

## GWF USA INC

### TERMS AND CONDITIONS FOR THE SALE OF GOODS AND ANCILLARY SERVICES

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

#### 1. Interpretation

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

##### 1.1 Definitions:

**Business Day:** a day other than a Saturday, Sunday or a federally recognized holiday in the USA, or any day on which banking institutions are authorized or required by law or other governmental action to close.

**Business Hours:** the period from 8:30 am to 4:30 pm EST on any Business Day.

**Charges:** the charges payable by the Customer for the supply of the Services in accordance with clause 10.

**Commencement Date:** has the meaning given in clause 2.2.

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

**Contract:** the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

**Control:** has the meaning provided in 2 CFR § 910.368 and the expression **change of control** shall be interpreted accordingly.

**Customer:** the person or firm who purchases the Goods and/or Services from the Supplier.

**Customer Default:** has the meaning set out in **Error! Bookmark not defined.**9.2.

**Deliverables:** the deliverables set out in the Order produced by the Supplier for the Customer.

**Delivery Location:** has the meaning given in clause 4.2.

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

**Goods:** the goods (or any part of them) set out in the Order.

**Goods Specification:** any specification for the Goods, including any relevant plans or drawings that is agreed in writing by the Customer and the Supplier.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and any and all related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for unauthorized use or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or

extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which exist, or will exist, now or in the future, in any part of the world.

**Order:** the Customer's order for the supply of Goods and/or Services, as set out the Customer's written acceptance of the Supplier's quotation.

**Services:** the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification.

**Service Specification:** the description or specification for the Services set out in the Supplier's quotation by the Supplier to the Customer.

**Supplier:** **GWF USA INC**, which is registered in Delaware and Florida whose address is P.O.Box 772817, Ocala, Florida 34477.

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

**Warranty Period:** has the meaning given in clause 5.1.

## 1.2 Interpretation:

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

## 2. Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order, at which point and on which date, the Contract shall come into existence and be effective (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods and/or illustrations and/or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract nor have any force or meaning under the Contract.

- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 The Parties hereby agree, that by execution hereof, the terms and conditions contained herein shall control, notwithstanding anything to the contrary in the Contract between the Parties. Further, in the event that a quote was provided to Customer, such quote shall be considered non-binding and only the terms of this document, the Contract, and any amendments thereto, made in writing and executed by all parties, shall be binding upon the Parties.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specifically stated within the Contract.

### **3. Goods**

- 3.1 The Goods are described in the Supplier's sales documentation as modified by any applicable Goods Specification.
- 3.2 The Supplier reserves the right to amend the Goods Specification, if required for any reason, and the Supplier shall notify the Customer in any such event.

### **4. Delivery of Goods**

- 4.1 The Supplier shall ensure that: each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any), and, if the Order is being delivered in instalments, the outstanding balance of Goods remaining to be delivered.
- 4.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.3 Subject to the Supplier's agreement, the Customer may collect the Goods from the Supplier's premises.
- 4.4 Delivery of the Goods shall be completed upon the first to occur of a carrier hired by Supplier unloading of the Goods at the Delivery Location, or Customer taking possession of the Goods, which shall be considered completed when such Goods are transferred to a carrier hired by Customer, or by Customer otherwise taking possession of such Goods.
- 4.5 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier 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 the Supplier with

adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 4.6 If the Supplier 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, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.7 If the Customer fails to take delivery of the Goods on the delivery date, or within five Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
  - (b) the Supplier shall store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.8 If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken actual delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.9 The Supplier 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.

## 5. **Quality of Goods**

- 5.1 The Customer shall inspect the Goods on delivery or collection.
- 5.2 Subject to clauses 5.4 and 5.5, the Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (**Warranty Period**), the Goods shall:
- (a) conform in all material respects with their description and any applicable Goods Specification;
  - (b) be free from material defects in design, material and workmanship;
  - (c) be of satisfactory quality; and
  - (d) be fit for any purpose held out by the Supplier.

