

Proteus Waterproofing Ltd : Terms and conditions for the supply of goods and services (pro-Proteus).

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The Customer's attention is particularly drawn to the provisions of clause 14 (Limitation of liability)

1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Commencement Date: has the meaning given in clause 2.3.

Conditions: these terms and conditions as amended from time to time in accordance with clause 18.8.

Contract: the contract between Proteus and the Customer for the supply of Proteus Products and/or Services in accordance with these Conditions.

Contractor: the person, company, entity or firm which undertakes the Installation Works, which for the avoidance of doubt may also be the Customer.

Contractor Defect: a defect in the Finished System which in the reasonable opinion of Proteus is or has been caused by the workmanship of the Contractor.

Contractor's Guarantee: where applicable, the written guarantee of the contractor to Proteus as to the repair of defects in the Finished System..

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.

Customer: the person, company, entity or firm who purchases the Proteus Products and/or Services from Proteus.

Customer Specification: any specification of the Customer for the Installation Works and/or Proteus Products, including any relevant plans, photographs or drawings, that is agreed in writing by the Customer or the Contractor and Proteus.

Defect: a defect in the Waterproofing Products which results in water ingress or penetration of the Finished System.

Defective Products: the Waterproofing Products which have a Defect.

Delivery Location: has the meaning given in clause 5.2.

Finished System: the product of the completed Installation Works.

Force Majeure Event: has the meaning given to it in clause 17.

Guarantee Beneficiary: the owner, occupier or proprietor of the Project Address, or the person or entity otherwise eligible for the Proteus Guarantee (at Proteus' absolute discretion) and as identified in the guarantee application form.

Guarantee Period: the guarantee period stated in the Proteus Guarantee.

Installation Works: the installation of the Proteus Products by the Contractor at the Project Address in accordance with the Proteus Specification.

Intellectual Property Rights: patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: shall mean either: (a) the Customer's order for the supply of Proteus Products and/or Services, as set out in the Customer's purchase order form; or (b) the Customer's written acceptance of Proteus' quotation; or (c) the Customer's verbal acceptance of Proteus' quotation, as the case may be.

Order Acknowledgement: Proteus' acknowledgement of receipt of the Order which specifies the correct price for the Proteus Products or Services or the Proteus Products and Services.

Practical Completion: occurs when the Contractor completes the Installation Works.

Project Address: the building, property, structure, location or land at, in or on which the Installation Works are to be undertaken.

Proteus: Proteus Waterproofing Limited registered in England and Wales with company number 08458402 whose registered office is at Charter House, 105 Leigh Road, Leigh-On-Sea, Essex, SS9 1JL.

Proteus Guarantee: the guarantee from Proteus to the Guarantee Beneficiary, the terms and conditions of which are available separately on request and may vary from time to time, and the guarantee: (a) extent and duration shall vary according to the nature of the project; (b) may be insurance-backed or not, depending on the Proteus Specification; (c) terms and conditions shall be at Proteus' absolute discretion.

Proteus Products: the waterproofing products and other materials (or any part of them) set out in the Order Acknowledgement.

Proteus Specification: the specification written by Proteus for the Installation Works, including installation instructions, product data sheet detailing the methods to facilitate the Installation Works, any relevant plans, photographs or drawings, that is agreed in writing by the Customer or the Contractor and Proteus.

Proteus Materials: has the meaning given in clause 9.1(h).

Services: the services, including but not limited to the Training Services and any surveying, sampling, consultancy, assessment, rectification and design work, supplied by Proteus to the Customer as set out in the Order or otherwise forming part of the supply of Proteus Products and services to the Customer.

Training Services: the training services supplied by Proteus to the Customer or Contractor pursuant to the booking form and invoice rendered by Proteus.

Waterproofing Products: the waterproofing products supplied by Proteus to the Customer, which shall not include (without limitation) accessories, photovoltaic systems, rooflights, man safe systems, insulation, green or blue roof coverings, hard or soft landscaping, decking and similar and like products.

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes fax and email.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Proteus Products or Services or Proteus Products and Services in accordance with these Conditions.

