

CON29DW COMMERCIAL REPORT TERMS AND CONDITIONS

The Customer and Client are asked to note these terms, which govern the basis on which this drainage and water report is supplied.

Definitions

'The Company' means the water service company or their data provider producing the Report.

'Order' means any request completed by the Customer requesting the Report.

'Report' means any drainage and/or water report (known as the CON29DW Commercial) prepared by The Company in respect of the Property.

'Property' means the address or location supplied by the Customer in the Order.

'Customer' means the person, company, firm or other legal body placing the Order, either on their own behalf as Client, or, as an agent for a Client.

'Client' means the person, company or body who is the intended recipient of the Report with an actual or potential interest in the Property.

'Purchaser' means the actual or potential purchaser of an interest in the Property including their mortgage lender.

'Terms' means these terms and conditions for the CON29DW Commercial and CON29DW Commercial PLUS enquiries and General Terms means any general commercial terms in effect between the parties.

Agreement

1.1 These Terms set out the terms which apply in respect of any Orders the Customer places with us for a Report.

1.2 These Terms may need to be amended from time to time and have a publication date which will be updated when any changes are made. Every time the Customer wishes to place an Order, the Customer must check these Terms to ensure that the Customer understands the terms which apply at that time, as they may have changed since any earlier order the Customer may have placed.

1.3 If the Customer does not accept these Terms the Customer must not place any Orders with us.

1.4 If the Customer is trading as a business, it is also the Customer's responsibility to ensure that prior to placing an Order on behalf of a Client, that the Customer make the Client aware of the Terms, and that they accept them.

1.5 The Customer's Order constitutes an offer by the Customer to purchase Report(s) from us.

1.6 We may choose not to accept Your Order, but on the rare occasion that this may occur, we will aim to notify You within 48 hours. For the avoidance of doubt, no contract will exist between Us until we have expressly accepted Your Order.

1.7 The Company agrees to supply the Report to the Customer and allow it to be provided to the Client and the Purchaser subject, in each case, to these Terms. The scope and limitations of the Report are described in paragraph 2 of these Terms, and the liability of The Company is subject to the provisions of paragraph 3. The Customer shall be responsible for bringing these Terms to the attention of the Client and the Purchaser as necessary.

1.8 The Customer, the Client and the Purchaser agree that placing an Order for a Report and the subsequent provision of the copy of the Report to the Purchaser indicates their acceptance of these Terms, and The Company shall be entitled to rely on this notwithstanding any failure on the part of the Customer to comply with paragraph 1.1 above.

The Report

2. Whilst The Company will use reasonable care and skill in producing The Report, it is provided to the Customer the Client and the Purchaser on the basis that they acknowledge and agree to the following :-

2.1 The Report is produced only for use in relation to Commercial Properties, development or land which require the provision of drainage and water information and cannot be used for residential properties, development of land or any property to be developed as a single, residential domestic property. Where the Customer requires a report for a residential property, the Customer can order a different report from us, and different terms shall apply.

2.2 The information contained in the Report can change on a regular basis so The Company cannot be responsible to the Customer the Client and the Purchaser for any change in the information contained in the Report after the date on which the Report was first produced and sent to the Customer.

2.3 The Report does not give details about the actual state or condition of the Property nor should it be used or taken to indicate or exclude actual suitability or unsuitability of the Property for any particular purpose, or relied upon for determining saleability of value, or used as a substitute for any physical investigation or inspection. Further advice and information from appropriate experts and professionals should always be obtained.

2.4 The information contained in the Report is based upon the accuracy of the address supplied to The Company.

2.5 The Report provides information as to the location & connection of existing services and other information required to complete the CON29DW Commercial enquiry form in relation to drainage and water enquiries and should not be relied on for any other purpose (including the potential and/or suitability for any other connections to be made to existing services).

2.6 The Report may contain opinions or general advice to the Customer, the Client and the Purchaser and The Company will only accept liability for opinions or general advice given by it as originally set out in the Report and not for any interpretation of the same by any other party.

Liability

3.1 The Company shall not be liable to the Customer, the Client or the Purchaser for any failure defect or non-performance of its obligations arising from any failure of or defect in any machine, processing system or transmission link or anything beyond The Company's reasonable control or the acts or omissions of any party for whom The Company is not responsible.

3.2 Where a report is requested for an address falling within a geographical area where two different companies separately provide Water and Sewerage Services, The Company shall nevertheless be liable for the accuracy of such information contained in the Report which was obtained from the other company.

3.3 The Report is produced only for use in relation to commercial properties and commercial developments of domestic property transactions which require the provision of drainage and water information pursuant to a CON29DW Commercial enquiry form.

3.4 The Company has in place Professional Indemnity cover. For the avoidance of doubt the liability of The Company is not limited to the level of its cover.

