



# Eco Control Solutions

## Proposal to Eradicate Japanese Knotweed

For

**Beck Developments Ltd**

### Site Location

Mearley Croft

Clitheroe

Lancashire BB7 1BJ

Our Ref: **3087M/PM**

Date: 16<sup>th</sup> July 2012



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## Section 1.1

ECS carried out a site survey on behalf of Beck Developments Ltd upon the instruction of Mr Andrew Little. The site is located at Mearley Croft, Clitheroe, Lancashire BB7 1BJ. The survey was carried out on Monday 9<sup>th</sup> July 2012 by Pascal Mc Kenna (Invasive Weeds Specialist).

ECS are one of the leading invasive weeds eradication consultants in the country, offering professional yet practical solutions to all invasive and ecological issues.

### Site Overview:

The site is largely overgrown with mature trees present throughout. There are numerous outbreaks of Japanese knotweed (JK) located throughout the site and all appear to be healthy and with large crowns present which indicates a virile rhizome (root) system. The infestation at the upper area of the site (JK1) is relatively undisturbed and is growing amongst dense low lying vegetation.

The infestations on the lower area of the site run along the edge of the adjoining watercourse and west towards Woone Lane. The infestations on this low lying area have been seriously disturbed and interfered with over time and show the signs of such interference. There are numerous small JK plants spread throughout this area and recent soil disturbance may have spread rhizomes causing cross contamination. Some of these infestations have been cut by third parties with the remaining debris left on site.

**This site has several potential issues with Japanese Knotweed. Please see separate aerial photograph in section 1.2 of this report and attached reference “Appendix 1 – Aerial photograph 3087 where all current noted Japanese Knotweed has been identified and the areas of concern have been clearly highlighted.**

**Issue 1:** The current noted Japanese knotweed is not secured. ECS recommend that this infestation is secured by means of Herras fencing. This would assist in preventing any further site contamination or the opportunity that a member of staff/ construction contractor takes small pieces off site contaminating other areas. Japanese knotweed is legally classified as **controlled waste** and should therefore only be handled by a specialist licensed controlled waste operator.

**Issue 2:** The majority of the JK infestations have been cut by third parties which emphasises the need for secure fencing.

**Issue 3:** The majority of current noted Japanese knotweed is located on a sloping bank toward the watercourse. By law ECS must apply for an Aqherb01 licence from the Environmental Agency, copy licence to be e mailed to client for his records.

**Issue 4:** There are mature trees within the infestations which will be damaged by herbicidal applications

**0.4g of Japanese Knotweed rhizome is sufficient to ensure further contamination of the entire site and beyond.**

**Damaging of Japanese Knotweed plants can delay the programme and add to costs.**



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## Section 1.2



**Appendix 1 - An aerial photograph of the site.**

### Areas of concern are highlighted as follows:

The **yellow** line denotes the site boundary.

The **red** denotes the current noted infestation of Japanese Knotweed on clients land.

The Blue denotes the stretch (5m) of Japanese Knotweed infestation which requires an Aqua1 herb licence from the E.A.



## Section 1.3

### SITE PHOTOGRAPHS TAKEN BY ECS DURING OUR SURVEY



**Picture One JK1:** Evidence of Japanese knotweed located on clients land, Just off Woone Lane



**Picture Two:** Mature JK infestation along the bank of the watercourse





**Picture Three:** An isolated infestation at the rear of the houses on Woone Lane



**Picture Four:** Soil disturbance within the rhizomal footprint of the infestations





**Picture Five:** New JK plants growing due to the removal of outbuildings. This growth shows that the rhizomes are healthy and strong



**Picture six:** Evidence of infestation which has been cut by third parties



**Example picture:** evidence of Japanese knotweed penetrating through house (**not on client land**)



**Example picture:** evidence of Japanese knotweed penetrating through House (**not on client land**)





## ECS Proposed Japanese Knotweed Eradication & Control Solution

ECS offer a complete tailored solution, delivering an eradication service to a specific timescale for a fixed price.

ECS would recommend that the most economical and appropriate solution would be to eradicate JK1 as per Appendix 1 via ECS's two year herbicidal in-situ programme ; Fully warranted in situ eradication by **November 2013**.

All other JK marked red on Appendix 1 to be eradicated by **November 2014**.

The installation of ECS's geo technic root barrier membrane as per Appendix 1

The remaining Japanese Knotweed (Blue on Appendix 1) entering a three year control programme finishing November 2014 in conjunction with an Aquaherb 1 licence from the Environment Agency.

There are a lot of JK plants which cannot be treated this year due to their size and the fact they have been cut by third parties. This is the reason for the prolonged eradication period.

