



Clearway Gritting Limited – Standard Terms & Conditions

DEFINITIONS

In these Conditions:

“Business Day”	means a day other than a Saturday, Sunday or public holiday in England, when banks are in London are open for business.
“Charges”	means the charges payable by the Customer for the supply of the Services.
“Clearway Gritting”	means Clearway Gritting Limited.
“Commencement Date”	the date on which the Contract starts, as set out in the Order Acknowledgement.
“Conditions”	means the standard terms and conditions set out in this document and (unless the context otherwise requires) includes in addition any special terms and conditions agreed in writing between Clearway Gritting and the Customer.
“Contract”	means the contract between Clearway Gritting and the Customer for the supply of the Services or Goods and Services in accordance with these Conditions.
“Customer”	means the person, firm or company named in the Order Acknowledgement.
“Data Protection Laws”	all applicable legislation and regulatory requirements in force from time to time in the UK relating to the use of personal data and the privacy of electronic communications, including (i) the Data Protection Act 2018, (ii) the retained EU law version of General Data Protection Regulation ((EU) 2016/679), and (iii) the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426).
“Goods”	means the goods which Clearway Gritting is to supply to the Customer.
“Operative(s)”	means any individual(s) engaged by CLEARWAY GRITTING to perform the Services in accordance with the Contract.
“Order”	means the Customer’s order for Services and/or Goods as set out in the in the Customer’s purchase order form, or the Customer’s written acceptance of the Quotation, as the case may be.
“Order Acknowledgement”	means the order acknowledgement issued by Clearway Gritting to the Customer confirming acceptance of the Order.
“Service Day”	means a day on which the Services are to be performed in accordance with the Contract, which is a day when it is forecast by the Met Office in their morning forecast(s) that temperatures will be below 1°C within the next 24 hours.
“Services”	means the gritting and snow ploughing works and services (including any instalment or parts of them) which Clearway Gritting is to supply to the Customer under the Contract.
“Site(s)”	means the site(s) described in the Order Acknowledgement where Clearway Gritting will perform the Services.
“Site Visit”	means a visit to the Site(s) by the Operative(s) to carry out the Services on a Service Day.
“Quotation”	means any tender or quotation in writing issued by Clearway Gritting to the Customer for the supply of Services and/or Goods, including these conditions and any drawings or other documents included by Clearway Gritting with the Quotation.





1. GENERAL

- 1.1 Unless expressly provided otherwise in this Contract, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time; and shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.2 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.
- 1.3 A reference to writing or written excludes fax but includes email.
- 1.4 Words importing persons include firms, companies and corporations and vice versa.
- 1.5 The Conditions, Order Acknowledgement and Quotation supersede and override any other terms and conditions and exclude any other terms and conditions, descriptions and statements as to quality and performance or suitability of the Services and the Goods stipulated or referred to by the Customer, whether in the Order or which the Customer otherwise seeks to impose or incorporate. To the maximum extent permitted by law, no terms are implied into the Contract by law, trade custom, practice or course of dealing.
- 1.6 Any Order received from the Customer whether or not in respect of a Quotation by CLEARWAY GRITTING shall not be binding on CLEARWAY GRITTING until accepted in Writing by CLEARWAY GRITTING on these Conditions in an Order Acknowledgement.
- 1.7 The Customer and CLEARWAY GRITTING intend that their respective rights, obligations and liabilities as provided for in the Contract, shall be exhaustive of the rights, obligations, and liabilities of each of them to the other, arising out of, under, or in connection with the Contract or the performance of the Services, whether such rights, obligations, and liabilities arise in respect or in consequence of a breach of contract, or of statutory duty, or a tortious or negligent act or omission which gives rise to a remedy at common law.
- 1.8 These Conditions shall be deemed to be incorporated in all contracts from time to time entered into between CLEARWAY GRITTING and the Customer which provide for the supply of any services and/or sale of any goods by CLEARWAY GRITTING to the Customer.
- 1.9 All samples, drawings, descriptive matter, specifications or advertising issued by CLEARWAY GRITTING and any descriptions or illustrations (including references to charges' rates and numbers of staff referred to in those descriptions or illustrations) contained in CLEARWAY GRITTING's catalogues or brochures or on its website are issued or published for the sole purpose of giving an approximate idea of the goods and/or services described in them. They will not form part of the Contract or have any contractual force.
- 1.10 Save as otherwise provided in these Conditions, any notice to be given under these terms must be in writing, and sent by first class pre-paid signed for post or by hand or by email to the Customer at its last-known business address or in the case of CLEARWAY GRITTING to its registered office and in the case of email, to the email addresses for each party specified in the Order Acknowledgement. If sent by hand, it shall be deemed to have been received at the time of delivery and, if sent by first class pre-paid signed for post, it shall be deemed to have been received forty-eight hours after posting (or at 9am on the next Business Day if this falls on a day which is not a Business Day). Notices sent by email shall be deemed to have been received at the time of transmission or if this time falls outside normal business hours (9am to 5.30pm on a Business Day) in the place of receipt, when normal business hours resume. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 1.11 No representative or agent of CLEARWAY GRITTING has any authority to agree any terms or make any representations that are inconsistent with the Conditions, Quotation and/or the Order Acknowledgement. CLEARWAY GRITTING shall not be bound by any statements made by any person purporting to act on CLEARWAY GRITTING'S behalf as to the Conditions, Quotation and/or Order Acknowledgement or any statements as to the delivery, quality, performance or suitability of the Services or Goods unless any such statement is specifically confirmed in writing by an authorised representative of CLEARWAY GRITTING specified in the Order Acknowledgement and annexed to the Contract. The Customer acknowledges that it does not rely on and waives any claim it might otherwise have for breach of any such representations which are not so authorised.



