

# Terms and conditions of business Guttaclean Ltd ("Guttaclean")

Trading address: 29 Lodge Road, Locks Heath, Southampton. SO31 6QY

## terms and conditions of business

### 1 Definitions and interpretation

1.1 In these Terms the following definitions apply:

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**Customer** means any person to whom Guttaclean supplies Goods and Services;

**Goods** means the goods which Guttaclean is to supply to the Customer in accordance with the Terms as set out on the Order Form;

**Order Form** means the document issued by Guttaclean setting out (1) a description of the Goods and Services (2) the Price (3) any other relevant matters.

**Price** means the price for the Goods and Services as set out on the Order Form;

**Services** means the services to be provided by Guttaclean to the Customer in accordance with the Terms as set out on the Order Form;

**Terms** means the standard terms set out in these terms and conditions of business;

1.2 Any changes to these Terms are valid only if agreed in writing between Guttaclean and the Customer.

1.3 Unless authorized in writing by Guttaclean, employees' or agents' representations concerning

the Goods and Services are not valid.

1.4 Any error or omission in any sales brochure, quotation, price list, acceptance or offer, invoice

or other material issued by Guttaclean (whether typographical, clerical or otherwise) may be corrected by Guttaclean without any liability on the part of Guttaclean.

1.5 If there is any conflict between the Order Form and the Terms, the Order Form shall prevail.

### 2 Appointment

2.1 The Customer appoints Guttaclean to provide Goods and Services in accordance with the

Order Form. The Terms apply to the Goods and Services set out in the Order Form. No other

terms will apply to the provision of the Goods and Services.

### 3 The Order Form

3.1 The quantity, quality and description of the Goods and Services shall be as set out in the Order Form.

3.2 It is the sole responsibility of the Customer to ensure the Goods and Services set out on the

Order Form meet its requirements.

3.3 Guttaclean may make changes to the Goods and Services in order to conform with any legal

requirements or which do not materially affect their quality or performance.

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### 3.4

The Customer shall at its own expense supply Guttaclean with all necessary materials and information required by Guttaclean to provide the Goods and Services in accordance with these Terms. If a failure by the Customer to provide materials or information causes Guttaclean to miss a deadline, the Guttaclean deadline shall be deemed to be extended by the period of the Customer's delay.

In the absence of an order form the customers verbal instruction will be deemed to be the order.

### **4 Price and Payment**

4.1 Guttaclean shall invoice the Customer for the Goods and Services as detailed on the Order Form.

4.2 Unless the subject of a genuine dispute, the Customer shall pay the Price within 30 calendar days of receipt of a valid invoice (the "Due Date").

4.3 The Price does not include VAT as we are not VAT registered. As such no VAT is to be charged.

4.4 Should the Customer fail to make any payment in full on the Due Date under this agreement,

Guttaclean may charge interest on the outstanding amount. Such interest shall accrue on a daily basis at the rate of 8% above the base rate of Barclays Bank PLC from time to time from the due date until the date of payment, whether before or after judgment.

4.5 If, because of a factor beyond the control of Guttaclean, the cost to Guttaclean of providing the Goods and Services increases, Guttaclean may before delivery increase the Price of the Goods and Services.

4.6 The Customer will pay the Price for the Goods and Services. If the Customer wants Guttaclean to deliver the Goods, the Customer will pay Guttaclean's charges for transport, packaging and insurance.

4.7 All amounts due under these Terms shall be paid in full without any deduction or withholding other than as required by law and neither party shall be entitled to assert any credit, set-off or counterclaim against the other party in order to justify withholding payment of any such amount in whole or in part.

### **5 Delivery of Goods**

5.1 The Customer will collect the Goods from Guttaclean's premises at any time after Guttaclean has notified the Customer that the Goods are ready for collection.

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5.2 Any dates quoted for delivery of the Goods are approximate and Guttaclean shall not be responsible for any delay in delivery of the Goods however caused. Unless agreed in writing in advance by Guttaclean time for delivery shall not be of the essence. Guttaclean may deliver Goods before the scheduled delivery date.

