

A close-up photograph of a worker wearing an orange high-visibility safety vest over a black long-sleeved shirt and black work pants. The worker is wearing grey work gloves and is holding a large roll of black corrugated drainage pipe. The pipe is coiled and has a metal fitting attached to its end. The background is slightly blurred, showing more rolls of pipe stacked on a wooden pallet.

# Terms & Conditions April 2024

**NAYLOR**  
DRAINAGE

# Naylor Drainage | Terms & Conditions of Sale 2024

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## 1. Interpretation

1.1 In these Conditions unless the context requires otherwise, the following words have the following meanings:

**“Conditions”** means the terms and conditions set out in this document.

**“Confidential Information”** means any commercial, financial or technical information, information relating to the Goods, plans, know-how or trade secrets which is obviously confidential in nature or has been identified as confidential, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract.

**“Contract”** means the contract between Naylor and the Customer for the sale and purchase of the Goods, incorporating these Conditions and the Order, and any special terms and conditions agreed between Naylor and the Customer in writing.

**“Customer”** means the company, firm, body or person who is purchasing the Goods from Naylor.

**“Delivery Address”** means the address where the Goods are to be delivered by Naylor (if Naylor are to deliver) more specifically detailed in the Order Confirmation.

**“Delivery Price”** means the cost of carriage of the Goods from the place of manufacture or storage by Naylor to the Delivery Address if Naylor are to deliver the Goods to the Delivery Address.

**“Estimated Delivery Date”** means the date, dates or time frame for delivery specified in the Order Confirmation when Naylor shall endeavour to deliver the Goods to the Delivery Address.

**“Force Majeure”** means an event or sequence of events beyond Naylor’s reasonable control preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Contract, strike, lockout or boycott or other industrial action including those involving Naylor’s or its suppliers’ workforce.

**“Goods”** means the goods and other physical material set out in an Order to be supplied by Naylor to the Customer in accordance with the Contract.

**“Goods Price”** means the price for the Goods.

**“Goods Warranty”** has the meaning given in clause 11.1.

**“Intellectual Property Rights”** means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in software, rights in goodwill, rights in Confidential Information, rights to invention, rights to sue for passing off, domain names and all other intellectual property rights and similar rights and, in each case; (a) whether registered or not; (b) including any

applications to protect or register such rights; (c) including all renewals and extensions of such rights or applications (d) whether vested, contingent or future (e) to which the relevant party is or may be entitled; and (f) in whichever part of the world existing.

**“Naylor”** means Naylor Drainage Limited (registered in England and Wales under company number 00342010).

**“Order”** has the meaning given in clause 3.1.

**“Order Confirmation”** means the order document issued by Naylor with details of the Goods ordered by the Customer.

**“POD Note”** means the proof of delivery note issued by Naylor to be signed by the Customer (or on the Customer’s behalf) on delivery of the Goods at the Delivery Address to confirm that the Goods have been delivered.

**“Total Price”** means the total Goods Price and (if any) the Delivery Price.

**1.2** Any reference in these 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.

**1.3** The headings in these Conditions are for reference only and shall not affect their interpretation.

## **2. Application of these Conditions**

**2.1** Naylor shall sell and the Customer shall purchase the Goods for the Total Price in accordance with the Contract to the exclusion of any other terms and conditions subject to which any quotation is accepted or purported to be accepted, or any Order is made or purported to be made, by the Customer. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Naylor which is not set out in the Contract. Nothing in these Conditions shall exclude or limit Naylor's liability for fraud.

**2.2** No terms of conditions endorsed on, delivered with or contained in the Customer’s Order, purchase order, confirmation of order, specification or other document shall form part of the Contract.

**2.3** No purported variation to these Conditions or any subsequent variation shall be binding on Naylor unless agreed in writing and signed by a duly authorised person on behalf of Naylor.

**2.4** Naylor’s employees or agents are not authorised to make any representations or warranties concerning the Goods unless confirmed by Naylor in writing. In entering into the Contract, the Customer acknowledges that it does not rely on any such representations which are not so confirmed. Any advice or recommendations given by Naylor or its employees or agents to the Customer or its employees or agents as to storage, application, installation or use of the Goods, which is not confirmed in writing by Naylor, is followed or acted upon entirely at the Customer’s own risk, and accordingly Naylor shall not be liable for any such advice or recommendation which is not so confirmed in writing.

