

TERMS & CONDITIONS

DRAIN CARE & REPAIR LTD TERMS AND CONDITIONS OF HIRE AND REPAIRS

- 1.1 In these conditions the following words have the following meanings:
- 'Contract' means a contract which incorporates these conditions and is made between the Customer and the Supplier for the hire of Hire Goods and/or the sale of Products and/or the Services;
- 'Customer' means the person, firm, company or other organisation hiring Hire Goods and/or contracting for the Services;
- 'Deposit' means any advance payment required by the Supplier in relation to the Hire Goods which is to be held as security by the Supplier;
- 'Hire Goods' means any machine, article, tool, and/or device together with any accessories specified in a Contract which are hired to the Customer;
- 'Hire Period' means the period commencing when the Customer holds the Hire Goods on hire (including Saturdays, Sundays and Bank Holidays) and ending upon the happening of any of the following events: i) the physical return of the Hire Goods by the Customer into the Supplier's possession; or ii) the physical repossession or collection of Hire Goods by the Supplier;
- 'Liability' means any liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities;
- 'Products' means the products sold to the Customer by the Supplier;
- 'Rental' means the Supplier's charging rate for the hire of the Hire Goods which is current from time to time during the Hire Period;
- 'Supplier' means Drain Care & Repair Ltd Registered number 12879977
- 'Services' Services and/or work (if any) to be performed by the Supplier for the Customer in conjunction with the hire of Hire Goods including any delivery and/or collection service for the Hire Goods or in conjunction with the repairing and/or servicing of Tools (and "Service" shall be interpreted accordingly); 'Tools' means any tool, hardware and/or equipment that the Customer requires to be serviced and/or repaired by the Supplier
- 2. BASIS OF CONTRACT**
- 2.1 Hire Goods are hired subject to them being available for hire to the Customer at the time required by the Customer.
- 2.2 Where hire of the Goods is to a Customer who is an individual and the hire would be covered by the Consumer Credit Act 1974 the duration of the hire shall not exceed 3 months. Accordingly the hire of any Goods is not covered by the Consumer Credit Act 1974.
- 2.3 Nothing in the Contract shall exclude or limit any statutory rights of the Customer acting as a consumer within the meaning of s12 of the Unfair Contract Terms Act 1977. Any provision which would be void under any consumer protection legislation or other such legislation in force from time to time shall, to that extent have no force or effect.
- 3. PAYMENT**
- 3.1 The amount of any Deposit, Rental and/or charges for any Services shall be as quoted to the Customer or otherwise as shown in the Supplier's current price list from time to time. Where a Deposit is required for the Hire Goods it must be paid in advance of the Customer hiring the Hire Goods. The Supplier may also require an initial payment on account of the Rental in advance of the Customer hiring the Hire Goods.
- 3.2 The Customer shall pay the Rental, charges for any Service, monies for any Products and/or any other sums payable under the Contract to the Supplier at the time and in the manner agreed. The Supplier's prices are exclusive of any applicable VAT for which the Customer shall additionally be liable.
- 3.3 The time for any payments by the Customer under a Contract shall be of the essence. Payment shall not be deemed to be made until Supplier has received either cash or cleared funds in respect of the full amount outstanding.**
- 3.4 If the Customer fails to make any payment in full on the due date the Supplier may charge the Customer interest (both before and after judgement) on the amount unpaid at the rate of 8% above the base rate from time to time of the Supplier's bank. Such interest shall be compounded with quarterly rests.
- 3.5 The Customer shall pay all sums due to the Supplier under the Contract without any set-off, deduction, counterclaim and/or any other withholding of monies.
- 3.6 The Supplier may set a reasonable credit limit for the Customer. The Supplier reserves the right to terminate or suspend the Contract for the hire of the Hire Goods and/or the provision of Services if allowing it to continue would result in the Customer exceeding its credit limit or the credit limit is already exceeded.
- 4. RISK TITLE AND INSURANCE**
- 4.1 Risk in the Hire Goods and any Products will pass immediately to the Customer when they leave the physical possession or the control of the Supplier.
- 4.2 Risk in the Hire Goods will not pass back to the Supplier from the Customer until the Hire Goods are back in the physical possession of the Supplier. This shall apply even if the Supplier has agreed to cease charging the rental.
- 4.3 Title in the Hire Goods remains at all times with the Supplier. The Customer has no right, title or interest in the Hire Goods except that they are hired to the Customer. Title in any Products remains with the Supplier until all monies payable to the Supplier by the Customer for the Products have been paid in full.
- 4.4 The Customer must not deal with the title or any interest in the Hire Goods. This includes but is not limited to selling, assigning, mortgaging, pledging, charging, securing, hiring, exerting a lien and/or lending. However the Customer may re-hire the Hire Goods to a third party with the prior written consent of the Supplier.
- 4.5 The Supplier will require proof of insurance in respect of the Hire Goods at additional cost to the rental. Alternatively the Supplier may require the Customer to insure the Hire Goods on such reasonable terms and for such reasonable risks as the Supplier may specify. The proceeds of any such insurance shall be held by the Customer in trust for the Supplier and be paid to the Supplier on demand. The Customer must not compromise any claim in respect of the Hire Goods and/or any associated insurance without the Supplier's written consent.**
- 5. DELIVERY, COLLECTION AND SERVICES**
- 5.1 It is the responsibility of the Customer to collect the Hire Goods from the Supplier. If the Supplier agrees to deliver the Hire Goods to the Customer it will do so at its standard delivery costs which will form part of any Service. Time for delivery shall not be of the essence of the contract and delivery times are given in good faith but are estimated only.
- 5.2 Where the Supplier provides Services the persons performing the Services are servants