### Proposed scope of works:

- ECS to supply and install Herras Fencing around JK1 and the main infestation at the rear of Woone lane. ECS to supply correct signage to cordon off the infestation and to prevent any accidental damage.
- ECS to manually cut dense impenetrable low level vegetation (in close proximity of the current noted Japanese knotweed).
- ECS to in situ eradicate by November JK1 marked Red on Appendix 1 2013
- ECS to in situ eradicate all other Japanese knotweed marked red as per Appendix 1 by November 2014.
- All Japanese knotweed marked blue on Appendix 1 to be controlled over a three year period (2012 to 2014).
- ECS to apply for a Aquaherb01 licence from the Environmental Agency
- ECS to install our geo technic root barrier as per Appendix 1



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**Actions to be taken by the client:**

The client should advise the relevant party/parties who work on your land regarding the presence of Japanese Knotweed infestations. The client should also notify all relevant parties that the cutting down/pulling out of any Japanese Knotweed is not permitted during the treatment programme as to do so would severely hinder the eradication of the Japanese Knotweed, or worst case scenario cause new infestations to occur.

**Important codicil:**

It is imperative that no Japanese knotweed is permitted to be disturbed, broken / pulled during our in situ eradication programme as this will delay our timescale and potential increase our eradication cost

- Mechanical excavation can be up to three meters deep; it is the client's responsibility to advise ECS of any underground buried services and to supply ECS with maps detailing any underground buried services before the commencement of excavation works. If underground services are located ECS reserve the right to alter our offer as extra costs may be incurred.
- The above is subject to a soil report being made available and is based upon the proviso that the soil is not polluted with any other contaminants I.E. Hazardous waste. If additional pollutants are found to be present the ground is classified as hazardous waste in combination with Controlled waste (Japanese knotweed). ECS retain the right to review and alter our costings accordingly.
- The above is not inclusive of the importation of clean backfill.
- The client to supply ECS with maps detailed any underground buried services before excavation works commence, if any services are located within the designed to be excavated area, ECS remain the right that our costings will have to be reviewed and altered.



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## Section 1.4

### ECS in situ eradication programme

ECS' site specific methodology for the eradication of the Japanese knotweed consists of the following:

- **Consultancy with Invasive Weed Specialist on all site issues.**
- **ECS to supply and install Herras security Fencing, ECS to supply correct signage to cordon of the infestation.**
- **ECS operatives to manually cut low level vegetation in close proximity of the current noted Japanese knotweed.**
- **To apply organic fertilizers to encourage growth for 2012 & 2013.**
- **ECS herbicidal in situ spraying eradication programme treatment (all JK marked red on Appendix 1) during the growing season of 2012**
- **To control waterside Japanese Knotweed during 2012.**
- **To repeat these programme during 2013 & 2014.**
- **Testing and monitoring of treated Rhizomes. October 2013 for all JK1 marked red on Appendix 1.**
- **Testing and monitoring of treated Rhizomes. October 2014 for all other JK marked red on Appendix 1**
- **Any Additional required treatments.**
- **Issue of 10 year warranty November 2013 for all JK1 marked red on Appendix 1.**
- **Issue of 10 year warranty November 2014 for all other JK marked red on Appendix 1.**
- **ECS to supply and install our Geo technic root barrier membrane as per Appendix 1.**
- **Ongoing Monitoring programme.**

ECS work to a lump sum pricing policy to give peace of mind to our clients, and make it easier to budget. Within the lump sum figure there are no additional costs for the services stated within this proposal.

**ALL ECS JAPANESE KNOTWEED ERADICATION WORKS ARE COVERED BY OUR 10 YEAR 5 MILLION POUND INSURANCE BACKED WARRANTY.**



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## Section 2.1

# Background Information on Japanese Knotweed

Japanese Knotweed is capable of growing 6cm per day and is found throughout the UK. It is highly invasive and capable of exposing weaknesses in buildings, foundations, concrete and tarmac. It has the capability to regenerate from rhizome as small as 0.4g therefore there is a highly substantial risk of spreading the plant via groundwork and disturbance.

Japanese Knotweed can cause:

- A reduction in land value
- Damage to foundations and structures
- Damage to road surfaces
- Damage to walls
- A monoculture swamping out native vegetation

**Japanese Knotweed is regulated by several acts of legislation, the main being:**

- The Wildlife and Countryside Act (as amended) 1981
- The Environmental Protection Act 1990
- The Environmental Protection (Duty of Care) Regulations 1991
- Third party litigation where damages may be sought for allowing Japanese Knotweed to spread onto other properties

The legislation above puts a duty of care on the landowner with Japanese Knotweed infestations to be proactive in the control and eradication of it.

