

NCH UK Limited T/as CHEM-AQUA

GENERAL TERMS AND CONDITIONS OF SUPPLY

1. DEFINITIONS

In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

- 1.1 **"Buyer"** means the person, company or firm who accepts a quotation or offer of the Seller for the sale of the Goods and/or supply of the Services, or whose order for the Goods and and/or Services is accepted by the Seller;
- 1.2 **"Contract"** means the contract for the purchase and sale of the Goods and/or supply of the Services under these Terms and Conditions;
- 1.3 **"Equipment"** means the equipment supplied to the Buyer on the basis set out in the Service Documentation;
- 1.4 **"Executive Report"** means the report provided by the Seller for each Site of the Buyer following completion of the Services as set out in the Service Documentation;
- 1.5 **"Early Termination Fee"** means the fee set out in the Service Documentation for the Equipment if the Contract is terminated early.
- 1.6 **"Goods"** means the goods (including any instalment of the goods or any parts for them and any Equipment) the subject of the contract or contracts to which these Terms and Conditions apply;
- 1.7 **"Method Statement"** means the confirmation by the Seller of the Services to be carried out for the Buyer;
- 1.8 **"Identification of Responsibilities Statement"** means the document prepared by the Buyer prior to the commencement of the Services for the Seller setting out the responsibilities of the Buyer and the Seller in carrying out the Services.
- 1.9 **"Product"** means the Goods and/or the Services;
- 1.10 **"Quotation for Works"** means the quote supplied by the Seller to the Buyer to carry out the Services;
- 1.11 **"Seller"** means NCH (UK) Limited, a company incorporated and registered in England and Wales with company number 00816221, whose registered office address is NCH House, Springvale Avenue, Bilston, West Midlands, WV14 0QL trading as Chem-Aqua;
- 1.12 **"Services"** means the services set out in the Service Documentation the subject of the contract or contracts to which these Terms and Conditions apply;
- 1.13 **"Service Documentation"** means the Method Statement; Quotation for Works and Identification of Responsibilities Statement;
- 1.14 **"Site"** means each location of the Buyer as set out in the Service Documentation;

- 1.15 **“Specification”** means the detailed requirements of the Buyer for the installation of equipment by the Seller.
- 1.16 **“System(s)”** means the systems of the Buyer which are the subject of the Services as set out in the Service Documentation
- 1.17 **“Written Scheme of Control”** means a comprehensive risk management document that clearly identifies those measures required to control the risks from exposure to Legionella bacteria, and how those measures are implemented and managed so that control over the Systems is achieved and remains effective.

2. **THESE TERMS AND CONDITIONS**

- 2.1 Every sale of the Product by Seller shall be subject to these Terms and Conditions which shall apply to the exclusion of any terms issued by Buyer or otherwise arising expressly or implied.
- 2.2 Sales literature, price lists and other documents issued by the Seller in relation to the Products are subject to alteration without notice and do not constitute offers to sell the Products which are capable of acceptance. No contract for the sale of the Products shall be binding on the Seller unless the Seller has issued a quotation which is expressed to be an offer to sell the Products or has accepted an order placed by the Buyer by whichever is the earlier of:
 - 2.2.1 the Seller’s written acceptance;
 - 2.2.2 delivery of the Goods;
 - 2.2.3 provision of the Services; or
 - 2.2.4 the Seller’s invoice.

3. **THE SERVICES**

- 3.1 The Seller will provide a Quotation for Works setting out the Services requested by the Buyer.
- 3.2 To support the Quotation for Works the Seller will provide the Buyer with an Identification of Responsibilities Statement setting out the requirements on the parties necessary to carry out the Services.
- 3.3 Once the Quotation for Works and Identification of Responsibilities Statement have been agreed with the Buyer, the Seller will complete a Method Statement setting out what the Seller will do in order to carry out the Quotation for works.
- 3.4 Any additions or alterations to the Services not recorded in the Service Documentation will be confirmed in writing by the Seller to the Buyer and the Service Documentation will be deemed amended accordingly. For the avoidance of doubt any amendments not confirmed in writing by the Seller to the Buyer do not form part of the Services and are not part of the Contract.
- 3.5 In the event that the Buyer supplies the Seller with a Specification this will be noted on the Service Documentation. The Seller takes no responsibility for

the accuracy of a Specification. Additional costs may be incurred by the Buyer if the Specifications are inaccurate and the Seller may not be able to complete the Services within the time specified in the Service Documentation.