2. QUOTATIONS

- 2.1 Quotations are an invitation to treat only and without obligation. No contract shall come into effect until CLEARWAY GRITTING has accepted an Order from the Customer by issuing an Order Acknowledgement. Prices stated in a Quotation are valid for a period of 90 days from the date of issue and may be withdrawn by CLEARWAY GRITTING at any time within this period by written notice to the Customer.

3. COMMENCEMENT & DETERMINATION / TERMINATION

- 3.1 This Contract shall commence on the date specified in the Order Acknowledgement, shall continue in force until 31st March next (the "Term") unless terminated earlier by either party in accordance with the provisions of this Contract, or until CLEARWAY GRITTING and the Customer agree in writing that CLEARWAY GRITTING shall cease the supply of Goods and/or Services under the Contract. The parties may, by agreement, extend the Term to the 30th April but the basis of charging during the period 1st April to 30th April will be on a per visit basis, even if the original basis of charging is a monthly fixed fee for the period up to and including 31st March. The applicable per visit charges will be those notified to the Customer by CLEARWAY GRITTING on or before 1st March, before the parties agree to the extension of the Contract Term.

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

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so; or
- (b) any step or action is taken by, or in relation to, the other party in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, 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
- (c) the other party 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 within the meaning of section 123 of the Insolvency Act 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 Insolvency Act 1986; or
- (d) 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; or
- (e) the other party's financial position deteriorates to such an extent that in the terminating party's reasonable opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

- 3.3 On termination of the Contract:

- (a) the Customer shall immediately pay to CLEARWAY GRITTING all of the Customer's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, CLEARWAY GRITTING shall submit an invoice, which shall be payable by the Customer immediately on receipt; and
- (b) CLEARWAY GRITTING shall collect any Equipment stored at the Site(s) or at the Customer's premises. If the Customer fails to allow CLEARWAY GRITTING to do so, then CLEARWAY GRITTING 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.

- 3.4 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.

- 3.5 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.



4. TUPE

- 4.1 The provisions of Schedule 1 relating to TUPE shall apply at the start of the Services and on termination of the Services.