Planning permission and mortgages **will** also generally be refused without an eradication programme in place for the infestation.



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## Section 3.1

ECS specialise in providing tailor made solutions suited to the clients requirements. ECS can provide a wide and varied range of eradication solutions. These methodologies can be utilised individually or in conjunction to provide a bespoke, efficient and cost effective solution.

### **ECS ON SITE ERADICATION METHODOLOGIES:**

#### **ECS Single Season Herbicidal Eradication**

ECS's Single Season Herbicidal Eradication system will eradicate Japanese Knotweed in a single growing season. The methodology of the ECS system is based on the understanding that each infestation is different, combined with an in-depth knowledge of Japanese Knotweed. ECS design herbicidal treatment programmes which will differ from site to site but still carry the ECS 10 year warranty.

The ECS herbicidal eradication system not only eradicates Japanese Knotweed in a single season but is also more environmentally friendly than standard herbicidal applications due to lower dose rates than traditional 3 year programmes. Working closely with our clients, the ECS herbicidal programme can greatly reduce eradication expenses yet still give a fully warranted service which leaves treated areas Knotweed free for 10 years.

#### **ECS Two Season's Aquatic Herbicidal Eradication (including application for AqHerb01 licence from the Environment Agency (EA))**

ECS's two seasons aquatic approved Herbicidal Eradication system will eradicate Japanese Knotweed in two growing seasons. The methodology of the ECS system is based on the understanding that each infestation is different, combined with an in-depth knowledge of Japanese Knotweed. ECS design herbicidal treatment programmes which will differ from site to site but still carry the ECS 10 year warranty.



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## Stem Injection

Contrasting from traditional Japanese Knotweed herbicidal treatment methods which are applied to the surface of the leaves of the plant, stem injection targets the application of a controlled quantity of herbicide directly into the core of the plant. This direct targeting of the herbicidal application enables stem injection to be the least insidious method of eradication of Japanese Knotweed. Stem injection is not weather dependant - traditional spraying methods are severely compromised by weather conditions and cannot be applied during heavy winds or rain.

Stem injection can 100% be safely applied in an area where TPO's (Tree Preservation Orders) have been issued - traditional spraying and mechanical removal methods are not suitable, and will result in severe damage. Stem injection is accepted and authorised by the E.A. for use on organic approved farms, without causing the loss of their organic status. Due to the labour intensiveness of stem injecting it is really only used on smaller sites or sites that carry environmental issues for example water courses and TPO's

The ECS herbicidal spraying methodology can severely damage any vegetation within 2-3 meters of the target Japanese Knotweed. Whilst ECS take every precaution to reduce spray drift and collateral damage it is sometimes unavoidable when treating this hardy plant. The client will take responsibility for any collateral damage caused by ECS whilst acting under the client's instruction.



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## **ECS REMEDIATION AND EXCAVATION ERADICATION METHODOLOGIES:**

### **Dig and Dump**

This requires the excavation of the contaminated areas off site and to an approved landfill. Environmental guidelines state that soil should be removed 7 metres from every stand and to a depth of 3 metres. The excavated material must be treated as controlled waste, as per the Environmental Protection Act 1990. Due to regulations regarding use of landfill sites this has become an expensive option of control.

ECS's specialist knowledge and experience allows us to greatly reduce the amount of contaminated materials that need to be removed to landfill, this can be achieved by taking full responsibility of the excavation and our "clerk of works" monitoring every stage until completion. ECS can reduce the amount of spoil removed up to 60%, and this will also include our 10 year warranty.

### **Spoil to Soil**

**Spoil to Soil Technology** is our latest development in mechanical eradication of Japanese Knotweed. A technique developed by our research team to deliver on site remediation of Japanese Knotweed infestation. **Spoil to Soil Technology** enables ECS to provide the client with a guaranteed clear soil that can be used to back fill excavations with the additional reassurance of a residual persistent herbicide to ensure that even the smallest rhizome particle is left non-viable to cause future re-growth. By using innovative plant that has been tailored for the purpose, we have been able to keep the cost of this new methodology to below that of our existing mechanical techniques, which along with the Government's Tax advantages of up to 42% tax relief on in-situ carbon neutral treatment has allowed us to create a new market segment between herbicide spraying and the more traditional but expensive 'dig and dump' remediation.