2.2 The Customer is responsible for ensuring that the terms of the Order are complete and accurate.

2.3 The Order shall only be deemed to be accepted when Proteus issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.4 Any samples, drawings, descriptive matter or advertising issued by Proteus and any descriptions of the Proteus Products or illustrations or descriptions of the Services contained in Proteus' quotations, specifications, Proteus' Specification, catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Proteus Products described in them. They shall not form part of the Contract nor have any contractual force. Proteus reserves the right substitute the Proteus Products with an alternative that is materially the same as described.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.6 Any quotation given by Proteus shall not constitute an offer, and where no expiry date is stated by Proteus, is only valid for a maximum period of 90 days from its date of issue.

2.7 All of these Conditions shall apply to the supply of both Proteus Products and Services except where application to one or the other is specified.

2.8 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

2.9 The Customer authorises the Contractor to act as the Customer's agent in relation to the negotiation, formation and conclusion of the Contract with Proteus and the Customer agrees and acknowledges that it is bound by these Conditions and the Contract as principal of the Contractor.

3. PROTEUS PRODUCTS

3.1 The Proteus Products are described in the Order Acknowledgement.

3.2 To the extent that the Proteus Products are to be manufactured in accordance with a Customer Specification supplied by the Customer, the Customer shall indemnify Proteus against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Proteus arising out of or in connection with any claim made against Proteus for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Proteus' use of the Customer Specification. This clause 3.2 shall survive termination of the Contract.

3.3 Proteus reserves the right to amend:

- (a) the Order;
- (b) the Customer Specification;
- (c) the Order Acknowledgement; or
- (d) the Proteus Specification,

if required by any applicable statutory or regulatory requirement, and Proteus shall notify the Customer in any such event.

4. PROTEUS' GUARANTEE

4.1 Where applicable and subject to clause 4.2 below, following inspection or other approval of the Installation Works by Proteus, if Proteus finds (in its absolute discretion) no issues with the standard of workmanship of the Finished System as at the date of Practical Completion it will give the Proteus Guarantee to the Contractor or Customer in favour of the Guarantee Beneficiary.

4.2 Proteus reserves the right to either: (i) alter and amend the terms of the Proteus Guarantee; or (ii) not give the Proteus Guarantee to the Guarantee Beneficiary, if any of the following apply to the Finished System:

- (a) materials used in the Finished Systems are supplied by third parties and not by Proteus;
- (b) workmanship is not to the satisfaction of, and approved and signed off by, Proteus;
- (c) the design is compromised and/or there is unauthorised use of elements designed by third parties and not by Proteus;
- (d) the Proteus Specifications are not adhered to and followed and/or if changes to the Proteus Specifications are not agreed in writing in advance with Proteus;
- (e) electronic integrity leak tests are not undertaken in accordance with the requirements and terms of the Proteus Specifications;
- (f) the Finished System does not conform to the relevant industry codes of practice including, but not limited to, BS6229;
- (g) the Contractor does not enter into, or give, the Contractor's Guarantee;
- (h) Proteus has not been paid in full for all materials supplied in the Finished System, including materials supplied by Proteus to third parties.

4.3 If Proteus becomes aware that the matters listed in clause 4.2(a) to clause 4.2(h) apply to the Finished System after the date of the Proteus Guarantee, then Proteus shall have the right to require the Customer to, and (where applicable) the Customer shall procure that the Contractor shall, repair, remedy, rectify or renew, in part or in whole, any defect in the Finished System to Proteus' satisfaction.

5. DELIVERY OF PROTEUS PRODUCTS

5.1 Proteus shall ensure that:

- (a) each delivery of the Proteus Products is accompanied by a delivery note which shows all relevant Customer and Proteus reference numbers, the type and quantity of the Proteus Products (including the code number of the Proteus Products, where applicable); and
- (b) if there is any requirement for the Customer to return any packaging material to Proteus, it states clearly on the delivery note. The Customer shall make any such packaging materials available for collection at such times as Proteus shall reasonably request. Returns of packaging materials shall be at Proteus' expense.

5.2 Proteus shall deliver the Proteus Products to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after Proteus notifies the Customer that the Proteus Products are ready.

5.3 Delivery of the Proteus Products shall be completed on the arrival of the Proteus Products at the Delivery Location.

5.4 Any dates quoted for delivery of the Proteus Products are approximate only, and the time of delivery is not of the essence. Proteus shall not be liable for any delay in delivery of the Proteus Products that is caused by a Force Majeure Event or the Customer's failure to provide Proteus with adequate delivery instructions or any other instructions that are relevant to the supply of the Proteus Products.