5. CHARGES & PAYMENT

- 5.1 The Charges for the Services shall be calculated on the basis set out in the Order Acknowledgement (either on a fixed monthly rate basis or on a per Site Visit basis) at the rates specified in the Order Acknowledgement. The Charges are inclusive of the cost of labour, Equipment and gritting salt used to carry out the Services.
- 5.2 The price for Goods shall be the price set out in the Order Acknowledgement and shall be exclusive of all costs and charges for packaging, insurance, transport of the Goods, which shall be invoiced to the Customer in addition to the price.
- 5.3 CLEARWAY GRITTING reserves the right to
- (a) Increase the charges for the Services by giving not less than 30 days' notice to the Customer in line with the percentage increase in the Consumer Price Index in the period since the Commencement Date (or since the last such increase if the charges have already been increased since then) based on the latest available figure for the percentage increase in the Consumer Prices Index.
 - (b) Increase the price of the Goods by giving notice to the Customer at any time before delivery to reflect any increase in the cost of the Goods to CLEARWAY GRITTING that is:
 - (i) to any factor beyond CLEARWAY GRITTING's reasonable control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii) due to any request by the Customer to change the delivery date(s), quantities or types of Goods ordered.
- 5.4 In the event of extensions, modifications or alterations taking place to the Site(s) to be serviced after the Commencement Date, these shall be variations to be dealt with in accordance with clause 13.1 and CLEARWAY GRITTING shall be entitled (but not obliged) to review and increase or reduce the Charges, having regard to the total surface area of the Site(s) and their geographical location.
- 5.5 In respect of Services, CLEARWAY GRITTING shall invoice the Customer monthly in arrears. In respect of Goods, CLEARWAY GRITTING shall invoice the Customer on or at any time after completion of delivery of Goods.
- 5.6 The terms of payment shall be as stated at the foot of any Order Acknowledgement. In the absence of such a term, payment will be due and paid by the Customer within 30 days from the date of invoice in full and cleared funds to a bank account nominated in writing by CLEARWAY GRITTING. The Customer must not settle an invoice by making payment to an Operative.
- 5.7 All amounts due from the Customer 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 is required by law).
- 5.8 Time for payment by the Customer will be of the essence and in the event of default by the Customer, CLEARWAY GRITTING shall be at liberty to:
- (a) immediately suspend performance of the Services and delivery of the Goods by giving notice in writing to the Customer until payment has been received in full of any amounts outstanding without any liability whatsoever to the Customer and to remove all materials, tools and equipment belonging to CLEARWAY GRITTING from the Site(s) and/or the Customer's premises immediately by entering upon the Site(s) and/or the Customer's premises (as the case may be), by force if necessary. The Customer shall be liable for any transport and other associated costs arising directly out of the suspension of performance by CLEARWAY GRITTING;
 - (b) charge interest on any outstanding sum at the rate of 4% above the base lending rate of Barclays Bank Plc from time to time from the day when payment became due to the date of



payment (both before and after judgement) accruing daily and compounded quarterly. CLEARWAY GRITTING reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998;

- (c) recover all and any costs incurred by it (including costs, fees and disbursements of any outside recovery agency and/or legal fees) in collecting any monies due; and
- (d) terminate the Contract if the delay in payment exceeds 14 days.

This clause 5.8 will not affect any other right or remedy available to CLEARWAY GRITTING.

- 5.9 Any queries or disputes relating to the invoice must be submitted in writing to CLEARWAY GRITTING within 14 days from the date of invoice, specifying the reason for disputing the invoice. After the expiry of 14 days the invoice will be deemed to have been accepted without query or dispute and the full value of the invoice will be payable as provided in 6.6 above. The Customer shall remain liable to pay any undisputed part of the invoice in accordance with these Conditions. The provisions of clause 16 shall apply to any dispute over an invoice which is notified to CLEARWAY GRITTING in accordance with this clause 5.9.
- 5.10 All amounts payable by the Customer under the Contract are exclusive of any value added tax chargeable from time to time. Where any taxable supply for VAT purposes is made under the Contract by CLEARWAY GRITTING to the Customer, the Customer shall, on receipt of a valid VAT invoice from CLEARWAY GRITTING, pay to CLEARWAY GRITTING such additional amounts in respect of VAT as are chargeable on the supply of the Services and on the Goods at the same time as payment is due for the supply of the Services and for the Goods.
- 5.11 All payments payable to CLEARWAY GRITTING under the Contract shall become due immediately upon termination of this Contract despite any other provision.

