

TERMS AND CONDITIONS OF SALE

1. Interpretation

1.1 In these Terms and Conditions:

“**Buyer**” means the person or legal entity who accepts a quotation of the Seller for the sale of the Goods and or Services or the person or legal entity whose order for the Goods and or Services is accepted by the Seller.

“**Conditions**” means the standard terms and conditions of sale set out in this document and any special terms and conditions agreed in writing between the Buyer and the Seller.

“**Contract**” means the contract for the purchase, hire and sale of the Goods and or Services including hire of plant & machinery as defined by the Quotation and Conditions and any Acknowledgement of Order if one is provided.

“**Goods**” means the goods (including any parts for them) supplied by the Seller in accordance with the Contract and Conditions.

“**Quotation**” means the details of Goods and Services to be provided that will also include the price for providing them.

“**Seller**” means Brooker Piling Solutions Ltd registered in England under company number **05991256**.

“**Site**” means the location where Services are to be provided.

“**Services**” means the design, hire and or installation of Goods carried out by the Seller and includes the hire of plant & machinery in accordance with the Contract and Conditions.

1.2 Any references in these Terms and Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

2. Basis of Sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods and Services in accordance with any written quotation of the Seller which is accepted by the Buyer, or any order of the Buyer which is accepted by the Seller, subject in either case to the Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2.2 No variation to the Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller. Furthermore, signing by the Seller of any of the Buyer’s documentation shall not imply any modification of the Conditions.

2.3 The Seller’s employees or agents are not authorised to make any representations concerning the Goods or Services unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

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

3. Quotations

Unless otherwise specified in the quotation, quotations shall be valid for thirty days only after which time they may be altered or withdrawn by the Seller without giving notice to the Buyer. All quotations are subject to withdrawal at any time before acceptance by the Buyer.

4. Orders and Specifications

4.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller until the Seller has issued an “Acknowledgement of Order” form.

4.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods and or Services within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

4.3 For any design necessary as part of the Services the Seller shall rely entirely on information provided by the Buyer.

4.4 The quantity, quality and description of and any specification for the Goods and or Services shall be those set out in the Seller’s quotation (if accepted by the Buyer) or the Buyer’s order (if accepted by the Seller).

4.5 The Seller reserves the right to make any changes in the specification of the Goods and or Services which are required to conform with any applicable safety or other statutory requirements or, where the Goods and or Services are to be supplied to the Seller’s specification, which do not materially affect their quality of performance.

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

5. Price of the Goods and or Services

- 5.1** The price of the Goods and or Services shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), current at the date of acceptance of the order. Where the Goods and or Services are supplied for export from the United Kingdom, the Seller's quoted price shall apply. All prices quoted are valid for 30 days only and are subject to withdrawal at any time before acceptance by the Buyer.
- 5.2** Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to provide or arrange delivery of the Goods and or Services otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.
- 5.3** The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

6. Terms of Payment

- 6.1** Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods and or Services on or at any time after delivery of the Goods and or provision of the Services, unless Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 6.2** The Buyer shall pay the price of the Goods and or Services within 30 days of the date of the Seller's invoice, or on such other terms as agreed, notwithstanding that delivery of the Goods may not have taken place and the property of the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 6.3** If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- (a) cancel the contract or suspend any further deliveries to the Buyer;
 - (b) charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the statutory rate of interest on late commercial payments as set by the UK Government, until payment in full is made (a part of a month being treated as full month for the purpose of calculating interest).

7. Delivery of the Goods

- 7.1** Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.
- 7.2** Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in Delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 7.3** If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's default) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
- (a) store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - (b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
- 7.4** On delivery of the Goods the Seller shall require the Buyer or its agent to sign and return one copy of a delivery note.

