



TERMS AND CONDITIONS OF REPAIR

1 INTERPRETATION

1.1 In these Conditions:

“Buyer”

means the person who accepts a Written quotation of Matchpoint for the Services or whose Written order for the Services is accepted by Matchpoint

“Conditions”

means the standard terms and conditions for repair set out in this document “Contract” means the contract for the purchase and supply of the Services

“Goods”

means the goods the subject matter of the Services provided by the Buyer to Matchpoint

“Matchpoint”

means Matchpoint Water Asset Management, Inc.

“Repairs”

means the repairs to be made to the Goods by Matchpoint as specified by Matchpoint in the Written quotation or by the Buyer in any Written order

“Services”

means the repair services (including the provisions of any spare parts) which Matchpoint is to supply in accordance with these Conditions

“Writing”

includes facsimile transmission and comparable means of communication, but not electronic mail and Written shall be construed accordingly.

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2 BASIS OF THE SALE

2.1 Buyer shall purchase and Matchpoint shall supply the Services in accordance with any Written quotation of Matchpoint accepted by the Buyer, or any Written order of the Buyer which is accepted by Matchpoint, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorized representatives of the Buyer and Matchpoint.

2.3 Matchpoint’s employees or agents are not authorized to make any representations concerning the Services unless confirmed by Matchpoint in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations that are not so confirmed.

3 ORDERS AND SPECIFICATIONS

3.1 No order submitted by the Buyer shall be deemed to be accepted by Matchpoint unless and until confirmed in Writing by the Matchpoint’s authorized representative.

3.2 The Buyer shall be responsible to Matchpoint for ensuring the accuracy of the terms of any order submitted by the Buyer, and for giving Matchpoint any necessary information relating to the

Services required within a sufficient time to enable Matchpoint to perform the Contract in accordance with its terms.

- 3.3** The description of the Repairs shall be set out in Matchpoint's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by Matchpoint).
- 3.4** No order which has been accepted by Matchpoint may be cancelled by the Buyer except with the agreement in Writing of Matchpoint and on terms that the Buyer shall indemnify Matchpoint in full against all loss (including loss of profit), costs (including the cost of all labor and materials used), damages, charges and expenses incurred by Matchpoint as a result of cancellation.

4 PRICE OF THE SERVICES

- 4.1** The price of the Services shall be Matchpoint's quoted price. All prices quoted are valid for 15 days only or until earlier acceptance by the Buyer, after which time Matchpoint may alter them without giving notice.
- 4.2** Matchpoint reserves the right, by giving Written notice to the Buyer at any time before delivery, to increase the price of the Services to reflect any increase in the cost to Matchpoint which is due to any factor beyond the control of Matchpoint, any change in delivery dates, or specification for the Services which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give Matchpoint adequate information or instructions.
- 4.3** Unless otherwise agreed in Writing between the Buyer and Matchpoint, all prices are given by Matchpoint on an ex works basis, and where Matchpoint agrees to deliver the Goods otherwise than at Matchpoint's premises, the Buyer shall be liable to pay Matchpoint's charges for transport, packaging and insurance.
- 4.4** The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to Matchpoint.
- 4.5** The quoted price includes an assessment charge. In the event the Buyer decides not to proceed with the Service then the assessment charge will still apply.

5 TERMS OF PAYMENT

- 5.1** Subject to any special terms agreed in Writing between the Buyer and Matchpoint, Matchpoint shall be entitled to invoice the Buyer for the price of the Services on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event Matchpoint shall be entitled to invoice the Buyer for the price at any time after Matchpoint has notified the Buyer that the Goods are ready for collection or (as the case may be) Matchpoint has tendered delivery of the Goods.
- 5.2** The Buyer shall pay the price for the Services within 15 days of the date of Matchpoint's invoice, and Matchpoint shall be entitled to recover the price, notwithstanding that delivery may not have taken place. The time for payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.3** If the Buyer fails to make any payment on the due date then, without prejudice to any other righter remedy available to Matchpoint, Matchpoint shall be entitled to:
 - 5.3.1** not perform or suspend any further Services to the Buyer (or any part of the Services);
 - 5.3.2** require the Buyer to pay in advance for any Services (or any part of the Services) which have not yet been performed;
 - 5.3.3** appropriate any payment made by the Buyer to such of the Services (or the services supplied under any other contract between the Buyer and Matchpoint) as Matchpoint may think fit (notwithstanding any purported appropriation by the Buyer).

6 DELIVERY

- 6.1** Delivery of the Goods shall be made by the Buyer collecting the Goods at Matchpoint's premises at any time after Matchpoint has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by Matchpoint, by Matchpoint delivering the Goods to that place.
- 6.2** Any dates quoted for delivery of the Goods are approximate and Matchpoint shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by Matchpoint in Writing. The Goods may be delivered by Matchpoint in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3** If Matchpoint fails to deliver the Goods for any reason other than any cause beyond Matchpoint's reasonable control or the Buyer's fault, and Matchpoint is accordingly liable to the Buyer, Matchpoint's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price for the Services.
- 6.4** If the Buyer fails to take delivery of the Goods or fails to give Matchpoint adequate delivery instructions at the time stated for delivery (otherwise than by reason of a dispute concerning the Goods where the Buyer is questioning or refusing to pay all or any part of what Matchpoint claims to be due in respect of the Services or by reason of Matchpoint's fault) then, without prejudice to any other right or remedy available to Matchpoint, Matchpoint may:
- 6.4.1** store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; and
- 6.4.2** after first contacting the Buyer in Writing to arrange delivery and affording the Buyer a reasonable opportunity to take delivery of the Goods or where Matchpoint has failed to trace or communicate with the Buyer having taken reasonable steps to do so:
- 6.4.2.1** sell the Goods using the best method of sale reasonably available in the circumstances and (after deducting any amount payable and due to Matchpoint, storage and selling expenses) either charge the Buyer for any shortfall between the balance and the price for the Services under the Contract or account to the Buyer with the proceeds of sale, as appropriate; or
- 6.4.2.2** dispose of the Goods as Matchpoint may think fit.
- 6.4.3** The Buyer warrants that it is the owner of the Goods and in the event Matchpoint sells the Goods, in accordance with clause 6.4.2.1, Matchpoint shall give good title to any purchaser of the Goods.