4. PRICE

- 4.1 Products are supplied at the price ruling at the time of despatch; performance (as the case may be); or as specified in the Service Documentation.
- 4.2 The Seller reserves the right, by giving written notice to the Buyer at any time before delivery or provision, to increase the price of the Goods and/or Services to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods and/or Services which are requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.3 Prices for Equipment do not include the cost of installation or any pipe work required and the cost for which is set out in the Service Documentation
- 4.4 Seller reserves the right to charge Buyer for any increase in freight and carriage charges over those on which the Seller's price is based.

5. PAYMENT OF SELLER'S INVOICES

- 5.1 Payment for the Product shall become due immediately 30 days after the date of a Seller's invoice.
- 5.2 Time for payment is of the essence.
- 5.3 Without prejudice to any other right or remedy that it may have, if the Buyer fails to pay the Seller any sum due under this agreement on the due date:
 - 5.3.1 the Buyer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.3.1 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%;
 - 5.3.2 the Seller may suspend all or part of the Services until payment has been made in full.
- 5.4 All sums payable to the Seller under this agreement:
 - 5.4.1 are exclusive of VAT, and the Buyer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
 - 5.4.2 shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required

by law).

6. SELLER'S WARRANTIES AND LIABILITY

- 6.1 Seller warrants that, subject to the normal limits of industrial quality the Goods shall be free from defects in materials and workmanship. If the Goods do not conform to that warranty, Seller will, at its option: repair or replace the Goods; and/or refund and/or invoice credit Buyer in respect of the whole or the proportionate price paid by Buyer for the Goods.
- 6.2 Seller warrants that the Services will be carried out with reasonable skill and care, subject to the Buyer complying with its obligations as set out in clause 23. If the Services do not conform to this warranty, Seller will, at its option either: carry out remedial works to; re-perform such Services; and/or refund, and/or invoice credit buyer in respect of the whole or the proportionate price.
- 6.3 Any issues, risks, areas of responsibility, or pieces of work not specifically listed and itemised in the Service Documentation are areas outside of Seller's responsibility and no liability is accepted by Seller in relation to them. In addition, Seller is responsible to the Buyer for items listed in the Service Documentation only for the duration of the Contract. For the avoidance of doubt Seller takes no responsibility and accepts no liability for any acts or omissions on the part of the Buyer to deal with obligations incumbent upon the Buyer pursuant to the following: The Health and Safety at Work Act 1974; The Management Relations 1999; and Control of Substances Hazardous to Health Act 2002; ACOP L8 and HSG 274 or any amended or updated relevant legislation. The Buyer is required to make its own enquiries and take whatever action they consider is necessary to ensure compliance with the above.
- 6.4 The forgoing warranties under conditions 6.1 and 6.2 are conditional on the following:
 - 6.4.1 Buyer giving written notice to Seller of the alleged defect in the Goods and/or Services, with such notice to be received by the Seller within 7 (seven) days of the time when Buyer discovers or ought to have discovered the defect, and in any event within 6 (six) months of delivery of the Goods and/or provision of the Services unless otherwise stated in the Service Documentation;
 - 6.4.2 Buyer affording Seller a reasonable opportunity to inspect the Goods; or (if so requested by Seller) returning the allegedly defective Goods to Seller's works. In the event that the Goods are returned to the Seller (at Seller's request for inspection to take place there) carriage is to be paid by Buyer;
 - 6.4.3 Buyer making no further use of the Goods after the time at which Buyer discovers or ought to have discovered the defect(s);
 - 6.4.4 the defective Goods, having been used, stored and maintained in accordance with any instructions, information or literature issued or

made available by Seller, or in accordance with general trade practice, and there being no negligence or misuse on the part of Buyer, its servants or agents, nor the Goods having been altered or repaired by any person other than Seller or those authorised by Seller; and

6.4.5 Seller being satisfied that the defect(s) in the Goods and/or Services was/were due to defective workmanship or use of defective materials, and without prejudice to the forgoing, Seller shall be under no liability whatsoever for defects due to: fair wear and tear; neglect; any wilful damage; use of the Goods for any purpose other than those for which they are designed; failure to follow the Seller's instructions (whether given orally or in writing), misuse or alteration of the Goods without the Seller's prior approval, or any other act or omission on the part of the Buyer, its employees or agents or any third party.