8. Provision of the Services

- 8.1** Provision of the Services shall be defined as the Seller being available to carry out the Services as set out in the Contract, whether or not the Services are carried out.
- 8.2** The Seller may perform the Services using inhouse staff or sub-contract them to suitably qualified or approved third party providers as necessary.
- 8.3** Prior to commencement of the Services the Buyer shall ensure that all statutes, notices and/or other compliance with building or environmental or any other requirements, local authority or other relevant rules, regulations by-laws and documentation or special notices, forms certificates and applications necessary for the Services or any part of them have been completed. Any costs incurred by the Seller arising out of delays or stoppages to performance of the Services arising out of a breach of this clause shall be payable by the Buyer.
- 8.4** Prior to commencement of the Services the Buyer shall locate and mark clearly on the surface of the Site and on an accompanying plan all underground services running under or through the Site and shall show the markings and provide a copy of the marked plan to the Seller prior to commencement of the Services. Prior to commencement of the Services the Buyer must expose and/or divert any services that might conflict with provision of the Services on Site. The Buyer shall be responsible for setting out each pile/anchor position including maintaining such setting out marks, beacons or boards and for the establishment and marking of levels and the provision of all setting out points and datum points, physically on the Site. The positions of all piles and related structures will be deemed by the Seller to be correct and acceptable to the Buyer.
- 8.5** The Buyer shall provide such barricades, hoardings, fences, excavation covers or any other safety barriers warnings and notices as are necessary on the Site.

- 8.6 The Buyer shall provide on the Site reasonable secure storage facilities for the Goods and any plant, tools and materials used by the Seller for its performance of the Services.
- 8.7 Where the Goods are delivered to the Site prior to performance of the Services the Buyer shall off load and safely store them on the Site and shall make them available to the Seller as required to perform the Services. The Buyer shall also check the Goods for any visible defects before signing the delivery note.
- 8.8 The Buyer shall provide welfare facilities to the Seller on or conveniently near the Site.
- 8.9 The Buyer shall provide and make available on the Site electric power (normal domestic 60A, 240V, safety/shock protected supply outlet) and water (normal garden house domestic water supply outlet) or suitable safe alternatives. In the absence of such facilities being available on the Site, the Buyer shall notify the Seller so they can provide a hired mobile power generator and water bowser if required and the cost of such hire including administration and handling costs shall be charged to the Buyer.
- 8.10 The Seller shall perform any installation and on Site work related to the Services either directly or by using approved sub-contractors.
- 8.11 If specified the Seller may provide training and on Site support for the Buyer to perform aspects of the Services.
- 8.12 Unless otherwise specified tolerance for positional accuracy of screw piles and/or anchors will be limited to 75mm horizontally and 5 degrees of angularity in any direction.
- 8.13 Unless otherwise specified the Seller or an approved sub-contractor shall use its own tools, plant, equipment and labour to perform the Services.
- 8.14 Unless otherwise specified the Buyer shall be responsible for making good and cleaning after the Services including the removal of spoils or rubbish from demolitions or excavations.
- 8.15 Any dates quoted for provision of the Services are approximate only and the Seller shall not be liable for any delay in performing the Services howsoever caused. Time for performing shall not be of the essence unless previously agreed by the Seller in writing. The Services may be performed by the Seller in advance of the quoted performance date upon giving reasonable notice to the Buyer.
- 8.16 If, as a consequence of any change and/or difference in ground conditions or in the anticipated bearing capacity (irrespective of the reason whether any error, omission or change in any site investigation data), it is necessary for the Seller to manufacture, supply and/or install (in circumstances where the Seller has undertaken to install) additional lengths of pile, such additional lengths shall be paid for by the Buyer at the rate(s) stated in the Contract and shall be "additions" and shall be payable upon the same terms as set out in the Contract.
- 8.17 If the Buyer fails to take allow the Services to be performed or fails to give the Seller adequate instructions for provision of the Services (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's default) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
- (a) charge the Buyer for the reasonable costs (including third party costs and hire or equipment) incurred; or
 - (b) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
- 8.17 On performance of the Services the Seller may require the Buyer or its agent to sign and return one copy of a delivery/satisfactory note.

9. Access and Safety on Site

- 9.1 The Buyer shall ensure the Seller has access to the Site for the purpose of carrying out the Services at such times as may be specified in the Contract. The Contract unless otherwise specified provides of continuity without restriction, interruption or impediment by others;
- 9.2 The Buyer shall provide access to the Site sufficient for the plant and equipment needed to perform the Services.
- 9.3 The Buyer shall ensure that the working area is level and free from any tripping hazards.
- 9.4 The Buyer shall ensure that the working platform is suitable for the plant and machinery required to carry out the Services.
- 9.5 While on the Site the Seller shall comply strictly with all applicable statutory enactments and regulations by-laws or other regulations of local authorities, any reasonable Buyer's Health and Safety Policy and works Rules (copies of which must be provided to the Seller in advance) and reasonable instructions from any Site Foreman and Safety Officer.