5.5 If Proteus fails to deliver the Proteus Products, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement Proteus Products of similar description and quality in the cheapest market available, less the price of the Proteus Products. Proteus shall have no liability for any failure to deliver the Proteus Products to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Proteus with adequate delivery instructions or any other instructions that are relevant to the supply of the Proteus Products.

5.6 The Customer shall ensure that the Delivery Location is suitable for delivery of the Proteus Products and if the Delivery Location is not suitable for delivery of the Proteus Products (in Proteus' absolute discretion), the Customer shall be treated as having failed to take or accept delivery of the Proteus Products and the terms of clauses 5.7 and 5.8 shall apply.

5.7 If the Customer fails to take or accept delivery of the Proteus Products within three Business Days of Proteus notifying the Customer that the Proteus Products are ready, then except where such failure or delay is caused by a Force Majeure Event or by Proteus' failure to comply with its obligations under the Contract in respect of the Proteus Products:

- (a) delivery of the Proteus Products shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which Proteus notified the Customer that the Proteus Products were ready; and
- (b) Proteus shall store the Proteus Products until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

5.8 If ten Business Days after the day on which Proteus notified the Customer that the Proteus Products were ready for delivery the Customer has not taken or accepted actual delivery of them, Proteus may resell or otherwise dispose of part or all of the Proteus Products and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Proteus Products or charge the Customer for any shortfall below the price of the Proteus Products.

5.9 If Proteus delivers up to and including 5% more or less than the quantity of Proteus Products ordered the Customer may not reject them.

5.10 Proteus may deliver the Proteus Products by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

6. QUALITY OF PROTEUS PRODUCTS

6.1 Proteus warrants that on delivery and before, but not after, installation the Proteus Products shall:

- (a) be free from material defects in design and material; and
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (c) be fit for any purpose held out by Proteus.

6.2 Subject to clause 6.3, if:

- (a) the Customer gives notice in writing to Proteus within a reasonable time of discovery that some or all of the Proteus Products do not comply with the warranty set out in clause 6.1;
- (b) Proteus is given a reasonable opportunity of examining such Proteus Products; and
- (c) the Customer (if asked to do so by Proteus) returns such Proteus Products to Proteus' place of business at the Proteus' cost,

Proteus shall, at its option, repair or replace the defective Proteus Products, or refund the price of the defective Proteus Products in full.

6.3 Proteus shall not be liable for the Proteus Products' failure to comply with the warranty set out in clause 6.1 if:

- (a) the Customer makes any further use of such Proteus Products after giving a notice in accordance with clause 6.2;
- (b) the defect arises because the Customer failed to follow Proteus' oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Proteus Products or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of Proteus following any drawing, design or Customer Specification supplied by the Customer;
- (d) the Customer alters or repairs such Proteus Products without the written consent of Proteus;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (f) the Proteus Products differ from their description or the Proteus Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

6.4 Except as provided in this clause 6, Proteus shall have no liability to the Customer in respect of the Proteus Products' failure to comply with the warranty set out in clause 6.1.

6.5 These Conditions shall apply to any repaired or replacement Proteus Products supplied by Proteus.

7. TITLE AND RISK

7.1 The risk in the Proteus Products shall pass to the Customer on completion of delivery.

7.2 Title to the Proteus Products shall not pass to the Customer until the earlier of:

- (a) Proteus receives payment in full (in cash or cleared funds) for the Proteus Products and any other Proteus Products that Proteus has supplied to the Customer in respect of which payment has become due, in which case title to the Proteus Products shall pass at the time of payment of all such sums; and
- (b) the Customer resells the Proteus Products, in which case title to the Proteus Products shall pass to the Customer at the time specified in clause 7.4.

7.3 Until title to the Proteus Products has passed to the Customer, the Customer shall:

- (a) store the Proteus Products separately from all other Proteus Products held by the Customer so that they remain readily identifiable as Proteus' property;

- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Proteus Products;
- (c) maintain the Proteus Products in satisfactory condition and keep them insured against all risks for their full price on Proteus' behalf from the date of delivery;
- (d) notify Proteus immediately if it becomes subject to any of the events listed in clause 15.2(b) to clause 15.2(q); and
- (e) give Proteus such information as Proteus may reasonably require from time to time relating to:
 - (i) the Proteus Products; and
 - (ii) the ongoing financial position of the Customer.

