



# SMART FLOW

## Sales and Services Terms of Business

### Important:

SMART FLOW provides water sustainability as a service. To ensure the Client gets the best possible outcomes and return on investment our contract is with the end user (the client) and not through third parties such as facility management companies.

Supplier Details	
Company Name	DH Flow Control Ltd
Trading Name	SMART FLOW
Company Address	Unit 4F Fingal Bay Business Park. Balbriggan Co Dublin. K32NA49
Contact Person	Lorraine Mc Mahon-Key Accounts Manager
Contact Details	Phone: 01 6855220 – 086 075 3855 Email: admin@mymartflow.ie
Company Number	610594
VAT Registration number	3490480KH

### 1. Interpretations

1.1 The definitions and rules of interpretation in this contract apply in these terms and conditions.

**Supplier:** DH Flow Control Limited T/A SMART FLOW incorporated and registered in Ireland with company number 1610594 having its registered office at Unit 4F Fingal Bay Business Park Balbriggan. Co Dublin.

**Territory:** Ireland

**Customer:** The client who purchased supply, installation and monitoring service from the Supplier.

**Customer Premises:** means each individual customer premises/ address at which the Supplier equipment is to be / has been installed.

**Hub:** means the device installed at the Customer's Premises. Which comes with a 12month warranty.

**Service/s:** means the Supply, supply and installation and or monitoring service provided by the Supplier.

**Monitoring:** means the 24/7 365 inhouse monitoring by the trained SMART FLOW agents.

**The Plan:** means the charges and payments for the products and services purchased by the Customer.

**Dashboard:** Means the application installed on the customers laptop or mobile device in order to procure the service.

**Contract:** The Customer's acceptance of a quotation for Services by the Supplier and terms and conditions herein or the Customers signing of order form for Suppliers Hub and Services.

**DPA:** means the Data Protection Act 2018 incorporating the General Data Protection Regulation (GDPR).

**Term:** means the Initial Term of 12 months plus any renewal term thereafter in accordance with condition 3.2



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### 2. Application of conditions

2.1 These Conditions shall:

- a) apply to and be incorporated into the Contract; and
- b) prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation, or specification or other document supplied by the Customer, or implied by law, trade custom, practice or course of dealing.

2.2 The Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other document shall not govern this Contract.

### 3. Commencement and duration

3.1 The date of commencement of this contract is the date of Client signing the Suppliers order form for the supply or supply and installation of Suppliers Hub and Monitoring services.

3.2 The term of this contract is for a period of 12 months from the date of order signing. The contract will automatically rollover after 12 months unless cancelled by the Customer.

3.3 The monitoring Services supplied under the Contract will be provided from commissioning of the Suppliers Hub at installation and charged in advance on an annual basis through direct debit or standing order.

3.4 Access to the SMART FLOW customer portal is provided on receipt of monitoring payment.

### 4. Customer's obligations

4.1 The Customer shall:

- a) Set up a Direct Debit or standing order for the processing of annual monitoring charges.
- b) ensure a power supply is available in the required location to enable the connection of the Hub prior to installation and that this is switched on at all times post the installation;
- c) comply with the fair usage terms which provides;
  - I. The Customer shall have access to 5MB of data per month. (on average a system will require 1.5MB of data per month).
- d) co-operate with the Supplier in all matters relating to the service;
- e) be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the service;
- f) not repair or use the Supplier Hub other than in accordance with the supplier's written instructions or authorization
- g) give the Company 60 days prior notice where the Customer has entered into negotiations which may result in the transfer of ownership or occupancy of the Customer premises;
- h) check with their cellular network provider that it is available to meet the requirements of the Service prior to installing the App.

### 5. Users and registration

5.1 Following the installation of the System at the Customer Premises, the Customer will be required to set up an account through the Supplier's app in order to use the Services.

5.2 The Customer shall nominate a user or up to a maximum of 5 (five) users for the Services whose details shall be inputted on registration of the App (the "User"). SMART FLOW technical support team will provide assistance in the set-up of this.

5.3 There is a maximum of 5 (five) users per device included with the terms of this agreement.

5.4 Costs for additional users above the 5 (five) will incur a charge at a rate of €5 per month, per user, per device. This cost will be charged on an annual basis in advance of additional users onboarded to the platform.

5.5 The users shall keep a secure password for their use of the Services and keep this password confidential.

### 6. Service Availability

6.1 The Supplier shall, during the Term of this Agreement, provide the Services to the Customer in line with terms detailed within this Agreement.

6.2 The Supplier shall use commercially reasonable endeavors to make the Services available 24 hours a day, seven days a week.