6. SUPPLY OF THE SERVICES

- 6.1 CLEARWAY GRITTING shall supply the Services to the Customer at the Site(s) on Service Days by making Site Visits in accordance with the Contract.
- 6.2 A Site Visit will only take place on a Service Day. On each Service Day during the Term, CLEARWAY GRITTING will contact the Customer by noon to tell the Customer that CLEARWAY GRITTING proposes to perform a Site Visit to perform the Services. This may come by email or by phone. CLEARWAY GRITTING determines that a day is a Service Day by relying on the weather forecasts provided by the Met Office on the morning of the Service Day. CLEARWAY GRITTING is not responsible for the accuracy of Met Office weather forecasts and the Customer acknowledges and agrees that CLEARWAY GRITTING shall have no liability to the Customer in the event that an inaccurate forecast by the Met Office either results in Services being performed unnecessarily (temperatures of 1°C or higher) or results in Services not being performed when they are needed (temperatures below 1°C).
- 6.3 After CLEARWAY GRITTING has told the Customer that it is a Service Day and that it intends to perform a Site Visit, the Customer has the option of cancelling the Site Visit up to 3pm on the Service Day by phone or by email. Provided the Customer cancels by 3pm on the Service Day, no charges will be charged for that Service Day. If the Customer cancels after 3pm on a Service Day, CLEARWAY GRITTING may charge a cancellation fee based on the costs and expenses it has incurred, for example cancellation when an Operative is already at a Site but has not started performing the Services would incur a charge for fuel and the Operative's time.
- 6.4 Unless otherwise agreed with the Customer, CLEARWAY GRITTING shall provide all equipment and materials (including gritting salt/sand) necessary to perform the Services.
- 6.5 CLEARWAY GRITTING may, by notifying the Customer, amend the Services:
 - (a) if necessary to comply with any applicable law or regulatory requirement; or
 - (b) if the amendment will not have a material adverse effect on the nature or quality of the Services.
- 6.6 The Services will be provided using reasonable care and skill.
- 6.7 CLEARWAY GRITTING shall deploy an adequate number of Operatives to perform the Services and ensure that the Operatives are competent and appropriate for the tasks allocated to them. CLEARWAY



GRITTING will use reasonable endeavours to provide any specific requested number of Operatives but will not be under any liability for failing to do so.

- 6.8 CLEARWAY GRITTING shall ensure that all Operatives have all permits, visas and consents required for the proper performance of the Contract, including the right to work in the UK.
- 6.9 CLEARWAY GRITTING shall ensure that all Operatives attending the Site(s) adhere to any reasonable security and health and safety requirements provided by the Customer to CLEARWAY GRITTING at least 24 hours before the Site Visit.
- 6.10 If CLEARWAY GRITTING's performance of any of its obligations under the Contract is prevented or delayed by any failure by the Customer to perform any of its obligations in the Contract ("Customer Default"), then, without limiting or affecting any other right or remedy available to CLEARWAY GRITTING:
- (a) CLEARWAY GRITTING may suspend performance, and rely on the Customer Default to relieve it from the performance, of the affected obligations until the Customer remedies the Customer Default;
 - (b) CLEARWAY GRITTING shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from CLEARWAY GRITTING'S failure or delay to perform any of its obligations as set out in this clause 6.10; and
 - (c) the Customer shall reimburse CLEARWAY GRITTING on written demand for any costs or losses sustained or incurred by CLEARWAY GRITTING arising directly or indirectly from the Customer Default.

7. FURTHER OBLIGATIONS OF CLEARWAY GRITTING

- 7.1 CLEARWAY GRITTING will
- (a) provide the Services at the Site(s) and/or Goods in accordance with the requirements of the Contract; and
 - (b) keep in force policies of insurance covering employer's liability in the sum of not less than £10 million and public liability in the sum of not less than £10 million. Copies of the relevant certificates are available on written request by the Customer from CLEARWAY GRITTING.