7.4 Subject to clause 7.5, the Customer may resell or use the Proteus Products in the ordinary course of its business (but not otherwise) before Proteus receives payment for the Proteus Products. However, if the Customer resells the Proteus Products before that time:

- (a) it does so as principal and not as Proteus' agent; and
- (b) title to the Proteus Products shall pass from Proteus to the Customer immediately before the time at which resale by the Customer occurs.

7.5 At any time before title to the Proteus Products passes to the Customer, Proteus may:

- (a) by notice in writing, terminate the Customer's right under clause 7.4 to resell the Proteus Products or use them in the ordinary course of its business; and
- (b) require the Customer to deliver up all Proteus Products in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Proteus Products are stored in order to recover them.

8. SUPPLY OF SERVICES

8.1 Proteus shall supply the Training Services to the Customer in accordance with the training booking form in all material respects.

8.2 Proteus shall use all reasonable endeavours to meet any performance dates for the Services specified in the training booking form or in correspondence, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Training Services.

8.3 Proteus reserves the right to amend the Customer Specification, the Proteus Specification or the training booking form if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Proteus shall notify the Customer in any such event.

8.4 Proteus warrants to the Customer that the Services will be provided using reasonable care and skill.

9. CUSTOMER'S OBLIGATIONS

9.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in the Customer Specification are complete and accurate;
- (b) co-operate with Proteus in all matters relating to the Services;
- (c) provide Proteus, its employees, agents, consultants and subcontractors, with access to the Project Address, office accommodation and other facilities as reasonably required by Proteus to provide the Services;
- (d) provide Proteus with such information and materials as Proteus may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Project Address for the supply of the Services and the Installation Works;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services and the Installation Works before the date on which the Services or the Installation Works are to start;

- (g) comply with all applicable laws, including health and safety laws;
- (h) keep all materials, equipment, documents and other property of Proteus (**Proteus Materials**) at the Project Address in safe custody at its own risk, maintain Proteus Materials in good condition until returned to Proteus, and not dispose of or use Proteus Materials other than in accordance with Proteus' written instructions or authorisation; and
- (i) comply with any additional obligations as set out in the Customer Specification, Proteus Specification or any other document or correspondence sent to the Customer by Proteus.

9.2 In the event of a Contractor Defect during the Guarantee Period:

- (a) where the Customer is the Contractor, the Customer shall:
 - (i) repair, remedy, rectify or renew, in part or in whole, the Contractor Defect at its own cost (including access costs); and
 - (ii) if necessary (in Proteus' absolute discretion), repair, rectify or renew the Finished System at its own cost (including access costs), in either case such repair, remedial, rectification or renewal work to be to the satisfaction of Proteus.
- (b) where the Customer is not the Contractor, the Customer shall:
 - (i) agree that Proteus may instruct an independent contractor (the identity and instruction of the said contractor shall be in Proteus' absolute discretion) to repair, remedy, rectify or renew, in part or in whole, the Contractor Defect; and
 - (ii) if necessary, the independent contractor instructed by Proteus may repair, remedy, rectify or renew the Finished System; and
 - (iii) in either case, the costs to be incurred by Proteus in relation to the instruction of the independent contractor and all repair, remedial, rectification or renewal work shall be payable in advance by the Customer to Proteus; and
 - (iv) the Customer hereby agrees to provide safe access to the Project Address, at the Customer's cost, for the independent contractor to undertake the said work and hereby grants a licence to Proteus and the independent contractor for that purpose.

9.3 If Proteus' performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or the Contractor, or failure by the Customer or Contractor to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, Proteus shall have the right to suspend performance of the Services or the Installation Works until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Proteus' performance of any of its obligations;
- (b) Proteus shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Proteus' failure or delay to perform any of its obligations as set out in this clause 9.3; and
- (c) the Customer shall reimburse Proteus on written demand for any costs or losses sustained or incurred by Proteus arising directly or indirectly from the Customer Default.

10. CHARGES AND PAYMENT

10.1 The price for Proteus Products and the Services:

- (a) shall be the price set out in the Order or, if no price is quoted or the price is incorrect, the price set out in the Order Acknowledgment; and
- (b) shall be exclusive of all costs and charges of packaging, insurance, transport of the Proteus Products, which shall be invoiced to the Customer.