of the Customer and are under the direction and control of the Customer. The Customer shall be solely responsible for any instruction, guidance and/or advice given by the Customer to any such person and for any damage which occurs as a result of such persons following the Customer's instructions, guidance and/or advice.

- 5.3 The Supplier will allow and/or procure sufficient access to and from the relevant site and procure sufficient unloading space, facilities, equipment and access to power supplies for the Supplier's employees, sub-contractors and/or agents to allow them to carry out the Services. The Customer will ensure that the site where the Services are to be performed is, where necessary, cleared and prepared before the Services are due to commence.

- 5.4 If any Services are delayed and/or are cancelled due to the Customer failing to comply with its obligations the Customer will be liable to pay the Supplier additional standard charges from time to time for such delay, postponement and/or cancellation.**

6. CARE OF HIRE GOODS

- 6.1 The Customer shall;
- 6.1.1 not interfere with the Hire Goods, their working mechanisms or any other parts of them and take reasonable care of Hire Goods and only use them for their proper purpose in a safe and correct manner in accordance with any operating and/or safety instructions provided or supplied to the Customer and notify the Supplier immediately after any breakdown, loss and/or damage to the Hire Goods;

- 6.1.2 take adequate and proper measures to protect the Hire Goods from theft, damage and/or other risks;

- 6.1.3 notify the Supplier of any change of its address and upon the Supplier's request, provide details of the location of the Hire Goods and permit the Supplier at all reasonable times to inspect the Hire Goods including procuring access to any property where the Hire Goods are situated;

- 6.1.4 keep the Hire Goods at all times in its possession and control and not remove the Hire Goods from the United Kingdom without the prior written consent of the Supplier;

- 6.1.5 be responsible for the conduct and cost of any testing, examinations and/or checks in relation to the Hire Goods required by any legislation, best practice and/or operating instructions except to the extent that the supplier has agreed to provide them as part of the Services;

- 6.1.6 not do or omit to do anything which will or may be deemed to invalidate any policy of insurance related to the Hire Goods;

- 6.1.7 not continue to use Hire Goods where they have been damaged and will notify the Supplier immediately if the Hire Goods are involved in an accident resulting in damage to the Hire Goods, other property and/or injury to any person; and

- 6.1.8 where the Hire Goods require fuel, oil and/or electricity ensure that the proper type is used and that, where appropriate, the Hire Goods are properly fitted by a qualified and competent person.

- 6.2 The Hire Goods must be returned by the Customer in good working order and condition (fair wear and tear excepted) and in a clean condition (everyday garments) together with all insurance policies, licences, registration and other documents relating to the Hire Goods.

7. BREAKDOWN

- 7.1 Allowance will be made in relation to the Rental to the Customer for any non-use of the Hire Goods due to breakdown caused by the development of an inherent fault and/or fair wear on condition that the Customer informs the Supplier immediately of the breakdown.

- 7.2 The Customer shall be responsible for all expenses, loss (including loss of Rental) and/or damage suffered by the Supplier arising from any breakdown of the Hire Goods due to the Customer's negligence, misdirection and/or misuse of the Hire Goods.**

- 7.3 The Supplier will at its own cost carry out all routine maintenance and repairs to the Hire Goods during the Hire Period and all repairs which are required due to fair wear and tear and/or an inherent fault in the Hire Goods. The Customer will be responsible for the cost of all repairs necessary to Hire Goods during the Hire Period which arise otherwise than as a result of fair wear and tear and/or an inherent fault.**

- 7.4 The Customer must not repair or attempt to repair the Hire Goods unless authorised to do so in writing by the Supplier.