6.5 Save as otherwise provided for in these Terms and Conditions, and to the full extent permitted by law:

6.5.1 all conditions and warranties express or implied are hereby expressly excluded (save for section 12 of the Sale of Goods Act 1979, section 2 of the Supply of Goods and Services Act 1982 and section 2(3) of the Consumer Protection Act 1987);

6.5.2 Seller shall be under no liability for any loss or damage howsoever caused which arises in respect of Buyer's liabilities to any third party; and

6.5.3 Seller shall be under no liability for any direct, indirect or consequential loss or damage howsoever caused, and, without prejudice to the foregoing, Seller shall not be liable for any costs claims or damages or expenses, arising out of any tortious acts or omissions or any breach of contract or statutory duty or misrepresentation, calculated by reference to profits, income production or accruals or loss of such profits, income production or accruals or by reference to accrual of such costs claims damages or expenses on a time basis.

6.6 Nothing herein contained shall be construed as an attempt to exclude or limit the liability of Seller:

6.6.1 in negligence for the death of or injury to any person; or

6.6.2 fraud or fraudulent misrepresentation.

6.7 Nothing in this condition 6 shall limit the Buyer's payment obligations under the Contract.

6.8 Subject to conditions 6.4 and 6.5 above, the maximum liability of Seller under or in connection with any contract to which these Terms and Conditions apply (including for negligence) shall not exceed the price received by Seller from the Buyer under such a contract.

6.9 Seller shall not be liable for loss or damage suffered or incurred by Buyer to the extent resulting from Buyer's own negligence or wilful default.

- 6.10 Save to the extent that Seller is by this condition expressly made liable, Buyer shall indemnify and keep indemnified Seller against any and all expenses, liability, loss, claims or proceedings, arising out of, or caused by, or occurring in the course of the sale of the Goods and/or carrying out of the Services.
- 6.11 Seller accepts no responsibility for any drawing, design or specification not prepared by Seller; Seller gives no warranty, guarantee, representation or opinion, on the practicability of construction or of the efficacy, safety or otherwise, of materials to be supplied or work to be executed by Seller in accordance any drawing, design or specification not prepared by Seller; and Buyer shall be responsible for the cost of any additional work caused by defects in any such drawings, designs or specifications.

7. EQUIPMENT

- 7.1 In the event that the Seller supplies the Equipment the terms of supply will be set out in the Service Documentation.
- 7.2 In the event that the Equipment is supplied to the Buyer either by way of hire; loan; or rent to buy, the Buyer shall:
 - 7.2.1 obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Seller to provide the Services, including in relation to the installation of the Equipment before the date on which the Services are to start; and
 - 7.2.2 keep, maintain and insure the Equipment in accordance with the Seller's instructions from time to time and shall not dispose of or use the Equipment other than in accordance with the Seller's written instructions or authorisation.
- 7.3 At the end of the Contract the Buyer shall uninstall and return all of the Equipment. If the Buyer fails to do so, then the Seller may enter the Customer's premises and take possession of the Equipment. Until the Equipment has been returned or repossessed, the Buyer shall be solely responsible for its safe keeping.
- 7.4 If the Buyer terminates the Contract within the period set out in the Service Documentation the Buyer will be subject to an Early Termination Fee.
- 7.5 In the event that the Equipment is supplied on a rent to buy basis if the Contract is terminated within the period set out in the Service Documentation the Buyer will either buy the Equipment on terms to be agreed with the Seller or the Seller will enter onto the Buyers premises to remove the Equipment.

8. DELIVERY

- 8.1 Delivery is deemed to have occurred at these times, if Product is:
 - 8.1.1 collected from Seller, at the time when loading of Product either in containers or through delivery line from Seller's storage tank commences; or

8.1.2 transported by Seller at request of Buyer, at the time when unloading of Product either in containers or through delivery line from the Seller's delivery vehicle commences.

8.2 Deviations in quantity of Goods delivered, up to a maximum of either 10% of weight or volume, from that stated in the Service Documentation, shall not permit the Buyer any right to reject delivered Goods or to claim damages, and Buyer shall be obliged to accept the delivered Goods and to pay in full and on time, at the contract rate, for the quantity of Goods delivered.

8.3 Time for delivery shall not be of the essence.

9. TITLE AND RISK

9.1 Property in the Goods shall not pass to Buyer until the full price of the Product and every other sum whatsoever which is due from Buyer to Seller, whether under this Contract or otherwise, have been received in full by Seller in cash or cleared funds. This condition shall apply notwithstanding that the Goods have been affixed to or incorporated in real or other property.