**Spoil to Soil Technology** has been rigorously researched and tested by our operations team and has demonstrated to produce consistently successful eradication results. The advantages of this methodology are:

- Financial – an extremely competitive solution
- Instant solution - as quick as conventional excavation solutions (Dig and Dump)
- No time restrictions - this methodology can be utilised at any time of the year
- A carbon neutral solution which enables the client to claim up to 42% tax relief
- No importing of expensive back fill
- The clean soil can be re used on site
- Reduced amount of dumper trucks, less complaints from adjoining residents
- Reduced amount of noise pollution
- ECS 10 Year 5 Million Pounds insurance backed warranty



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## Stock piling

Integrated on-site treatment provides the client with a flexibility of choice. Soil can be excavated from the contaminated area and relocated to a more convenient area on the site where it can be stockpiled on a geo-textile membrane. The Japanese Knotweed can then be allowed to grow normally then herbicidally treated. Once eradication has been completed the soil can then be reintroduced and re used on the site. This method reduces the environmental and economic problems of the dig and dump strategy.

## Cell Burial

This option provides a solution appropriate for the timescale of each individual development. Japanese Knotweed onsite burial is a fast cost effective method of dealing with Japanese Knotweed infestations. The constraints to this methodology are site size, water levels and area of development. Within the cell burial programme a pit is dug and lined with a geotextile membrane. All joints within the cell are welded closed. The Japanese Knotweed is then excavated under the direction of a highly experienced ECS clerk of works. This is then capped with a cover of geotextile membrane and welded shut, thus creating "The Cell". A cover of soil is then placed on top of the cell to a depth of approximately 2 metres. This solution is perfect for areas of sites that are not to be piled or built on. Historically clients have built car parks on top of the cells. This Japanese Knotweed control method is covered by the ECS 10 year insurance backed warranty.

Please note that for any excavation works

Mechanical excavation can be up to three meters deep; it is the client's responsibility to advise ECS of any underground buried services before the commence of excavation works, if underground services are located ECS reserve the right to alter our offer as extra costs may be incurred.

The above is subject to a soil report being made available and the soil is not contaminated with any other contaminants I.E. Hazardous waste, if ground is classified as Hazardous waste in combination with Controlled waste (Japanese Knotweed) ECS remain the right that our costings will have to be reviewed and altered.

The above does not include the importation of clean backfill.

The client to supply ECS with maps detailed any underground buried services before excavation works commence, if any services are located within the designed to be excavated area, ECS remain the right that our costings will have to be reviewed and altered.



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## Section 3.1

### ECS ECOLOGICAL SERVICES

ECS can offer a full range of ecological services across the UK using our in-house staff and specialist ecologists.

ECS aim to produce the most practical and cost effective solution to their clients ensuring that they remain within the law and their works are able to go ahead unhindered.

ECS are able to provide:

#### **Phase 1 Habitat Surveys**

**Protected Species Assessments: (Great Crested Newts, Bats, Badgers etc)**

**Biodiversity Management**

**Ecological Impact Assessments (EIA)**

**Arboricultural Surveys**

**Protected Species Licensing and Mitigation**

**Reptile and amphibian fencing**

**Species translocation**

**Habitat translocation**

**Badger fencing**

**Small mammal fencing**

**Habitat creation**

**Arboricultural works**



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## Section 3.2

### ECS UK OFFICES

ECS actively promotes carbon neutral eradication solutions and in accordance with our environmentally friendly company policy we are able to significantly reduce our carbon footprint by having a range of local offices throughout the UK.

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## Section 4.1



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## ECS CUSTOMER REFERENCES

ECS take great care and pride to maintain and cultivate an excellent working relationship with their clients, the feedback from our clients is reflected by this.

### Peel Holdings

*To whom it may concern,*

*I have known Peter for more than 5 years as National Sales Director. I have continually been impressed by Peter's focus on delivering remediation solutions that are the best for Peel's projects, rather than a solution that will earn the highest fee. This client focus and understanding of the commercial imperatives that frequently drive many of our projects means that I and several of my colleagues across the Peel group routinely turn to Peter for advice and assistance whenever we encounter an 'invasive weed' problem that requires rapid assessment and management. I have no hesitation in recommending ECS to other companies, and have done so on several occasions.*

### Laing O' Rourke

*I confirm that Eco Control Solutions carried out the removal of Japanese Knotweed on our London Gateway Site and in close proximity to the existing Thames flood defence wall.*

*The works were carried out to cost, programme and our satisfaction*

*Alan Burford*

*Laing O'Rourke*

### Knight Frank LLP



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*Thank you very much for taking the time to visit us this morning for what proved to be an exceptionally useful presentation. I have circulated your details to our other valuers and I am currently vetting a report which has been produced on behalf of a Bank where there is an issue with Japanese Knotweed. I suspect it is likely to become more of a problem in the future and it is one where we need to have the necessary expertise and recognition skills so as to make recommendations to bring in a Company like ECS.*

*Thank you for making the talk so interesting with your various examples and for it not being a sales pitch. The former worked well and I have added your details to our database.*

