

Terms and Conditions of Supply

01 June 2021

BW-Terms-01062021.1.0

brightwater
tap into better

Brightwater Services Ltd
Suite 7 – First Floor, Stuart House,
Eskmills, Station Road, Musselburgh EH21 7PB
0330 022 0570 | brightwater.com



1. Introduction

- 1.1 We are a licensed provider of water and wastewater services, surface water drainage and trade effluent services and these terms and conditions will apply where we have entered a Contract with you.
- 1.2 Any reference to communication being written or in writing in these Conditions includes communication by email. These Conditions will also apply where you have a Deemed Contract with us.

2. Definitions and interpretations

Definitions

In these Conditions, unless the context otherwise requires:

Act means Water Services Etc. (Scotland) Act 2005 and any associated Act.

Assigned Site means either a gap site or other Premises allocated to us under the Market Code for which we have responsibility for the supply of the Services.

Business Day means a day other than a Saturday, Sunday or public holiday in Scotland when banks in Edinburgh are open for business.

Charges means the charges payable by you for the supply of the Services calculated in accordance with condition 8 (Meter readings), using the relevant Tariff.

Commencement Date has the meaning set out in condition 3.3 (Entering the Contract).

Contract Agreed Date is the date when the Contract is signed

Conditions means these terms and conditions as amended from time to time in accordance with condition 4 (Supply of services) or condition 5 (Variation).

Contract means the contract between us and you for the supply of Services in accordance with these Conditions consisting of these Conditions and, where applicable, the Order accepted by us as amended from time to time in accordance with condition 4 (Supply of services) or condition 5 (Variation).

Contract Term means the term of the Contract, as specified in the Estimate.

Data Protection Laws means all applicable laws and regulatory requirements relating to privacy and the protection of personal data including, without limitation, the Data Protection Act 2018 and the General Data Protection Regulation (EU) 2016/679 (as transposed into domestic legislation) ("UK GDPR"); and any other mandatory guides and/or codes of practice issued from time to time by the Information Commissioner's Office and/or another regulatory body.

Deemed Customer means an owner, tenant or occupier of an Assigned Site who has not actively chosen to receive the Services from us or who has terminated the Contract but continues to receive the Services from us.

Deemed Contract means the conditions which shall apply between us

Discount means the difference between the Charges calculated using the Industry Default Tariff and the Charges calculated using the Tariff, where the Tariff Charges have been discounted because the Contract Term is fixed.

Estimate means our estimate for the Services which sets out details of the Services to be provided, the Contract Term, Tariff and any Discounts to be applied to the Tariff.

Industry Default Tariff means the tariff which we can charge you for supply of the Services under the industry default standards as set by WICS from time to time.

Market Code means the market code published by the WICS, as updated from time to time.

Meter Services means services sub-contracted to a Network Operator including meter repairs, replacements, installations and upgrades.

Network Operator means the statutory water or sewerage undertaker appointed by government as the provider of wholesale water and/or sewerage services in the area in which a Premises is located that owns or operates the network through which water and/or sewerage services are supplied to that Premises.

Order means your written acceptance of the Estimate.

Point of Demarcation means the boundary at the Premises at which liability for the pipework and infrastructure passes from the Network Operator to you, which is determined by the Network Operator.

Premises means the business address where we will provide the Services as set out in the Order.

Pricing Schedule means our list of pricing as amended from time to time and available at <https://www.brightwater.com/water-charges/pricing-schedule/>

Privacy Policy means the privacy policy available at <https://www.brightwater.com/legals/privacy-policy/>

Regulatory Body means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate or influence the matters dealt with in the Contract.

Services means supply of water and/or the removal of any associated waste including surface water and trade effluent.

Tariff means the prices for the Services set out in the Order.

we/us/our means Brightwater Services Ltd., a limited company registered in Scotland with company number SC514287.

you/your means the company, person or people who have entered into the Contract with us. If this is more than one company or person, each company or person will be jointly and severally liable for any money owed to us. This means we will be entitled to claim all of the money owed from any company or person.

