

## Storm Force Terms and Conditions of Sale

Rev.04 – July 2023

### 1. Definitions and interpretations

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

#### 1.1 Definitions

The following definitions apply in these Conditions.

**"Agreed Customer Quote"** is the Customer Quote referenced in the accompanying Purchase Order.

**"Additional Works"** means any Works additional to the Scope of Work provided in the Purchase Order.

**"Affected Party"** has the meaning given in clause 11.1.

**"Business Day"** means a day other than a Saturday, Sunday or public holiday, when banks in London are generally open for business.

**"Commencement Date"** has the meaning given in clause 2.3.

**"Contract Documents"** means these Conditions, the Purchase Order, the Agreed Customer Quote and any other documents listed in, attached to or appended to the Purchase Order.

**"Contract Particulars"** means the contract particulars section in the Purchase Order.

**"Contract Sum"** means the amount to be paid by the Merchant to Wavin which comprises the values stated in the relevant Purchase Orders relating to the Project, as adjusted in accordance with these Conditions.

**"Customer"** means the customer specified in the Agreed Customer Quote

on whose behalf the Goods and/or Works are to be provided.

**"Customer Particulars"** means the customer particulars section in the Agreed Customer Quote.

**"Date of Practical Completion"** has the meaning given in clause 7.1.7.

**"Date of Site Access"** has the meaning given in the Customer Particulars.

**"Defect"** or **"Defective"** means any defect in the Goods or the Works, including any failure of the Goods to comply with the Goods Specification and the Contract Documents, but excluding any failure or defect arising as a result of the failure by the Merchant, Customer or end user, as applicable, to use, operate or maintain the Goods in accordance with the manufacturer's recommendations and instructions (in so far as Wavin has provided such documents to the Merchant, Customer or the end user, as applicable) or arising as a result of ordinary wear and tear.

**"Deleterious"** means deleterious to the durability of the Works or referred to as being hazardous to health and safety in the Guide: 'Good Practice in the Selection of Construction Materials' published by the British Council for Offices current at the date of specification or use, or by the Building Research Establishment or any other substance not in accordance with British Standards (where applicable) or an equivalent but no lesser standard and Codes of Practice and good building practice as set out in the United Kingdom of a recognised body or institution. Without prejudice to the aforementioned a material or combination of materials shall be regarded as being deleterious or hazardous if its use would or might have

the effect of reducing the normal life expectancy of the material itself or any material to which it is fixed or the structure in which it is incorporated or to which it is fixed or the Works, to a period less than specified or which would normally be expected.

**"Deliverables"** means all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Project.

**"Delivery Location"** has the meaning given in the Customer Particulars.

**"Delivery Note"** has the meaning given in clause 4.3.2.

**"Merchant"** means the party named as the Merchant in the Purchase Order.

**"Merchant Materials"** has the meaning given in clause 6.4.9.

**"Force Majeure Event"** has the meaning given in clause 11.1.

**"Goods"** means the goods (or any part of them) to be provided by Wavin as more particularly described in the Goods Specification.

**"Goods Specification"** means any specification for the Goods set out in the Purchase Order or otherwise agreed in writing by the Customer and Wavin and notified to the Merchant, including in any related plans and drawings, which have been duly attached to or otherwise incorporated into the Purchase Order.

**"Goods Warranty Period"** means the warranty period for the Goods specified in the Agreed Customer Quote.

**"Party"** means the Customer, Merchant or Wavin as appropriate and **"Parties"** means the Customer, Merchant and Wavin.

**"Plant"** means any piece of and all plant, equipment and/or materials (other than Goods) to be supplied by Wavin as specified in the Scope of Works.

**"Practical Completion"** means, as applicable, that: (i) the Goods have been delivered in accordance with the Contract Documents; and (ii) the Works have been completed in accordance with the Contract Documents (save for any Snagging Issues).

**"Project"** means the project for which Wavin is to provide Goods, Works and/or services, the particulars of which are set out in the Agreed Customer Quote.

**"Proof of Delivery"** means the confirmation of the quantity of Goods delivered to the Delivery Location.

**"Purchase Order"** means the purchase order from Merchant to Wavin.

**"Relied Upon Information"** has the meaning given in clause 3.2.

**"Scope of Works"** means: (i) delivery of the Goods; and/or (ii) performance of the Works, including any Deliverables, including the design and installation of the Goods, as set out in the Agreed Customer Quote.

