

# TERMS AND CONDITIONS ( Revised 11.6.2019 )

## PART 1 DEFINITIONS AND INTERPRETATION

- 1.1 In this contract:
- 1.1.1 any reference to a statutory provision shall be deemed to include a reference to any statutory modification or re-enactment of it;
- 1.1.2 the clause or condition headings do not form part of this contract and shall not be taken into account in its construction or interpretation.
- 1.2 In these conditions the following terms shall have the following meanings:
- “the Supplier” means S K Heating and Cooling Limited of 229 Bristol Road, Gloucester, GL1 5TL
- “the Customer” means the customer identified on each Work Sheet, quotation or other Relevant Document.
- “Contract” means this Contract (or any Contract for the Sale, Repair Maintenance or Installation Services between the Supplier and the Customer).
- “the Goods” means any goods including whole Units, parts and components of or materials contained in them (a summary of which is contained in the relevant Work Sheet or where a Work Sheet has not been raised or does not specify all the Goods as detailed in the relevant quotation).
- “Equipment” means the Goods and/or any equipment, machines, parts or otherwise in respect of which the Customer engages the Supplier (a summary of which is contained in the relevant Work Sheet or where a Work Sheet has not been raised or does not specify all the Goods as detailed in any Relevant Document).
- “Price” means the price stated on each quotation, Work Sheet, invoice or other Relevant Document always provided that where there is any discrepancy between the Price stated on any of the aforesaid the Price on the invoice shall prevail.
- “Relevant Document” means any quotation, survey, letter or other document not specifically defined pertaining to Goods or services provided by the Supplier to the Customer produced and signed by the Supplier.
- “Maintenance Services” means any routine maintenance or servicing of any Equipment.
- “Repair” or “Repairs” means any work of any kind carried out by the Supplier on the Equipment that does not form part of the installation of new Goods for the first time or Maintenance Services as detailed in Part 4 and the relevant Work Sheet.
- “Work Sheet” means the document headed “Work Sheet” completed by the Supplier and which refers therein to these terms and conditions.
- “Unit” means any piece of Equipment made up of various parts that together make a single item e.g. an air conditioning unit.
- “Commencement Date” means the commencement date specified in any relevant Work Sheet or Relevant Document whichever is the earlier.
- “Contract Date” means the Commencement Date or the date upon which the Supplier's quotation is accepted in writing by the Customer whichever is the earlier.
- “Warranty” means the Supplier's Warranty as defined by Part 7 of these conditions.

## PART 2 QUOTATIONS AND PRICE AND PAYMENT FOR THE SUPPLY OF GOODS, MAINTENANCE SERVICES AND REPAIRS; PASSING OF RISK AND TITLE

- 2.1 Where provided quotations by the Supplier unless otherwise stated on them shall be open for acceptance within 30 days of the date of the quotation.
- 2.2 The Price invoiced is calculated in respect of the Goods actually supplied, Maintenance Services actually carried out and Repairs actually done irrespective of the items specified in any quotation.
- 2.3 The Supplier shall have the right to adjust its prices for any increase in the price of materials, parts, labour, transport, changes in work or delivery schedules or quantities or any other costs of any kind arising for any reason after the Contract Date. Price changes shall take effect on the date of service on the Customer of notice of the change.
- 2.4 All invoices are payable in sterling on the date stated in the Supplier's invoice and in no circumstances shall the Customer be entitled to make any deduction or withhold payment for any reason at all.
- 2.5 Without prejudice to any other rights of the Supplier if the Customer fails to pay the invoice price by the due date the Customer shall not be allowed any discount given in that invoice or in any other way agreed and shall pay interest on any overdue amount from the date of which payment was due to the date of actual payment (whether before or after judgment) on a daily basis at a rate of 8% per annum and reimburse to the Supplier all costs and expenses (including administrative and legal costs) incurred in the collection of any overdue amount.
- 2.6 For the Purposes of section 12 of the Sale of Goods Act 1979 the Supplier shall transfer only such title or rights in respect of the Goods as the Supplier has and if the Goods are purchased from a third party shall transfer only such title or rights as that party had and has transferred to the Supplier.
- 2.7 Notwithstanding the earlier passing of risk, title in the Goods shall remain with the Supplier and shall not pass to the Customer until the amount due under the invoice for them (including interest and costs) has been paid in full.
- 2.8 Until title passes the Customer shall hold the Goods as bailee for the Supplier and shall store or mark them so that they can at all times be identified as the property of the Supplier.
- 2.9 The Supplier may at any time before title passes and without any liability to the Customer;
- 2.9.1 repossess and dismantle and use or sell all or any of the Goods and by doing so terminate the Customer's right to use, sell or otherwise deal in them; and
- 2.9.2 for that purpose (or determining what if any Goods are held by the Customer and inspecting them) enter any premises of or occupied by the Customer.
- 2.10 The Supplier may maintain an action for the price of any Goods notwithstanding that title in them has not passed to the Customer.
- 2.11 The Supplier shall be entitled to allocated any money paid by the Customer in respect of any matter to any outstanding invoice.

