

# **DIRECTION FROM THE WATER SERVICES REGULATION AUTHORITY TO TOR WATER LIMITED UNDER SECTIONS 66DA AND 117F OF THE WATER INDUSTRY ACT 1991**

## **1. Interpretation**

Unless otherwise specified:

- (a) terms capitalised in this direction are defined in the Wholesale Retail Code (the “**Code**”); and
- (b) references to sections are references to sections of the Code.

## **2. Background**

- 2.1 The Water Services Regulation Authority (the “**Authority**”) has issued the Code pursuant to sections 66DA and 117F of the Water Industry Act 1991 (the “**Act**”). The Code prescribes the standard form Wholesale Contract (together with its various schedules and appendices, including the Business Terms, Operational Terms and Market Terms) which is to be entered into by Contracting Wholesalers and Contracting Retailers.
- 2.2 Under sections 66DA(4) and 117F(4) of the Act, if the Authority considers that a water supply licensee or sewerage licensee is not acting as required by the Code, it may give the licensee a direction to do, or not to do, a thing specified in that direction.
- 2.3 On 29 June 2018, the Authority granted the company to whom this Direction is addressed (the “**Licensee**”) a water supply licence with a retail authorisation in accordance with Section 17A of the Act and a sewerage licence with a retail authorisation in accordance with Section 17BA of the Act.
- 2.4 The Licensee is a Contracting Retailer for the purposes of the Wholesale Contract.
- 2.5 Section 5 (Charges and payment) of the Wholesale Contract requires that in consideration of the provision of the Wholesale Services under the Wholesale Contract, the Contracting Retailer shall pay the Contracting Wholesaler the Wholesale Charges, all as calculated and payable in accordance with the Code and the Wholesale Tariff Document.
- 2.6 Part D of Schedule 1 Part 2 Business Terms (the “**Business Terms**”) sets out the requirement for, and when, the Contracting Retailer should pay the Contracting

**DIRECTION FROM THE WATER SERVICES REGULATION AUTHORITY TO TOR WATER  
LIMITED UNDER SECTIONS 66DA AND 117F OF THE WATER  
INDUSTRY ACT 1991**

Wholesaler the Wholesale Charges. Part E of the Business Terms sets out the circumstances in which the Contracting Retailer will be classed as a Defaulting Trading Party.

- 2.7 The Authority has received seventeen notifications from a Contracting Wholesaler since August 2018 that the Licensee has not paid invoices due in accordance with Section 9 of the [Business Terms](#).
- 2.8 The Authority has received eleven notifications from a Contracting Wholesaler since October 2018 that the Licensee has been and is at the date of this Direction a Defaulting Trading Party in accordance with Section 10.1.1. of the Business Terms, meaning that the Licensee has failed to pay an amount of more than five thousand pounds (£5,000) (exclusive of VAT) (and this is not disputed under Section 9.7.2) properly due by it under the Wholesale Contract where:
- (a) such payment has not been made ten (10) Business Days after the payment due date; and
  - (b) on or after the last Business Day in the period specified in Section 10.1.1(a) the Contracting Wholesaler has issued notice to the Contracting Retailer to pay the outstanding amount within a further period of five (5) Business Days after the Contracting Retailer's receipt or (if earlier) deemed receipt of such notice; and
  - (c) the amount invoiced has not been paid by the expiry of that further period of five (5) Business Days of the Contracting Retailer's receipt or (if earlier) deemed receipt of notice pursuant to Section 10.1.1(b).
- 2.9 Section 9.7.2 of the Business Terms states that:
- “If any item or part of an item in an invoice or statement rendered by a Party under this Section 9 is disputed or subject to question, payment of the remainder of the invoice or statement shall not be withheld on those grounds, and the provisions of Section 9.9.2 shall apply to the disputed or questioned item from the time, and to the extent that, it shall subsequently be agreed or determined to have been properly payable. Where a Party wishes to dispute or question an item or part of an item in an invoice or statement, it may only do so in good faith and on grounds which are not vexatious or frivolous.”
- 2.10 Further, the Licensee is at the date of this Direction a Defaulting Trading Party in accordance with Section 10.1.2 of the Business Terms as it has failed to pay an