5.3 Subject to clause 5.4, if:

- (a) the Customer gives notice in writing to the Supplier during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.2;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,

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

5.4 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.3;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal working conditions; or
- (f) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.5 The warranty set out in clause 5.2, shall not apply to:

- (a) to consumable parts, such as protective coatings that are designed to diminish over time, unless failure has occurred due to a defect in materials or workmanship;
- (b) to cosmetic damage, including but not limited to scratches, dents and broken plastic on ports;
- (c) to any failure, non-conformity or defect of the Goods or component thereof caused by aggressive environmental conditions;
- (d) to damage caused by use with another product that is not approved by the Supplier;

- (e) to damage caused by accident, abuse, vandalism, deliberate tampering, theft, mishandling, misapplication, misuse, fire, earthquake or other external cause;
- (f) to improper installation and/or damage caused by operating the Products outside our guidelines;
- (g) to damage caused by services (including but not limited to upgrades, maintenance, repairs and expansions) performed by anyone who is not a representative of the Supplier or authorized by the Supplier to undertake such work;
- (h) if the Goods are used in temperatures exceeding the maximum specified in the technical specification;
- (i) to defects caused by normal wear and tear or otherwise due to the normal aging of the Goods;
- (j) to defects caused by exposure to direct sunlight;
- (k) to negligent acts or omissions or malfeasance of the Customer or any third party;
- (l) to damage to the Goods caused by the Customer or any third party or other conditions beyond the control of the Supplier;
- (m) if any serial number or security seals have been removed or defaced from the Goods;
- (n) if the Goods are connected or interrogated by equipment that is not approved by the Supplier for use with the Goods;
- (o) to Goods that have been modified to alter their functionality or capability without the written permission of the Supplier.

5.6 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.2.

5.7 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

## **6. Title and risk**

6.1 The risk of loss of the Goods shall pass to the Customer upon completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods and services that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 15.1(b) to clause 15.1(d); and
- (e) give the Supplier such information as the Supplier may reasonably require from time to time relating to:
  - (i) the Goods; and
  - (ii) the ongoing financial position of the Customer.

6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

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

6.5 At any time before title to the Goods passes to the Customer, the Supplier may:

- (a) by notice in writing, terminate the Customer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and
- (b) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **7. Supply of Services**

7.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.

7.2 The Supplier shall use all reasonable efforts to meet any performance dates for the Services specified in the Service Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

- 7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

## **8. Hire of Equipment**

- 8.1 A Customer hiring equipment shall hereinafter be referred to as the 'Hirer'. Items hired shall hereinafter be referred to as the 'Equipment'
- 8.2 The minimum hire contract period shall be one calendar month inclusive, unless otherwise agreed in writing by the Supplier. Any period of hire of less than one calendar week shall be rounded up to the next whole week for the purposes of invoicing. The charges on each contract shall be at the hire rates quoted by the Supplier unless otherwise agreed in writing by the Supplier. Carriage charges in either direction shall be included in addition to the quoted weekly hire rates.
- 8.3 The hire contract period shall commence from the date of dispatch or the date of collection from the Supplier's premises unless otherwise agreed in writing. The period of hire shall cease on the day the Equipment is collected from the Hirer's premises or delivered back to the Supplier's premises.
- 8.4 Hirer's responsibilities
- (a) The Hirer will ensure that the Equipment is checked upon receipt for damage or defects. The Supplier shall not be responsible for damage to the Equipment if the Hirer fails to report any damage to the Equipment within 24 hours of the date of the Hirer receiving the Equipment.
  - (b) Equipment should be kept in a good and sound condition during use and storage.
  - (c) Equipment should not be subjected to any misuse or unfair wear and tear during use or storage.
  - (d) The Hirer shall preserve the Supplier's or Manufacturer's identification numbers or marks on the Equipment.
  - (e) The Hirer shall comply with the Supplier's or Manufacturer's instructions and other regulations that may be issued for the proper use of the Equipment and the Hirer will be responsible for any damage caused to the Equipment arising from the Hirer's failure to observe such instructions or regulations.
  - (f) The Hirer shall indemnify the Supplier in respect of any loss or damage, however caused, during use and storage of the Equipment. In the event of such loss or damage, the Hirer will immediately inform the Supplier. A replacement or repair cost will be quoted including any shortfall in income as a result of the loss or damage. The agreed hire charges will continue until the Supplier has been reimbursed in full.



