

COMMERCIAL EXTRA DRAINAGE AND WATER SEARCH

TERMS & CONDITIONS

These Terms govern the basis on which the Report is supplied and the basis upon which the Customer and the Client have relied upon the Report.

Definitions

'Apparatus' means the sewers, disposal mains or lateral drains, water mains, resource mains or discharge pipes and associated infrastructure for which an Undertaker holds statutory responsibility under the Water Industry Act 1991 shown on the map attached to the Report;
'Client' means the person who is the intended recipient of the Report with an actual or potential interest in the Property.
'Company' means Severn Trent Retail and Utility Services Limited, the company producing the Report.
'Customer' means the person placing the Order, either on its own behalf as Client, or, as an agent for or a reseller to a Client.
'Order' means any request completed by the Customer requesting the Report in accordance with the Company's order procedure.
'Report' means the drainage and/or water report prepared by the Company in respect of the Property.
'Partner Undertakers' means Severn Trent Water Plc or South Staffordshire Water Plc.
'Person' means any individual, firm, body corporate, unincorporated association or partnership.
'Property' means the address or location supplied by the Customer in the Order which satisfies one or more of the requirements set out in paragraph 2.1.
'Purpose' shall have the meaning set out in paragraph 2.2.
'Terms' means these Commercial Extra Drainage and Water Search Terms and Conditions.
'Third Party Undertaker' means any Undertaker other than a Partner Undertaker.
'Undertaker' means a Sewerage and/or Water Undertaker (both as defined in the Water Industry Act 1991) providing water and sewerage services.

1. Agreement

1.1 The Company agrees to supply the Report to the Customer and, if applicable, the Customer shall provide the Report to the Client, subject to these Terms to the exclusion of all other terms and conditions including any terms and conditions which the Customer and/or Client purports to apply under any Order, confirmation of Order or any other document. The scope and limitations of the Report are described in paragraph 2 of these Terms.

1.2 Where the Customer is not the Client, then the Customer shall ensure that these Terms are brought to the attention of the Client on or prior to the Customer placing the Order and that the Terms are provided with any copy of the Report provided by the Customer to the Client. The Customer is responsible for making sure that the Client is aware of the limitations and exclusions that are contained in these Terms and must draw the Client's attention to any disclaimers set out in the Report.

1.3 The Customer agrees that the placing of an Order for a Report indicates its acceptance of these Terms.

1.4 Where the Customer is placing an Order on behalf of a Client, it warrants and represents to the Company that it is authorised to accept these Terms on behalf of the Client and to bind the Client to these Terms.

2. The Report

2.1 This Report should only be used where the Property, which is the subject of the Report, is used for carrying out a trade or business. This Report should not be used if the Property is a residential, domestic property for which the Home Information Pack (No 2) Regulations 2007 apply.

2.2 The Report is produced solely for use by the Client for the intended purpose of the Report (the "Purpose"). The Purpose is the identification of the location and connection of existing drainage and/or water services at the Property in relation to the individual commercial property transaction in respect of the Property which is in the contemplation of the Client at the time of ordering the Report. The Company shall not be liable in any circumstances in connection with the Report if it is used for any other purpose.

2.3 Whilst the Company will use its reasonable care and skill in producing the Report, it is provided to the Customer on the basis that the Customer and the Client acknowledge and agree to the following:-

2.3.1 the information contained in the Report details only the location and connection of existing drainage and/or water services at the Property at the date stated in the Report;

2.3.2 the Company's obligation in respect of the Report is to correctly reproduce and compile the information provided by the Partner Undertakers and any Third Party Information (in accordance with paragraph 3.8);

2.3.3 the Report does not give details about the actual state or condition of the Property or the existing drainage and/or water services nor should it be used or taken to indicate actual suitability or unsuitability of the Property for any particular purpose, or relied upon for determining saleability or value, or used as a substitute for any physical investigation or inspection. Further advice and information from appropriate experts and professionals should always be obtained if the Customer or the Client requires;

2.3.4 the information contained in the Report is dependent upon the accuracy of the information supplied by the Customer or Client including, but not limited to the address of the Property and any plan of the Property;

2.3.5 the statements in the Report marked as "General Advice" are intended to be general statements and advice in addition to the report on the Property. The Company cannot ensure that any such General Advice is accurate, complete or valid and accepts no liability for such general statements and advice provided; and

2.3.6 the position and depth of any Apparatus shown on any maps attached to the Report is approximate, and is intended as a general guide only and no warranty as to its correctness is given or implied and the Company shall have no liability for any inaccuracy in respect of the position of the Apparatus shown on any map. 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 Apparatus.

2.4 The Client and/or Customer shall notify the Company as soon as is practicable if it becomes aware of any defect or inaccuracy in the Report.

3. Limitation of Liability

3.1 The Company does not exclude its liability (if any) to the Customer and/or the Client:

3.1.1 for personal injury or death resulting from the Company's negligence;

3.1.2 for any matter for which it would be illegal for the Company to exclude or to attempt to exclude its liability; or

3.1.3 for fraud.

3.2 Subject to paragraph 3.1 the Company accepts no responsibility for and excludes its liability (whether for breach of contract, negligence or any other tort, under statute or statutory duty, restitution or otherwise at all) for:

3.2.1 any inaccuracy or error in the Report based on incomplete or inaccurate information supplied by the Customer and/or the Client;

3.2.2 any use of the Report by the Customer for any purpose other than the Purpose;

3.2.3 any inaccuracy or error in information provided by any Third Party Undertaker;

3.2.4 any error in a Report, which is based on any error or inaccuracy in a public register; or

3.2.5 any change in the location and connection of existing drainage and/or water services at the Property after the date stated in the Report.