6.3 The Supplier does not warrant that the use of the Services will be uninterrupted or error-free. In extreme cases the availability of the Services cannot be guaranteed 100% of the time due to matters which can be subject to the following interruptions;

- a) planned maintenance of the App and system uptime, notified to clients in advance;
- b) unavailability of the cellular network and;
- c) any other events which may affect the Network or the Service which are beyond the control of the Supplier.

6.4 The Customer accepts responsibility for the selection of the Services to achieve its intended results.

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- 6.5 The Customer acknowledges that the Supplier is and does not provide a third-party monitoring system if there is an emergency, relevant authorities are not contacted by the Supplier and dispatched to the Customer's Premises. Notifications are sent to Customers appointed personnel to act on.
- a) The first 30 days monitoring is focused on gathering a base line for the water usage profile within the building where the Suppliers system is installed.
  - b) Leak detection will begin following the gathering of this base line. However, in cases of a significant spike in water usage a notification may be issued.
  - c) The Customer has sole responsibility for following up on notifications issued and thus it is imperative that the Customer has appointed personnel to follow up on notifications received.
- 7. Customer Premises**
- 7.1 The agreed number of SMART FLOW Hubs will be supplied and installed to the customer premises as detailed within the order confirmation form.
- 8. The Plan: payment and charges**
- 8.1 The once off cost for supply, or supply and installation of each SMART FLOW system as detailed within the order form is billed on signing of the order form and payable in advance of installation.
- 8.2 The SIM contained within the Hub remains the property of the Supplier at all times.
- 8.3 Installation costs are based on a standard installation on to Pipework up to 2" (two inch).
- 8.4 The cost of 24/7 365 inhouse monitoring by the trained SMART FLOW agents detailed within the order form is per device per month.
- 8.5 Monitoring fees will be charged in advance per calendar year at point of sale and become effective on the 1st day of month following installation payable via Direct Debit or Standing order
- 8.6 Clients are required to set up a Direct debit standing order for payment of annual monitoring fees. Access to the SMART FLOW customer portal will not be provided until the first monitoring fee is received and confirmation of standing order set up is provided.
- 8.7 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may suspend all Services until payment has been made in full.
- 8.8 Time of payment shall be of the essence of the Contract.
- 8.9 The parties agree that the Supplier may review and increase its standard monthly fee rates for the Plan, provided that such charges cannot be increased within the first 12 months or more than once in any following 12-month period. The Supplier will give the Customer written notice of any such increase 2 months before the proposed date of the increase.
- 9. Installation**
- 9.1 In advance of the installation, the Customer shall provide photographic and written details on the location for the SMART FLOW device within the Customers premises. This shall include:
- a) A photo of the incoming water mains located inside the building before any T off branches. This should typically have a manual stop valve and or existing mechanical water meter;
  - b) The correct diameter of the incoming mains pipe; (standard installation costs are based on pipework up to 2")
  - c) Confirmation that there is a power supply/socket in place to plug in the SMART FLOW Hub near the location of the water meter/incoming water mains inside the building. If the power supply is not presently available, the Customer shall commit to ensure this is in place prior to installation.
- 9.2 If an installation date has been agreed on the basis of Customers confirmation that a power supply shall be available on that date and no supply is available on arrival of Suppliers engineers:
- a) The installation can proceed on the wishes of the Customer with the Customer taking full responsibility for the device going offline within 48 hours if the power supply is not then installed.
  - b) A call out fee of £200 is payable by the Customer to the Supplier to recommission the system if required in the event of going offline due to no power supply.
  - c) The installation can be re-scheduled at a cost to the Customer of €200 payable in advance of the rescheduled installation.
- 9.3 The cost quoted for supply and installation is for a standard installation, whereby the device will be installed onto pipework up to 2" (two inch) and carried out on weekdays between 8am-6pm..
- a) If pipe alterations or additional works are required for the installation additional costs may incur. Any additional costs are charged at €200 per hour plus materials. This will be notified to the customer in advance to confirm completion of the works and the customer will decide whether to proceed.
  - b) If incorrect pipe diameters have been provided by the Customer which results in a scheduled installation not been able to proceed after Suppliers engineers arrive on-site a walk away fee of €200 will apply payable in advance of the required rescheduling of the installation.
  - c). Requests for installations outside of regular hours will incur additional out of hours charges.