*Tom Barrow*

*Partner*

## **Royal Institution of Chartered Surveyors (RICS)**

*As mentioned during our conversation I am happy to report back from our feedback forms some excellent responses to your presentation, so thank you once again. Also very happy to include you in our programme of events for September 2009 to June 2010 which I am working on putting together now. Thank you again*

*Carole Conway*

*Royal Institution of Chartered Surveyors (RICS)*

*Registered office: 12 Great George Street, Parliament Square, London SW1P 3AD*



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## ECS ASSOCIATED MEMBERSHIPS

ECS is a cutting edge company and we ensure the highest quality to our clients by means of:

- **Our professional qualifications.**
- **More than 30 years' experience in eradication / controlling invasive weeds and ecological issues.**
- **Associated memberships.**

In addition to being qualified as CPD certified, ECS take pride in being members of other established, widely recognised and reputed organisations. ECS are members of:



A central register of trained and qualified sprayer operators, ensuring that any equipment being used is in accordance with current legislation and have due regard to any environmental impact.



NPTC's aspire to promote competence and professionalism in the workforce of land-based and related industries by the encouragement of continuous learning and the recognition of skill.



Constructionline is the UK's largest certified pre-qualification database, saving the construction industry over £500 million a year in administration. Already used by over 60% of local authorities, constructionline reduce duplication and save time and money by encouraging organisations to use a single source for pre-qualification.



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## Section 4.2



Safe contractor is an accreditation scheme that assesses the health & safety competency of contractors and service providers. Clients have a legal obligation to ensure that external contractors and service providers working on their premises operate in a safe way. There is therefore a need to assess contractor's health & safety arrangements and increasingly this is being carried out through Safe contractor. Many large organisations now use Safe contractor as their primary means of selecting contractors.



CHAS have assessed and approved ECS' health and safety systems and processes. CHAS is established as the market leader for health and safety pre-qualification in the UK. It is a non-commercial scheme available to suppliers and to organisations looking for suitably competent suppliers.



ECS are one of the UK's principal eradication specialists experienced in organising local invasive weed CPD venue's. Please contact us to find out your next local venue.

CPD – Continuing Personal or Professional Development - is the term that describes a commitment to structured skills enhancement and personal or professional competence.

The CPD Certification Service helps organisations provide certified CPD and acts as a point of contact for those seeking to obtain certified CPD material. It supports further learning initiatives being undertaken by Government, professional institutions, trade associations, individual organisations, training providers, suppliers and so on.



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## ECS CPD Training

If you require more information regarding general invasive weeds ECS can offer CPD certified seminars (free of charge for our customers). We typically discuss the following subjects:

- Japanese Knotweed, Himalayan Balsam, Ragwort and Giant Hogweed.
- Legal responsibilities
- Legal border/boundary disputes
- Change of status
- Health and safety issues
- New in situ tax incentives

An understanding and advanced awareness of Japanese Knotweed and other invasive weed issues are a vital component in the pursuit of achieving substantial cost reductions. Remediation costs can be vastly reduced if a Japanese Knotweed eradication plan is instigated in the early stages of a development project.



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## Section 4.3

### WARRANTY OF WORK

Subject to the conditions outlined below Eco Control Solutions Ltd (ECS) warranty that all identified Knotweed on the specified site will have been completely killed and eradicated by the date agreed in the contract for a period of ten years from date of issue of the warranty. If there is any subsequent re-growth on the site ECS will carry out required remedial works to eradicate any infestations consistent with the original survey.

Remedial works to include:

- Appropriate chemical and cultural control methods
- Repair of any building works damaged by Knotweed rhizomes
- Remedial work to be covered up to a client value of £ 5 million with any additional costs to be borne by the client. The warranty does not cover any consequential loss of income or revenue in any way whatsoever as a result of any remedial works carried out by ECS.

The warranty does not cover new infestations outside the agreed survey introduced post treatment via third party contamination in any way whatsoever or introduction of contaminated topsoil or infestations resulting from a change in site levels not agreed during eradication process.

#### Warranty Conditions

The warranty is conditional on the following:

Eradication carried out 100% under ECS control and to detailed ECS methodology.

A detailed site survey to identify and map at a suitable scale consistent with the site to show all Knotweed infestations, and any trees or shrubs of ecological value that should be protected from the eradication treatment works. The survey should identify any potential watercourses or other factors that would affect methodology.

Complete Health and Safety audit of site.

Historical record of all ground works over the last twenty-four months.

Acceptance of the quote/proposal will be an acknowledgement by the client that the plan accurately reflects extent of all Knotweed on site, and agree course of action for any boundary issues with adjacent landowners.



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Plan to form basis of site control document. This is to be used in conjunction with proposed site development plan.

