and safety of the Company's employees and/or sub-contractors;

2.9.3 conduct of the Survey is delayed, disrupted or prevented by (i) the actions of any third party (ii) extreme weather conditions and/or (iii) operational problems or other issues encountered at the time of Survey (including, without limitation, collapsed or blocked sewers or inaccessible manholes);

2.9.4 the site area of the Property is greater than detailed in the Survey Request;

2.9.5 delays are caused or additional work is required as a consequence of any third party safety requirements or inductions; or

2.9.6 conduct of the Survey may result in (i) pollution or causation of any environmental hazard (ii) a breach of any regulation or legislation or any legal action by any third party and/or (iii) adverse public relations and/or potential damage to goodwill, brand or reputation of the Company and/or Severn Trent.

- 2.10 The risk of input or submission of information on the Survey Request and/or cancelling a Survey Request which has been accepted by the Company is, in each case, with the Customer. The Customer (or any person on its behalf) entering incorrect information, including an incorrect address, and/or cancelling an accepted Survey Request will not in either case remove or limit the Customer's obligation to pay for the price of the any Survey Request.

### **Liability**

- 3.1 The Company shall not be liable to the Client for any failure defect or non-performance of its obligations arising from any failure of or defect in any machine, processing system or transmission link or anything beyond the Company's reasonable control or the acts or omissions of any party for whom the Company is not responsible.

- 3.2 The Company does not warrant that any Survey will meet the Customer's individual requirements and the Customer acknowledges that it is the responsibility of the Customer to ensure that its relevant Survey and Survey Request (including, without limitation, the Property identification) meets the Customer's requirements.

- 3.3 Where the Customer sells this Survey to a Client (other than in the case of a bona fide legal adviser recharging the cost of the Survey as a disbursement) the Company shall not in any circumstances (whether for breach of contract, negligence or any other tort, under statute or statutory duty or otherwise at all) be liable for any loss or damage whatsoever and the Customer shall indemnify the Company in respect of any claim by the Client.

- 3.4 The Company shall not be responsible for nor shall it have any liability to the Customer or the Client or any third party directly or indirectly whether in tort or contract or otherwise for any inaccuracies or errors in or omissions in the Survey resulting from information (whether written, oral or otherwise) provided by a Data Provider nor resulting from any Survey Request which is inaccurate, incomplete, illegible, out of sequence or in the wrong form or in respect of the wrong property or arising from late arrival or non-arrival thereof.

3.5 Subject to paragraph 3.5 the Company shall not be liable to the Customer or the Client or any third party for loss of profits, loss of business, loss of goodwill, loss of use, loss of contracts, or other indirect or consequential loss (the "Losses") whether arising from negligence, breach of contract or howsoever. If however, the Company is found to be liable for any of the Losses or for breach of contract, misrepresentation, misstatement or other tortious acts or omissions, including negligence, arising under or in connection with the Survey then the Company's maximum liability in aggregate shall not exceed £1,000,000.

3.6 The Company shall accept liability for death or personal injury arising from its negligence.

#### **Copyright and Confidentiality**

4.1 The Customer and the Client acknowledge that the Survey is confidential and is intended for the personal use of the Client. The copyright and any other intellectual property rights in the Survey shall remain the property of the Company. No intellectual or other property rights are transferred or licensed to the Customer or the Client except to the extent expressly provided.

4.2 The Customer or Client is entitled to make copies of the Survey (other than maps contained in, or attached to, the Survey, where no copying is permitted).

4.3 The Customer and Client agree (in respect of both the original and any copies made) to respect and not to alter any trademark, copyright notice or other property marking which appears on the Survey.

4.4 The maps contained in the Survey are protected by Crown Copyright and must not be used for any purpose outside the context of the Survey.

4.5 The Customer and the Client agree to indemnify the Company against any losses, costs, claims and damage suffered by the Company as a result of any breach by either of them of the terms of paragraphs 4.1 to 4.4 inclusive.

#### **Payment**

5.1 Unless otherwise stated all prices are inclusive of VAT. The Customer shall pay for the price of the Survey specified by the Company in its price list from time to time in full in sterling within 30 days of the date of invoice, without any set off, deduction or counterclaim. The Customer must pay the Company on time in cleared funds. If not, the Company may cancel existing Surveys and suspend further Surveys until payment of all outstanding amounts is made in full.

5.2 The Company reserves the right to increase the price for a Survey where the site area of the Property exceeds the de-minimis bands set out in the Company's price list from time to time. The Company will, on request, provide a quotation for providing a Survey of a Property whose site area exceeds such de-minimis bands and the Customer shall be deemed to have accepted such quotation by submitting a Survey Request in respect of such Property.

5.3 In the event that the Company produces a Survey which is incomplete as a result of the occurrence of any of the circumstances in paragraph 2.8 then, notwithstanding that the Survey is incomplete, the Customer shall still be liable to pay for the full price of the Survey specified by the Company in its price list from time to time.

5.4 In addition to any other remedy which the Company may have, the Company may claim interest on any overdue invoices at the rate which is 4% over the base rate of The Bank of England as that rate fluctuates.

5.5 The Customer shall be liable to the Company as principal for payment of the Company's invoices whether or not the Customer is acting on its own account or as agent for a Client.

#### **General**

6.1 If any provision of these terms is or becomes invalid or unenforceable, it will be taken to be removed from the rest of these terms to the extent that it is invalid or unenforceable. No other provision of these terms shall be affected.

6.2 Except as provided for in paragraph 6.4, a person who is not a party to the contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of the contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

6.3 No waiver by the Company of any breach of the contract by either the Customer or the Client shall be considered as a waiver of any subsequent breach of the same or any other provision and no failure to exercise or delay in exercising any right or remedy under the contract shall constitute a waiver of that right or remedy.

6.4 The Company may carry out its obligations (including producing the Survey) through (a) any company which at the relevant time is its holding company or subsidiary (as defined in section 736 of the Companies Act 1985) or the subsidiary of any such holding company or (b) any agents or sub-contractors who may themselves act through any agents or sub-contractors and references in these terms to "the Company" shall include a reference to such

holding company, subsidiary, agents or sub-contractors as applicable from time to time.

6.5 The Company reserves the right to defer the date of delivery of or to cancel any Survey (without liability to the Customer) if the Company is affected by Force Majeure. For the purposes of this paragraph "Force Majeure" means any circumstances beyond the reasonable control of the Company including, without limitation, industrial disputes, act of God, government actions, hostilities, terrorist attack, terrorist activity, accident, breakdown of plant or machinery, fire, flood, storm, disease or epidemic.

6.6 These terms shall be governed by English law and all parties submit to the exclusive jurisdiction of the English courts.