8. OBLIGATIONS OF THE CUSTOMER

- 8.1 The Customer shall:
- (a) pay the contractual charges and other sums due in accordance with the terms of payment set out in clause 5 above.
 - (b) provide CLEARWAY GRITTING with such information and assistance as CLEARWAY GRITTING may reasonably require in order to supply the Services and/or Goods and ensure that such information is complete and accurate in all material respects.
 - (c) provide Operatives with access to the Site(s) on Service Days when Site Visits are to be carried out including any facilities as reasonably required by CLEARWAY GRITTING to provide the Services and provide the Operatives with a security pass for the duration of each Site Visit, if needed. CLEARWAY GRITTING reserves the right to charge the full cost of a Site Visit if its Operative is unable to access the Site(s) to perform the Services due to non-compliance by the Customer with this clause.
 - (d) tell CLEARWAY GRITTING about any unavoidable restrictions at the Site(s) by 3pm on the Service Day.
 - (e) take all reasonable precautions to ensure the safety of CLEARWAY GRITTING's Operatives whilst such persons are carrying out the Services on and/or delivering the Goods to the Site(s) and/or the Customer's premises and in particular will:



- (i) ensure that all electrical equipment on which or in the vicinity of which CLEARWAY GRITTING's Operatives are at work, is safe, adequately maintained and switched off prior to any activity by such persons;
 - (ii) comply with all applicable laws including its duties under sections 3 and 4 of the Health & Safety at Work etc. Act 1974 as if it were the employer of CLEARWAY GRITTING's Operatives;
 - (iii) comply with all health and safety regulations and requirements in force.
- (f) not during the course of any Contract and for a period of 6 months after its termination offer or seek to offer employment or any contract for services to any person who at any time during the course of any Contract was engaged by CLEARWAY GRITTING to perform the Services.
- (g) keep all Equipment, material or other property of CLEARWAY GRITTING used in the provision of the Services and/or supply of Goods at the Customer's premises or any Site in safe custody at its own risk and to not dispose of or use the Equipment, material or other property other than in accordance with CLEARWAY GRITTING's written instructions or authorisation
- (h) not claim ownership of any Equipment or materials used in the provisions of the Services and/or supply of Goods under any circumstances save in the case where CLEARWAY GRITTING specifically sells such Equipment or materials to the Customer.
- (i) co-operate with CLEARWAY GRITTING in all matters relating to the provisions of Services and/or Goods.

8.2 With effect from the Commencement Date, the Customer shall grant to CLEARWAY GRITTING a non-exclusive and revocable licence to enter the Site(s) for the sole purpose of providing the Services to the Customer. The licence shall be subject to the terms and conditions of this Contract, is personal to CLEARWAY GRITTING and shall terminate immediately on termination of the Contract.

9. DAMAGE & REPERFORMANCE

- 9.1 The Customer must notify CLEARWAY GRITTING immediately on becoming aware of any damage caused by an Operative to any property of the Customer or to any Site in the course of providing the Services. Subject to clause 11, CLEARWAY GRITTING shall be responsible for the reasonable costs of repair or replacement (at the option of CLEARWAY GRITTING) with regard to any such damage.
- 9.2 10.2 If CLEARWAY GRITTING performs the Services negligently or materially in breach of this Contract then, if requested by the Customer within a reasonable time (taking into account to the nature of the Services and the weather conditions at the Site in question), CLEARWAY GRITTING will promptly re-perform the relevant part of the Services, unless CLEARWAY GRITTING opts to refund to the Customer a fair proportion of the Charges arising in respect of that Site Visit instead.

10. SUPPLY OF GOODS

- 10.1 The Goods are described in a Quotation. CLEARWAY GRITTING reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirement (in which case CLEARWAY GRITTING will notify the Customer of the change) or to make an improvement in the Goods.
- 10.2 CLEARWAY GRITTING shall deliver the Goods to the location set out in the Order Acknowledgement or such other location as the parties may agree ("Delivery Location") at any time after CLEARWAY GRITTING notifies the Customer that the Goods are ready.
- 10.3 Delivery of the Goods shall be completed on completion of unloading of the Goods at the Delivery Location. CLEARWAY GRITTING is not required to transfer the Goods into salt bins but may elect to do so, at the Customer's request.
- 10.4 Any dates quoted for delivery of the Goods are approximate only, and time of delivery is not of the essence.