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

### 3. Orders

- 3.1 The Customer may place orders for the Goods from time to time (each, an **Order**). The Customer shall ensure that the terms of its Order, any specification provided by the Customer (if any) and the Order Confirmation are complete and accurate, and shall be responsible for giving Naylor any further necessary information relating to the Goods within a sufficient time to enable Naylor to perform the Contract in accordance with its terms.
- 3.2 Unless otherwise agreed by Naylor, the Customer shall place Orders by email and shall include the following information: descriptions of Goods including the relevant Naylor item code for the Goods; the Customer's name and contact details, including contact details of a person at the Delivery Address (if applicable); whether the pipe quantity requested in the Order is per metre or pipe length; the Customer's purchase order and the full address of the Delivery Address (if applicable) including post code; and any special delivery instruction, for example, Delivery Address access requirements or restrictions; and the requested delivery date. Orders are subject to minimum volume requirements as stipulated by Naylor from time to time.
- 3.3 Each Order by the Customer to Naylor shall be an offer to purchase the Goods subject to the Contract including these Conditions.
- 3.4 No Order submitted by the Customer shall be deemed to be accepted by Naylor and no contract shall come into effect between the parties unless and until and the earlier of:
  - 3.4.1 Naylor's written acceptance of the Order; or
  - 3.4.2 Naylor dispatching the Goods or notifying the Customer that they are available for collection (as the case may be).
- 3.5 Rejection by Naylor of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
- 3.6 Naylor may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to supply the Goods and are incapable of being accepted by the Customer.
- 3.7 Marketing and other promotional material relating to the Goods are illustrative only and do not form part of the Contract.
- 3.8 The quantity, quality and description of and any specification for the Goods shall be those set out in the Order Confirmation.
- 3.9 If the Goods are to be manufactured or any process is to be applied to the Goods by Naylor in accordance with a specification submitted by the Customer, the Customer shall indemnify Naylor against all loss, damages, costs and expenses awarded against or incurred by Naylor in connection with or paid or agreed to be paid by Naylor in settlement of any claim for infringement of any Intellectual Property Rights of any other person which results from Naylor's use of the Customer's specification. In such event, Naylor shall be entitled to suspend the performance of the Contract, or to immediately terminate the Contract, without the Customer being entitled to claim any compensation.
- 3.10 Naylor reserve the right to make any changes in the specification of the Goods which are required to conform to any applicable safety or other statutory requirements or which do not materially affect their quality or performance.

#### **4. Price**

- 4.1** The Total Price shall be as set out in the Order. The Customer shall pay the Total Price for the Goods to Naylor.
- 4.2** All quotations, tenders and price lists are subject to withdrawal at any time by Naylor without prior notice to the Customer.
- 4.3** If the cost of manufacture, storage or delivery of the Goods is increased as a result of the Customer changing the requested delivery date, quantity or specification for the Goods or where there is any delay resulting from any change of instructions of the Customer or a failure of the Customer to give Naylor adequate information or instructions then Naylor reserves the right to increase the Total Price to reflect such increase in cost and Naylor will give notice to the Customer at any time before delivery of the Goods of such increase in Total Price.
- 4.4** The Total Price is exclusive of any applicable value added tax or other sales taxes, which the Customer shall be liable to pay to Naylor, and the Customer shall pay such taxes to Naylor.

#### **5. Terms of Payment**

- 5.1** Unless otherwise agreed, Naylor shall invoice the Customer for the Total Price on dispatch of the Goods.
- 5.2** Unless otherwise specified by Naylor in writing, the Customer shall pay all invoices within 30 days of the end of the month of the date of Naylor's invoice. In the event of late payment by the Customer, any cash discount previously agreed by Naylor shall automatically be withdrawn without notice. Time for payment by the Customer is of the essence.
- 5.3** Except in the case of manifest error, all invoices raised by Naylor shall be deemed to be correct unless the Customer notifies Naylor in writing of any objection within 72 hours of receipt by the Customer of Naylor's invoice.
- 5.4** If the Customer fails to pay the total of any sum invoiced by Naylor on the due date, then Naylor shall be entitled to:
  - 5.4.1** terminate the Contract (and any other contract between Naylor and the Customer) with immediate effect and/or suspend any further deliveries to the Customer;
  - 5.4.2** appropriate any payment made by the Customer to such of the Goods (or Goods supplied under any other contract between the Customer and Naylor) as Naylor may think fit; and/or
  - 5.4.3** demand immediate payment of an unpaid invoices under the Contract (and any other contract between Naylor and the Customer) whether they have fallen due in accordance with the relevant Contract; and
  - 5.4.4** charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 4% per annum above the Bank of England base rate from time to time, until payment in full is made with interest to be charged on a daily basis.
- 5.5** Naylor may (at its discretion) set and vary credit limits from time to time and withhold all deliveries and Orders if the Customer exceeds such credit limit.