9.2 Until property in the Goods has passed in accordance with condition 9.1, Buyer shall: hold the Goods in a fiduciary capacity as bailee; store them in such a way that they are identifiable as the property of the Seller and in an appropriate environment; are separate from all other goods in the possession of Buyer; and insure the Goods against all reasonable risks.

9.3 Until property in the Goods has passed in accordance with condition 9.1, Buyer shall have no right to: sell the Goods; pledge; or in any way charge by way of security for any indebtedness of the Buyer without Seller's consent.

9.4 Until property in the Goods has passed in accordance with condition 9.1, Seller may, by notice in writing to Buyer, determine Buyer's right to use the Goods and Buyer shall thereupon at its own cost return the Goods to Seller and shall cease to be in possession of the Goods with the consent of the Seller.

9.5 The Seller reserves the right to repossess any Goods in which the Seller retains title without notice. The Buyer irrevocably authorises the Seller to enter the Buyer's premises during normal business hours for the purpose of repossessing the Goods in which the Seller retains title and inspecting the Goods to ensure compliance with the storage and identification requirements of sub-Clause 9.2.

9.6 The Buyer's right to possession of the Goods in which the Seller maintains legal and beneficial title shall terminate if:

9.6.1 the Buyer commits or permits any material breach of its obligations under these Terms and Conditions;

9.6.2 the Buyer enters into a voluntary arrangement under Parts I or VIII of the Insolvency Act 1986, the Insolvent Partnerships Order 1994 (as amended), or any other scheme or arrangement is made with its creditors;

9.6.3 the Buyer is or becomes the subject of a bankruptcy order or takes advantage of any other statutory provision for the relief of insolvent debtors; or

9.6.4 the Buyer convenes any meeting of its creditors, enters into voluntary or compulsory liquidation, has a receiver, manager, administrator or administrative receiver appointed in respect of its assets or undertaking or any part thereof, any documents are filed with the court for the appointment of an administrator in respect of the Buyer, notice of intention to appoint an administrator is given by the Buyer or any of its directors or by a qualifying floating charge-holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986), a resolution is passed or petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer.

9.7 Notwithstanding the forgoing:

9.7.1 the Goods are at the entire risk of Buyer from the time of delivery;

9.7.2 Buyer shall not be entitled to return the Goods or any of them unless the Seller shall have given a notice pursuant to condition 9.4 above relating whether exclusively or not to the Goods; and

9.7.3 nothing in this condition 9 shall in any way limit or modify Buyer's obligation to pay for the Goods in full.

10. **NON-DELIVERY AND DAMAGE IN TRANSIT**

10.1 Buyer shall notify Seller in writing of any claim for non-delivery of the Goods or for damage in transit, within 7 (seven) days of the date of delivery or due date for delivery. Following such notification, Seller shall make good any shortage in the Goods delivered and will replace Goods damaged in transit as soon as it is reasonably able to do so, but shall not be under any additional liability, howsoever arising. Seller's obligation to replace damaged Goods shall be subject to such Goods being returned to the Seller.

10.2 If for any reason Buyer fails to accept delivery of the Goods: Buyer shall remain liable to pay the price for the Goods, (with interest) at the time and at the rates specified in these Terms and Conditions; Seller shall be entitled to store the Goods; Buyer shall be liable to Seller for the costs of such storage; and Buyer shall be responsible for any and all loss or damage to the Goods howsoever arising during such storage.

10.3 Seller reserves the right to terminate any contract with the Buyer on these Terms and Conditions in the event that the Buyer unreasonably refuses to accept delivery of the Goods.

11. **HANDLING GOODS**

11.1 Seller hereby gives notice to Buyer, that Seller has available for Buyer's inspection upon request, information and product literature concerning the conditions necessary to ensure that the Goods will be safe and without risk to

health when properly used. If Buyer is not already in possession of such literature or requires any information or advice in connection with the safe and proper use of Goods, Buyer should immediately contact Seller to request the same.

- 11.2 Buyer undertakes to draw to the attention of his servants or agents or any person handling or otherwise using Goods on behalf of Buyer, or having access to the Goods whilst in possession of Buyer, any information or warnings concerning the methods whereby or the conditions where under Product should be used or handled, contained in Seller's relevant literature.
- 11.3 Buyer shall indemnify and keep indemnified Seller against all costs, claims, demands and damages arising from any failure of Buyer to ensure that any person handling, using or having access to the Goods complies with information and warnings provided by Seller.