**"Snagging Issues"** means minor outstanding Work and Defects which are not required to be completed or remedied by law and will not materially affect the safe and efficient use of the Goods and/or the Works for their intended purpose (either until or whilst such Work is completed and such Defects are remedied), which have been agreed by Wavin with the Customer and

notified to the Merchant as a condition to Practical Completion.

**"Special Conditions"** means each of the conditions referred to as Special Conditions in the Agreed Customer Quote.

**"Site"** means the site where the Goods are to be delivered and/or the Works performed, as more particularly described in the Customer Particulars.

**"Sign off Document"** has the meaning given in clause 6.6.

**"Term"** means in relation to the Project, the period commencing upon the Commencement Date and ending upon such date as either Party shall terminate the contract in accordance with these Conditions.

**"Trade Agreement"** means the most recent trade agreement between Wavin Limited and the Merchant at the date of the Purchase Order.

**"Wavin"** means Wavin Limited incorporated and registered in England and Wales with company number 00405836 whose registered office is at Wavin Edlington Lane, Edlington, Doncaster, South Yorkshire, DN12 1BY, or any affiliated company thereof specified in the Purchase Order.

**"Works"** means the works and/or services to be performed by or on behalf of Wavin, as more particularly described in the Scope of Works and/or as may be agreed between the Parties from time to time.

**"Works Warranty Period"** has the meaning given in the Customer Particulars.

## 1.2 Interpretation

1.2.1 Clause, schedule and paragraph headings shall not affect the

interpretation of the Purchase Order or these Conditions.

1.2.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.3 A reference to a party includes its personal representatives, successors and permitted assigns.

1.2.4 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.2.5 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.

1.2.6 A reference to writing or written includes email.

1.2.7 In the event of any ambiguity or inconsistency between the terms of the below listed documents, the terms of the document with the higher order in the list above shall prevail over the terms of all documents with a lower order:

- (a) the Special Conditions referred to in the Agreed Customer Quote;
- (b) the Agreed Customer Quote;
- (c) the Conditions;
- (d) each of the annexures appended to the Purchase Order;
- (e) any other Contract Documents; and
- (f) The Trade Agreement.

**2. Basis of Contract**

- 2.1 Save where otherwise agreed by the Parties in writing, these Conditions shall apply to any sale of Goods and/or performance of Works by or on behalf of Wavin relating strictly to the Project only, to the exclusion of all other terms that the Merchant seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 The Merchant shall issue a Purchase Order to Wavin.
- 2.3 The Purchase Order shall be accepted when Wavin sends a confirmation of the Purchase Order to the Merchant, and on which date the contract shall come into full force and effect (the "**Commencement Date**").
- 2.4 These Conditions shall apply to the Purchase Order from the Merchant, which Wavin confirms.
- 2.5 Any Purchase Order may only be cancelled by the Merchant upon the Merchant giving Wavin written notice and provided that any reasonable and properly incurred costs and expenses by Wavin as a consequence of such cancellation are forthwith reimbursed in full. Wavin shall mitigate any costs or expenses incurred.
- 2.6 Any variations to these Conditions shall only be applicable if agreed in writing between the Parties.
- 2.7 The Merchant and the Customer hereby acknowledge that it has not relied on any oral statement or oral representation made by or given on behalf of Wavin (including any agents, employees, officers and representatives thereof) when entering into the Purchase Order. The Merchant will have no remedy in respect of any representation, statement, assurance or

warranty that is not either in writing or expressly included in the Contract Documents.

- 2.8 The Merchant and the Customer hereby acknowledge that any advice or recommendations given by or on behalf of Wavin, which is not confirmed by Wavin in writing, including in relation to: (i) the suitability of any Goods for a particular purpose; (ii) the quantities of Goods required; and (iii) any measurements or plans are given for guidance purposes only and without liability on the part of Wavin.