**5.6** The Customer shall not be entitled to withhold payment of any amount payable under the Contract to Naylor because of any disputed claim of the Customer in respect of defective Goods or any other breach of the Contract nor shall the Customer be entitled to set off against any amount payable under the Contract to Naylor any monies which are not then presently payable by Naylor for which Naylor disputes liability.

## **6. Delivery of the Goods**

**6.1** Each Order will specify the Delivery Address and, if none is specified, then the parties may agree that the Customer shall collect the Goods from Naylor at a location nominated by Naylor.

**6.2** Time and dates for collections or delivery (as applicable) shall not be of the essence, unless previously agreed by Naylor in writing. Naylor will use reasonable endeavours to deliver the Goods or make them available for collection on the Estimated Delivery Date(s). No delay shall entitle the Customer to refuse to make payment for any Order or part of any Order or repudiate any Contract with Naylor.

**6.3** Naylor may at its discretion deliver the Goods in instalments. Delivering the Goods in instalments shall not entitle the Customer to cancel an Order or reject delivery of any instalment. Any delay or defect in an instalment shall not entitle the Customer to cancel any other instalment.

**6.4** Naylor shall not be liable for any delay or failure of delivery caused by:

**6.4.1** the Customer's failure to make the Delivery Address available;

**6.4.2** the Customer's failure to prepare the Delivery Address as required for delivery of the Goods;

**6.4.3** the Customer's failure to provide Naylor with adequate instructions for delivery or otherwise relating to the Goods;

**6.4.4** any other Customer fault; or

**6.4.5** Force Majeure.

**6.5** Without prejudice to any other rights of Naylor, if for any reason the Customer is unable to accept delivery of or collect the Goods when the Goods are due and ready for delivery/collection, Naylor may arrange storage of the Goods at the Customer's risk and the Customer shall be liable to Naylor for the costs (including insurance) of such storage.

**6.6** Subject to clause 6.7, on arrival of Naylor's delivery vehicle at the Delivery Address, the Customer shall be responsible for the unloading of the Goods and will do so promptly. The Customer shall be responsible for any damage during unloading and for all costs occasioned by any delay in commencing or carrying out the unloading or by the failure to unload.

**6.7** Naylor's fork lift unloading service may be requested by the Customer at the time that the Order is placed. Naylor does not guarantee that this service will be available for any Order delivery and the supply of this service shall be at Naylor's sole discretion. When Goods are unloaded by Naylor's fork lift, firm ground and sufficient space for manoeuvring are required at the Delivery Address. Where these conditions are met, Naylor will be responsible for the safe unloading of such Goods. Where the driver deems the ground conditions unsuitable for safe unloading, the driver is entitled to refuse to drive over such ground which they consider unsuitable. In such circumstances, the parties may agree an alternative location for safe unloading at the Delivery Address. If the parties are unable to agree an alternative

location for safe unloading, then the Goods will not be unloaded and the parties shall arrange re-delivery to a suitable location on an alternative date which shall be subject to additional charges.

- 6.8** The Customer will be responsible for all loss or damage to the Goods, the vehicle and equipment used to deliver and unload the Goods at the Delivery Address resulting from the nature of the ground at the Delivery Address, where that ground is, in the driver's sole opinion, unsafe for delivery or unloading, whether the Customer was aware of the condition of the ground or not. Should any injury be caused to any person or any damage to property occur while unloading the Goods, the Customer agrees to indemnify Naylor against all loss, damages, costs and expenses awarded against or incurred by Naylor in connection with or paid or agreed to be paid by Naylor in settlement of any claim connected or otherwise related thereto.
- 6.9** Where delivery of the Goods is to be made by Naylor to the Customer, to the fullest extent permitted by applicable law, the Goods shall be deemed to have been delivered to the Delivery Address in full and in accordance with the Order Confirmation where the POD Note has been signed on delivery, unless the Customer gives Naylor written notice within 72 hours of the Estimated Delivery Date of any non-delivery.