All proposed works on site during the eradication period to be notified to ECS prior to commencement. This is to include all proposed site activity and any local authority and utility works. It is the sole responsibility of the client to keep ECS informed of any potential disturbance of the site in any way whatsoever.

Site security to be the sole responsibility of the client and should be consistent with any recommendations made by ECS.

All fly tipping subsequent to contract and map being agreed with client to be disposed of at discretion of ECS in approved manor at additional cost to client.

ECS to approve, source and import any topsoil onto site and to agree any significant change in ground levels to be carried out post site treatment.

Force majeure to be in place for period of eradication process covering fire, flood, rain, wind, sleet, hail etc. and any weather related or man-made factors that could affect timing and effectiveness of eradication methodology in any way whatsoever.

ECS to monitor site for a period of two years post warranty on a yearly basis during Knotweed growing season and after that time as appropriate or as notified by client.

Specific Warranty Issues in Relation to site (if any).



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## Section 4.4

### TERMS AND CONDITIONS OF SUPPLY OF SERVICES BY ECO CONTROL SOLUTIONS LIMITED

#### 1. INTERPRETATION

##### 1.1 In these Conditions the following words have the following meanings:

**Conditions:** these terms and conditions.

**Contract:** the contract created by the Customer's acceptance of a Quote for Services by the Supplier under clause 2.1.

**Contract Price:** The price for the provision of Services, as set out in the Quote.

**Contract Documents:** these Conditions and the terms of the Quote accepted by the Customer.

**Customer:** the person, firm or company who purchases Services from the Supplier.

**Customer's Manager:** the Customer's manager for the Services, appointed in accordance with clause 5.1.

**In-put Material:** all documents, information, content and materials provided by the Customer relating to the Services, including information and plans relating to the Site.

**Intellectual Property Rights:** all patents, copyright and related rights, trade marks, rights in goodwill, registered and unregistered design rights, database right, moral rights, rights in confidential information and any other intellectual property rights, in each case whether registered or unregistered and including all applications for such rights, anywhere in the world.

**Quote:** a quote or proposal issued by the Supplier for the supply of Services.

**Services:** the services to be provided by the Supplier under the Contract as set out in the Quote together with any other services which the Supplier provides or agrees to provide to the Customer.

**Site:** the site at which the Services are to be performed.

**Supplier:** Eco Control Solutions Limited.

**Supplier's Warranty:** the warranty to be provided by the Supplier to the Customer pursuant to clause 9.



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- 1.2 References to clauses are to the clauses of these Conditions. Words in the singular shall include the plural and vice versa. Where the words “include(s)”, “including” or “in particular” are used in these Conditions, they are deemed to have the words “without limitation” following them and where the context permits, the words “other” and “otherwise” are illustrative and shall not limit the sense of the words preceding them.

## 2. THE CONTRACT

- 2.1 The Supplier may issue a Quote following a request by the Customer to do so and following a Site survey by the Supplier. The Quote may be accepted by the Customer at any time during its period of validity by signing and returning a copy to the Supplier. By accepting the Quote the Customer appoints the Supplier to supply the Services to it in consideration of the Contract Price and subject to the terms of the Contract Documents.

- 2.2 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 implied by law, trade custom, practice or course of dealing.

- 2.3 Quotes are given by the Supplier on the basis that no Contract shall come into existence except in accordance with clause 2.1. Quotes are based on the Supplier's current costs of supply and are subject to amendment at any time. The appointment of the Supplier will commence upon receipt by the Supplier of a quote signed by the Customer and will last until completion of the Services unless terminated in accordance with these Conditions.

- 2.4 In the event of any inconsistency between the terms of these Conditions and the Quote, the terms of the Quote will prevail.



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### **3. SERVICES**

- 3.1 Time for completion of the Services shall not be of the essence of the Contract. To the extent that the Quote provides no timescale for the completion of Services, the Supplier and the Customer may agree any such timescales in writing, but any such timescales will be not be binding on the Supplier.
- 3.2 The Services are provided on the basis of the detail that exists at the time of the observations made by the Supplier on its initial Site survey. The Supplier reserves the right to amend the Contract Price to take account of any changes or development at the Site subsequent to its initial Site survey.
- 3.3 If the Customer cancels the provision of Services on less than 24 hours' notice prior to the agreed commencement date for Services, the Supplier reserves the right in its absolute discretion to charge the full Contract Price to the Customer.