**3. Quality and Description of the Goods**

- 3.1 The quantity, quality and description of the Goods shall be prescribed in the Goods Specification appended to the Purchaser Order, or otherwise agreed between the Parties in writing.
- 3.2 Wavin shall be entitled to rely upon the accuracy and completeness of any information which the Customer provides to Wavin (whether prior to or following the Commencement Date) in respect of: (i) the intended purpose and application of the Goods; (ii) the conditions of the ground where the Goods are to be installed; and (iii) available access to the Site ("**Relied Upon Information**").
- 3.3 Wavin warrants that on delivery and throughout the Goods Warranty Period the Goods shall:
  - 3.3.1 conform in all material respects with their description and the Goods Specification;
  - 3.3.2 be free from material defects in design, material and workmanship; and
  - 3.3.3 be of satisfactory quality and fit for the purpose of the Project (within the meaning of the Sale of Goods Act 1979).

- 3.4 Any samples, drawings, descriptive matter or advertising issued by or on behalf of Wavin and any descriptions of the Goods (including specifications, dimensions and weight) or illustrations or descriptions of the services contained in Wavin's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the services and/or goods described in them. They shall not form part of the Contract Documents or have any contractual force.
- 3.5 Wavin reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements. Wavin will provide Merchant and Customer with notice of such change in a timely manner.
- 3.6 Nothing in this clause 3 shall imply any fitness for purpose obligation on Wavin in relation to any design undertaken by or on behalf of Wavin other than as set in the Contract Documents.
- 4. Delivery of the Goods**
- 4.1 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. If Goods are not delivered on the specified delivery date (as set out in the Purchase Order) and, after discussions between the Parties, if Wavin is unable to supply the Goods by an agreed alternative date, then the Merchant and Customer may:
- 4.1.1 refuse to take any subsequent attempted delivery of the Purchase Order;
- 4.1.2 cancel any further Purchase Orders that have been placed with Wavin; and/or
- 4.1.3 terminate this agreement with immediate effect.
- 4.2 Wavin shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide: (i) access to the Site by no later than the Date of Site Access; (ii) adequate delivery instructions; and/or (iii) any other instructions that are reasonably required in connection with the supply of the Goods that have a direct impact on delivery of such Goods.
- 4.3 Wavin shall ensure that:
- 4.3.1 the Goods are properly packed, clearly marked, and secured in accordance with the Goods Specification and in such manner as to enable them to be clearly identifiable and to reach the Delivery Location in a good and undamaged condition in accordance with good industry practice in Wavin's industry, profession or trade;
- 4.3.2 delivery of the Goods is accompanied by a delivery note which shows the date of the Purchase Order, the relevant Merchant and Wavin reference numbers (as applicable), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered (the "**Delivery Note**"); and
- 4.3.3 the Goods are delivered to the Delivery Location, provided that if Wavin shall incur additional costs as a result of the Delivery Location being outside of the Site, then Wavin shall be entitled to submit a claim for such additional reasonable and properly incurred costs and expenses, which shall be added to the Contract Sum.
- 4.4 Delivery is completed on the completion of delivery of the Goods at the Delivery Location. The Customer assumes risk and responsibility for unloading the Goods at the Delivery Location.

- 4.5 Inspection and Defective Goods
- 4.5.1 Goods Delivery: Upon delivery of the Goods to the Delivery Location, the Customer shall inspect the quantity of the Goods (**Proof of Delivery**)
- 4.5.2 Goods Inspection: Within five Business Days after delivery of the Goods to the Delivery Location, Customer shall examine the Goods and notify Wavin and the Merchant promptly upon becoming aware of any Defective Goods. The Merchant shall use reasonable endeavours to procure that the Customer is made aware of this obligation.
- 4.6 Defective Goods: The Merchant and the Customer shall be entitled to reject Defective Goods, provided always that: (i) the Merchant and/or the Customer have notified Wavin of the Defective Goods promptly and prior to installation, affixing to the site or otherwise covering up of the site; and (ii) Wavin has an opportunity, action reasonably and promptly, to examine and/or test the Goods to check if they are Defective. The Merchant shall use reasonable endeavours to procure that the Customer is made aware of this obligation.
- 4.7 If the Customer fails to take or accept delivery of the Goods within five Business Days of Wavin notifying the Merchant that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Wavin's material breach of its obligations under the Contract Documents:
- 4.7.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the fifth Business Day after the day on which Wavin notified the Merchant that the Goods were ready; and
- 4.7.2 Wavin shall store the Goods until delivery takes place and shall be entitled to charge the Merchant for all reasonable related costs and expenses (including insurance), acting reasonably.
- If fifteen Business Days after the day on which Wavin notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted actual delivery of them, Wavin may, upon giving five Business Days' notice to the Merchant, resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Merchant for any excess over the price of the Goods or charge the Merchant for any shortfall below the price of the Goods.
- 5. Title and Risk**
- 5.1 The risk in the Goods shall pass to the Customer on completion of delivery in accordance with clause 4.4.
- 5.2 Title to the Goods shall not pass to the Merchant (or Customer) until Wavin receives payment in full in cleared funds for the Goods.
- 5.3 Until title to the Goods has passed under clause 5.2, the Merchant shall use reasonable endeavours to procure that the Customer ensures that:
- 5.3.1 the Goods are stored separately from all other goods held by Customer so that they remain readily identifiable as Wavin's property;
- 5.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 5.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Wavin's behalf from the date of delivery.

