

Hydratight Operations Limited
GENERAL TERMS AND CONDITIONS OF
TRAINING SERVICES

1 DEFINITIONS & INTERPRETATIONS

1.1 In these terms the following words shall have the following meanings:-

1.1.1 "Attendees" means the persons who the Customer wishes to attend the training sessions provided by the Company under the Contract (defined below);

1.1.2 "Company" means Hydratight Operations Limited whose registered office is at 5 Coopies Field, Coopies Lane, Morpeth, Northumberland, NE61 6JT, England or any other nominated and identified corporate body;

1.1.3 "Company's Equipment" means any equipment, tools or facilities, provided by the Company and used directly or indirectly in the supply of the Services (defined below) including any equipment, tools or facilities set out in the Specification (defined below);

1.1.4 "Contract" means any contract between the Company and the Customer for the provision of the Services by the Company incorporating these conditions;

1.1.5 "Customer" means the person, firm or company named in the Specification;

1.1.6 "Customer's Equipment" means any equipment or facilities provided by the Customer and used directly or indirectly in the supply of the Services including any equipment or facilities set out in the Specification;

1.1.7 "Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

1.1.8 "Services" means the training services to be provided by the Company under the Contract as further detailed in the Specification;

1.1.9 "Specification" means the specification document agreed by the Company and the Customer in relation to the Services, incorporating these conditions;

1.1.10 "Training Facilities" means any facilities to be provided by the Company or the Customer for the purposes of the Services as further detailed in the Specification;

1.1.11 "Training Materials" means all documents, products and materials provided by the Company in relation to the Services in any form; and

1.1.12 "VAT" means value added tax chargeable under English law for the time being and any similar additional tax.

1.2 Reference to the singular shall include the plural, the masculine shall include the feminine, the whole shall include the part, the personal shall include the

corporate and in all cases vice versa, as if they were set out separately and traversed seriatim.

2 SUPPLY OF TRAINING

2.1 These terms shall apply to and be incorporated into the Contract and prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation or specification or other document supplied by the Customer, or implied by law, trade custom, practice or course of dealing.

3 COMMENCEMENT AND DURATION

3.1 Subject to Clauses 3.2 and 3.3, the Services supplied under the Contract shall be provided by the Company to the Customer on the date(s) specified in the Specification or, if no dates are specified in the Specification, such date(s) as are agreed between the Company and the Customer.

3.2 Not less than seventy two (72) hours prior to the time set out in the Specification for the commencement of provision of the Services, either party may by notice in writing request that the date(s) for performance of the Services be rescheduled to mutually convenient alternative dates. The parties shall use their reasonable endeavours to agree mutually convenient alternative dates and, in the absence of such agreement within thirty (30) days of the date of the notice, the Company shall be entitled to either:

3.2.1 nominate the alternative dates by giving notice in writing to the Customer; or

3.2.2 in the case of a notice served by the Customer, terminate the Contract immediately upon giving written notice to the Customer and invoice the Customer in respect of the charges payable by the Customer for the Services.

3.3 In the event that the Customer requests to reschedule the performance of the Services less than seventy two (72) hours before the time scheduled for their performance, the Company shall be entitled to invoice the Customer in respect of the charges payable by the Customer for the Services.

3.4 The Customer may cancel this Contract without liability to the Company up to the time seventy two (72) hours prior to the time set out in the Specification for the commencement of provision of the Services. If the Customer purports to cancel the Contract after this point in time, the Company shall be entitled to invoice the Customer for the total amount of the charges set out in the Specification.

4 SUPPLIERS RIGHTS AND OBLIGATIONS

4.1 The Company shall use reasonable endeavours to provide the Services to the Customer, in accordance in all material respects with the Specification. Time shall not be of the essence for performance of the Services.

4.2 The Company reserves the right to refuse to provide the Services where, in the opinion of the Company, performance of the Services would pose a risk to the health and safety of any person including, without limitation, as a result of any Training Facilities or equipment provided by the Customer or any failure of the Customer to comply with any of its obligations under the Contract.