- (g) The Hirer is responsible for checking that the Equipment is suitable for use in the particular environment in which it shall be situated, with particular attention to any hazardous environments.
- (h) The Hirer shall arrange adequate insurance to cover the full replacement cost of the Equipment and ensure it has suitable top up or additional insurance as may be required if the Equipment is used in hazardous environments.
- (i) The Hirer shall not, without the prior consent of the Supplier, use the Equipment outside the United Kingdom.
- (j) The Hirer shall not, without prior consent of the Supplier, sell or offer for sale, mortgage, pledge, lend or otherwise dispose of or part with possession of the Equipment.
- (k) Data retained in the Equipment should be downloaded and/or deleted by the Hirer before returning the Equipment to the Supplier. Note that the Supplier may, at its discretion, delete any remaining instrument data in the Equipment after its return and it will not be possible to retrieve any data after the return of the equipment

## 9. Customer's obligations

### 9.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in the Service Specification and the Goods Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Services, if applicable;
- (f) obtain and maintain all necessary licenses, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (g) comply with all applicable laws, including health and safety laws;
- (h) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorization; and

- (i) comply with any additional obligations as set out in the Service Specification and the Goods Specification.

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

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 9.2; and
- (c) the Customer shall immediately reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## 10. Charges and payment

10.1 The price for Goods:

- (a) shall be the price set out in the Supplier's quotation; and
- (b) shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.

10.2 The charges for Services shall be calculated on a time and materials basis:

- (a) the charges shall be calculated in accordance with the Supplier's daily fee rates, as set out in the Supplier's quotation;
- (b) the Supplier's daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.30 am to 4.30 pm worked on Business Days;
- (c) the Supplier reserves the right to charge an overtime rate of the daily fee rate on a pro rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 10.2(b); and
- (d) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

10.3 The Supplier reserves the right to:

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

10.4 In respect of Goods and Services (if applicable), the Supplier shall invoice the Customer in accordance with the payment timeframes set out in the Supplier's quotation.

10.5 The Customer shall pay each invoice submitted by the Supplier:

- (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

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

10.6 All amounts payable by the Customer to the Supplier are exclusive of taxes unless specifically stated otherwise. Customer shall be responsible for any and all sales taxes due, as well as any other tax directly applicable to the performance of the terms and conditions of this Contract, whether such taxes be local, state, or federal taxes.

10.7 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 15, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 10.7 shall accrue each day at a rate equal to the Prime Rate as issued by the Wall Street Journal, plus 4%, per annum, but shall be at 4% a year for any period when that base rate is at or below 0%. For clarification, if the Prime Rate published by the Wall Street Journal is 2%, then interest shall accrue at the rate of 6% per annum, with such amount being compounded daily. Under this example, interest would accrue at the rate of 0.01667% per day (6% / 360 days). In the event that the interest rate exceeds the maximum interest rate permitted by law, then the applicable interest rate for such period of time shall instead be equal to the maximum interest rate allowed to be applied under the law as it is then in effect.

- 10.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **11. Intellectual property rights**

- 11.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 11.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable license to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.
- 11.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 11.2.
- 11.4 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable license to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

## **12. Data protection**

- 12.1 The following definitions apply in this clause 12:
- (a) **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the United States of America, including the Federal Trade Commissions Act (15 U.S. Code Section 41 et seq.), and regulations made thereunder, and the Electronics Communications Act of 1986, and all other applicable laws.
  - (b) **Domestic Law:** This Contract shall be governed by the laws of the state of Florida.
- 12.2 Both parties will comply with all applicable data protection laws.
- 12.3 The parties acknowledge that when providing the Goods to the Customer, the Supplier must gain access to and or acquire the ability to transfer, store or process personal data of the employees of the Customer.
- 12.4 Notwithstanding the terms of clause 12.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of the Contract.
- 12.5 The Customer consents to the Supplier appointing third-party processors of Personal Data under the Contract.