3. Entering the contract

- 3.1 Any Estimate given by us is only valid for a period of 30 days from its date of issue and shall not constitute an Order until it is accepted by you in writing.
- 3.2 The Order constitutes an offer by you to purchase Services in accordance with these Conditions.
- 3.3 The Order shall only be deemed to be accepted by us when we confirm acceptance of the Order in writing at which point your Order with us begins on the Commencement Date. These Conditions apply from the Contract Agreed Date.
- 3.4 These Conditions apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 3.5 You will:
 - 3.5.1 comply with these Conditions and, any regulations, laws, licences, conditions, codes, consents and byelaws relevant to the provision or use of the Services;

- 3.5.2 pay us the Charges in terms of condition 8 (Meter readings) and provide us with a deposit for the supply of the Services in advance of us supplying you with the Services, unless we agree in writing that no such deposit is due;
 - 3.5.3 inform us as soon as reasonably possible if you are aware that your usage at the Premises may increase significantly;
 - 3.5.4 inform us as soon as reasonably possible of relevant changes to personal details and circumstances, including but not limited to, changes to the use of the Premises, such that the Premises would no longer be eligible to receive the Services, and of any changes to the rateable value of the Premises;
 - 3.5.5 retain responsibility for all pipework and infrastructure required to provide the Services which are beyond the Point of Demarcation and, where necessary or required by us, repair, at your own cost, any pipework or infrastructure required to provide the Services, including any works necessary to ensure that any meter is accessible;
 - 3.5.6 retain responsibility for the usage of the Services, whether authorised by you or not. You also agree that we are not obliged to monitor usage levels forming part of the Services and/or to report unusual usage patterns; and
 - 3.5.7 properly maintain and use equipment which is in good working order and compatible with the Services in compliance with all relevant technical, legislative and regulatory standards.
- 3.6 We reserve and maintain our rights set out in the Act and under our licences.

4. Supply of services

- 4.1 We will provide the Services to the Premises on the date on which we become the registered responsible supplier and will provide written confirmation to this effect.
- 4.2 We will provide the Services to you on the terms set out in the Contract. We and/or the Network Operator have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement or as required by the Network Operator, or which do not materially affect the nature or quality of the Services, and we shall notify you in any such event.
- 4.3 We shall not be liable for any delay or failure to provide the Services which results from circumstances or causes which are beyond our reasonable control.
- 4.4 Once we have become the registered responsible supplier for the Premises, you may not transfer the Services to another supplier:
 - 4.4.1 where the transfer is due to complete during the Contract Term or any Renewal Period and you have not provided us with the notice required under condition 11.2 (Terminating the contract); or
 - 4.4.2 for any reason set out in the Market Code; or
 - 4.4.3 where we have begun the process of disconnecting the Services.

5 Variation

- 5.1 We reserve the right to increase any Tariff or reduce any Discount in the event of:
 - 5.1.1 any increase in charges by the Network Operator or any Regulatory Body to us;
 - 5.1.2 any material change to the Services requested by you; or
 - 5.1.3 any material change in your consumption of the Services affecting the commercial viability of the Contract;

and we will endeavour to notify you in writing of any increase to the Tariff by the Network Operator or any Regulatory Body within a reasonable time before applying any such increase.

- 5.2 Where you continue to receive Services after the date of termination of the Contract, we reserve the right to calculate the Charges due in such circumstances using the Industry Default Tariff.
- 5.3 Other than as set out in condition 5.1 or condition 5.2, or in accordance with condition 4 (Supply of services), no variation of the Contract shall be effective.