10.2 Proteus reserves the right to increase the price of the Proteus Products, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Proteus Products to Proteus that is due to:

- (i) any factor beyond the control of Proteus (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (ii) any request by the Customer to change the delivery date(s), quantities or types of Proteus Products ordered, or the Customer Specification; or
- (iii) any delay caused by any instructions of the Customer in respect of the Proteus Products or failure of the Customer to give Proteus adequate or accurate information or instructions in respect of the Proteus Products.

10.3 In respect of Proteus Products, Proteus shall invoice the Customer on or at any time after dispatch of the Proteus Products for delivery to the Customer. In respect of Training Services, Proteus shall invoice the Customer either in advance or monthly in arrears.

10.4 The Customer shall pay each invoice submitted by Proteus:

- (a) on the last Business Day of the calendar month following the month in which Proteus' invoice is dated or in accordance with any credit terms agreed by Proteus and confirmed in writing to the Customer; and
- (b) in full and in cleared funds to a bank account nominated in writing by Proteus, and

time for payment shall be of the essence of the Contract.

10.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Proteus to the Customer, the Customer shall, on receipt of a valid VAT invoice from Proteus, pay to Proteus such additional amounts in respect of VAT as are chargeable on the supply of the Services or Proteus Products at the same time as payment is due for the supply of the Services or Proteus Products.

10.6 In the event of a query or dispute of the amount charged in an invoice, the Customer shall notify Proteus of the query or nature of the dispute (with sufficient details so that the nature of the dispute can be reasonably understood) within 7 days of the receipt of the invoice. In the event that the Customer fails to notify Proteus of the query or the dispute within this time period, the Customer shall be deemed to have accepted the invoice and shall pay the same in accordance with clause 10.4.

10.7 If the Customer fails to make a payment due to Proteus under the Contract by the due date, then, without limiting Proteus' remedies under clause 15, the Customer 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 10.7 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%.

10.8 All amounts due under the Contract 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).

11. INTELLECTUAL PROPERTY RIGHTS

11.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by Proteus.

11.2 Nothing in this Contract constitutes the grant of a right or licence of Proteus' intellectual property or Proteus' Intellectual Property Rights to the Customer.

11.3 The Customer shall not, and shall procure that the Contractor shall not, without Proteus' written consent:

- (a) allow any of Proteus' logos or trademarks applied to the Proteus Products to be obliterated, covered, obscured or omitted or to add any additional words or marks;
- (b) use Proteus' logos or trademarks or company name or Intellectual Property Rights in any respect whatsoever.

12. DATA PROTECTION

12.1 The following definitions apply in this clause 12:

- (a) **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.

- (b) **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.
 - (c) **Domestic Law:** the law of the United Kingdom or a part of the United Kingdom.
- 12.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 12.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and Proteus is the Processor.
- 12.4 Without prejudice to the generality of clause 12.2, the Customer will ensure that it, and will procure that the Contractor, has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Proteus and/or lawful collection of the Personal Data by Proteus on behalf of the Customer for the duration and purposes of the Contract.
- 12.5 Without prejudice to the generality of clause 12.2, Proteus shall, in relation to any Personal Data processed in connection with the performance by Proteus of its obligations under the Contract:
- (a) process that Personal Data only on the documented written instructions of the Customer unless Proteus is required by Domestic Law to otherwise process that Personal Data. Where Proteus is relying on Domestic Law as the basis for processing Personal Data, Proteus shall promptly notify the Customer of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits Proteus from so notifying the Customer;
 - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - (d) not transfer any Personal Data outside of the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or Proteus has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) Proteus complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) Proteus complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (f) notify the Customer without undue delay on becoming aware of a Personal Data Breach;
 - (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Domestic Law to store the Personal Data; and
 - (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 12.

12.6 Proteus may, at any time on not less than 30 days' notice, revise this clause 12 by replacing it with any applicable controller to processor standard clauses or similar terms adopted by the Information Commissioner or forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

13. CONFIDENTIALITY

13.1 Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination or expiry of the Contract, 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 13.2.

13.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, contractors or subcontracts 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 the Contract. The Customer shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 13; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.3 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 the Contract.

14. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

14.1 The restrictions on liability in this clause 14 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

14.2 Nothing in these Conditions limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Proteus Products Act 1979 or section 2 of the Supply of Proteus Products and Services Act 1982 (title and quiet possession);
- (d) defective products under the Consumer Protection Act 1987;
- (e) any matter in respect of which it would be unlawful for Proteus to exclude or restrict liability.