- 10.5 If CLEARWAY GRITTING fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available.
- 10.6 CLEARWAY GRITTING will not be liable for any delay in delivery of the Goods or failure to deliver the Goods that is caused by the Customer's failure to provide CLEARWAY GRITTING with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 10.7 If the Customer fails to accept delivery of the Goods within 3 Business Days of CLEARWAY GRITTING notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a force majeure event or by CLEARWAY GRITTING's failure to comply with its obligations under the Contract in respect of the Goods, delivery of the Goods shall be deemed to have been completed at 9.00am on the third Business Day following the day on which CLEARWAY GRITTING notified the Customer that the Goods were ready and CLEARWAY GRITTING shall store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 10.8 If 10 Business Days after the day on which CLEARWAY GRITTING notified the Customer that the Goods were ready for delivery, the Customer has not accepted actual delivery of them, CLEARWAY GRITTING may resell or otherwise dispose of part or all of the Goods.
- 10.9 If CLEARWAY GRITTING delivers up to and including 5% more or less than the quantity of the Goods ordered, the Customer may not reject them.
- 10.10 CLEARWAY GRITTING may deliver the Goods 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.
- 10.11 CLEARWAY GRITTING warrants that on delivery, the Goods shall:
- conform in all material respects with their description;
 - be of satisfactory quality within the mean of the Sale of Goods Act 1979; and
 - be fit for any purpose expressly held out by CLEARWAY GRITTING.
- 10.12 Subject to clause 10.13, if:
- Customer gives notice in writing to CLEARWAY GRITTING within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 10.11;
 - CLEARWAY GRITTING is given a reasonable opportunity of examining such Goods; and
 - the Customer (if asked to do so by CLEARWAY GRITTING) returns such Goods to CLEARWAY GRITTING's place of business at the Customer's cost,
- CLEARWAY GRITTING shall, at its option, replace the defective Goods, or refund the price of the defective Goods in full.
- 10.13 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 10.11 if:
- the Customer makes any further use of such Goods after giving a notice in accordance with clause 10.12;
 - the defect arises because the Customer failed to follow CLEARWAY GRITTING's oral or written instructions as to the storage or use of the Goods or (if there are none) good trade practice regarding the same;
 - the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
 - the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- Except as provided in clause 10.11 to clause 10.13, CLEARWAY GRITTING shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 10.11.
- 10.14 The risk in the Goods shall pass to the Customer at completion of delivery.



10.15 of the Goods shall not pass to the Customer until CLEARWAY GRITTING has received in full (in cash or cleared funds) all sums due to it in respect of the Goods and all other sums which are or which become due to CLEARWAY GRITTING from the Customer on any account.

11. LIABILITY

11.1 References to liability in this clause 11 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

11.2 in the Contract limits CLEARWAY GRITTING's liability which cannot legally be limited, including liability for:

- (a) or personal injury caused by negligence;
- (b) or fraudulent misrepresentation;
- (c) 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); and
- (d) defective products under the Consumer Protection Act 1987.

11.3 Subject to the provisions of clause 11.2 above CLEARWAY GRITTING's entire liability under the Contract shall not exceed £50,000.00. The cap on liability contained in this clause 11.3 shall be reduced by:

- (a) awarded or agreed to be paid under clause 9.1 and 10.12; and
- (b) amounts awarded by a court or arbitrator using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.

11.4 Subject to clause 11.2 above CLEARWAY GRITTING shall not be liable to the Customer for (i) loss of actual or anticipated profits or savings, (ii) loss of contract, (iii) loss of sales, business or economic loss, (iv) loss of or damage to goodwill, (v) punitive, indirect, incidental or consequential damages, (vi) loss of income, (vii) loss of business opportunities or (viii) loss of, damage to or corruption of data or (ix) any type of punitive, special, indirect or consequential loss, (x) damages due under penalty clauses, (xi) wasted expenditure or (xii) cost of mitigation (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if, in any such case, such loss was reasonably foreseeable or CLEARWAY GRITTING had been advised of the possibility of the Customer incurring the same.