8. LOSS OR DAMAGE TO THE HIRE GOODS

- 8.1 If the Hire Goods are returned in damaged, unclean and/or defective state except where due to fair wear and tear the Customer shall be liable to pay the Supplier for the cost of any repair and/or clearing required to return the Hire Goods to a condition fit for re-hire and the Rental until such repairs and/or clearing have been completed.

- 8.2 The Customer will pay to the Supplier the replacement cost on a new for old basis of Hire Goods which are lost, stolen and/or damaged beyond economic repair during the Hire Period less the amount paid to the Supplier under any policy of insurance taken out in accordance with these conditions.**

- 8.3 The Customer shall also pay to the Supplier the Rental until the Supplier has been paid the amount representing the replacement cost of such Hire Goods.**

9. TERMINATION BY NOTICE

- 9.1 If the Hire Period has a fixed duration neither the Customer nor the Supplier shall be entitled to terminate the Contract before the expiry of that fixed period unless agreed with the other party.

- 9.2 If the Hire Period does not have a fixed duration either of the Customer or the Supplier is entitled to terminate the Contract upon giving to the other party any agreed period of notice.

- 9.3 If no period of notice has been agreed or specified the Customer may terminate the Hire Period by the physical return of the Hire Goods and the Supplier shall be entitled to terminate the Hire of the Hire Goods by giving not less than 14 days notice to the Customer.

10. DEFAULT

- 10.1 If the Customer:-

- 10.1.1 fails to make any payment to the Supplier when due;

- 10.1.2 breaches the terms of the Contract and, where the breach is capable of remedy, has not remedied the breach within 14 days of receiving notice requiring the breach to be remedied;

- 10.1.3 persistently breaches the terms of the Contract;

- 10.1.4 provides incomplete, materially inaccurate or misleading facts and/or information in connection with the Contract;

- 10.1.5 pledges, charges or creates any form of security over any Hire Goods, or ceases or threatens to cease to carry on business, or proposes to compound with its creditors,