## PART 3 SUPPLY AND INSTALLATION OF GOODS

- 3.1 The Goods are delivered to the Customer when the Supplier makes them available to the Customer, the Customer's agent or any carrier (who shall be deemed to be the Customer's agent whoever pays its charges) at the Supplier's premises or at any other delivery point agreed by the Supplier.
- 3.2 Risk in the Goods passes when they are delivered in accordance with condition 3.1 notwithstanding the conditions contained in any other part of this Contract the Customer shall be responsible for insuring the Goods at all times after delivery.
- 3.3 The Supplier may at its discretion deliver the Goods by installments in any sequence.
- 3.4 Where the Goods are delivered by installments or where the Supplier is delivering more than one Unit no default or failure by the Supplier in respect of any one or more installments shall vitiate the Contract in respect of the Goods previously delivered or undelivered Goods.
- 3.5 Any dates quoted by the Supplier for the delivery of the Goods are approximate only and shall not form part of the Contract and the Customer acknowledges that in the performance expected of the Supplier no regard has been paid to any quoted delivery dates.
- 3.6 If the Customer fails:
- 3.6.1 to take delivery of the Goods or any part of them on the due date; or
- 3.6.2 to provide any instructions or documents required to enable the Goods to be delivered on the due date; the Supplier may on giving written notice to the Customer store or arrange for the storage of the Goods and on the service of the notice;
- 3.6.3 risk in the Goods shall pass to the Customer;

- 3.6.4 delivery of the Goods shall be deemed to have taken place; and
- 3.6.5 the Customer shall pay to the Supplier all costs and expenses including storage any redelivery and insurance charges arising from its failure.
- 3.7 The Supplier shall not be liable for any penalty, loss, injury, damage or expense arising from any delay or failure in delivery or performance from any cause at all nor shall any such delay or failure entitle the Customer to refuse to accept any delivery or performance of or repudiate the Contract.
- 3.8 Where the Contract is for installation and supply of the Goods the Supplier shall deliver the Goods to the premises at the Customer's address and shall install it or them in working order in a position selected by the Customer (subject to any survey or recommendations of the Supplier).
- 3.9 Upon installation of the Goods the Supplier shall recommend the period after which the first Maintenance Service should be carried out and the intervals thereafter subject to the Supplier's right to alter this recommendation at any time.
- 3.10 The Price paid in respect of the installation and commissioning of Goods shall be in addition to the price paid for Maintenance Services.
- 3.11 Whether or not the Goods were installed by the Supplier the Customer shall not interfere with or adjust the Goods in any way but on any fault occurring shall immediately inform the Supplier who shall without delay Repair or replace it subject to the conditions of the Contract. The Customer shall compensate the Supplier in full on demand for all loss and damage to the Goods caused by willful misuse of them.
- 3.12 The Customer shall keep the Goods in good condition and maintained in accordance with the manufacturers and Supplier's recommendation until title in the Goods passes to the Customer and in any event in accordance with the conditions this Contract.