11.5 Subject to clause 11.2 above, CLEARWAY GRITTING shall have no liability to the Customer in respect of any event unless the Customer shall have served notice of the same upon CLEARWAY GRITTING during the period starting on which the Customer became, or ought reasonably to have become, aware of the event having occurred and ending one month from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

11.6 CLEARWAY GRITTING assumes no liability for any loss or damage suffered or incurred by the Customer resulting from an Operative's loss of entrusted key(s) or keycard(s) or fob(s) other than the costs of reproducing the lost or damaged key(s) or keycard(s) or fob(s).

11.7 Subject to clause 11.2, CLEARWAY GRITTING shall not be liable for any loss suffered by the Customer caused by a failure to activate the Customer's security system following a Site Visit or otherwise failing to adequately secure the Site(s), except where this arises through the wilful default of the Operative(s).

11.8 CLEARWAY GRITTING has given commitments as to compliance of the Goods and Services with the Contract in clause 6 and clause 10. 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.

11.9 The Customer shall indemnify CLEARWAY GRITTING in respect of any loss or damage suffered by CLEARWAY GRITTING (including all costs and expenses, including if appropriate a contribution to lost profits and overheads incurred by CLEARWAY GRITTING and wasted expenditure) which arises:

- (a) as a result of any breach or default by the Customer in its obligations under any Contract with CLEARWAY GRITTING; or
- (b) as a result of the Customer's negligence.



11.10 This clause 11 shall survive termination of the Contract.

12. FORCE MAJEURE

12.1 CLEARWAY GRITTING shall not be responsible for any delay, breach of the Contract or any failure or delay to fulfil any of its obligations nor be liable for any loss or damage suffered or incurred by the Customer by reason of any delay in the performance of the contracted Services and/or delivery of the contracted Goods caused directly or indirectly by any Act of God, war, government or parliamentary restriction, import or export regulation, strike, lockout, shortage of labour, trade dispute, fire, flooding, act of terrorism, breakdown of plant or premises or other supplies or any other cause whatsoever beyond the reasonable control of CLEARWAY GRITTING.

13. VARIATIONS

13.1 No variation to any Contract requested by the Customer shall be binding on CLEARWAY GRITTING unless agreed by CLEARWAY GRITTING and the Customer in writing and signed by the parties or their authorised representatives. For the avoidance of doubt, this includes any change to the number of Sites or the location of any of the Sites. As part of such variation the charges may be accordingly increased or decreased by CLEARWAY GRITTING.

14. CONFIDENTIALITY

14.1 The Customer shall keep confidential and not disclose to any third party any information which it has acquired from CLEARWAY GRITTING as a result of discussions, negotiations and other communications in connection with the provision of the Services and/or delivery of the Goods ("Confidential Information") and under no circumstance shall the Customer use any Confidential Information for commercial benefit either of the Customer and/or its subsidiaries or affiliates or any of its directors or senior management or any connected persons of any of its directors or senior management.

14.2 The provisions of clause 14.1 shall not apply to the whole or any part of the Confidential Information to the extent that it is trivial or obvious; already in the Customer's possession other than as a result of a breach of this clause by the Customer; in the public domain, otherwise than as a result of a breach of this clause 14 by the Customer; or required to be disclosed by law or by lawful authority.

14.3 If the Customer is a public authority subject to the requirements of the Freedom of Information Act 2000 ("FOIA"), CLEARWAY GRITTING acknowledges that the Customer may be required under the FOIA to disclose Confidential Information without consulting or obtaining consent from CLEARWAY GRITTING. The Customer shall take reasonable steps to notify CLEARWAY GRITTING of a request for information under the FOIA or the Environmental Information Regulations 2004 (SI 2004/3391) (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it's permissible and reasonably practical for it to do so.

15. GENERAL

15.1 If any term of the Contract (or any part of any term) is or becomes invalid, illegal or unenforceable, it shall be deemed deleted but that shall not affect the validity and enforceability of the remainder of the Contract which shall remain in full force and effect.

15.2 The Customer shall not be entitled to assign or sub-contract any of its rights or obligations under any Contract without prior written consent of CLEARWAY GRITTING. CLEARWAY GRITTING may assign and subcontract its rights and obligations under any Contract without the consent of the Customer.

15.3 A person who is not a party to this Contract shall have no rights pursuant to the Contracts (Rights of Third Parties Act) 1999 (the "Act") to enforce any term of the Contract.

