

Terms & Conditions - Service Contract



1. INTERPRETATION

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

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

Supplier: Crescent Industrial.

Service Contract: any contract between the Supplier and the Customer for the supply of Services.

Equipment: any machinery or equipment owned by or hired to the Customer and in respect of which the Services are provided.

Servicing: means the service inspections conducted by the Supplier in accordance with the Service Contract.

Additional Services: means any maintenance, repair, additional callouts or additional labour ordered by the Customer.

Parts: means Replacement Parts and Wear Parts supplied by the Supplier to the Customer pursuant to the Service Contract.

Replacement Parts: means any Part which is not a Wear Part.

Wear Part: means brooms, brushes, skirts, squeegees and any other Part expressed as a Wear Part in the Service Contract.

Annual Service Charge: the annual charge set out in the Service Contract and payable in full for each consecutive 12 month period, or part of any such period, during which Services are supplied.

Servicing: means Servicing and/or Additional Services.

1.2 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

2. APPLICATION OF TERMS

2.1 These conditions shall be incorporated into the Service Contract in their entirety and shall prevail over any of the Customer's terms and conditions.

2.2 These conditions are subject to any special conditions in the Service Contract.

2.3 Any variation to these conditions and any representations about the Services shall have no effect unless expressly agreed in writing and signed on behalf of the Supplier. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Service Contract. Nothing in this condition shall exclude or limit the Supplier's liability for fraudulent misrepresentation.

2.4 Any quotation is valid for a period of 30 days only from its date unless previously withdrawn by the Supplier.

3. COMMENCEMENT AND DURATION OF SERVICES

3.1 The Services shall commence on the date specified in the Service Contract.

3.2 Subject to condition 9, the Services shall be supplied for a minimum period of 12 months and after that shall continue to be supplied until the Service Contract is terminated by either party giving to the other party not less than 3 months notice in writing.

4. SPECIFICATIONS

4.1 Unless otherwise specified in the Service Contract the Supplier shall only be obliged to provide the Services between the hours of 8:00am and 5:00pm during the working week which for the avoidance of doubt excludes Saturdays, Sundays and bank holidays.

4.2 The Annual Service Charge is based upon the estimated usage levels for each item of Equipment as specified in the Service Contract and where the Service Contract is silent shall be based upon the usage level as recommended by the manufacturer, owner or supplier of the Equipment in question.

4.3 The Annual Service Charge is based on the frequency level specified in the Service Contract.

5. SERVICE CONTRACT PRICE

5.1 The Annual Service Charge, unless otherwise specified in the Service Contract, shall be exclusive of the cost of Replacement Parts, Wear Parts, Additional Services, VAT on Services and/or Parts and any additional charges, all of which shall be payable by the Customer in accordance with the Service Contract. The Service Contract price shall be the total of all charges payable by the Customer to the Supplier in accordance with the Service Contract.

5.2 Where the Service Contract is terminated under condition 3.2 the Annual Service Charge in respect of the 12 month period during which termination occurred shall be discounted to reflect the proportion of unused service inspections in respect of the same 12 month period.

5.3 Unless otherwise specified in the Service Contract, additional labour and additional call outs will be charged for and payable at the Supplier's standard rate.

5.4 Unless otherwise specified in the Service Contract Parts will be charged for and payable by the Customer at the Supplier's standard rate.

5.5 A premium call out charge will be payable by the Customer as an additional charge at the Supplier's standard rate, if and to the extent that any Services are performed outside the times specified in condition 4.1.

5.6 A premium service uplift charge will be payable by the Customer as an additional charge at the Supplier's standard rate, if and to the extent that any Services are performed outside the times specified in condition 4.1.

5.7 Unless otherwise specified in the Service Contract, Parts shall be charged at the Supplier's standard price published on the Supplier's website or pricelist and such prices are exclusive of VAT.

5.8 The Supplier reserves the right to increase the Annual Service Charge in so far as is necessary to reflect changes in trade conditions, raw material supply, imposed taxes or similar occurrences beyond the control of the Supplier, provided that such price cannot be increased more than once in any 12 month period. The Supplier will give the Customer written notice of any such increase 3 months before the proposed date of the increase. If such increase is not acceptable to the Customer, it may, within one week of such notice being received, terminate the Service Contract by giving 2 months written notice to the Supplier.

5.9 Where the Supplier incurs additional costs owing to suspension or alteration of the Services arising from the Customer's instructions or lack of instructions, or by reason of interruptions, delays, overtime, unusual hours, mistakes or work occasioned by the act or default of the Customer, such cost shall be added to the Service Contract price as an additional charge and paid for by the Customer.

6. PAYMENT

6.1 Subject to condition 6.4, and unless otherwise specified in the Service Contract, or agreed in writing between the parties, payment is due in pounds sterling and shall be paid as follows:

6.1.1 Where the Customer does not have an authorised credit account with the Supplier, the Annual Service Charge together with

VAT shall be payable immediately and all other sums due to the Supplier under the Service Contract shall become payable as and when they arise.

6.1.2 Where the Customer has an authorised credit account with the Supplier, the Customer shall pay each invoice issued by the Supplier, by the end of the month following the date of the invoice.

6.2 Time for payment shall be of the essence.

6.3 No payment shall be deemed to have been received until the Supplier has received cleared funds.

6.4 All payments payable to the Supplier under the Service Contract shall become due immediately on its termination despite any other provision.

6.5 The Customer shall make all payments due under the Service Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Supplier to the Customer.