## **7. Risk and Title**

- 7.1** Save as set out in clause 6.5, risk of damage to or loss of the Goods shall pass to the Customer at the time of delivery at the Delivery Address (where Naylor is to deliver the Goods to the Delivery Address) or at Naylor's works (where the Customer is to collect the Goods) or, if the Customer wrongfully fails to take delivery of the Goods, the time when Naylor has tendered delivery of the Goods.
- 7.2** Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, title in the Goods shall not pass to the Customer until Naylor has received in cash or cleared funds payment in full of the Total Price and all other goods under any other contract agreed to be sold by Naylor to the Customer for which payment is then due.
- 7.3** Until title to the Goods has passed to the Customer, the Customer shall:
- 7.3.1** hold the Goods as bailee for Naylor;
  - 7.3.2** store the Goods separately from all other material in the Customer's possession;
  - 7.3.3** take all reasonable care of the Goods and keep them in the condition in which they were delivered;
  - 7.3.4** insure the Goods from the date of delivery: (i) with a reputable insurer; (ii) against all risks; (iii) for an amount at least equal to the Goods Price; and (iv) noting Naylor's interest on the policy;
  - 7.3.5** ensure that the Goods are clearly identifiable as belonging to Naylor;
  - 7.3.6** not remove or alter any mark on or packaging of the Goods;
  - 7.3.7** inform Naylor immediately if it becomes subject to any event in clause 18.1; and
  - 7.3.8** permit Naylor to inspect the Goods during the Customer's normal business hours and provide Naylor with such information concerning the Goods as Naylor may request from time to time.
- 7.4** Notwithstanding clause 7.3, the Customer may use or resell the Goods in the ordinary course of its business until such time as it becomes aware or ought reasonably to have become aware that an event in clause 18.1 has occurred or is likely to occur.
- 7.5** If the Customer resells the Goods in accordance with clause 7.4, title to the Goods shall pass to the Customer immediately prior to the resale. Until title in the Goods passes from Naylor to the Customer:

**7.5.1** the proceeds of sale relating to the Goods shall be held in trust for Naylor and shall not be mixed with other money or paid into any overdrawn bank account and shall be identified as the money of Naylor; and

**7.5.2** Naylor shall remain legally and beneficially entitled to the proceeds of sale.

**7.6** If, at any time before title to the Goods has passed to the Customer, the Customer informs Naylor, or Naylor reasonably believes, that the Customer has or is likely to become subject to an event in clause 18.1, Naylor may:

**7.6.1** require the Customer at the Customer's expense to re-deliver the Goods to Naylor; and

**7.6.2** if the Customer fails to do so promptly, enter any premises where the Goods are stored and repossess them and the Customer hereby grants Naylor all necessary rights of entry, rights of way and/or access to such premises for such purposes.

**7.7** To avoid doubt, Naylor may maintain an action for the Total Price, notwithstanding that title in the Goods has not passed to the Customer.

## **8. Returns**

**8.1** Subject to clause 11, Naylor will not be required to accept any request to return of Goods pursuant to the Order. However, if Naylor agrees to accept the return of Goods supplied, this will be subject to such conditions as Naylor specifies to the Customer, including the payment of Naylor's normal haulage and restocking charges at the time.

**8.2** Returned Goods must be received by Naylor in the same condition as delivered to the Customer.

## **9. Description of Goods**

**9.1** Unless otherwise stated and to the fullest extent permitted by applicable law, sizes and weights on contracts, price lists, quotations, Orders, tenders, literature, or Specifications are approximate only, as variations in manufacture and materials cannot be avoided.

**9.2** The Customer agrees that Naylor shall be entitled to assume that all drawings, descriptions, specifications and other information supplied by the Customer to Naylor whether verbal or written are complete, accurate and entirely suitable for the Customer's requirements.

**9.3** The Customer shall indemnify Naylor in respect of all loss, damages, costs and expenses incurred by Naylor in connection with any change in the requirements or specification requested by the Customer after the Customer's Order has been accepted by Naylor.