**DIRECTION FROM THE WATER SERVICES REGULATION AUTHORITY TO TOR WATER  
LIMITED UNDER SECTIONS 66DA AND 117F OF THE WATER  
INDUSTRY ACT 1991**

amount properly due by it under the Wholesale Contract (and not disputed under Section 9.7.2) for a third time having failed on two occasions in the previous twelve Month period and the Contracting Wholesaler has issued notice to the Contracting Retailer to remedy such non-payment upon at least two of those occasions and the sums remain outstanding.

- 2.11 The Authority does not consider that the Licensee is acting as required by the Code as it has repeatedly failed to pay invoices in accordance with Section 9 of the Business Terms. The Licensee has persistently failed to pay undisputed amounts of more than five thousand pounds (£5,000) (exclusive of VAT) properly due by it under the Wholesale Contract resulting in it being classed as a Defaulting Trading Party, in accordance with Section 10.1 of the Business Terms, on a reoccurring basis. The Authority considers that, in accordance with its powers and duties under section 2 of the Act, and in the interest of customer protection, it is appropriate to take steps to prevent the Licensee from providing Water Retail Services and/or Sewerage Retail Services to Eligible Premises that it does not already provide these services to whilst it continues to fail to pay amounts due under the Wholesale Contract.

**3. Direction under sections 66DA and 117F of the Water Industry Act 1991**

**3.1 Commencement and Duration**

3.1.1 The Direction shall take effect from 30 May 2019.

3.1.2 The Direction shall remain in effect until such time as Ofwat directs otherwise.

**3.2 Actions for Tor Water Limited**

3.2.1 The Authority hereby directs that:

- (a) the Licensee must pay any outstanding, and undisputed, invoices or statements to any relevant Contracting Wholesaler in accordance with the Sections 9 and 10 of the Business Terms of the Code by no later than 28 June 2019;
- (b) the Licensee must pay any future undisputed invoices and statements to any relevant Contracting Wholesaler in accordance with Sections 9 and 10 of the Business Terms of the Code;
- (c) Whilst the Licensee remains a Defaulting Trading Party, and during any future period should it become a Defaulting Trading Party:

**DIRECTION FROM THE WATER SERVICES REGULATION AUTHORITY TO TOR WATER  
LIMITED UNDER SECTIONS 66DA AND 117F OF THE WATER  
INDUSTRY ACT 1991**

- i) it must not provide Water Retail Services and/or Sewerage Retail Services to Eligible Premises that it does not already provide these services to;
- ii) it must not seek to register any new Eligible Premises under the Code;
- iii) it must notify MOSL that it is subject to the prohibitions in i) and ii) above; and
- iv) it must, by Friday 31 May, or a later date agreed with the Authority, include a notification in a prominent position on the home page of its website, in terms approved by the Authority, stating that it is not currently providing Water Retail Services and/or Sewerage Retail Services to Eligible Premises and/or Non-Household Customers that it is not currently providing these services to. For the avoidance of doubt, the Licensee must be clear in any communications as to the reasons why it is not currently providing services to additional Eligible Premises and/or Non-Household Customers.

3.2.2 In accordance with section 66DA(6) and 117F(6) of the Act it is the duty of the Licensee to comply with this Direction. This duty is enforceable by the Authority under Section 18 of the Act.

### **3.3 Monitoring and compliance**

3.3.1 The Licensee is directed to provide a monthly compliance statement to the Authority confirming compliance with Paragraph 3.2.1 of this Direction.

**Dated: 29 May 2019**



**Signed on behalf of the Authority by Emma Kelso, Senior Director Markets & Enforcement**

**Duly authorised for that purpose by the Authority**