12. PACKAGES

- 12.1 Without prejudice to the generality of the word, "package" shall include drums, intermediate bulk containers, and other such containers.
- 12.2 Where Buyer has an option, as set out in the Service Documentation, to return packages and chooses to exercise this option, Buyer must return such packages empty, securely closed, in a good reusable condition and to the location requested by Seller. Buyer must bear the costs of returning packages to Seller, and must advise Seller on date of despatch.
- 12.3 Any packages Seller lends to Buyer shall remain the property of Seller at all times. Buyer must make such packages available as soon as possible for return to Seller, and return such packages in accordance with condition 10.2 above. Any packages required to be returned which are not returned, or not returned in a good reusable condition, and within a reasonable period of time, shall be paid for by Buyer at Seller's standard rate operating at the date of issue by Seller to Buyer of a debit note relating to such packages.
- 12.4 All loss or damage to packages shall be Buyer's responsibility, howsoever caused.
- 12.5 Buyer must immediately notify Seller of any loss or damage to packages however caused upon Buyer's discovery of such loss or damage.

13. INSOLVENCY OF BUYER

In the event of Buyer entering into any arrangement or composition with its creditors, committing any act of bankruptcy; (being a corporation) an order being made or a resolution being passed for its winding up (except for the purposes of amalgamation or reconstruction as a solvent company); or a Receiver or Administrator being appointed in respect of the whole or any part of its undertaking or assets, Seller may without prejudice to its other rights terminate any contract to which these Terms and Conditions apply forthwith by written notice to Buyer, and shall be entitled to suspend all or any work or future deliveries of Goods and/or the provision of Services under such contracts.

14. **FORCE MAJEURE**

- 14.1 Seller shall not be liable for any failure to deliver Product arising from circumstances beyond Seller's reasonable control. Non-exhaustive illustrations of such circumstances include: act of God; explosion; abnormal weather conditions; fire; flood; strikes; lockouts; Government action or regulations (UK or otherwise); pandemics or epidemics; delay by suppliers; accidents and shortage of materials, labour or manufacturing facilities.
- 14.2 Should Seller be so prevented from delivering the Products to Buyer, Seller shall give Buyer written notice of this fact as soon as reasonably practicable following discovery thereof.
- 14.3 If the circumstances preventing delivery of Product continue for more than three months after Buyer receives Seller's notice under condition 14.2 above, either party may give written notice to the other terminating any contract to which these Terms and Conditions apply.
- 14.4 If the Contract between the parties subject to these Terms and Conditions is terminated under condition 14.3 above, Seller shall refund any payment which Buyer has already made towards the price of the Product (subject to deduction of any amount Seller as the Seller may think fit (notwithstanding any purported appropriation by the Buyer)), but Seller will not be liable to compensate Buyer for any further loss or damage caused by Seller's failure to deliver Product.
- 14.5 Any delay in delivery of Product which is excusable under this condition 14 shall be excused, notwithstanding that goods of the same description as the Goods and/or Services may be available to purchase from another source by the Seller for supply to Buyer.

15. **NOTICES**

Any notice required to be given or served in accordance with these Terms and Conditions shall be in writing (excluding fax and email) and shall be deemed to have been duly given if sent or delivered to the party concerned at its address detailed in the Service Documentation.

16. **ASSIGNMENT OF CONTRACT**

No contract between the parties to which these Terms and Conditions relate shall be assigned by Buyer. Nothing in these Terms and Conditions shall prevent Seller from sub-contracting all or part of any contract between the parties to which these Terms and Conditions relate.

17. **SELLER'S LIEN**

In addition to any other right or lien to which Seller by law or the other terms is entitled, Seller shall be entitled to a general lien on all the goods and property of Buyer in Seller's possession.

18. **INTELLECTUAL PROPERTY RIGHTS**

- 18.1 Buyer shall not use the Goods or any specifications, designs or drawings or any other information supplied by Seller for the purpose of designing or

manufacturing identical goods. All patents, registered designs, copyright and other intellectual property rights in or in connection with Goods which Seller may have shall remain the sole property of Seller at all times.