### **4. SUPPLIER'S OBLIGATIONS**

- 4.1 The Supplier shall use reasonable endeavours to provide the Services, in accordance in all material respects with the Quote. The Supplier will perform the Services with reasonable care and skill.
- 4.2 The Supplier shall use all reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises and the Site and that have been communicated to it by the Customer, provided that it shall not be liable if, as a result of such observation, it is in breach of any of its obligations under this Contract.
- 4.3 The Supplier will comply with all applicable legislation in providing the Services. The Supplier will not be deemed to be responsible for any material found upon the Site unless the Supplier has expressly accepted such responsibility in writing.

### **5. CUSTOMER'S OBLIGATIONS**

- 5.1 The Customer shall:
- (a) co-operate with the Supplier in all matters relating to the Services and appoint the Customer's Manager, who shall have the authority contractually to bind the Customer on matters relating to the Services;



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- (b) provide, for the Supplier, its agents, sub-contractors and employees, upon reasonable notice and at no charge, such access to the Site, as may be reasonably required by the Supplier in order to provide the Services;
- (c) provide, in a timely manner, access to such In-put Material and other information as the Supplier may request or reasonably require and ensure that it is accurate in all material respects;
- (d) where relevant be responsible (at its own cost) for preparing and maintaining the Site for the supply of the Services and informing the Supplier of all of its obligations and actions under this clause 5.1(d);
- (e) ensure that it is in compliance at all times with all applicable health and safety legislation with regard to the Site, and shall provide appropriate safe access to the Site for the Supplier's representatives to carry out the Services. In the event that, in the reasonable opinion of the Supplier's representatives at the Site, the Site or their access to it is unsafe or unsuitable for them to carry out the Services, the Supplier will be entitled to withdraw its representatives from the Site immediately, until such time as the Site or access to it is made safe to the Supplier's satisfaction. The Customer shall be liable for any costs arising out of delays caused by such withdrawal of the Supplier's representatives due to safety concerns.
- (f) obtain and maintain all necessary licences and consents to enable the Supplier to carry out and perform the Services at the Site, and comply with all relevant legislation in relation to the Services and the use of In-put Material insofar as such licences, consents and legislation relate to the Customer's business, premises, staff and equipment and the Site in all cases before the date on which the Services are to start.



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- 5.2 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, sub-contractors 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.
- 5.3 Change control
- 5.4 If at any time the Customer requests a change to the scope or execution of the Services the Customer will provide such details of the requested changes to the Supplier as the Supplier may require and, if the Supplier is willing and able (in its absolute discretion) to provide such amended Services, the Supplier will issue an amended Quote setting out the amended Services and an amended Contract Price.
- 5.5 If the Customer wishes the Supplier to proceed with the change, it shall sign and return to the Supplier the amended Quote, whereupon the amended Quote will become the applicable Quote for the purposes of these Conditions. For the avoidance of doubt, the Supplier will have no obligation in relation to any amended Quote (or any requested amendments to the Services) unless and until an amended Quote is signed by the Customer and returned to it in accordance with the provisions of this clause.
- 5.6 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. If the Supplier requests a change to the scope of the Services for any other reason, the Customer shall not unreasonably withhold or delay consent to it provided that such changes do not materially affect the nature or quality of the Services and, where practicable, it will give the Customer reasonable notice of any change, and will submit to the customer a duly amended Quote for signature by the Customer.
- 6. CHARGES AND PAYMENT**
- 6.1 The Customer will pay the Contract Price in consideration for the provision of the Services. The Contract Price shall be the amount set out in the Quote.
- 6.2 The Contract Price may be paid in instalments if provision for payment by instalments is made in the Quote. In the absence of any such terms, the Supplier will invoice the Customer for the Contract Price on or at any time after completion of the Services. If the duration of the Services is greater than one month, the Supplier reserves the right to submit interim invoices every 30 days.



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6.3 The Contract Price excludes:

- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services, the cost of any materials and the cost of services (other than the Services) reasonably and properly provided by third parties and required by the Supplier for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Supplier; and
- (b) VAT, and

such expenses, materials and third party services shall be invoiced by the Supplier, and VAT will be added by the Supplier to all its invoices to the Customer, and the Customer will duly pay the same in accordance with the provisions of this clause.

7.4 The Supplier reserves the right to charge the Customer for any further costs incurred by the Supplier, plus a reasonable profit thereon, as a result of the Customer's failure to comply with its obligations in clause 5.

6.5 The Customer shall pay in pounds sterling each invoice submitted to it by the Supplier, in full and in cleared funds, and without any deduction or set off within 30 days of receipt and in accordance with the provisions of this clause. The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

6.6 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:

- (a) charge interest on such sum from the due date for payment at the rate of interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
- (b) suspend some or all of the Services until payment has been made in full.