**6. Performance of the Works**

6.1 Wavin shall carry out and complete the Scope of Works.

6.2 Save where otherwise agreed in writing by Wavin, all unloading, distribution, setting out, pumping out, blinding, backfilling, fall protection and stoning up shall be carried out by the Customer.

6.3 Wavin warrants to the Merchant that the Works will be performed in a good and workmanlike manner using reasonable care and skill and in accordance with good industry practice in Wavin's industry, profession or trade. The foregoing warranty shall not be affected by Wavin subcontracting any aspect of the Works.

6.4 In performing the Works, Wavin shall:

6.4.1 co-operate with the Customer and other contractors at the Site in all matters relating to the Scope of Work;

6.4.2 perform the Works in an efficient manner and in accordance with any time period agreed with the Customer and set out in the Agreed Customer Quote;

6.4.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that Wavin's obligations are fulfilled in accordance with these Conditions;

6.4.4 provide all equipment, tools and vehicles and such Plant as may be required in connection with the Scope of Work;

6.4.5 ensure that no materials will be used in or specified for use in, or otherwise incorporated as part of the Works, which are Deleterious;

6.4.6 obtain and at all times maintains in full force and effect all the licences, permissions, authorisations, consents

and permits that it needs to carry out and complete its obligations under the Contract Documents insofar as they relate to the Scope of Work;

6.4.7 comply with all applicable British Standards, laws, regulations, regulatory policies, guidelines or industry codes, which may apply to the provision of the Works;

6.4.8 observe all health and safety rules and regulations and any other security requirements or site rules, which Wavin has been made aware of prior to the commencement of Works; and

6.4.9 hold all materials, equipment and tools, drawings, specifications and data supplied by the Merchant to Wavin (the "**Merchant Materials**") in safe custody at its own risk, maintain the Merchant Materials in good condition until returned to the Merchant, and not dispose or use the Merchant Materials other than in accordance with the Merchant's written instructions or authorisation.

6.5 Where the Merchant requires Wavin to design any or all of the Works:

6.5.1 Wavin shall exercise all reasonable skill and care expected of an experienced designer in the relevant area of design in carrying out such duties; and

6.5.2 Wavin grants to the Merchant, with full title guarantee, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Deliverables for any purpose relating to the Project. Such licence carries the right to grant sub-licences.

6.6 Wavin shall examine all Goods prior to start of the Works. In case defective Goods are discovered, Wavin shall promptly and at no additional cost replace those defective Goods, notify the Merchants and Customer and

arrange any necessary subsequent visits to carry out the Works promptly and at no additional cost. Upon completion of the Scope of Works and prior to achieving Practical Completion; the Customer shall inspect the Works and confirm that the Scope of Works are completed in accordance with the Agreed upon Quote as mentioned in the Purchase Order for the Project. ("**Sign Off Document**")

**7. Merchant and Customer's Obligations**

- 7.1 The Merchant shall use its reasonable endeavours to:
  - 7.1.1 co-operate with Wavin in all matters relating to the Scope of Work;
  - 7.1.2 procure for and provide Wavin with such information and materials as Wavin may reasonably require in order to carry out and complete the Scope of Work, and ensure that such information is complete and accurate in all material respects, it being understood and agreed that such information shall be deemed to be Relied Upon Information;
  - 7.1.3 coordinate with the Customer (and any other contractors on Site) to ensure that the necessary preparations have been duly carried out and completed at the Site (including any necessary excavation work) by no later than the Date of Site Access in readiness for the installation of the Goods;
  - 7.1.4 procure for Wavin full and unrestricted (during normal business hours) access to the Site and other facilities at the Site that may be required in connection with the Works by no later than the Date of Site Access;
  - 7.1.5 ensure there is sufficient and adequate access to the Site, including for articulated lorries or other vehicles carrying heavy loads, provided that