6 Suspension of services

- 6.1 The Services may be suspended by the Network Operator, where the Network Operator requires to carry out maintenance, repairs or improvements to pipework or infrastructure or reasonably believes that the Services are being misused. We will endeavour to give you reasonable notice of any suspension required by the Network Operator.
- 6.2 We may suspend the Services in circumstances when we would otherwise be able to terminate the Contract.
- 6.3 We will not be liable to you for any losses that are incurred by you as a result of suspension of the Services in terms of conditions 6.1 and 6.2
- 6.4 Any suspension of the Services for any reason whatsoever, including temporary disconnection, will not affect your obligation to pay for the Services during or after the period of suspension.
- 6.5 Where suspension arises because of a breach of the Contract by you, we reserve the right to charge an administration fee to cover our costs incurred for any suspension.

7. Deemed contract

- 7.1 Where you have a Deemed Contract with us, we will calculate the Charges from meter readings obtained in accordance with condition 8 (Meter readings).
- 7.2 Where you have a Deemed Contract with us because the Premises is a gap site, we will calculate Charges from the date we become the responsible supplier for the Premises.
- 7.3 Where you have a Deemed Contract with us because you are the new occupier, tenant or owner of the Premises and we are the existing responsible supplier, we will calculate Charges from the date you became responsible for the Premises.
- 7.4 These Conditions will apply to you where you have a Deemed Contract with us until you either enter into a Contract with us or another supplier becomes the responsible supplier for the Premises.
- 7.5 Conditions 3.4 (Entering the contract), 11.1, 11.2, 11.3 and 11.4 (Terminating the contract) do not apply to you if you have a Deemed Contract with us.

8. Meter readings

- 8.1 The Charges for the Services shall be on the following basis:
 - 8.1.1 where the Premises has a meter installed:
 - (a) we will make reasonable endeavours to take regular meter readings to calculate the volumetric usage of water for that period;
 - (b) wastewater shall be assumed to be 95% of the water metered to the property unless proven otherwise and amended by the Network Operator;

- (c) where it is not possible to take a meter reading in accordance with condition 8.1.1, we will estimate usage on historic consumption market data;
- (d) property drainage and roads drainage shall be measured on the rateable value of the Premises (calculated by the relevant valuation agency in line with the Scottish Water Charges Scheme as amended from time to time); and

8.1.2 where the Premises do not have a meter installed, all Charges in respect of water and wastewater usage shall be based on the Rateable Value of the premises or as defined by the Network Operator.

- 8.2 If you request a test by an independent meter examiner to determine the accuracy of your meter, you must pay for the test in advance. If the meter is found to be accurate, applicable charges for such tests will not be refunded. If the Charges are found to be incorrect we will arrange for appropriate compensation to be paid.
- 8.3 You must inform us immediately if a data logger or any other metering equipment is installed privately at the Premises and you accept sole liability for that equipment including any associated costs or damages incurred.

9. Payment and billing

- 9.1 We will raise invoices on a monthly basis in advance or in arrears or as otherwise notified, and you agree to pay us by Direct Debit on a monthly basis unless agreed otherwise in writing. Unless otherwise agreed in writing, invoices shall be sent to you by electronic billing. Where we agree to provide paper billing, we may charge an additional sum as set out in our Pricing Schedule.
- 9.2 The Charges are stated exclusive of VAT. Any invoices shall include any charges to value added tax or any other taxes or levies at the prevailing rate.
- 9.3 If you fail to make any payment due to us under the Contract within 14 days of the date of invoice, or within any other payment term agreed in writing, then you shall pay interest on the overdue amount in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. You shall pay the interest together with the overdue amount and any reasonable costs for recovering any overdue payment. This condition shall survive termination.
- 9.4 You must inform us promptly of any changes to your details which may affect payment. Where a direct debit payment fails due to out of date bank details, insufficient funds in your account or the direct debit is not set up, you may be charged as set out in our Pricing Schedule. Where you cancel a Direct Debit and it is not reinstated within 5 Business Days, unless agreed by us in writing, we may require you to pay using another payment method and may increase the Charges by 5% to cover the additional operating costs incurred by us in accepting payment by a method other than Direct Debit.
- 9.5 Where there is a dispute in relation to any payment or invoice, you shall make the payment and while we seek to reach agreement. If agreement is reached, we shall adjust the subsequent invoice accordingly.