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- 4.3 The Company reserves the right to refuse to provide the Services to any Attendee at any time if in the opinion of the Company the Attendee is:
- 4.3.1 unfit or unsuitable for any reason to attend or complete the relevant training course; or
- 4.3.2 that the behaviour of the Attendee is in any way dangerous, offensive or would otherwise impede the performance of the Services.
- 5 CUSTOMER'S OBLIGATIONS**
- 5.1 The Customer shall:
- 5.1.1 co-operate with the Company in all matters relating to the Services;
- 5.1.2 where the Customer is required to provide any Training Facilities:
- (a) provide the Training Facilities;
- (b) ensure, at all times that the Services are performed by the Company, that the Training Facilities will comply with all environmental requirements and conditions specified within the Specification or as otherwise notified by the Company to the Customer;
- (c) provide at the Training Facilities adequate heat, light, electricity supply, compressed air supply and any other utilities that the Company may require for the purposes of the Services;
- (d) provide the Company, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Training Facilities;
- (e) be responsible (at its own cost) for preparing and maintaining the Training Facilities for the supply of the Services in accordance with the Company's instructions;
- (f) inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply at the Training Facilities;
- 5.1.3 provide to the Company, in a timely manner, such information as the Company may require for the performance of the Services and ensure that it is accurate in all material respects;
- 5.1.4 ensure that all Customers' Equipment is in good working order and suitable for the purposes for which it is required in relation to the Services.
- 5.2 If the Company's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.
- 5.3 The Customer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct or indirect consequential losses,
- loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Company arising out of or in connection with:
- 5.3.1 the Customer's breach or negligent performance or non-performance of the Contract; and
- 5.3.2 any claim made against the Company by a third party for death, personal injury or damage to property which is attributable to the acts or omissions of the Customer, its employees, agents or subcontractors or any of the Attendees.
- 6 CHARGES AND PAYMENT**
- 6.1 The total price for the Services shall be the amount set out in the Specification.
- 6.2 The Company may invoice the Customer for the charges that are payable and VAT, at any time following performance of the Services.
- 6.3 The Customer shall pay any invoice submitted to it by the Company, in full and in cleared funds, within thirty (30) days of receipt to a bank account nominated in writing by the Company.
- 6.4 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Company on the due date, the Company may claim interest and/or compensation for reasonable debt recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debts regulations 2002.
- 6.5 The Company may, without prejudice to any other rights it may have, set off any liability of the Customer to the Company against any liability of the Company to the Customer.
- 7 INTELLECTUAL PROPERTY RIGHTS AND THE COMPANY'S PROPERTY**
- 7.1 All Intellectual Property Rights and all other rights in the Training Materials shall be owned by the Company or its licensors.
- 7.2 The Customer and the Attendees shall only use the Training Materials for the purposes of attending the relevant training course and shall not copy, rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the Training Materials.
- 7.3 All materials, equipment and tools, specifications and data supplied by the Company to the Customer (including the Company's Equipment) shall, at all times, be and remain the exclusive property of the Company.
- 8 CONFIDENTIALITY**
- 8.1 Both the Company and the Customer shall keep confidential and shall not without the prior consent in writing of the other disclose to any third party any technical or commercial information which it has acquired from the other as a result of discussions, negotiations or other communications between them relating to the Contract.

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9 LIMITATION OF LIABILITY

9.1 This Clause 9 sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Customer in respect of:

9.1.1 any breach of the Contract;

9.1.2 any use made by the Customer of the Services, the Training Materials or any part of them; and

9.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

9.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

9.3 Nothing in these conditions limits or excludes the liability of the Company:

9.3.1 for death or personal injury resulting from negligence; or

9.3.2 for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Company; or

9.3.3 for any liability incurred by the Customer as a result of any breach by the Company of the condition as to title or the warranty as to quiet possession implied by Section 2 of the Supply of Goods and Services Act 1982.

9.4 Subject to Clause 9.2 and 9.3

9.4.1 The Company shall not be liable for loss of profits, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, loss of corruption of data or information or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

9.4.2 The Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of the Contract shall be limited to the total price paid by the Customer for the Services or two hundred and fifty thousand pounds (£250,000.00) (whichever is the lower) save as otherwise expressly provided in these terms.