Wavin shall give the Merchant Customer details of such anticipated load as well as the proposed means of transporting the Goods (including dimensions and weight of the vehicle) to the Site;

- 7.1.6 notify Wavin forthwith in writing (with particulars) upon discovering any Defect affecting the Goods and/or the other Works, as applicable; and
- 7.1.7 forthwith confirm in writing to Wavin the achievement of Practical Completion following notification by Wavin that it considers it has achieved Practical Completion, If, for whatever reason the Customer fails to confirm the achievement of Practical Completion or otherwise notify Wavin in writing with the grounds for rejecting Practical Completion (acting reasonably) within five Business Days, then Wavin will be deemed to have achieved Practical Completion on the date notified to the Merchant and the Customer. The date of confirmation by the Customer of the achievement of Practical Completion or the date of deemed Practical Completion shall be referred to as the "**Date of Practical Completion**".
- 7.2 If Wavin's performance of any of its obligations under the Purchase Order is prevented or delayed by: (i) any act or omission by the Merchant or the Customer (or any of their respective suppliers, agents, contractors and representatives); or (ii) any failure by the Merchant or the Customer to perform any of their respective obligations ("**Merchant Default**"):
  - 7.2.1 without limiting or affecting any other right or remedy available to it, Wavin shall have the right to suspend performance of the Works (including delivery of any Goods) until the Merchant Default is rectified, and to rely on the Merchant Default to relieve it from the performance of any of its obligations in each case to the extent the Merchant



- Default prevents or delays Wavin's performance of any of its obligations;
- 7.2.2 Wavin shall not be liable for any costs or losses sustained or incurred by the Merchant or any other party (including the Customer if applicable) arising directly or indirectly from Wavin's failure or delay to perform any of its obligations under the Contract Documents pursuant to this clause 7.2; and
- 7.2.3 the Merchant shall reimburse Wavin on written demand for any costs or losses reasonably sustained or incurred by Wavin arising directly from the Merchant Default.
- 8. Payment**
- 8.1 Save where otherwise agreed between the Parties in writing, Wavin shall invoice the Merchant for the Contract Sum and the Merchant shall pay Wavin in accordance with the payment terms of the Trade Agreement.
- 8.2 The Contract Sum shall be inclusive of the costs of packaging, insurance and carriage of the Goods.
- 8.3 Unless otherwise agreed upon in the Trade Agreement, the Merchant shall pay all undisputed amounts due to Wavin in full and in cleared funds to a bank account nominated in writing by Wavin without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Disputes as to invoices must be bona fide and accompanied by detailed supporting information and are deemed waived 15 (fifteen) calendar days following the invoice date. Wavin reserves the right to correct any inaccurate invoices. Any corrected invoice must be paid by the original invoice payment due date, or the payment term included in the correct invoice, whichever is later.
- 8.4 The Customer Quote shall be valid for three (3) months from its issue date.
- 8.5 Wavin reserves the right to adjust the Contract Sum due to:
- (a) any request to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
  - (b) any delay caused by any instructions in respect of the Goods or failure to give Wavin adequate or accurate information or instructions in respect of the Goods; and adjust the Contract Sum for any Additional Works, provide always that Wavin shall only commence performance of the Additional Works following receipt of written approval by the Merchant of the proposed adjustment to the Contract Sum.
- 8.6 The Merchant and Customer acknowledge that the Contract Sum is based upon the Agreed Customer Quote and accordingly, any change to the Agreed Customer Quote or any variance from the assumptions set out in the same may result in additional fees, to be agreed between the Parties.
- 9. Warranties and indemnities**
- 9.1 Subject to clause 9.3 below, Wavin warrants to the Merchant that:
- 9.1.1 the Goods shall be free from Defects (fair wear and tear excepted) throughout the Goods Warranty Period; and
  - 9.1.2 the Works shall be free from Defects throughout the Works Warranty Period.
- 9.2 Wavin shall repair or replace any Defective Goods at its cost, or by agreement between the Parties