5.3 Where the delivery of the Goods is to be made by Guttaclean in bulk, Guttaclean may deliver up to 2 percent more or 2 percent less than the quantity ordered. This shall not affect the Price.

### **6 Ownership and Responsibility**

6.1 Ownership of any consignment of Goods shall not pass to the Customer until Guttaclean has received payment in full of all sums due to it in respect of that consignment only

6.2 Until ownership in the Goods passes to the Customer, the Customer shall:

6.2.1 hold the Goods on behalf of Guttaclean, take proper care of them and take all reasonable steps to prevent any damage to or deterioration of them;

6.2.2 store or keep the Goods separately from other Goods, so as to show clearly that they belong to Guttaclean;

6.2.3 not sell or part with possession of the Goods;

6.2.4 keep the Goods free from any mortgage, charge, lien or other encumbrance;

6.2.5 insure the Goods; and

6.2.6 notify Guttaclean immediately if any event specified in clause 8.1.2 to 8.1.9 occurs in relation to the Customer.

6.3 Despite clauses 6.1 and 6.2, Guttaclean may bring an action against the Customer for the price of the Goods and Services if the Customer fails to pay for them in full by the Due Date, even though property in the Goods has not passed to the Customer.

6.4 The responsibility for loss or damage to any consignment of the Goods shall pass to the Customer on delivery.

6.5 Each order for the Goods shall constitute a separate contract and any default by Guttaclean

in relation to any one order shall not entitle the Customer to treat these Terms as terminated.

### **7 Warranties and indemnities**

7.1 Guttaclean warrants and represents to the Customer that it will perform its obligations under

these Terms with reasonable skill and care. All other warranties are expressly disclaimed to the fullest extent permitted by law.

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7.2 Guttaclean shall not be liable to the Customer (whether in contract, tort, including negligence

and breach of duty, or otherwise at law) for any:

7.2.1 indirect or consequential loss; and/or

7.2.2 loss of profits, revenue or goodwill of the Customer.

7.3 Guttaclean does not exclude its liability for death or personal injury if caused by its own negligence or for fraud.

### **8 Termination**

8.1 Either party may terminate these Terms immediately by notice in writing if the other party:

8.1.1 commits a material breach of any of the Terms (including without limitation late payment) and, if such breach is capable of remedy, fails to remedy the breach within 30 days of receiving notice from the terminating party specifying the breach and requiring the breach to be remedied;

8.1.2 enters into liquidation whether compulsorily or voluntarily (otherwise than for the purposes of a solvent amalgamation or reconstruction);

8.1.3 becomes insolvent;

8.1.4 ceases or threatens to cease to carry on business;

8.1.5 compounds or makes any voluntary arrangement with its creditors;

8.1.6 is the subject of a notice of appointment of an administrator, or a notice of intention to appoint an administrator or liquidator;

8.1.7 is unable to pay its debts as they fall due;

8.1.8 has an encumbrance take possession of, or a receiver or administrative receiver appointed over, all or any part of its assets; or

8.1.9 takes or suffers any similar action due to debt.

or if the equivalent of any of the events described at clause 8.1.2 to 8.1.9 inclusive under the law of any jurisdiction occurs in relation to the other party.

8.2 The expiry or termination of these Terms for any reason shall not affect any rights and/or obligations:

8.2.1 accrued before the date of termination or expiry; or

8.2.2 expressed or intended to continue in force after and despite expiry or termination.

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8.3 The Customer shall not, following the termination of these Terms, for any reason represent itself as being connected with Guttaclean or any member of Guttaclean's Group.

8.4 On termination of these Terms (for a breach by the Customer) all outstanding or un-invoiced

Prices shall become immediately payable.

### **9 Confidentiality**

9.1 In this clause 9, Confidential Information means all technical, commercial and financial information, product information, trade secrets, know-how and all information relating to the plans, intentions, market opportunities, transactions, affairs and/or business of a party and its

Group companies and/or its or their customers and/or suppliers, and the Terms;

9.2 Each party shall keep secret and confidential all Confidential Information of the other and shall not (and shall procure that its employees and/or officers shall not) copy, use or disclose any such information to any third party, other than as may be necessary to comply with its obligations under these Terms.