- applies for an interim moratorium in respect of claims and/or proceedings or has a Bankruptcy Petition presented against it, or being a company, enters into voluntary or compulsory liquidation, has a receiver, administrative receiver appointed over all or any of its assets, any attachment order is made against the Customer or any distress, execution or other legal process is levied on any property of the Customer or the Customer takes or suffers any similar action in any jurisdiction;
- 10.1.6 appears to the Supplier due to the Customer's credit rating to be financially inadequate to meet its obligations under the Contract; and/or
- 10.1.7 appears responsible to the Supplier to be about to suffer any of the above events then the Supplier shall have the right, without prejudice to any other remedies, to exercise any or all of the rights set out in clause 10.2 below.
- 10.2 If any of the events set out in clause 10.1 above occurs in relation to the Customer then:-
- 10.2.1 the Supplier may enter, without prior notice any premises of the Customer (or premises of third parties with their consent) where Hire Goods owned by the Supplier may be and repossess any Hire Goods;
- 10.2.2 the Supplier may withhold the performance of any Service and cease any Service in progress;
- 10.2.3 the Supplier may cancel, terminate and/or suspend without liability to the Customer the Contract and/or any other contract with the Customer; and/or
- 10.2.4 all monies owed by the Customer to the Supplier shall immediately become due and payable.
- 10.3 Any repossession of the Hire Goods shall not affect the Supplier's right to recover from the Customer any monies due under the Contract and/or any damages in respect of any antecedent breach.
- 10.4 Upon termination of a contract the Customer shall immediately:
- 10.4.1 return the Hire Goods to Supplier or make the Hire Goods available for collection by the Supplier as requested by the Supplier; and
- 10.4.2 pay to the Supplier all arrears for Rentals, Charges for any Services, monies for any Damages and/or any other sums payable under the Contract.
- 11. LIMITATIONS OF LIABILITY**
- 11.1 Unless the Customer deals as a consumer within the meaning of s12 of the Unfair Contract Terms Act 1977:
- 11.1.1 All warranties, representations, terms, conditions and duties implied by law relating to fitness, quality and/or adequacy are excluded to the fullest extent permitted by law.
- 11.1.2 All warranties, representations, terms, conditions and duties implied by law in relation provision of Services and to the use of reasonable care and skill, reasonable time for performance and reasonable consideration shall be excluded from this Contract.
- 11.2 If the Supplier is found to be liable in respect of any loss or damage to the Customer's property the extent of the Supplier's Liability will be limited to the retail cost of the replacement of the damaged property.
- 11.3 Any defective Hire Goods must be returned to the Supplier for inspection if requested by the Supplier before the Supplier will have any Liability for defective Hire Goods.
- 11.4 The Supplier shall have no Liability to the Customer if any monies due in respect of the Hire Goods are not the Service have not been paid in full by the due date for payments.
- 11.5 The Supplier shall have no Liability for additional damage, loss, claims, costs or expenses caused or contributed to by the Customer's continued use of defective Hire Goods and/or Services after a defect has become apparent or suspected or should reasonably have become apparent to the Customer.
- 11.6 The Customer shall give the Supplier a reasonable opportunity to remedy any matter for which the Supplier is liable before the Customer incurs any costs and/or expenses in remedying the matter itself. If the Customer does not do so the Supplier shall have no liability to the Customer.
- 11.7 The Supplier shall have no liability to the Customer to the extent that the Customer is covered by any policy of insurance arranged as a result of the Contract and the Customer shall ensure that the Customer's insurers waive any and all rights of subrogation they may have against the Supplier.
- 11.8 The Supplier shall have no liability to the Customer for any:-
- 11.8.1 consequential losses (including loss of profits and/or damage to goodwill);
- 11.8.2 economic and/or other similar losses;
- 11.8.3 special damages and indirect losses; and/or
- 11.8.4 business interruption, loss of business, contracts and/or business opportunity.
- 11.9 The Supplier's total Liability to the Customer under and/or arising in relation to any Contract shall not exceed 5 times the amount of the Rental and charges for Services (if any) under that Contract or the sum of £1000 whichever is the higher.**
- 11.10 Each of the limitations and/or exclusions in this Contract shall be deemed to be repeated and apply as a separate provision for each of:
- 11.10.1 Liability for breach of contract;
- 11.10.2 Liability in tort (including negligence); and/or
- 11.10.3 Liability for breach of statutory duty; except clause 11.9 above which shall apply once only in respect of all the said types of Liability.
- 11.11 Nothing in this Contract shall exclude or limit the Liability of the Supplier for death or personal injury due to its negligence or any other Liability which it is not permitted to exclude or limit as a matter of law.
- 12. GENERAL**
- 12.1 Each hire of an item of Hire Goods shall form a distinct Contract which shall be separate to any other Contract relating to other Hire Goods.
- 12.2 The Customer shall be liable for the acts and/or omissions of its employees, agents, servants and/or subcontractors as though they were its own acts and/or omissions under this contract.
- 12.3 The Customer agrees to indemnify and keep indemnified the Supplier against any and all losses, lost profits, damages, claims, costs (including legal costs on a full indemnity basis), actions and any other losses and/or liabilities suffered by the Supplier and arising from or due to any breach of contract, any tortious act and/or omission and/or any breach of statutory duty by the Customer.
- 12.4 No waiver by the Supplier of any breach of the Contract shall be considered as a waiver for any subsequent breach of the same provision or any other provision. If any provision is held by any competent authority to be unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the affected provision shall be unaffected and shall remain in full force and effect.
- 12.5 The Supplier shall have no Liability to the Customer for any delay and/or non performance of a Contract to the extent that such delay is due to any events outside the Suppliers reasonable control including but not limited to acts of god, war, flood, fire, labour/disputes, strikes, subcontractors, lock-outs, riots, civil commotion, malicious damage, explosion, governmental actions and any other similar events. If the Supplier is affected by any such