## PART 4 REPAIRS AND MAINTENANCE SERVICES

- 4.1 The Supplier may agree to enter in to a contract for Maintenance Services in respect of any Goods and may at its discretion enter into a contract for Maintenance Services in respect of any of the Customer's Equipment. A summary of the Equipment for which Maintenance Services are to be supplied shall be detailed on the Work Sheet or any Relevant Document.
- 4.2 The Repair services and Maintenance Services will be provided between 9 a.m. and 5 p.m. Monday to Friday excluding bank and local holidays.
- 4.3 The Supplier will endeavor to respond promptly and if possible within 24 hours for requests for Repairs or Maintenance Services.
- 4.4 The Maintenance Services will include relevant checks set out in the Supplier's Maintenance Report Sheet from time to time in place but will not extend to:
- modifications or additions to the Equipment;
  - repairs to the Equipment;
  - peripheral items and consumables (lists available);
  - items which in the Supplier's opinion can no longer be subject to economical maintenance and for which the Supplier has submitted or will submit a refurbishment cost estimate payable in addition to the Maintenance Charge;
  - defects resulting, in the Supplier's reasonable opinion from misuse or neglect of or accident to the Equipment or failure to follow the instructions or advice of the Supplier or the Equipment manufacturer;
  - work carried out on the Equipment that falls outside the Supplier's recommended servicing intervals;
  - the Repair or replacement of parts which the Supplier requires to carry out away from the site named overleaf but which the Customer for security reasons or otherwise is unwilling to release to the Supplier.
- 4.5 Maintenance charges are payable as set out in any Relevant Document.
- 4.6 Repair and any additional services (including emergency visits outside the hours specified in condition 4.2 and the cost of replacement parts not covered by a parts warranty given by the Supplier will be the subject of extra charges in accordance with the Supplier's terms then in force payable in 30 days of the date of the Supplier's invoice or as specified in any Relevant Document.
- 4.7 The Supplier may:
- 4.7.1 adjust its charges for Maintenance Services by written notice not later than on 30 days notice;
- 4.7.2 if the Customer does not pay the (adjusted) charge for Maintenance Services on the due date terminate the contract immediately and without notice (and where the Goods for which the Maintenance Services are provided remain the property of the Supplier pursuant to condition 2.7 above the Supplier may rely on condition 2.7 to 2.11 in respect of recovery for the cost of the Price of the Goods, any outstanding maintenance charges and any other sum due to the Supplier from the Customer pursuant to these conditions.
- 4.8 To facilitate the provision by the Supplier of Maintenance Services the Customer shall:
- 4.8.1 keep and operate the Equipment in a proper and prudent manner and ensure that only competent trained employees are allowed to operate it;
- 4.8.2 use the Equipment in a suitable environment with proper power supplies in accordance with instructions and advice of the Equipment manufacturer and the Supplier;
- 4.8.3 not move the Equipment or make any addition, modification or adjustment to it without the Supplier's prior written consent;
- 4.8.4 maintain and make available to the Supplier records of the operation, maintenance and any malfunction of the Equipment; and
- 4.8.5 provide such times as the Supplier reasonable requires at no cost to the Supplier all documentation, software, materials and services necessary for the maintenance and testing of the Equipment, access to the Equipment, use of the Customer's workshop and repair facilities and the co-operation of the Customer's personnel in diagnosing and overcoming any malfunction of the Equipment. The supplier will not be held liable for the incorrect alteration, removal and/or disposal of any equipment decommissioned directly by the Customer
- 4.9 The Supplier shall use its reasonable endeavors to keep the Equipment in efficient operating condition but shall have no liability at all for any loss or damage of any kind arising from any stoppage, breakdown or failure of the Equipment however occasioned.
- 4.10 The Supplier shall have no liability for any damage to the Customer's property unless occasioned by the Supplier's negligence.
- 4.11 Replaced parts are the Supplier's property unless replaced by parts supplied by the Customer at no cost to the Supplier and the conditions of this contract pertaining to Goods shall apply to them.
- 4.12 In respect of any agreement for Maintenance Services the same shall commence on the Commencement Date and remain in force until it is terminated by either party on 3 months notice. This condition does not apply to any other service provided by the Supplier to the Customer.