15.4 Nothing in this Contract is intended to or shall operate to create a partnership or joint venture of any kind between the parties or any of them, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).



- 15.5 The waiver by either party of a breach or default of any of the provisions of the Contract by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have under the Contract operate as a waiver of any breach or default by the other party.

16. DISPUTES & GOVERNING LAW

- 16.1 If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it ("Dispute"), then the parties shall follow the procedure set out in this clause 16:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("Dispute Notice"), together with relevant supporting documents. On service of the Dispute Notice, the authorised representatives of each of the parties specified in the Order Acknowledgement ("Contract Managers") shall attempt in good faith to resolve the Dispute;
 - (b) if the Contract Managers are for any reason unable to resolve the Dispute within 20 Business Days of the Dispute Notice, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 30 Business Days of service of the Dispute Notice, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing ("ADR notice") to the other party to the Dispute, referring the dispute to mediation;
 - (c) if there is any point on the logistical arrangements of the mediation, other than nomination of the mediator, upon which the parties cannot agree within 14 days from the date of the ADR notice, where appropriate, in conjunction with the mediator, CEDR will be requested to decide that point for the parties having consulted with them; and
 - (d) unless otherwise agreed between the parties, the mediation will start not later than 30 days after the date of the ADR notice.
- 16.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings.

17. ENTIRE AGREEMENT

- 17.1 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.
- 17.2 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.
- 17.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

18. GOVERNING LAW / JURISDICTION

- 18.1 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.
- 18.2 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.

19. DATA PROTECTION

- 19.1 Each party shall comply with all applicable Data Protection Laws when performing this Contract.



SCHEDULE 1 – TUPE

The definitions in this paragraph apply in this Schedule 1

“Employee Liability Information”	has the meaning given in regulation 11(2) of the Employment Regulations.
“Employment Regulations”	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).
“Entry Transferring Employees”	those employees whose contracts of employment transfer to CLEARWAY GRITTING from the Customer or a Former Supplier as at the Commencement Date, being those employees who are listed in the Order Acknowledgement.
“Former Supplier”	a supplier supplying services to the Customer before the Commencement Date that are identical or substantially similar to the Services (or any part of the Services), including any subcontractors of that person.
“Loss”	all claims (threatened or actual), demands, proceedings, awards, compensation, damages, fines and losses, and all related payments (including settlement payments), costs and expenses (including all reasonable legal expenses and other professional fees together with any VAT).
“Employment Regulations”	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).
“Entry Transferring Employees”	those employees whose contracts of employment transfer to CLEARWAY GRITTING from the Customer or a Former Supplier as at the Commencement Date, being those employees who are listed in the Order Acknowledgement.
“Former Supplier”	a supplier supplying services to the Customer before the Commencement Date that are identical or substantially similar to the Services (or any part of the Services), including any subcontractors of that person.

1. Transfer of Employees to CLEARWAY GRITTING on the Commencement Date

- 1.1 Each party considers that the start of the Services shall not constitute a relevant transfer for the purpose of the Employment Regulations.
- 1.2 If any person employed or engaged by the Customer or a Former Supplier claims, or is determined, to have become an employee of or have rights against CLEARWAY GRITTING by virtue of the Employment Regulations, then the Customer shall, within five Business Days of being informed of that claim or determination, make (or procure that a third party makes) to that person an offer in writing to employ them under a new contract of employment on terms which, taken as a whole, are substantially the same as or better than the terms of employment of that person immediately before the making of the offer.
- 1.3 Upon the offer being made (or any time after it should have been), CLEARWAY GRITTING shall terminate the employment or alleged employment of the person concerned and the Customer shall indemnify CLEARWAY GRITTING from and against all Losses suffered or incurred by CLEARWAY GRITTING and arising out of the employment of that person until the termination of their employment or alleged employment, provided that CLEARWAY GRITTING:
 - (a) Takes reasonable steps to minimise any Losses, including by following proper termination of employment procedures; and
 - (b) informs the Customer of the claim or determination under paragraph 2.2 within six months of the Commencement Date.

2. Employment exit provisions

- 2.1 Each party considers that the end of the Services shall not constitute a relevant transfer for the purpose of the Employment Regulations.