3.3 Except as provided in paragraph 3.1 and paragraph 3.4 the Company's entire liability in respect of all causes of action arising by reason of or in connection with the Report (whether for breach of contract, negligence or any other tort, under statute or statutory duty or restitution or otherwise at all) shall not exceed £5,000,000.

3.4 Except as provided in paragraph 3.1, the Company will be under no liability to the Customer and/or the Client whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any indirect or consequential loss (both of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused arising out of or in connection with these Terms and/or the provision of the Report.

3.5 Except as set out in paragraph 3.1, the Company hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, express (other than those set out in these Terms) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Customer and/or the Client.

3.6 The Company shall not be in breach of these Terms or otherwise liable to the Customer and/or the Client for any failure to provide or delay in providing the Report to the extent that such failure or delay is due to an event or circumstance beyond the reasonable control of the Company including but not limited to any delay, failure of or defect in any machine, processing system or transmission link or any failure or default of a supplier or sub-contractor of the Company or any provider of any third party Information except to the extent that such failure or delay is caused by the negligence of the Company.

3.7 Where the Customer sells this Report to a Client under its own name or as a reseller of the Company (other than in the case of a bona fide legal adviser recharging the cost of the Report 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, restitution or otherwise at all) be liable to the Customer for any loss (whether direct, indirect or consequential loss (all three of which terms include without limitation, pure economic loss, loss of profit, loss of business, depletion of goodwill and like loss)) or damage whatsoever caused in respect of the Report or any use of the Report or reliance placed upon it and the Customer shall indemnify and keep indemnified the Company in respect of any claim by the Client that the Company may incur or suffer.

3.8 Where the Property falls within a geographical area where two or more different Undertakers provide water and sewerage services, the Company shall use extracts from reports provided by Third Party Undertakers in respect of the part of the Property that falls within the provision of services by Third Party Undertakers and such information shall not be produced specifically for the Company ("Third Party Information"). Liability for accuracy of the Third Party Information used for the purpose of the Report will remain with that Third Party Undertaker and is subject to the Third Party Undertakers' terms and conditions of supply of such reports. The Company gives no warranty as to the correctness, accuracy or completeness of the Third Party Information and provided that the Company reproduces the Third Party Information in the Report correctly, the Company excludes all liability (whether for breach of contract, negligence or any other tort, under statute or statutory duty, restitution or otherwise) for any Third Party Information.

3.9 If the Customer and/or Client is acting as a consumer in purchasing the Report, then in respect of the party dealing as a consumer (the "Consumer"), the provisions of paragraphs, 3.3 to 3.5 shall not be deemed to apply and subject to paragraph 3.1, the Company shall only be liable to the Consumer for losses which the Consumer suffers as a result of the Company not providing the Report in accordance with these Terms. The Company is not responsible to the Consumer for any losses which it may incur which were not a foreseeable consequence of the Company breaching these Terms, including if the Consumer and the Company could not have contemplated those losses before or when the parties entered into these Terms. The Company's liability to the Consumer shall not in any circumstances include any business losses that it may incur, including but not limited to lost data, lost profits or business interruption.

4. Copyright and Confidentiality

4.1 The Customer acknowledges and where the Customer is not the Client, the Customer shall procure that the Client acknowledges that the Report is confidential to the Customer and/or the Client and may only be used by the Customer and/or the Client for the Purpose and the proper performance of these Terms.

4.2 The copyright and any other intellectual property rights in the Report 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 in these Terms. The maps contained in the Report are protected by Crown Copyright and must not be used for any purpose not anticipated by the Report.

4.3 The Customer and the Client are entitled to make copies of the Report for the Purpose but may only copy Ordnance Survey mapping or data contained in or attached to the Report if it has an appropriate licence from the originating source of that mapping or data.

4.4 The Customer agrees and where the Customer is not the Client, the Customer shall procure that the Client agrees, (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 Report.

4.5 The Customer agrees and where the Customer is not the Client, the Customer shall procure that the Client agrees to indemnify and keep indemnified 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.

4.6 The obligation to procure the compliance of the Client to the obligations set out in this paragraph 4 and in paragraph 6.5 shall not apply to Customers who are bona fide legal advisers recharging the cost of the Report to the Client as a disbursement.

5. Payment

5.1 Unless otherwise stated all prices are inclusive of VAT. The Customer shall pay the price of the Report specified by the Company, without any set off, deduction or counterclaim. Unless the Customer or Client has an account with the Company for payment for Reports, the Company must receive payments for Reports in full before the Report is produced. For Customers or Clients with accounts, payment terms will be as agreed with the Company.

5.2 Where the Property consists of a site with four or more separate metered or un-metered water supplies, additional fees may be charged as notified to the Customer by the Company.

6. 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 Any failure by the Company to enforce any breach of the Terms shall not be deemed to be a waiver of any future breach of the Terms by the Customer or Client.

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

6.4 Nothing in these Terms shall in any way restrict the Customer or Client's statutory or any other rights of access to the information contained in the Report.

6.5 The Company and the Customer agree and where the Customer is not the Client, the Customer shall procure that the Client agrees that these Terms contain all the terms which the Company and the Customer and/or the Client have agreed in relation to the subject matter of these Terms and supersede any prior written or oral agreements, representations or understandings between any of them in relation to such subject matter. Nothing in this paragraph 6.5 will exclude any liability which one party would otherwise have to another party in respect of any statements made fraudulently.

6.6 The Company may assign, delegate, licence, hold on trust or sub-contract all or any part of its rights and obligations under these Terms.

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