10. Risk and Property re Goods

- 10.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
- (a) in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
 - (b) in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 10.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of the Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods sold by the Seller to the Buyer for which payment is due.
- 10.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such

proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

10.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

10.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

11. Risk, Disruption, Damage, Defects, Noise, Vibration, Pollution and Reinstatement re Services

11.1 Risk of disruption, damage, defects, noise, vibration, pollution and reinstatement in performance of the Services shall be born by the Buyer:

(a) in the performance of the Services the Seller accepts no responsibility for any loss damage or interruption to any existing services or sub surface structures and shall be indemnified and hold harmless by the Buyer for such loss damage or delays unless the correct positions and depth of such services or structures have been given to us in writing and marked on the ground;

(b) in the case of noise and vibration, these will be compatible with the Seller's use of standard plant and equipment as necessary to perform the Services. Indicative noise and vibration levels may be provided to the Buyer on request;

(c) in the case of damage and defects of any kind whatsoever arising the performance of Services by the Seller, no liability shall attach to the Seller in the performance of the Services which is outside the Seller's immediate and direct control or knowledge including but not limited to reaction to undermining the effects of all coring or mining ground movement springs cavities aggressive materials in the ground or teasing water underground streams a lot of support due to subsequent operations or any fault in the junction between our work and subsequent work carried out by others;

(d) in the case of a release of pollutants from or on the Site arising the performance of Services by the Seller, no liability shall attach to the Seller in the performance of the Services as a result of drilling or excavating into contaminated materials or by direct or indirect displacement of contaminants during the performance of the Services. In the event of such a release, the Seller shall be indemnified for and against all costs and delays resulting from any damage and remedial work carried out by the Seller;

(e) in the case of reinstatement work necessary following performance of the Services by the Seller, all reinstatement work shall be carried out by others at the Buyer's expense.

11.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of the Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods sold by the Seller to the Buyer for which payment is due.

11.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

11.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

11.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

12. Warranties and Liability

12.1 The above warranty is given by the Seller subject to the following conditions:

(a) the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

(b) the Seller shall be under no liability in respect of any design components of the Services arising from any information provided in writing by the Buyer. The Seller is quoting for the Contract on an unremunerated basis and does not extend a duty of care to the Buyer in respect of assessing whether the Goods and Services suit the purposes. For clarity the Seller shall not undertake or carry out any investigation into the ground or other physical conditions existing on the Site and shall rely solely on the written information provided by the Buyer;

(c) the Seller shall be under no liability in respect of any defect, damage, loss or interruption in the installation components of the Services arising from failure to provide information in writing by the Buyer. For clarity the Seller shall not undertake or carry out any investigation into the obstructions and underground services or other services on the Site and shall rely solely on the written information provided by the Buyer. In the event that obstructions are encountered or underground services cause damage and or disruption of the Services the Seller shall be entitled to claim for repair or replacement or equipment at cost plus 20% and for any delay in providing the Services at an hourly rate of £75 per person on Site;

(d) the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;

(e) the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;

(f) the above warranty does not extend to parts, materials or equipment not manufactured by the Seller. The Seller will use all reasonable endeavours to procure for the Buyer the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

12.2 Subject as expressly provided in the Conditions, and except where the Goods are sold under a consumer sale (as defined by the Sale of Goods Act 1979), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

12.3 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in the Conditions.

12.4 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control, being an event of force majeure.

13. Bonds and Guarantees

The Seller does not provide Performance Bonds or Parent Company Guarantees.

14. Indemnity

If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that the Seller is given full control of any proceedings or negotiations in connection with any such claim and the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations.

15. Insolvency of Buyer

15.1 This clause applies if:

(a) the Buyer agrees a voluntary arrangement, restructuring plan or composition of liabilities with its creditors or becomes subject to a moratorium or administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

(b) an encumbrance takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

(c) the Buyer ceases, or threatens to cease, to carry on business; or

(d) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

15.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

16. General

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

16.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

16.3 If any provision of the Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Conditions and the remainder of the provision in question shall not be affected thereby.

16.4 The Contract shall be governed by the laws of England.