10 Limitation of liability

- 10.1 Nothing in the Contract shall limit or exclude either party's liability for:
 - 10.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or
 - 10.1.2 fraud or fraudulent misrepresentation; or
 - 10.1.3 breach of the terms implied by section 11B of the Supply of Goods and Services Act 1982 (title and quiet possession); or
 - 10.1.4 any other liability which cannot be limited or excluded by applicable law.

- 10.2 Subject to condition 10.1, we shall not be liable to you, whether in contract, delict (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- 10.2.1 loss of profits;
 - 10.2.2 loss of sales or business;
 - 10.2.3 loss of agreements or contracts;
 - 10.2.4 loss of anticipated savings;
 - 10.2.5 loss of use or corruption of software, data or information;
 - 10.2.6 loss of damage to goodwill; and
 - 10.2.7 any indirect or consequential loss.
- 10.3 Subject to condition 10.1, our total liability to you, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the total Charges paid by you to us under the Contract in the year immediately preceding the event giving rise to the claim.
- 10.4 The terms implied by sections 11C, 11D and 11E of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 10.5 This condition 10 shall survive termination of the Contract.

11. Terminating the contract

- 11.1 You may terminate the Contract within 5 Business Days of the Contract Agreed Date (excluding any Renewal Period) without penalty.
- 11.2 We will send you a renewal notice not less than 30 days prior to the end of the Contract Term or any Renewal Period (as relevant). Unless terminated in accordance with this condition 11, at the expiry of the relevant Contract Term the Contract shall continue on a rolling annual basis ("Renewal Period") and the rates set out in your then current renewal notice will be applied for the forthcoming Renewal Period.
- 11.3 Without limiting your other rights or remedies, you may terminate the Contract during the Contract Term or any Renewal Period by giving us 20 Business Days' written notice provided that such notice may not be given earlier than 120 days prior to the end of the Contract Term or any Renewal Period.
- 11.4 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 11.4.1 you have a Deemed Contract with us; or
 - 11.4.2 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 28 days of that party being notified in writing to do so; or
 - 11.4.3 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; or
 - 11.4.4 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

- 11.4.5 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.
- 11.5 Without limiting our other rights or remedies, we may terminate the Contract with immediate effect by giving written notice to you if:
 - 11.5.1 you fail to pay any amount due under the Contract on the due date for payment and remain in default not less than 10 days after being notified in writing to make such payment; or
 - 11.5.2 you interfere or damage your meter or any other equipment owned by us or the Network Operator; or
 - 11.5.3 our supply licence is revoked or if a Regulatory Body appoints another supplier to take over your supply.
- 11.6 Where the Contract is terminated by you during the Contract Term in accordance with condition 11.3, you shall pay, in addition to any Charges due in accordance with condition 11.9.1, a sum equivalent to the Discount you have received from the Commencement Date until the date of termination of the Contract.
- 11.7 You agree that the sums set out in condition 11.6 represent a fair and reasonable estimate of the losses, costs and expenses which we would suffer in the event of the Contract being terminated by you in accordance with condition 11.3
- 11.8 The sums set out in condition 11.6 shall be calculated with reference to actual usage from the final meter reading of the Premises, which you must provide to us within 14 days of termination.
- 11.9 On termination of the Contract for any reason:
 - 11.9.1 you shall immediately pay to us all of outstanding unpaid invoices and interest (if applicable) and, in respect of Services supplied (including any Services supplied to you after the date of termination) but for which no invoice has been submitted, we shall submit an invoice, which shall be payable by you immediately on receipt;
 - 11.9.2 the accrued rights, remedies, obligations and liabilities of the parties as at termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination;
 - 11.9.3 provided all outstanding unpaid invoices are paid in accordance with condition 11.9.1, we will instruct the Network Operator to terminate your supply with effect from 28 days from the date of termination; and
 - 11.9.4 conditions which expressly or by implication survive termination shall continue in full force and effect.