9.3 The obligation of confidence shall not apply where the Confidential Information:

9.3.1 is required to be disclosed by operation of law;

9.3.2 was in the possession of the recipient prior to disclosure by the other party without restriction on disclosure or use;

9.3.3 is subsequently acquired from a third party without any obligation of confidence;

9.3.4 is or becomes generally available to the public through no act or default of the recipient; or

9.3.5 is disclosed on a confidential basis for the purposes of obtaining professional advice.

9.4 This clause 9 shall continue in force notwithstanding the expiry or termination of these Terms,

whatever the reason for such termination.

### **10 Intellectual Property Rights**

10.1 All intellectual property rights in reports and other deliverables created by Guttaclean in the

course of performing the Services shall belong to Guttaclean and the Customer shall not obtain any rights therein. Guttaclean hereby grants the Customer a license to use the intellectual property rights in the deliverables to the extent necessary to make use of the deliverables as contemplated by the Order Form.

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### 11 General

11.1 Time is not of the essence in relation to the performance of the obligations of Guttaclean under these Terms.

11.2 Notices between the Customer and Guttaclean relating to these Terms shall be in writing.

Notices shall either be delivered personally or sent by first class post or fax to their registered office. Notices if delivered by hand shall be treated as received when delivered, if sent by first class post 48 hours after posting, if sent by air-mail post 72 hours after posting and if sent by fax when sent.

11.3 These Terms are the entire agreement between the Customer and Guttaclean and replaces

all previous agreements between them relating to the same subject matter.

11.4 Neither the Customer or Guttaclean shall be liable if it breaches these Terms as a result of

circumstances which are beyond its reasonable control, provided that as soon as is reasonably practicable it gives notice to the other party. For these purposes acts of omissions

by the employees, sub-contractors, developers, agents and representatives of either party are within that party's control.

11.5 Unless these Terms provide otherwise, nothing in it creates a partnership or employment

relationship between the Customer and Guttaclean or makes one party the agent of the other.

11.6 Neither Guttaclean nor the Customer may assign or transfer these Terms or any rights or

objections under them without the prior written consent of the other (such consent not to be unreasonably withheld or delayed).

11.7 The Customer and Guttaclean confirm that they do not intend any third party to have the right

to enforce any provision of these Terms under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

11.8 If any provision of these Terms are found under the laws of any jurisdiction to be invalid,

illegal or unenforceable, the validity, legality or enforceability of that provision in that jurisdiction shall not in any way affect the validity, legality or enforceability of all the provisions

of these Terms in any other jurisdiction.

11.9 The Customer and Guttaclean shall attempt to substitute for any invalid, illegal or unenforceable provision a valid, legal and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid, illegal or unenforceable provision.

11.10

All terms of this agreement which by their nature ought to survive termination will continue to be effective after this agreement has expired or been terminated.

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### **11.11**

The customer shall ensure that their property is safe for Guttaclean and its agents to carry out their duties as set out in the Order Form. The customer shall further more ensure that full access without hindrance is available to Guttaclean and its agents to perform all necessary duties and tasks. The customer shall make Guttaclean aware of anything which may encumber or hinder Guttaclean during the execution of Guttaclean's normal duties. The customer shall also make Guttaclean aware of any defective decking, paths, patios, walkways and low roofs weather out buildings garages or conservatories. Guttaclean will not operate above glass roofs or defective roofs that we are made aware of by the customer. Guttaclean cannot accept any responsibility or liability for damage caused to any roofs that we need to span above to facilitate cleaning of the guttering at high level as requested by the customer. In such an instance the customer would need to ensure that they are insured for such events by their home buildings insurance. All due care will be taken at all times to ensure safe working practices.

### **11.12**

The laws of England and Wales shall govern these Terms. The Customer and Guttaclean agree to submit to the exclusive jurisdiction of the courts of England and Wales