- event then time for performance shall be extended for a period equal to the period that such event or events delayed such performance.
- 12.6 All third party rights are excluded and no third parties shall have any rights to enforce the Contract. This Contract is governed by and interpreted in accordance with English law and the parties agree to submit to exclusive jurisdiction of the English courts.
- 12.7 The Supplier's Terms of and Conditions of Sale will apply to all Products sold and in the event of conflict between the Supplier's Terms of and Conditions of Sale and the Supplier's Conditions for Hire and Repair, the Supplier's Terms of and Conditions of Sale will prevail. Copies of the Suppliers Terms of and Conditions of Sale are available on request.
- 12.8 It is the Customers responsibility to ensure that everyone who uses the Hire Goods is properly instructed on how to use them safely and correctly and they have all the instructions the Supplier has supplied and that the Hire Goods are not misused.
- 13. DATA PROTECTION**
- 13.1 In order to maintain and manage credit accounts the Supplier will undertake searches of credit reference agencies and other organisations who may also keep a record of that search. These enquiries may concern the directors and principals of a Limited Company. The Supplier will monitor and record information relating to the Customer's trade performance and such information may be shared with other organisations such as collection agents and lawyers to enable recovery of sums due to the Supplier and any others who may use the information when managing credit accounts or assessing further credit applications by the Customer.
- SUPPLEMENTAL TERMS FOR TOOL REPAIR/SERVICING**
- 14. TERMS APPLY IN ADDITION**
- 14.1 Where the Supplier repairs or services Tools for the Customer these supplemental terms will apply in addition to the terms set out above.
- 15. PAYMENT**
- 15.1 The Supplier may require an initial payment on account of the Services in advance.
- 15.2 In addition to the quoted price for the Services the Supplier may also charge a reasonable administration charge to the Customer.
- 15.3 In the absence of contrary agreement, and subject to clause 15.2, payment will be due when the Supplier informs the Customer that the Services have been completed and the Tools are ready for collection.
- 15.4 The Supplier may exercise a lien over the Tools until the Customer has paid all sums due to the Supplier under the Contract. Accordingly the Supplier has the right to retain possession of the Tools until payment is made.
- 15.5 If any sum remains outstanding under the Contract for a period in excess of 3 months then title in the Tools shall pass to the Supplier and the Supplier shall have the right of sale over the Tools. If the Supplier exercises such right of sale then any balance of the sale proceeds shall be paid to the Customer after the deduction of the sums due to the Supplier under the Contract.
- 16. RISK**
- 16.1 Risk in the Tools will remain with the Customer at all times. The Supplier shall not be responsible for any loss or damage caused to or suffered by the Tools whilst they are in the possession of the Supplier however caused.
- 17. DELIVERY AND COLLECTION**
- 17.1 It is the responsibility of the Customer to deliver and collect the Tools to and from the Supplier. If the Customer fails to collect the Tools from the Supplier within 3 months of the Supplier making the Tools available for collection then the Supplier may dispose of the Tools as the Supplier sees fit without any further obligation or liability to the Customer. In such circumstances the Supplier may charge the Customer for its reasonable storage and disposal costs.
- 17.2 The Supplier may agree to collect or deliver the Tools from/to the Customer. Such collection/delivery will be charged to the Customer at the Supplier's standard rates which will be charged to the Customer in addition to the costs of the Services and will be payable subject to the terms contained in the Contract.
- 18. ABILITY TO PROVIDE SERVICES**
- 18.1 Nothing in the Contract nor any action of the Supplier shall be taken as a representation that, or form a binding agreement that, the Supplier will be able to carry out the Services in any particular case.
- 18.2 If at any point the Supplier is unable to carry out the Services then the Customer shall be informed of such inability within a reasonable period. In such circumstances the remaining terms and conditions of the Contract shall continue in force except that the Supplier may only charge the Customer for its reasonable costs of investigation and any partial Services provided.
- 18.3 The Supplier shall not be liable for any cost or loss to the Customer caused by any failure or inability to complete the Services.
- 19. TIME SCALE**
- 19.1 Time for the provision of the Services by the Supplier shall not be of the essence.
- 19.2 The Supplier shall seek to provide the Customer with an estimate of when the Services shall be completed however this is designed to be for guidance only and the Customer recognises that the Services may not be completed within any such estimate. The Supplier shall not be liable for any cost or loss to the Customer caused by any failure to complete the Services within any given estimate.
- 20. EFFECT ON ANY MANUFACTURER'S WARRANTY**
- 20.1 The Supplier shall not be liable for any invalidation or other effect on any warranty, guarantee or any other agreement with the manufacturer of the Tools or any other party arising from the Supplier's provision of the Services.
- 21. REFERRAL TO THIRD PARTIES**
- 21.1 Should the Supplier be unable to provide any Service requested by the Customer then the Supplier may suggest a third party to provide this Service to the Customer. Any such suggestion is made without any warranty or representation as to the third party's suitability or quality of workmanship and the Supplier shall not be liable for any loss or damage suffered by the Customer arising from the provision of Services by any such third party.
- 22. BRIBERY ACT COMPLIANCE**
- 22.1 The Customer shall ensure that in any dealings with the Supplier, neither the Customer nor its employees or agents shall commit any offence under the Bribery Act 2010 ("the Act") including not engaging in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Act. The Customer shall inform the Supplier immediately it becomes aware of any actions between the parties that could constitute an offence under the Act.