## 10 Cancellation

In the event of cancellation by the Client the following applies:

- 10.1 Cancellation of order due to Client's **building infrastructure** including pipework:
- In the event where an installation cannot proceed for any reason related to Client's building at agreed installation site an alternative site may be agreed. If Client chooses not to select an alternative site a refund of 75% of payment received will be made in instances where there has been no site survey or Supplier engineers have not visited the site.
  - Where the Supplier engineers have visited the installation site a refund less €200 for site attendance will apply.
  - Where a full site survey has been requested by Client and conducted by Supplier but not paid for, the cost of survey (€450) will be deducted from any refund payable.
- 10.1 General cancellations
- If cancellation is made within 30 days of order payment received an administration fee at 25% of total order cost will apply and shall be deducted from any refund due.
  - If the cancellation is received by the Supplier later than 30 days after order payment is received the client forfeits any right to a refund.
  - Any refunds due will be payable on month end following month of cancellation. Clients must provide a) written notice of cancellation and b) their bank account details for receipt of any refunds payable.
- 10.2 If a Client wishes to cancel the monitoring service written notice of at least 3(three) months must be provided.
- No Refunds are provided on cancellation of monitoring services for any payment received in the applicable year.
  - To comply with Recycling Waste Electrical and Electronic Equipment (WEEE) the Supplier will receive and recycle the HUB free of charge if returned by the Client via post to the Suppliers office at Unit 4F Fingal Bay Business Park Balbriggan. Co Dublin K32NA49. The Supplier will issue a prepaid postal label for this.
  - Alternatively, the Supplier can schedule an engineer to attend the Clients premises to uninstall the device at a call out charge of €200. Supplier will then remove the device and dispose in compliance with WEEE.

## 11 Intellectual property rights

- 11.1 All Intellectual Property Rights in the Services on the App shall be owned by the Supplier. The Supplier licenses all such rights to the Customer to enable the Customer to make reasonable use of the Services.

## 12 Limitation of liability

- 12.1 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.
- 12.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract. Without prejudice to the generality of the foregoing, all terms, conditions, warranties or representations implied by Sections 13, 14 and 15 of the Sale of Goods Act 1893 and/or Section 39 of the Sale of Goods and Supply of Services Act 1980 are hereby excluded to the fullest extent permitted by applicable law if the Customer is a business and the Contract is a business-to-business contract. For consumers the specific exclusions referred to in this condition shall apply where it is permissible to do so in accordance with relevant law and/or the exclusion has been brought to the attention of the Customer. The Customer acknowledges that this clause is fair and reasonable.
- 12.3 The Supplier shall not be liable for:
- 12.3.1 *loss of profits; or*
  - 12.3.2 *loss of business; or*
  - 12.3.3 *depletion of goodwill and/or similar losses; or*
  - 12.3.4 *loss of anticipated savings; or*
  - 12.3.5 *loss of goods; or*
  - 12.3.6 *loss of contract; or*
  - 12.3.7 *loss of use; or*
  - 12.3.8 *loss of corruption of data or information; or*
  - 12.3.9 *any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.*
- 12.4 As per 6.3 above the supplier's system cannot guarantee it will notify the user of all events and therefore the supplier cannot be held liable for any damages to a property

## 13 Data protection

The Supplier confirms that it will comply with its obligations under DPA in relation to personal data of the Customer and that all processing of the Customer's personal data will be carried out in accordance with the Supplier's Privacy Policy.

## 14 Termination



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14.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other on giving the other not less than 2 month's written notice under clause 3 or immediately on giving notice to the other if:

14.1.1 the customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than fourteen days after being notified in writing to make such payment; or

14.1.2 the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the



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breach.

14.2 On termination of the Contract for any reason:

14.2.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;

14.2.2 the Supplier shall not be required to refund to the customer any payment or part of received as per terms of contract in cases where contract is terminated by Supplier through no fault of the Supplier before end of contract period;

14.2.3 the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

**15 Force majeure**

The Supplier shall have no liability to the Customer under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

**16 Variation**

The Supplier may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services.

Subject to condition 14., no variation of the Contract or these Conditions shall be valid unless it is in writing and signed by or on behalf of each parties.

**17 Assignment**

The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, mortgage, subcontract or deal in any manner with all or any of its rights or obligations under the Contract.

**18 No Partnership or Agency**

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

**19 Notices**

Any notice required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery or by commercial courier to the other party and for the attention of the person specified in the order form, or as otherwise specified by the relevant party by notice in writing to the other party.

Any notice shall be deemed to have been duly received if delivered personally, when left at the address and for the contact referred to in order form or, if sent by pre-paid first-class post or recorded delivery, on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

**20 Entire Agreement**

The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

**21 Governing law and jurisdiction**

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

The parties irrevocably agree that the courts in Ireland shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter or formation (including non-contractual disputes or claims).

**This contract is offered by DH Flow Control T/A SMART FLOW to the Customer identified within the signed order form for Suppliers goods and services.**

**Signed on behalf of Supplier (SMART FLOW)**

**Signature:** 

Name: Lorraine Mc Mahon. Key Accounts Manager



**SMART FLOW**

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