### **13. Confidentiality**

- 13.1 Customer undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the Supplier's, except as permitted by clause 13.2.
- 13.2 Customer may only disclose the Supplier's confidential information:
- (a) to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes carrying out Customer's obligations under or in connection with the Contract. Customer shall ensure that its employees, officers, representatives or advisers to whom it discloses the Supplier's confidential information comply with this clause 13; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.3 Customer shall not use the Supplier's confidential information for any purpose other than to perform its obligations under or in connection with the Contract.

### **14. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

- 14.1 The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 14.2 The restrictions on liability in this clause 14 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 14.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 14.4 The Supplier's total liability to the Customer in respect of all breaches of duty occurring within any contract year shall not exceed the cap.
- 14.5 In clause 14.4, the following definitions shall apply:
- (a) **cap.** The cap is the sum equal to the total charges payable by the Customer to the Supplier for the Goods (and Services if applicable) under the Contract;
  - (b) **contract year.** A contract year means a 12-month period commencing with the Commencement Date or any anniversary of it; and

- (c) **total charges.** The total charges means all sums paid by the Customer and all sums payable under the Contract in respect of goods and services actually supplied by the Supplier, whether or not invoiced to the Customer.

14.6 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 7.

14.7 This clause 14 shall survive termination of the Contract.

## **15. Termination**

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

- (a) the Customer commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within seven days after receipt of notice in writing to do so;
- (b) the Customer 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), obtaining a moratorium, 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;
- (c) the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

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

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment; or
- (b) there is a change of Control of the Customer.

15.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 15.1(b) to clause 15.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

## **16. Consequences of termination**

### **16.1 On termination of the Contract:**

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier 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.

16.2 Termination of the Contract 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 the Contract which existed at or before the date of termination.

16.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

## **17. Force majeure**

Supplier shall not be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. Such “force majeure” events shall include pandemics and epidemics, including the COVID-19 pandemic, especially the event it leads to further government mandated shutdowns, labor strikes, weather events (including, but not limited to hurricanes, earthquakes, floods, fires, tsunamis, etc.), supply shortages, civil unrest, war, armed conflict, changes in applicable law, and any other even or circumstance beyond the control of the Supplier that causes it to be unable to meet its obligations due to such circumstance(s).

## **18. General**

### **18.1 Assignment and other dealings**

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

## 18.2 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
  - (i) delivered by hand directly to the Managing Director or by tracked pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (ii) sent by email to the email addresses routinely used by the Supplier or the Customer during the course of the Contract (or an address substituted in writing by the party to be served), and such email must include [info@gwf-group.com](mailto:info@gwf-group.com) as a copied address, **in addition to** sending such email to the Managing Director and any other representative of Supplier that should reasonably be included.
- (b) Any notice shall be deemed to have been received:
  - (i) if delivered by hand, at the time the notice is left at the proper address;
  - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after delivery;
  - (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

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

## 18.4 Waiver.

- (a) A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

**18.5 No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, cause either party to be



considered the agent of the other, or authorize either party to make or enter into any commitments for or on behalf of the other party.

**18.6 Entire agreement.**

- (a) The Contract constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in is entering into the Contract and that it has not relied on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation, or negligent misstatement, based on any statement in the Contract.

**18.7 Third party rights.**

- (a) Unless it expressly states otherwise in the Contract, there shall be no third party beneficiaries under this Contract and no party that is not a direct party to the Contract shall have any right to make a claim pursuant to the Contract.
- (b) The rights of the parties to rescind or modify the Contract are not subject to the consent of any other person.

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

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

**18.10 Jurisdiction.** Each party irrevocably agrees that the courts of Pinellas County, Florida 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.