7 RISK AND INSURANCE

- 7.1** Risk of damage to or loss of the Goods shall remain with the Buyer whilst the Goods are in the possession of Matchpoint. Accordingly, the Buyer shall take out and maintain adequate insurance cover with an insurance company of good repute to cover such risk. The Buyer shall on the request of Matchpoint produce a copy of such insurance policy and a receipt for the payment of the current premium.

8 WARRANTIES AND LIABILITY

- 8.1** Subject to the conditions set out below Matchpoint warrants the Repairs will be free from defects in material and workmanship for 3 months from delivery.
- 8.2** The above warranty is given by Matchpoint subject to the following conditions:
- 8.2.1** Matchpoint shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working and storage conditions, failure to follow Matchpoint's instructions (whether oral or in Writing), misuse or alteration or repair of the Goods without Matchpoint's approval;
- 8.2.2** Matchpoint shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Services has not been paid by the due date for payment;

- 8.2.3** the above warranty does not extend to spare parts or equipment not manufactured by Matchpoint, in respect of which the Buyer shall only be entitled to the benefit the warranty as is given by the manufacturer to Matchpoint.
- 8.3** Any claim by the Buyer which is based on any defect in the quality or condition of the Repairs shall (whether or not delivery is refused by the Buyer) be notified to Matchpoint within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify Matchpoint accordingly, the Buyer shall not be entitled to reject the Goods and Matchpoint shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Services had been delivered in accordance with the Contract.
- 8.4** Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Repairs is notified to Matchpoint in accordance with these Conditions, Matchpoint shall be entitled, at Matchpoint's sole discretion, to fulfill its obligations under the warranty in clause 8.1, in respect of any defect in the quality or conditions of the Repairs by re-performing the Services (or the relevant part of the Services) free of charge or refunding to the Buyer the price of the Services (or a proportionate part of the price), but Matchpoint shall have no further liability to the Buyer.
- 8.5** The Buyer shall be entitled to the benefit of the warranty in clause 8.1, which constitutes Matchpoint's entire liability in respect of the Services. All other terms, conditions, warranties or other undertakings, whether express or implied by statute, common law, trade usage, custom or otherwise are excluded from and by these Conditions.
- 8.6** Except in respect of death or personal injury caused by Matchpoint's negligence, Matchpoint shall not be liable to the Buyer:
- 8.6.1** by reason of any representation (unless fraudulent);
- 8.6.2** in respect of any loss or damage of whatever kind, including (without limitation) to premises or other tangible property (whether arising by reason of the negligence of Matchpoint, its employees or agents or otherwise); or
- 8.6.3** for any indirect, special or Consequential Loss or damage or other claims for compensation whatsoever (whether arising by reason of the negligence of Matchpoint, its employees or agents or otherwise) arising out of or in connection with the Services (including any delay in supplying or failure to supply the Services) or use or resale of the Goods by the Buyer. In the event of legal liability being established Matchpoint shall not be liable to pay damages arising from the aforementioned loss or damage. For the purposes of this condition 8.5 "Consequential Loss" means economic loss or indirect loss or damage of the Buyer including, without limitation, any damage to its business, any loss of anticipated profits, damage to reputation or goodwill, loss of expected future business, damages, costs or expenses payable to any third party or any other indirect losses.
- 8.7** In the event of legal liability being established against Matchpoint, Buyer's sole rights of redress against Matchpoint shall be limited to the payment of any claim or claims for damages the total of which will in no circumstances exceed the price paid for the Services.
- 8.8** Matchpoint shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of Matchpoint's obligations in relation to the Repairs, if the delay or failure was due to any cause beyond Matchpoint's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond Matchpoint's reasonable control:
- 8.8.1** act of God, explosion, flood, tempest, fire or accident: war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 8.8.2** acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes;

8.8.3 strikes, lock-outs or other Industrial actions or trade disputes (whether involving employees of Matchpoint or of a third party); difficulties in obtaining raw materials, labor, fuel, parts or machinery.

9 INSOLVENCY OF BUYER

9.1 This clause applies if the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or an encumbrance takes possession, or a receiver is appointed, of any of the property or assets of the Buyer: or the Buyer ceases, or threatens to cease, to carry on business; or Matchpoint reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

9.2 If this clause applies then, without prejudice to any other right or remedy available to Matchpoint, Matchpoint shall be entitled to cancel the Contract or suspend any further Services under the Contract without any liability to the Buyer, and if the Services have been performed but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

10 GENERAL

10.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or place of business.

10.2 No waiver by Matchpoint of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

10.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable the validity of the other provisions and the remainder of the provision in question shall not be affected.

10.4 The parties acknowledge that it is not their intention that any third party shall be entitled to enforce any term of this agreement, which may confer a benefit on that third party. The Contract shall be governed by the laws of the United States of America, and the Buyer agrees to submit to the non-exclusive jurisdiction of the United States courts.

215 Racine Dr., Suite 201
Wilmington, NC 28403

P: (910) 509-7225
info@matchpointinc.us

matchpointinc.us

Water. That's the point.