6.6 If the Customer fails to pay the Supplier any sum due pursuant to the Service Contract, the Customer shall be liable to pay interest to the Supplier on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of the Bank of England, accruing on a daily basis until payment is made, whether before or after any judgment. The Supplier reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

7. SUPPLIERS OBLIGATIONS

7.1 The Supplier shall use reasonable endeavours to provide the Services in accordance in all material respects with the Service Contract and any specifications contained therein.

7.2 The Supplier shall use reasonable endeavours to agree with the Customer, times and dates for Servicing.

7.3 The Supplier will use reasonable endeavours to meet any performance dates, but any such dates shall be estimates only and time shall not be of the essence in performance of the Services.

7.4 The Supplier shall use 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 that have been communicated to it under condition 8.1(e), provided that it shall not be liable under the Service Contract if, as a result of such observation, it is in breach of any of its obligations under the Service Contract.

8. CUSTOMERS OBLIGATIONS

8.1 The Customer shall:

(a) Co-operate with the Supplier in all matters relating to the supply of the Services;

(b) provide the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Customer's premises, office accommodation, data and other facilities as reasonably required by the Supplier;

(c) provide to the Supplier, in a timely manner, such information as the Supplier may require and ensure that it is accurate in all material respects;

(d) be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from its premises in accordance with all applicable laws, before and during the supply of the Services at those premises, and informing the Supplier of all of the Customer's obligations and actions under this condition 8.1(d);

(e) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises;

(f) obtain and maintain all necessary licences and consents and comply with all legislation relevant to the Services, insofar as such licences, consents and legislation relate to the Customer's business, premises, staff and equipment, in all cases before commencement of the Services.

8.2 If the Supplier's performance of any of its obligations under the Service 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.

8.3 The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to goods and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in performing any of its obligations under the Service Contract, subject to the Supplier confirming such costs, charges and losses in writing.

9. TERMINATION

9.1 Without prejudice to any other rights or remedies which the parties may have, the Supplier may terminate the Service Contract without liability to the Customer immediately on giving notice to the other if: (a) the Customer fails to pay any amount due under the Service Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment; or (b) the Customer commits a material breach of any of the terms of the Service Contract and (if such breach is remediable) fails to remedy that breach within seven days of that party being notified in writing of the breach; or (c) circumstances exist or arise which, in the reasonable opinion of the Supplier, materially and adversely affect the performance of, or the ability to perform, the Customer's duties and obligations under the Service Contract; or (d) the Customer ceases or threatens to cease to carry out its business; or (e) the Customer becomes bankrupt or makes a composition or arrangement with his creditors or being a limited company has a Petition issued for the Insolvency of that company or goes into liquidation or carries out its business under an Administrator, Receiver, Manager or Liquidator or enters into a scheme or arrangement for the benefit of its creditors or any of them.

9.2 On termination of the Service Contract by either party and for any reason:

9.2.1 All monies due to the Supplier under the Service Contract and not yet paid shall become payable immediately; and

9.2.2 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.

9.3 On termination of the Service Contract (however arising), the following conditions shall survive and continue in full force and effect: (a) condition 9; (b) condition 10; and (c) condition 13.6.

10. LIMITATION OF LIABILITY (THE CUSTOMER'S ATTENTION IS DRAWN TO THIS CONDITION IN PARTICULAR)

10.1 This condition 10 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 Service Contract;

(b) any use made by the Customer of any of the Services the Parts or any part of them; and

(c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Service Contract.

10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Service Contract.

10.3 Nothing in these conditions excludes or limits the liability of the Supplier:

(a) for death or personal injury caused by the Supplier's negligence; or

(b) for any matter which it would be illegal for the Supplier to exclude or attempt to exclude its liability;

(c) for any liability incurred by the Customer as a result of any breach by the Supplier of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982;

(d) for fraud or fraudulent misrepresentation.

10.4 Subject to condition 10.2 and condition 10.3:

(a) the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Service Contract shall be limited to the Annual Service Charge in respect of the 12 month period during which the breach occurred or the sum of £100 whichever is the lower amount; and

(b) the Supplier shall not be liable to the Customer for loss of profit, loss of business, loss of use, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Service Contract.

11. ASSIGNMENT

11.1 The Supplier may assign the Service Contract or any part of it to any person, firm or company.

11.2 The Customer shall not be entitled to assign the Service Contract or any part of it without the prior written consent of the Supplier.

12. FORCE MAJEURE

12.1 The Supplier reserves the right to defer the date of delivery or to cancel the Service Contract or reduce the volume of the Equipment ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Supplier including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 90 days, the Customer shall be entitled to give notice in writing to the Supplier to terminate the Service Contract.

13. GENERAL

13.1 Each right or remedy of the Supplier under the Service Contract is without prejudice to any other right or remedy of the Supplier whether under the Service Contract or not.

13.2 If any provision of the Service Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Service Contract and the remainder of such provision shall continue in full force and effect.

13.3 Failure or delay by the Supplier in enforcing or partially enforcing any provision of the Service Contract shall not be construed as a waiver of any of its rights under the Service Contract.

13.4 Any waiver by the Supplier of any breach of, or any default under, any provision of the Service Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Service Contract.

13.5 The parties to the Service Contract do not intend any term of the Service Contract to be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

13.6 The formation, existence, construction, performance, validity and all aspects of the Service Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

14. NOTICES

14.1 All notices between the parties about the Service Contract shall be in writing and delivered by hand or sent by first class post or sent by fax or email:

(a) in case of notices to the Supplier to its place of business or such changed address as shall be notified to the Customer by the Supplier; or

(b) (in the case of notices to the Customer) to any address of the Customer set out in any document which forms part of the Service Contract or such other address as shall be notified to the Supplier by the Customer.

14.2 Notices shall be deemed to have been received:

(a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or

(b) if delivered by hand, on the day of delivery; or

(c) if sent by fax or email on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.