- 18.2 Buyer shall indemnify and keep indemnified Seller against all charges, damages, penalties, costs and expenses to which Seller may become liable as a result of supplying the Product to the Buyer further to the Service Documentation, provided that said charges, damages, penalties, costs and expenses arise as a result of Seller's infringement of any patents, trademarks, copyright or registered designs or other intellectual property rights of any third party.

19. **CONFIDENTIALITY**

- 19.1 Each party undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 19.2.

- 19.2 Each party may disclose the other party's confidential information:

19.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 19; and

19.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- 19.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

20. **TERMINATION**

The Seller may terminate any contract between the parties subject to these Terms and Conditions upon providing the Buyer with 30 days' written notice.

21. **GOVERNING LAW AND JURISDICTION**

Any contract between the parties subject to these Terms and Condition shall be governed by and construed in accordance with English Law and shall be subject to the exclusive jurisdiction of the English Courts. The Seller may enforce any judgement relating to the Contract in any court of competent jurisdiction.

22. **LEGIONELLA CONTROL**

- 22.1 All quotations provided by the Seller shall, where applicable, be in accordance with the current requirements of the Health and Safety Executive's Approved Code of Practice and Guidance L8 (fourth edition) ("the **Code**") or any subsequent updates or amendments to the Code.

- 22.2 Buyer is hereby advised of its responsibility under paragraph 48 of the Code to appoint a person or persons to take managerial responsibility and to provide supervision for the implementation of precautions in relation to legionella control.
- 22.3 Legislative requirements for the control of legionellosis put the responsibility for compliance strictly on the owner/operator (referred to as the buyer in these Terms and Conditions) of water systems. Under the Health and Safety at Work Act 1974, and the Control of Substances Hazardous to Health Regulations 2002, as regards risks for legionellosis, all owners and operators of water systems have a responsibility to ensure that the risk is controlled and kept to an acceptable level. The Code stresses that whilst the tasks required to be undertaken to control the risk may be contracted out to an external specialist, the owner/operator must take all reasonable care to ensure the competence of the service provider (referred to as the Seller in these Terms and Conditions) to carry out such work.
- 22.4 The Services are to be carried out as part of a complete building water management plan and program for the building water systems set out in the Service Documentation. The Services should not be considered to be a complete mitigation of the risks associated with Legionella bacteria or any other waterborne pathogens.
- 22.5 Legionella and other bacteria present inherent risks in water-based systems. Due to the nature of such bacteria and its ability to rapidly reappear and colonize, the Seller cannot prevent the presence of Legionella or other waterborne bacteria or pathogens in Buyer's systems. The Seller cannot guarantee that the Buyer's systems will be free from Legionella or other waterborne bacteria. The Seller hereby disclaims any warranties relating to water system biohazards, including Legionella and other bacteria or pathogens. Neither party shall be liable for any consequential, indirect, or incidental losses of any type, lost profits, loss of business, loss of use, or loss of data. The Seller is not responsible for damages arising out of conditions existing prior to the start of the Services, non-standard metallurgy (such as aluminium, copper and plastic), dead legs and other impediment to complete water flow and Buyer's failure to properly operate and maintain its equipment.

23. **RISK ASSESSMENT SERVICES**

- 23.1 The Seller may undertake, or appoint a third party to undertake a Legionella risk assessment works (**Legionella Risk Assessment**) as stated in the Quotation for Works.
- 23.2 With regard to the Legionella Risk Assessment unless where otherwise stated or agreed:
- 24.2.1 one copy of the completed Legionella Risk Assessment will be issued digitally in a secured format and provided to the Seller appointed parties representative for distribution to end user(s);

and

24.2.2 any resulting queries on the Legionella Risk Assessment are to be directed to the Seller's account manager in a formal documented manner (email) and Seller's account manager will respond directly to the Buyer's appointed parties representative.

23.3 Unless otherwise stated a Written Scheme of Control is not included. Reference to the relevant sections of the Code and supporting guidance will be referenced on the Services Documentation and within the Legionella Risk Assessment. This reference does not constitute and should not be used as a Written Scheme of Control alone.