## **10. Quality of Goods and Inspection**

**10.1** The Customer shall:

**10.1.1** carefully inspect and check the Goods promptly after receipt. The Customer shall before signature of Naylor's POD Note or failing that within 72 hours of receipt of each delivery of the Goods, notify Naylor of any defect by reason of which the Customer alleges that the Goods delivered are not in accordance with the Contract and which should be apparent on reasonable inspection. Following the expiry of those 72 hours, the Customer shall be deemed to have accepted the Goods. The Customer agrees that such period is reasonable; and



**10.1.2** take all steps which are reasonably practicable to mitigate any loss in respect of any Goods which are defective and Naylor shall not be responsible for any loss which would have been avoided if such steps had been taken.

**10.2** Certain Goods are not manufactured in Naylor's factories but by third parties who are not covered by Naylor's BSI registration. As a result, the Goods manufactured by those third parties may not be in compliance with BSI. These Goods are subject to Naylor's full documented purchase and control procedures which are monitored by the BSI.

**10.3** Where seconds quality Goods are offered, these are made by the same processes as best quality Goods but during manufacture have become faulty and are sold as seen with no right to reject or return once delivered. Orders for seconds quality Goods will only be accepted subject to a condition that such Goods are not subject to any specification or approval by any person after delivery.

**10.4** Unless non-standard lengths of pipe are specifically requested by the Customer in its Order, standard lengths will be supplied by Naylor.

**10.5** Notwithstanding clause 10.4, Naylor reserves the right to supply lengths of pipe at its discretion but in such case, these will be supplied at the same rate per metre length as standard lengths.

## **11. Goods Warranty**

**11.1** Subject to the conditions set out below, Naylor warrants that at the time of delivery the Goods will correspond with their specification and will be free from defects in material and workmanship for a period of three months from delivery (the "**Goods Warranty**").

**11.2** The Goods Warranty is given by Naylor subject to the following conditions:

**11.2.1** Naylor shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer or any failure by the Customer to install the Goods correctly or failure to comply with Naylor's installation guidelines issued from time to time. For the avoidance of doubt, Naylor is a supplier of Goods and has no input into the design of any project which the Goods maybe incorporated into;

**11.2.2** Naylor 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 Naylor's instructions (whether oral or in writing), misuse, alteration or repair of the Goods without Naylor's approval;

**11.2.3** Naylor shall be under no liability under the Goods Warranty (or any other warranty, condition or guarantee) if the Total Price has not been paid by the due date for payment;

**11.2.4** Naylor shall be under no liability in respect of any defect in the Goods after the Goods have been laid, erected, subjected to any process or processes or otherwise used by the Customer or others beyond Naylor's control in a manner contrary to Naylor's recommendation or to good industry practice; and

**11.2.5** the Customer not making any further use of the Goods after notifying Naylor of the defect or failure in accordance with clause 11.5.

**11.3** The above warranty does not extend to parts, materials or equipment incorporated in the Goods but not manufactured by Naylor in respect of which the Customer shall be entitled only to the benefit of any such warranty or guarantee as is given by the manufacturer to Naylor.

- 11.4** The above warranty does not apply to seconds quality Goods supplied in accordance with clause 10.3.
- 11.5** As a condition precedent to any claim by the Customer under the Goods Warranty, the Customer shall notify Naylor in writing within 72 hours after discovery of the defect or failure, provide Naylor with sufficient information as to the nature and extent of the defect or failure and the uses to which the Goods had been put prior to the defect or failure arising, give Naylor a reasonable opportunity to examine the Goods and, if requested by Naylor, return the Goods to Naylor at the Customer's expense. If the Customer fails to comply with any of the foregoing, the Customer shall not be entitled to reject the Goods and Naylor shall have no liability for any such defect or failure, and the Customer shall be bound to pay the Total Price as if the Goods have been in accordance with the Contract and any specification.
- 11.6** Where Naylor acting reasonably but in its sole discretion determines that the relevant Goods do not comply with the Goods Warranty, Naylor shall be entitled to repair or replace the Goods (or the part in question) within a reasonable time or at Naylor's sole discretion, refund to the Customer the Goods Price where all of the Goods are defective (or a proportionate part of the Goods Price where not all the Goods are defective) but Naylor shall have no further liability to the Customer.
- 11.7** Subject as expressly provided in these Conditions, all warranties, representations, statements, conditions or other terms implied by statute or common law or otherwise are excluded to the fullest extent permitted by law.
- 11.8** The Customer warrants and represents that it has full capacity and authority to enter into the Contract.