3.5 This paragraph sets out the exclusions to and the limitations on our liability to the Customer and if the Customer is trading as a business to the Client and the Purchaser.

(1) We will not be liable to the Customer (and/or if the Customer is trading as a business to the Customer's Client) in contract, tort, negligence, breach of statutory duty, misrepresentation or otherwise:

- (a) If we do not accept the Order;
- (b) for any inaccuracies, mistakes or omissions in the Reports unless any such liability arises as a direct consequence of our negligence.

(2) Notwithstanding the above, nothing affects any party's liability for:

- (a) death or personal injury arising from its negligence,
- (b) liability for fraud or fraudulent misrepresentation and/or
- (c) any other liability which cannot be excluded or limited under applicable law.

3.6 Subject to clause 3.5 (2), our total liability to the Customer and/or if the Customer is trading as a business to the Client and the Purchaser, whether for breach of contract, tort, negligence, breach of statutory duty, misrepresentation or otherwise, arising under or in connection with these Terms and/or the provision of a Report limited to 10 million pounds (£10,000,000) in aggregate.

3.7 In providing You with this Report, we will comply with the Drainage & Water Searches Network (DWSN) Standards. These can be found at: <https://www.con29dw.co.uk/con29dw-commercial/>

3.8 The position and depth of apparatus shown on any maps attached to the Report are approximate, and are furnished as a general guide only, and no warranty as to its correctness is given or implied. The exact positions and depths should be obtained by excavation trial holes and the maps must not be relied on in the event of excavation or other works made in the vicinity of The Company's apparatus.

Copyright and Confidentiality

4.1 The Customer the Client and the Purchaser acknowledge that the Report is confidential and it intended for the personal use of the Client and the Purchaser. The copyright and any other intellectual property rights in the Report shall remain the property of The Company. No intellectual or other property rights are transferred or licensed to the Customer the Client or the Purchaser except to the extent expressly provided.

4.2 The Customer or Client is entitled to make copies of the Report but may not make any changes to it. In addition, the Customer [the Client or the Purchaser][or the Client] may only copy Ordnance Survey mapping or data contained in or attached to the Report, if they have an appropriate licence from the originating source of that mapping or data.

4.3 The Customer the Client and the Purchaser agree (in respect of both the original and any copies made) to respect and not to alter any trademark, copyright notice or other property marking which appears on the Report.

4.4 The maps contained in the Report are protected by Crown Copyright and must not be used for any purpose outside the context of the Report.

4.5 The Customer the Client and the Purchaser agree on a joint and several basis to indemnify The Company against any losses, costs, claims and damage suffered by The Company as a result of any breach by any of them of the Terms of paragraphs 4.1 to 4.4 inclusive.

Payment

5. Unless otherwise stated all prices are inclusive of VAT. The Customer shall pay for the price of the Report specified by The Company, without any set off, deduction or counterclaim. Unless the Customer has an account with The Company for payment for Reports, The Company must receive payment for Reports in full before the Report is produced. For Customers with accounts, payment terms will be as agreed with The Company.

General

6.1 If any provision of these Terms is or becomes invalid or unenforceable, it will be taken to be removed from the rest of these Terms to the extent that it is invalid or unenforceable. No other provision of these terms shall be affected.

6.2 These Terms shall be governed by English law and all parties submit to the exclusive jurisdiction of the English courts.

6.3 Nothing in these Terms shall in any way restrict the Customer's, the Client's, or the Purchaser's statutory or any other rights of access to the information contained in the Report.

6.4 The Report is supplied subject to these Terms and conditions which cannot be varied or amended without the specific agreement in writing of The Company referring to this paragraph.

6.5 These Terms may be enforced by the Customer, the Client and the Purchaser.

Cancellations or Alterations

7. Once an Order is placed, The Company shall not be under any obligation to accept any request to cancel other than in cases where an order has been placed and a cancellation on the same working day as the order is submitted to us you will not be charged.

The Property Ombudsman scheme (TPOs)

8. If we cannot resolve your complaint you may refer your complaint under The Property Ombudsman scheme (TPOs). The Ombudsman can award compensation up to £25000 to you if the Ombudsman finds that you or your client has suffered actual financial loss, distress or inconvenience. In addition to the TPO redress scheme covering consumers, TPO will also provide redress for small businesses (including Charities and Trusts) that meet the following criteria:

- a small business (or group of companies) with an annual turnover of less than £3 million;
- a Charity with an annual income of less than £3 million;
- a Trust with a net asset value of less than £3 million.

TPOs can be contacted:

The Property Ombudsman, Milford House, 43-55 Milford Street, Salisbury, Wiltshire, SP1 2PB
Telephone: 01722 222 306
www.tpos.co.uk