- proportionately reduce the Contract Sum.
- 9.3 The warranties provided in clause 9.1 above are provided subject always to Wavin not being liable for any Defects in the Goods and/or Works that arise from: (i) any errors or inaccuracies in Relied Upon Information; (ii) any misuse, alteration, wilful damage or repair of the Goods by the Customer (or other beneficiary of the Goods).
- 9.4 The Merchant shall not make any statement or representation or give any warranty to any third party (including without limitation the Customer) in respect of any Goods and/or Works (including Plant) other than in the terms made or given by Wavin to the Merchant in these Conditions nor shall the Merchant have any authority to commit Wavin to provide any service in relation to the Goods.
- 9.5 Subject to clause 9.3 above, Wavin shall execute all work required to remedy any Defects or damage, as may be notified by the Merchant or Customer to Wavin in writing, provided such notification shall occur prior to the expiry date of the relevant warranty period.
- 9.6 If Wavin fails to remedy any Defect or damage, or otherwise comply with its obligations in respect of any Defects and such remedial work was to be executed at the cost of Wavin in accordance with these Conditions, then (save where the Parties agree to proportionately reduce the Contract Sum for Defective Goods under clause 9.2 or Wavin is prevented from remedying the Defect by the Customer and/or the Merchant), without prejudice to the Merchant's other rights and remedies under these Conditions, the Merchant shall have the option, at its sole discretion to procure a third party to carry out the same in a reasonable manner and at Wavin's cost.
- 9.7 If the Merchant procures others to rectify a Defect under clause 9.6 then:
- 9.7.1 Wavin shall have no responsibility or liability for such work; and
- 9.7.2 Wavin undertakes to pay to the Merchant the costs reasonably incurred by the Merchant in remedying the relevant Defect or otherwise replacing the relevant part, component or Goods.
- 9.8 Subject to clauses 9.4 and 14.2, Wavin shall indemnify the Merchant against all losses, liabilities, costs, expenses, and damages suffered or incurred by the Merchant arising out of or in connection with any claim or demand made against the Merchant by the Customer or a third party arising out of or in connection with the Works to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract Documents by Wavin, its employees, agents or subcontractors.
- 9.9 The indemnity under clause 9.8 shall not cover the Merchant to the extent that a claim under it results from the Merchant's negligence, breach of these Conditions or wilful misconduct.
- 9.10 In consideration of the indemnity provided in clause 9.8, the Merchant confirms that it shall not waive, settle or otherwise compromise claims brought by the Customer or third party without the express written agreement of Wavin.
- 10. Insurance**
- 10.1 Wavin shall maintain professional indemnity insurance from the Commencement Date to 6 years from Practical Completion with the limit of indemnity of not less than £2 million in the annual aggregate, provided that such insurance continues to be available on reasonable terms and at commercially reasonable rates.

10.2 Wavin shall promptly notify the Merchant of any material change in the level of professional indemnity insurance that Wavin is required to maintain under this clause 10.

## 11. Force Majeure

11.1 In these Conditions, the expression "**Force Majeure Event**" means any event or condition which has prevented or delayed or will prevent or delay any Party from performing any obligation under the Contract Documents in whole or in part, if such event or condition, and such prevention or delay, is beyond the reasonable control of the Party relying thereon as justification for not performing any such obligation (the "**Affected Party**") provided, always, that:

11.1.1 such event or condition and such prevention or delay could not and cannot be prevented or overcome by the exercise of due diligence by the Affected Party, as appropriate, acting as a reasonable and prudent Wavin or Merchant (as applicable); and

11.1.2 such event or circumstance is not the direct result of a breach or failure by the Affected Party (or any person acting on behalf of the Affected Party) to perform any of its obligations under the Contract Documents.

11.2 Force Majeure Events may include, but are not limited to, circumstances of the kind listed below so long as the conditions in clauses 11.1.1 and 11.1.2 above are satisfied:

11.2.1 acts of government(s), acts of the public enemy, wars, acts of vandalism, blockades, embargoes, military action, civil disturbances, insurrection, riots, acts of terrorism, nuclear accidents or explosion, or similar occurrences;

11.2.2 acts of God, landslides, lightning, earthquakes, fires, explosions, storms or storm warnings, floods washouts, epidemics or similar occurrences; and

11.2.3 national or regional strikes, boycotts, lockouts and other similar industrial or labour disputes and disturbances (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party).