## **12. Limitation of Liability**

- 12.1** The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 12.
- 12.2** Subject to clause 12.5, Naylor's total liability shall not exceed the Total Price payable by the Customer in respect of the Goods to which the claim relates.
- 12.3** Subject to clause 12.5, Naylor shall not be liable for consequential, indirect or special losses.
- 12.4** Subject to clause 12.5, Naylor shall not be liable for (whether direct or indirect): loss of profit; loss of revenue; loss or corruption of data, loss or corruption of software or systems; loss or damage to equipment; loss of use; loss of production; loss of contract; loss of commercial opportunity; loss of savings, discount or rebate (whether actual or anticipated); harm to reputation or loss of goodwill; and/or wasted expenditure.
- 12.5** Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of (a) death or personal injury caused by negligence; (b) fraud or fraudulent misrepresentation; (c) any other losses which cannot be excluded or limited by applicable law.
- 12.6** Unless otherwise expressly agreed, Naylor shall have no responsibility for the performance, suitability or durability of any Goods or any materials or workmanship comprised therein to the extent the same is manufactured in accordance with the Customer's designs, drawings, standards or specifications.

**12.7** Offers by Naylor to supply Goods from stock on or within a given time or period are made subject to the availability of the Goods at a given time.

### **13. Assignment and Subcontracting**

**13.1** Naylor may assign or subcontract the Contract or any part of it to any person, firm or company at Naylor's sole discretion.

**13.2** The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without Naylor's prior written consent.

### **14. EDI Agreement**

**14.1** Naylor has adopted the Standard Electronic Data Interchange Agreement of the EDI Association (**EDI Agreement**). Where relevant, Naylor and the Customer will comply with the terms of the EDI Agreement. A copy of the EDI Agreement is available on request to Naylor or the EDI Association.

### **15. Intellectual Property Rights**

**15.1** The Customer warrants that any design, drawing, specification, materials or instruction given by the Customer to Naylor shall not cause Naylor to infringe the Intellectual Property Rights or other rights of any third party.

**15.2** Excluding any Intellectual Property Rights owned by (or licensed to) the Customer prior to the date of the Contract, all Intellectual Property Rights in respect of the Goods shall remain with or be vested in Naylor, and the Customer shall not obtain any right in Naylor's Intellectual Property Rights. Naylor grants to the Customer a limited, revocable, non-exclusive, non-transferable licence to use Naylor's Intellectual Property Rights solely for the purposes of the use or resale of the Goods, and Naylor's Intellectual Property Rights may not be used, copied or made available to third parties by the Customer for any other purpose without Naylor's express prior written consent.

**15.3** The Customer shall inform Naylor immediately and in full of any actual, expected, or envisaged infringement of Naylor's Intellectual Property Rights that comes to the Customer's attention.

### **16. Ethics**

**16.1** Nothing in these conditions or any Contract is intended, and nothing herein should be interpreted or construed, to induce or require either party to act in any manner which is inconsistent with, penalised or prohibited under any applicable laws, regulations or decrees applicable to such party which relate to foreign trade control, export controls, sanctions, embargos or international boycotts of any type.

**16.2** The Customer shall not export, re-export, re-sell or transfer any Goods to any individual, entity or location subject to UN, US, UK or EU sanctions, embargos or other trade restrictions and shall otherwise comply in all respects with all such sanctions, embargos and trade restrictions.

**16.3** Without prejudice to Naylor's rights under the Contract or pursuant to applicable law, Naylor shall have the right to terminate, without any obligation to send any notice, the Contract if Naylor

reasonably considers that the Customer is involved in any fraud, corruption, dishonesty or conduct tending to bring them or Naylor into disrepute.

