

JAMES RAMSAY (GLASGOW) LIMITED TERMS AND CONDITIONS FOR THE SUPPLY OF MAINTENANCE SERVICES AND REPAIR SERVICES

The Customer's attention is particularly drawn to the provisions of clause 10 (Limitation of liability).

1. Interpretation

The following definitions apply in these Conditions.

Definitions:

Base Source: the Quotation, the Maintenance Contract or the Customer instruction received and accepted pursuant to clauses 4.1 and 4.2, as relevant.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 8.

Conditions: these terms and conditions as amended from time to time in accordance with clause 15.8.

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

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

Customer Default: has the meaning set out in clause 7.1.

Deliverables: in the case of Maintenance Services, any maintenance report or compliance certificate produced by the Supplier for the Customer as specified in the Quotation or the Maintenance Contract, as the case may be and in the case of Repair Services, the Supplier's repair report produced by the Supplier for the Customer.

Maintenance Contract: has the meaning set out in clause 3.1.

Maintenance Services: planned preventative maintenance of the Customer's System (including, without limitation, servicing, inspections, checks, certification, adjustments, modifications, and supply and installation of Spare Parts) of such a nature and at such times and frequency as are set out in the Quotation or the Maintenance Contract, as the case may be.

Order: the Customer's purchase order for the Services.

Quotation: the Supplier's final written quotation to the Customer for the Services which shall be relevant to these Conditions notwithstanding that, from the face of it, its validity has expired.

Repair Services: remedial services in relation to the Customer's System (including, without limitation, adjustments, modifications, and supply and installation of Spare Parts) which are either (1) Scheduled Repair Services or (2) Unscheduled Call-Out Repair Services.

Scheduled Repair Services: Repair Services scheduled by the parties in ordinary course, including but not limited to Repair Services identified as being required during the carrying out of Maintenance Services.

Services: the services, including the Deliverables if relevant, supplied by the Supplier to the Customer as set out in the relevant Base Source. The Services shall comprise either: (1) Maintenance Services; or (2) Repair Services.

Services Specification: any description or specification for the Services to the extent to which they are included or referred to in the relevant Base Source, including any relevant plans or drawings.

Spare Parts: all parts and subassemblies of the System supplied and installed in the System by the Supplier as part of the Services, where provided in the relevant Base Source.

Supplier: James Ramsay (Glasgow) Limited, registered in Scotland with company number SC011277 and having its registered office at 35 Weardale Lane, Queenslie Industrial Estate, Glasgow, Scotland, G33 4JJ.

Supplier Materials: has the meaning set out in clause 7.1(h).

System: the equipment and associated items (including but not limited to appliances, interconnecting pipework, valves, pumps and all ancillary equipment), on which the Services are to be carried out pursuant to the relevant Base Source.

Unscheduled Call-Out Repair Services: unscheduled Repair Services on an emergency call-out basis due to malfunction of the Customer's System.

Works: the supply of the Services.

2. Basis of contract (Maintenance Services without Maintenance Contract and Scheduled Repair Services)

The following provisions of this clause 2 shall apply only to Maintenance Services where no Maintenance Contract exists and to Scheduled Repair Services:

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acknowledgment of the Order (which may be by email) at which point and on which date the Contract shall come into existence. The Services will commence on the date agreed between the parties.
- 2.3 Subject to clause 5, in the event of any discrepancy or inconsistency between the Quotation and the Order, the terms of the Order shall prevail.

3. Basis of contract (Maintenance Services with Maintenance Contract)

The following provisions of this clause 3 shall apply only to Maintenance Services where a Maintenance Contract exists.

- 3.1 This clause 3 applies to Maintenance Services in respect of which a standalone written maintenance contract exists between the parties (**Maintenance Contract**). These Conditions apply to such Maintenance Services and the Contract shall comprise the Maintenance Contract and these Conditions.
- 3.2 In the event of any discrepancy or inconsistency between the Maintenance Contract and these Conditions, the terms of the Maintenance Contract shall prevail.

4. Basis of contract (Unscheduled Call-Out Repair Services)

The following provisions of this clause 4 shall apply only to Unscheduled Call-Out Repair Services.

- 4.1 The Customer shall request Unscheduled Call-Out Repair Services from the Supplier by telephone, by email or by preliminary purchase order (specifying a notional cost for the Services). Such call, email or preliminary purchase order constitutes an offer by the Customer to purchase Unscheduled Call-Out Repair Services in accordance with these Conditions.
- 4.2 Such offer shall only be deemed to be accepted by the Supplier by email acknowledgment or by commencement of the Services at which point and on which date the Contract shall come into existence. The Services will commence at the time and on the date agreed between the parties and the Charges will be calculated on a time and materials basis pursuant to clause 8.2 after the Services have been completed.
- 4.3 After the Unscheduled Call-Out Repair Services have been completed, the Supplier will email the Customer with the calculated Charges and request a (final) purchase order for the Services in that amount (or less the notional amount in the preliminary purchase order as relevant).