11.3 For the avoidance of doubt, the Parties accept that the Affected Party shall not be entitled to claim a Force Majeure Event if it could, after becoming aware of the circumstances of the Force Majeure Event, reasonably have arranged its affairs to enable it to perform its obligations under the Contract Documents.

11.4 Upon the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party without delay giving the full particulars thereof and shall use all reasonable endeavours to remove, remedy or overcome the situation without delay.

11.5 After receiving the notice of the Force Majeure Event under clause 11.4, the obligations of the Affected Party under the Contract Documents shall, to the extent that they are affected by such Force Majeure Event, be suspended during but no longer than the continuance of the Force Majeure Event. The Affected Party shall give notice to the other party when it ceases to be affected by the Force Majeure Event.

## 12. Term and Termination

12.1 Without affecting any other right or remedy available to it, either party may terminate the Purchase Order with immediate effect by giving written notice to the other party if:

- 12.1.1 the other Party commits a material breach of its obligations under the Contract Documents and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;
- 12.1.2 the other Party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 12.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;
- 12.1.4 Without affecting any other right or remedy available to it, Wavin may terminate the Purchase Order with immediate effect by giving written notice to the Merchant if the Merchant fails to pay any amount due under the Purchase Order within 21 days of receiving written notification of late payment by Wavin.
- 13. Consequences of Termination**
- 13.1 On termination of the Purchase Order the Merchant shall pay to Wavin all of Wavin's outstanding unpaid and undisputed invoices and interest in accordance with these Conditions and, in respect of Services and Goods supplied but for which no invoice has been submitted, Wavin shall submit an invoice, which shall be payable in accordance with these Conditions.
- 13.2 Termination of the Purchase Order shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of contract which existed at or before the date of termination.
- 13.3 Any provision of the Contract Documents that expressly or by implication is intended to have effect after termination shall continue in full force and effect.
- 14. Liability**
- 14.1 Nothing in these Conditions limits any liability which cannot legally be limited, including liability for:
- 14.1.1 death or personal injury caused by negligence;
- 14.1.2 fraud or fraudulent misrepresentation; and
- 14.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 14.2 Subject to clause 14.1 above but notwithstanding any other provisions in the Contract Documents, Wavin's total liability under or in connection with the Project shall be limited to:
- 14.2.1 the same level as the professional indemnity insurance level Wavin is required to maintain under clause 10; or
- 14.2.2 300% of the total Contract Sum for the relevant Project whichever is less. The limit under this clause 14.2 shall apply however that liability arises, including, without limitation, a liability arising by breach of contract, arising by tort (including, without limitation, the tort of negligence) or arising by breach of statutory duty.

- 14.3 Subject to clause 14.1 above, Wavin shall not be liable to the Merchant for any loss of profits, loss of use, loss of production, loss of contracts and loss of data or any consequential or indirect loss suffered by the Merchant or any other party.
- 15. Miscellaneous**
- 15.1 Each Party undertakes to keep and procure to be kept secret and confidential all confidential information belonging to the other Party. Neither Party shall use or disclose such confidential information save for the purposes of the proper performance of the Purchase Order or with the prior written consent of the disclosing Party.
- 15.2 The Contract Documents constitute the entire agreement between the Parties and supersedes all prior negotiations representations or agreements related to the Project, either written or oral. No amendments to the Contract Documents shall be effective unless evidenced in writing and signed by the Parties.
- 15.3 If any provision or part-provision of the Contract Documents is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 15.3 shall not affect the validity and enforceability of the rest of the Contract Documents.
- 15.4 A waiver of any right or remedy under the Contract Documents or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract Documents or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract Documents or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 15.5 Nothing in these Conditions is intended to, or shall be deemed:
- 15.5.1 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. Wavin shall act as an independent supplier with respect to the Goods and the Works and shall exercise control, supervision, management and direction as to the method and manner of obtaining the results required by the Merchant; and/or
- 15.5.2 to confer on any third party any benefit nor the right to enforce any term of these Conditions or any Contract Document whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 15.6 The Contract Documents shall be governed by English law and the Parties hereby irrevocably submit to the exclusive jurisdictions of the English Courts.