## **17. Confidentiality**

- 17.1** The receiving party shall keep confidential all Confidential Information of the disclosing party and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:
- 17.1.1** any information which was in the public domain at the date of the Contract;
  - 17.1.2** any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
  - 17.1.3** any information which is independently developed by the receiving party without using information supplied by the disclosing party; or
  - 17.1.4** any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- 17.2** This clause 17 shall remain in force for a period of three years from the date of expiry or termination of the Contract.
- 17.3** The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

## **18. Customer Insolvency**

- 18.1** This clause applies if:
- 18.1.1** a resolution is passed at a meeting of the Customer for (or to petition for) its winding up or administration, or the Customer presents any petition for its winding-up or administration, or an order for the winding-up or administration of the Customer is made; or
  - 18.1.2** the Customer agrees to any kind of composition, rescheduling, scheme, compromise or arrangement involving it and its creditors generally (or any class of them) as a result of financial difficulties; or
  - 18.1.3** any administrative or other receiver or any manager of all or substantially all of the assets of the Customer is appointed or an encumbrancer takes possession of, or any execution or distress is levied against, all or substantially all of the assets of the Customer and which is not paid out or discharged within thirty (30) calendar days after such appointment, taking possession or levy;
  - 18.1.4** the Customer is unable to pay its debts generally as they fall due; or
  - 18.1.5** there occurs, in relation to the Customer, in any country or territory in which it carries on business or to the jurisdiction of whose courts it or any of its assets are subject, any event which corresponds in that country or territory with any of those mentioned above (subject to the same thresholds, grace periods and exceptions).
- 18.2** If any of the events in clause 18.1 apply, then Naylor shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the Goods have been delivered but not paid for the Total Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## **19. General**

- 19.1** Termination or expiry of the Contract shall not affect any accrued rights and liabilities of Naylor at any time up to the date of termination.
- 19.2** Notwithstanding any other provision of this Agreement Naylor shall not be deemed to be in breach of this Agreement, or otherwise be liable to the other, for any delay in performance or the non-performance of any of its obligations under this Contract, to the extent that the delay or non-performance is due to any Force Majeure.
- 19.3** The rights and remedies provided in the Contract for Naylor only are cumulative and not exclusive of any rights and remedies provided by law.
- 19.4** If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected. If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with the minimum such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.
- 19.5** Any notice required to be given to the Customer under these Conditions shall be in writing addressed to the Customer at its registered office or principal place of business or last notified email address.
- 19.6** Any notice required to be given to Naylor shall be in writing addressed to Naylor Drainage Ltd at its registered office or any other address notified in writing by Naylor to the Customer.
- 19.7** No failure, delay or omission by Naylor in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 19.8** A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.
- 19.9** If there is a conflict between these Conditions and the terms of the Order, these Conditions shall prevail to the extent of the conflict.

## **20. Health and Safety**

- 20.1** The Customer agrees to provide sufficient instruction and equipment to those who use the Goods to ensure their safety. The Customer agrees to indemnify Naylor against all loss, damages, costs and expenses awarded against or incurred by Naylor in connection with or paid or agreed to be paid by Naylor in settlement for loss or damage caused by any breach of this clause by the Customer.
- 20.2** The Customer agrees to comply with any information or instructions, including any revisions, whenever supplied by Naylor, or where the Goods are supplied direct from the manufacturer, supplied by the manufacturer (and it is deemed to have been given adequate information and to have read and understood it) relating to the use for which the Goods are designed or have been tested or concerning the conditions necessary to ensure that they will be safe and without risk to health at all times when they are being set, used, cleaned or maintained by any person at work or when they are dismantled or disposed of.

- 20.3** The Customer undertakes to take such steps as may be specified in information provided pursuant to clause 20.1 and 20.2 above to ensure that as far as reasonably practicable, the Goods will be safe and without risk to health as mentioned above.
- 20.4** For these purposes, the Customer is deemed to have been given a reasonable opportunity to test and examine the Goods before delivery.

## **21. Privacy Policy**

- 21.1** Any personal information that the Customer provides to Naylor will be dealt with in line with Naylor's privacy policy available on its website (and subject to any additional specific consent(s) the Customer may have given at the time the information was disclosed), which explains what personal information Naylor collect, how and why Naylor collect, store, use and share such information, the Customer's rights in relation to its personal information and how to contact Naylor and supervisory authorities if the Customer has a query or complaint about how Naylor use the Customer's personal information.

## **22. Governing Law & Jurisdiction**

- 22.1** The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).