5. Basis of contract (general)

These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

6. Supply of Services and Services' Warranty

- 6.1 The Supplier shall supply the Services to the Customer in all material respects in accordance with the Base Source.
- 6.2 The Supplier shall use all reasonable endeavours to meet any performance dates agreed between the parties, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 6.3 The Supplier reserves the right to amend the Services Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 6.4 The Supplier warrants to the Customer that it will perform the Services with reasonable skill and care, in a good and workmanlike manner and in accordance with the Services Specification. In the event the Services do not conform to this warranty, Supplier's sole liability and Customer's exclusive remedy in any cause of action alleging breach of this warranty or any claim related to a defect in Services provided by Supplier is expressly limited to the re-performance of such Services or a refund of the amount paid for the non-conforming Services, at Supplier's option. In any event, Supplier's liability for non-conforming Services will not exceed the cost of the non-conforming Services.
- 6.5 Claims made under the warranty in clause 6.4 must be notified to Supplier prior to the point of acceptance by the Customer of the Services by signing the Supplier's tablet or a project completion order or equivalent on site. Failure so to notify a breach of this warranty or any other defect in Services shall mean that the Seller shall have no liability for them. The Customer shall be deemed to have accepted the Services if a relevant Customer representative is given the opportunity to sign the Supplier's tablet or a project completion order or equivalent but declines to do so and, notwithstanding this, permits the Supplier's engineer to leave site without notifying a breach of warranty or defect in Services to the Supplier.
- 6.6 Acceptance or deemed acceptance of the Services pursuant to clause 6.5 shall not be affected by the Deliverables being produced by the Supplier for the Customer after the Supplier's engineer has left site.
- 6.7 The warranty in clause 6.4 shall not apply to any Spare Parts supplied by the Supplier but manufactured by a third party, in respect of which the Customer shall only be entitled, in conjunction with the Supplier, to the benefit of any warranty or guarantee as is given by the manufacturer to the Supplier and/or to the Customer. For the avoidance of doubt, no warranty is given by the Supplier to the Customer in respect of any goods or materials which are "free issued" by the Customer.
- 6.8 The Supplier shall not be liable for defective Services pursuant to clause 6.4 if the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer (including but not limited to any pipework route) or due to the Customer's failure to operate and/or maintain the System in accordance with manufacturer's instructions.
- 6.9 Except as provided in clause 6.4 above, Supplier makes no other warranty, express or implied, including but not limited to any warranty of merchantability or fitness for any particular purpose, and the Supplier shall have no other warranty liability to the Customer.

7. Customer's obligations

- 7.1 The Customer shall:
 - (a) ensure that the terms of the Order or the Maintenance Contract, as relevant, and any information it provides in relation to the Services Specification are complete and accurate;
 - (b) co-operate with the Supplier in all matters relating to the Services;

- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (g) comply with all applicable laws, including health and safety laws and the Bribery Act 2010;
- (h) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- (i) comply with any additional obligations or conditions noted in the relevant Base Source.

7.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 7.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

8. Charges and payment

8.1 Subject to clause 8.2, the Charges for the Services shall be as set out in the Order or Maintenance Contract, as relevant.

8.2 The Charges for the Unscheduled Call-Out Repair Services shall be calculated on a time and materials basis:

- (a) the Charges shall be calculated in accordance with the Supplier's prevailing hourly rates or any rates which have been agreed with the Customer in writing;
- (b) the Supplier shall be entitled to charge a higher, premium hourly rate for any Services provided out of hours. "Out of hours" for these purposes shall mean any hours worked on a holiday and any hours outside Monday-Friday (each inclusive) 8am to 4.30pm; and
- (c) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

8.3 Unless agreed otherwise in the Order or the Maintenance Contract as relevant, the Supplier shall invoice the Customer on acceptance or deemed acceptance of the Services pursuant to clause 6.5.

8.4 The Customer shall pay each invoice submitted by the Supplier:

- (a) within 30 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

- 8.5** All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 8.6** If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 11, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 8.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 8.7** All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

9. Intellectual property rights

- 9.1** All intellectual property rights in or arising out of or in connection with the Works (other than intellectual property rights in any materials or drawings provided by the Customer) shall be owned by the Supplier.
- 9.2** The Supplier grants to the Customer a fully paid-up, worldwide, non-exclusive, royalty-free licence to use the Deliverables to make use of and maintain the Works, in its business.

10. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 10.1** References to liability in this clause 10 include every kind of liability arising under or in connection with the Contract including liability in contract, delict, tort (including negligence), misrepresentation, restitution or otherwise.
- 10.2** Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence; or
 - (b) fraud or fraudulent misrepresentation.
- 10.3** Subject to clause 10.2, the Supplier's total liability to the Customer under or in connection with the Contract shall not exceed the total Charges payable to the Supplier under this Contract or the annual amount payable to the Supplier under any relevant Maintenance Contract.
- 10.4** This clause 10.4 sets out specific heads of excluded loss. The following types of loss are wholly excluded:
- (i) loss of profits;
 - (ii) loss of sales or business;
 - (iii) loss of agreements or contracts;
 - (iv) loss of anticipated savings;
 - (v) loss of use or corruption of software, data or information;
 - (vi) loss of or damage to goodwill; and

(vii) indirect or consequential loss.

10.5 The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 6. In view of these commitments, the terms implied by sections 11C, 11D and 11E of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

10.6 This clause 10 shall survive termination or expiry of the Contract.

11. Termination

11.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of fourteen days after being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

11.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

11.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 11.1(b) to clause 11.1 (d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

12. Consequences of termination

12.1 On termination of the Contract:

- (a) 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 shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

12.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

12.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

13. Confidentiality

13.1 Each party undertakes that it shall not at any time during the Contract and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.2.

13.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 13; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

14. Force majeure

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (a Force Majeure Event). The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for at least three months, the party not affected may terminate the Contract by giving fourteen days' written notice to the affected party.

15. General

15.1 Assignment and other dealings. Neither party may assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the other party.

15.2 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address; or
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second business day after posting.

15.3 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract.

15.4 Waiver.

- (a) A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

15.5 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

15.6 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

15.7 Third party rights. Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contract (Third Party Rights) (Scotland) Act 2017 for any third party to enforce or otherwise invoke any term of the Contract.

15.8 Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their representatives).

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

15.10 Jurisdiction. Each party irrevocably agrees that the Scottish courts shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.