14.3 Subject to clause 14.2, Proteus' total liability to the Customer shall not exceed the aggregate value of sums paid by the Customer to Proteus in respect of Defective Products only.

14.4 This clause 14.4 sets out specific heads of excluded loss and exceptions from them:

- (a) Subject to clause 14.2, the types of loss listed in clause 14.4(c) are wholly excluded by the parties.
- (b) If any loss falls into one or more of the categories in clause 14.4(c) and also falls into the category in clause 14.4(d), then it is not excluded.
- (c) The following types of loss are wholly excluded:
 - (i) loss of profits;
 - (ii) loss of sales or business;
 - (iii) loss of agreements or contracts;
 - (iv) loss of anticipated savings;
 - (v) loss of use or corruption of software, data or information;
 - (vi) loss of or damage to goodwill; and

- (vii) indirect or consequential loss.
- (d) The following type of loss and specific loss are not excluded:
 - (i) sums paid by the Customer to Proteus pursuant to the Contract, in respect of any Defective Products.

14.5 Proteus has given commitments as to compliance of the Proteus Products and Services with relevant specifications in clause 6 and clause 8. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

14.6 This clause 14 shall survive termination of the Contract.

15. TERMINATION

15.1 Without affecting any other right or remedy available to it, Proteus may terminate the Contract by giving the Customer not less than 14 days' written notice.

15.2 Without affecting any other right or remedy available to it, Proteus may terminate the Contract with immediate effect by giving notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment;
- (b) the Customer commits a material breach of any term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 5 days after being notified in writing to do so;
- (c) the Customer repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (d) the Customer or Contractor suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the IA 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (e) the Customer or Contractor commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;
- (f) the Customer or Contractor applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (g) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer or Contractor (being a company, limited liability partnership or partnership);
- (h) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the Customer or Contractor (being a company, partnership or limited liability partnership);
- (i) the holder of a qualifying floating charge over the assets of the Customer or Contractor (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (j) a person becomes entitled to appoint a receiver over all or any of the assets of the Customer or Contractor or a receiver is appointed over all or any of the assets of the Customer or Contractor;
- (k) the Customer or Contractor (being an individual) is the subject of a bankruptcy petition, application or order;
- (l) a creditor or encumbrancer of the Customer or Contractor attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (m) any event occurs, or proceeding is taken, with respect to the Customer or Contractor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.2(d) to clause 15.2(l) (inclusive);
- (n) the Customer or Contractor suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

- (o) the Customer's or the Contractor's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy;
 - (p) the Customer or Contractor (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing their own affairs or becomes a patient under any mental health legislation; or
 - (q) there is a change of Control of the Customer or the Contractor.
- 15.3 Without affecting any other right or remedy available to it, Proteus may suspend the supply of Services or all further deliveries of Proteus Products under the Contract or any other contract between the Customer and Proteus if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 15.2(a) to clause 15.2(q), or Proteus reasonably believes that the Customer is about to become subject to any of them.

16. CONSEQUENCES OF TERMINATION

- 16.1 On termination of the Contract:
- (a) the Customer shall immediately pay to Proteus all of Proteus' outstanding unpaid invoices and interest and, in respect of Services and Proteus Products supplied but for which no invoice has been submitted, Proteus shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - (b) the Customer shall return all of the Proteus Materials or Proteus Products which have not been fully paid for. If the Customer fails to do so, then Proteus may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 16.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 16.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

17. FORCE MAJEURE

Proteus shall not be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control, which shall include (but shall not be limited to) any national or global pandemic or epidemic (a **Force Majeure Event**). In such circumstances Proteus shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for two months, the Customer may terminate the Contract by giving 30 days' written notice to the affected party.

18. GENERAL

18.1 Assignment and other dealings

- (a) Proteus may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Proteus.

18.2 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by email to the address specified in Proteus' Credit Account Application Form.
- (b) Any notice or communication shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 18.2(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

18.3 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 18.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

18.4 Waiver. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

18.5 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

18.6 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation, or negligent misrepresentation based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

18.7 Third party rights.

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

18.8 Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

18.9 Governing law. The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

18.10 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

Name:	
Company:	
Position in Company:	
Date:	
Signed: (To be signed by a registered Director of the company)	

This document must be 'wet' signed by a company Director registered with companies house
An electronic signature will not be accepted
Please return signed copies to accounts@proteuswaterproofing.co.uk