6.7 Time for payment shall be of the essence of the Contract.

**7. CONFIDENTIALITY & INTELLECTUAL PROPERTY RIGHTS**

7.1 Any party (the "Receiving Party") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to it by the other party (the "Disclosing Party"), its employees, agents or sub-contractors and any other confidential information concerning the Disclosing Party's business or its products which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of



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such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or sub-contractors are made aware of the confidential nature of such confidential material. For the avoidance of doubt, the Customer acknowledges that all details of the processes, techniques and chemicals (or combinations of chemicals) used by the Supplier in the provision of the Services are confidential.

- 7.2 All Intellectual Property Rights vested in the Supplier prior to commencement of the Services shall remain vested in the Supplier and all Intellectual Property Rights vested in the Customer prior to commencement of the Services shall remain vested in the Customer. Any Intellectual Property Rights created during or arising out of the provision of the Services will vest in the Supplier absolutely.

## **8. WARRANTY & LIMITATION OF LIABILITY**

- 8.1 This clause 9 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- (a) any breach of the Contract;
- (b) any use made by the Customer of the Services, or any part of them; and
- (c) any representation, statement or tortuous act or omission (including negligence) arising under or in connection with the Contract.

- 8.2 The Supplier's Warranty will be provided to the Customer upon completion of the Services and payment in full of the Contract Price and will become effective as from the date of delivery to the Customer. Before the Supplier Warranty becomes effective, its terms will be subject to any amendments that the Supplier may, in its absolute discretion, consider appropriate as a result of issues arising out of the provision of the Services at the Site. The Supplier's Warranty will, when delivered to the Customer, be deemed to be part of these Conditions and will be subject to the remaining terms of the Conditions. The insurance backed warranty is based on the supplier having Professional Indemnity Insurance. All other warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

- 8.3 Nothing in these Conditions limits or excludes the liability of the Supplier:

- (a) for death or personal injury resulting from negligence; or
- (b) for any damage or liability incurred as a result of fraud or fraudulent misrepresentation by the Supplier.



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#### 8.4 Subject to clause 8.3:

- (a) the Supplier shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for loss of profits, business, anticipated savings, goods, contract, use or loss or corruption of data, software or information, or for depletion of goodwill or any special, indirect or consequential or pure economic loss, costs, damages, charges or expenses. Furthermore the Supplier will not be liable for, and the Customer will indemnify the Supplier against, any costs, losses, damages or charges arising from any claims, proceedings or actions arising from the Supplier's use of the In-put Material in the provision of the Services.
- (b) the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with:
  - (i) breach of the Supplier's Warranty, shall be limited to the remedy set out for such breach in the Supplier's Warranty, and
  - (ii) subject to clause 9.4(b)(i) above, any other liability arising in connection with the performance or contemplated performance of the Services, shall be limited to the price paid by the Customer for the Services.

### 9. TERMINATION

9.1 Without prejudice to any other rights or remedies which the parties may have, any party (the "Terminating Party") may terminate the Contract immediately on giving notice to the other (the "Breaching Party") if:

- (a) the Breaching 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 being notified in writing of the breach; or
- (b) an order is made or a resolution passed for the winding up of the Breaching Party or an order is made for the appointment of an administrator to manage the affairs, business and property of the Breaching Party or if a receiver is appointed over any of the Breaching Party's assets or undertaking, or if circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding-up order, or the Breaching Party makes any arrangement or composition with its creditors or ceases to trade.

9.2 On termination of the Contract for any reason:



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- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices plus any 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; and
- (b) the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

## 10. FORCE MAJEURE

The Supplier shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing the Services by acts, events, omissions or accidents beyond its reasonable control, including 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, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

## 11. GENERAL

- 11.1 A waiver of any right under the Contract Documents is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
- 11.2 Personal data (as the same is defined in the Data Protection Act 1996) relating to the Customer or the Customer's employees acquired by the Supplier will be processed by or on behalf of the Supplier in connection with the Services and may be used by the Supplier for marketing other similar services to the Customer.
- 11.3 If any provision (or part of a provision) of the Contract Documents are found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.
- 11.4 Each of the parties acknowledges and agrees that, in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Contract or not) relating to its subject matter other than as expressly set out in the Contract Documents.



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- 11.5 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 11.6 Nothing in the Contract Documents is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other.
- 11.7 The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.
- 11.8 Notice given under the Contract shall be in writing, sent for the attention of the person, and to the address or fax number, given in the Quote (or such other address, fax number or person as the relevant party may notify to the other party) and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed receipt under this clause is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is a business day), at 9.00 am on the first business day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.
- 11.9 Subject to clause 6, no variation of any of the Contract Documents shall be valid unless it is in writing and signed by each of the parties.
- 11.10 The Contract and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales, and each party hereby submits to the exclusive jurisdiction of the English Courts.



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