23.4 For the completion of the Legionella Risk Assessment to be of the correct current legally required standard the Seller will require from the Buyer, including but not limited to,:

23.4.1 unimpeded and continual access to a system aware, trained and competent accompanying individual that knows the hazards and risks associated with the site/areas of working/ areas involved in the assessment, and who has access at time of the assessment to all key and relevant areas, plant and equipment, records and documentation relating to and/ or is relevant to the system(s) being assessed; and

23.4.2 the following:

- a) safety/site induction training;
- b) any previous Legionella risk assessment;
- c) documentation for current control regime(s) (these will be referenced in the Executive Report to confirm and report on the effectiveness of or gaps in the current control regime(s));
- d) a comprehensive asset(s) register;
- e) booking in of work procedures; and
- f) schematic drawings (in accordance with the correct, current legally required standard) showing the System(s) to be assessed and any areas of alteration(s).

23.5 Where the Buyer is not able to comply with all the requirements set out clause 23.4 or the Service Documentation the Seller will endeavour to ensure the Legionella Risk Assessment is completed as accurately as possible however the effective assessment of the System(s) and completion of an accurate Legionella Risk Assessment document for the System(s) assessed will be limited to the information provided.

23.6 Seller will observe all booking in of work procedures defined by the Buyer and takes this as adequate notification of a site visit to enable access to all required areas to be assessed. All areas will be accessed as is safe or permitted to do so.

- 23.7 Where access to areas are known to be frequently prohibited or denied, the Buyer will be required to:
- 23.7.1 provide evidence of the services located within the area and any documentation/records to confirm the current control scheme implemented; and
 - 23.7.2 aid the booking in process by proposing convenient and/or alternative time(s) where access would be possible to avoid the environmental impact of a revisit and any related charges.
- 23.8 Any schematic drawing included within the Legionella Risk Assessment service will be non-technical representations of the system(s) assessed in line with the correct, current legally required standard unless otherwise quoted for. Where schematics are not stated and quoted for; these will not be included.
- 23.9 After completion of the Services the Seller will provide an Executive Summary which includes:
- 23.9.1 photographs (as is safe and permitted to do so) that are required in accordance with the Service Documentation;
 - 23.9.2 a record of:
 - a) any issues relating to Buyer's obligations including, but not limited to, those set out in set out in clause 23.4.2;
 - b) where access has been denied or not been possible to any part of the Site; and
 - c) the failure to visually record any issues where a camera or photography have been prevented or the situation is not safe including commentary as to why this has not been possible.
- 23.10 For ease of reference the Executive Summary may consolidate areas of the Site where there is duplication of the layout of the Site. By way of example this may include rooms which have been indicated by the Buyer are identical.
- 23.11 Where Seller directs (but has no involvement in the appointment of) the Buyer to or the Buyer appoints a third party to conduct a legionella risk assessment works; the Seller takes no responsibility for the completed documentation and cannot attest to its correct completion, standard of the assessment or any identified remedial actions that maybe an outcome of the completed risk assessment.
- 23.12 In the event that the Buyer appoints a third party to carry out a legionella risk assessment under 23.11 the Seller recommends that the Buyer refers to the to the Legionella Control Association website for further information on how to choose a Legionella Risk Assessment provided before appointing any third party.

24 CLEAN AND DISINFECTION SERVICES

For the completion of clean and disinfection services to be of the correct standard

the Seller will require the Buyer to clearly identified and formally confirm a correct "Drain to"/"Discharge to" point that is satisfactory for the discharge of process water and/or water containing chemical(s), before work can commence.

25 IDENTIFICATION OF ANY POTENTIAL HAZARDS AND RISKS

- 25.1 Before the Services can commence all potential hazards and risk associated with the area that work is to take place in, or hazards associated by access to or egress of the working area are to be formally reported by the Buyer to the Seller to enable the correct control measures to be successfully implemented.
- 25.2 All areas outside the areas the Seller is taking responsibility (as set out in the Service Documentation) must to comply with the Health and Safety at Work Act 1974 (the **Act**) (or any subsequent amendment or re-enactment) and be risk assessed by the Buyer with a view to remove or reduce the residual risk. A control scheme (as set out in the Act) should be implemented by the Buyer to control the residual risk with records kept to document these actions and a review program implemented to ensure the controls are effective and to current requirements.
- 25.3 All records regarding Legionella activity must be maintained by the Buyer and the Buyer is responsible for maintaining these records.
- 25.4 The Seller is a registered member of the Legionella Control Association (**LCA**). The Seller's registration certificate is available upon request. The Buyer is advised to read the LCA's Code of Conduct for Service Providers which is available free of charge at: https://www.legionellacontrol.org.uk/_data/pdf/a-code-of-conduct-for-service-providers-70118-06-18.pdf