9.5 The Customer hereby acknowledges that:

9.5.1 the Services are provided by the Company only for the purposes of raising awareness of the Attendees of the subject matter of the relevant training course;

9.5.2 the satisfactory completion of any relevant training course by any of the Attendees will be subject to the attendance of the Attendee throughout the full duration of the training course and, where applicable, satisfactory performance by the Attendee of any relevant tasks or activities forming part of the training course;

9.5.3 The Company gives no warranty, representation, guarantee or undertaking that, as a result of the

Services, any of the Attendees will be competent or will possess the necessary technical knowledge or expertise to perform any task or activity or to operate any particular item of equipment or machinery.

10 INSURANCE

10.1 The Customer shall obtain, pay for and maintain with a reputable insurer reasonably acceptable to the Company, for the benefit of the Company and the Customer and for a period of six (6) years from the date of commencement of performance of the Services, one or more policies of insurance in respect of:

10.1.1 Public Liability Insurance, including contractual liability, for a sum of two million pounds (£2,000,000.00) in the aggregate in respect of any and all liability howsoever and whenever arising in respect of a claim;

10.1.2 Employer's Liability Insurance for a sum of not less than five million pounds (£5,000,000.00) for any one claim for each employee;

10.1.3 Occupiers Liability Insurance, including contractual liability, for a sum of five million pounds (£5,000,000.00) in the aggregate in respect of any and all liability howsoever and whenever arising in respect of a claim.

10.2 Each such policy of insurance shall cover any claim arising out of an event occurring during the term of the policy, regardless of whether the claim is made during or after the expiration of the term of the policy.

10.3 The Customer shall:

10.3.1 produce to the Company on request a certificate of insurance for, or other evidence of, that insurance and evidence of the payment of the premium; and

10.3.2 do nothing to invalidate or prejudice the Company's entitlement under any such insurance policy.

11 TERMINATION

11.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:

11.1.1 fails to pay any sum payable by it under this Contract within thirty (30) days of the due date for payment;

11.1.2 commits a material breach of this Contract (other than one to which Clause 11.1.1 applies) and, if the breach is capable of remedy, fails to remedy it within thirty (30) days after receipt of a written notice specifying the breach and requiring it to be remedied;

11.1.3 goes into liquidation or administration, has a receiver appointed over any of its assets or makes a voluntary arrangement or composition with its creditors (in each case, within the meaning of the Insolvency Act 1986); or

11.1.4 For the purposes of Clause 11.1.2, a breach of any provision of this Contract shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that the time of performance is not of the essence).

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11.2 On termination of the Contract for any reason:

11.2.1 The Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt;

11.2.2 the Customer shall return all of the Company's Equipment and Training Materials. If the Customer fails to do so, then the Company may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and

11.2.3 the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

11.3 On termination of the Contract (however arising), each of Clauses 5.3, 6, 7, 9 and 10 shall survive and continue in full force and effect.

12 FORCE MAJEURE

12.1 The Company shall have no liability to the Customer under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

13 VARIATION

13.1 The Company may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services.

13.2 Subject to Clause 13.1, no variation of the Contract or these conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the parties.

14 ANTI-BRIBERY

14.1 The Customer confirms that it has received, read and understood the Company's Anti-Bribery Policy ("the Policy") and agrees that it shall conduct itself strictly in accordance with the Policy, and shall not by its acts or omissions breach that Policy.

14.2 The Customer will allow such access as the Company may from time to time require to its personnel, premises, documents and records so that the Company may monitor the Customer's compliance with the Policy.

14.3 The Customer will not by its acts or omissions commit any breach of any provision of the Bribery Act 2010, ("the Act") or commit any offence thereunder, or do or omit to do any act or thing whereby the Company (or any of its officers, employees or agents) may be in breach of the Act or commit any offence thereunder.

15 GENERAL CONDITIONS

15.1 Any notice required or permitted to be given by either party to the other under these terms shall be given in writing and addressed to the other party at its registered office, principal place of business or at such other address that may be notified to the other party from time to time.

15.2 No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver and any subsequent breach of the same or any other provision.

15.3 The Company is a member of a group of companies and accordingly the Company may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group.

15.4 The Company shall be entitled to subcontract the whole or any part of its obligations under the Contract to any third party which it may in its absolute discretion determine but any subcontract shall not relieve the Company of its obligations hereunder.

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

15.6 A person who is not party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Contract.

15.7 The Contract shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the non-exclusive jurisdiction of the English courts.