12. Your information

- 12.1 During the provision of the Services, you may disclose personal information to us, which we shall use in accordance with the terms of our Privacy Policy, and we may act as a controller of that information.
- 12.2 You may also be a controller and be responsible for complying with the Data Protection Laws and where you provide information to us regarding another person, you confirm that you have informed them of our identity and the terms of our Privacy Policy.

13. Access to your premises

- 13.1 You must allow us, the Network Operator or any person authorised by us or the Network Operator access to the Premises to carry out the Services, any Meter Services and any maintenance, repairs or improvements to infrastructure. You permit us to organise access to the Premises by the Network Operator on your behalf.
- 13.2 In an emergency, we or the Network Operator may require you to stop using water or disposing of associated waste. We, and the Network Operator will take reasonable care when working in the Premises.

14. Moving or leaving your premises

- 14.1 You must provide us with at least 14 days' written notice if you intend to move or leave your Premises and where the property is rented or you occupy it under a licence to occupy, you must provide us with your landlord's details prior to vacating the premises.
- 14.2 If you fail to notify us of any move, or fail to provide the landlord's details, we shall have the right to continue to charge you for the Services until we receive such notice.

15. Force majeure

Neither party shall 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.

16. Entire agreement

- 16.1 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.
- 16.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

17. No partnership

Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

18. Assignment and subcontracting

- 18.1 We may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of our obligations under the Contract to any third party or agent.
- 18.2 You shall not, without our prior written consent, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of your rights or obligations under the Contract.

19. Notices

- 19.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:
- 19.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - 19.1.2 sent by email to the address specified in the Order at the time of entering the Contract, or other address as notified to us, by you, in writing.
- 19.2 Any notice or communication shall be deemed to have been received:
- 19.2.1 if delivered by hand, at the time the notice is left at the proper address;
 - 19.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

19.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours, when business hours resume. In this condition 19.2.3 business hours means 9.00 am to 5.00 pm on a Business Day.

19.3 This condition 19 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..

20. Waiver

A waiver of any right or remedy under the Contract 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 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 or by law shall prevent or restrict the further exercise of that or any other right or remedy.

21. Severance

If any provision or part-provision of the Contract 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 condition shall not affect the validity and enforceability of the rest of the Contract.

22. Third parties

No one other than a party to the Contract shall have any right to enforce any of its terms, except the Network Operator in respect of conditions 4.2 (Supply of services), 6.1 (Suspension of services) and 13 (Access to your premises). The rights of the parties to rescind or vary this Contract are not subject to the consent of any other person.

23. Confidentiality

23.1 You shall not at any time disclose to any person any confidential information concerning our business, affairs, customers, clients or suppliers, except as permitted by condition 23.2.

23.2 You may disclose our confidential information:

23.2.1 to your employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising your rights or carrying out your obligations under or in connection with the Contract. You shall ensure that your employees, officers, representatives, contractors, subcontractors or advisers to whom you disclose our confidential information comply with this condition 23; and

23.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

23.3 You shall not use our confidential information for any purpose other than to exercise your rights and perform your obligations under or in connection with the Contract.

24. Rights and remedies

Except as expressly provided in the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

25. Conflict

If there is an inconsistency between any of the provisions of these Conditions and the provisions of the Order, the provisions of the Order shall prevail; provided always that if there is an inconsistency between any of the provisions

of these Conditions as subsequently varied from time to time in terms of conditions 4 (Supply of services) and 5 (Variation) and the provisions of the Order, to the extent that the conflict arises because of changes to the Conditions the provisions of the updated Conditions shall prevail.

26. Governing law and jurisdiction

- 26.1 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 laws of Scotland.
- 26.2 Each party irrevocably agrees that the Scottish courts 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.