## PART 5 SCOPE OF THE CONTRACT

- 5.1 Under no circumstances shall the Supplier have any liability of whatever kind for:
- 5.1.1 any defects resulting from wear and tear, accident, improper use by the Customer or use by the Customer except in accordance with the instructions or advice of the Supplier or the manufacturer of any Goods or neglect or from any instructions or material provided by the Customer;
- 5.1.2 any Goods which have been adjusted, modified or repaired except by the Supplier;
- 5.1.3 the suitability of any Goods for any particular purpose or use under specific conditions whether or not the purposes or conditions were known or communicated to the Supplier save where:

## TERMS AND CONDITIONS ( Revised 11.6.2019 )

5.1.3.1 the Supplier has carried out a survey and made recommendations regarding the suitability of certain Goods and/or their siting and/or their maintenance; and

5.1.3.2 the Goods have been supplied, sited, maintained and repaired in accordance with those recommendations; and

5.1.3.3 the Customer's circumstances or the information provided by the Customer to the Supplier used to form the basis of that recommendation have not altered;

5.1.4 any substitution by the Customer of any material or components not forming part of any specification of the Goods agreed in writing by the Supplier;

5.1.5 any descriptions, illustrations, specifications, figures as to performance, drawings and particulars of weights and dimensions submitted by the Supplier contained in the Supplier's catalogues, price lists, or elsewhere since they are merely intended to represent a general idea of the Goods and not form part of the contract of be treated as representations;

5.1.6 any technical information recommendations statements or advice furnished by the Supplier its servants or agents not given in writing in response to a specific written request from the Customer before the Contract is made; or

5.1.7 any variations in the quantities or dimensions of any Goods or changes of their specification or substitution of any material or components if the variation or substitution does not materially affect the characteristics of the Goods and the substituted material or components are of a quality equal or superior to those originally specified.

### Extent of liability

5.2 The Supplier shall have no liability to the Customer for any loss or damage of any nature (including but not restricted to damage to any of the Customer's property) arising from any breach of any express or implied warranty or condition of the Contract or any negligence, breach or statutory or other duty on the part of the Supplier or in any other way out of in connection with the performance or purported performance of or failure to perform the Contract except for death or personal injury resulting from the Supplier's negligence as expressly stated in these conditions.

5.3 If the Customer establishes that Goods have been delivered damaged or are not of the correct quantity or do not comply with their description the Supplier shall at its option replace with similar Goods any Goods which are missing lost or damaged or do not comply with their description, or allow the Customer credit for their invoice value or Repair any damaged Goods subject to the terms of this Contract.

5.4 If the Customer establishes that any Goods are defective and the Supplier shall at its option replace with similar Goods or Repair any defective Goods allow the Customer credit for their invoice value or to the extent that the Goods are not of the Supplier's manufacture assign to the Customer (as far as the Supplier is able so to do) any warranties given by the manufacturer of the Goods to the Supplier.

5.5 The delivery of any repaired or replacement Goods shall be at the Supplier's premises or other delivery point specified for the original Goods.

5.6 Where the Supplier is liable in accordance with this condition in respect of only some or part of the Goods the Contract shall remain in full force and effect in respect of the other or other parts of the Goods and no set-off or other claim shall be made by the Customer against or in respect of such other or other parts of the Goods.

5.7 No claim against the Supplier shall be entertained for any defect arising from any design or specification provided or made by the Customer or if any adjustments, alterations or other work has been done to the Goods by any person except the Supplier.

5.8 The Supplier shall not be liable where any Goods, the Price of which does not include carriage, are lost or damaged in transit and all claims by the Customer shall be made against the carrier. Replacements for such lost or damaged Goods will, if available, be supplied by the Supplier at the Prices ruling at the date of dispatch.

5.9 In no circumstances shall the liability of the Supplier to the Customer under the Contract exceed the invoice value of the Goods.

### Claims notification

5.10 Any claim for non-delivery of Goods shall be notified in writing by the Customer to the Supplier within 10 days of the date of the Supplier's invoice.

5.11 Any claim that any Goods have been delivered damaged are not of the correct quantity or do not comply with their description shall be notified by the Customer to the Supplier within 7 days of their delivery.

5.12 Any alleged defect, failure of Repair or concern regarding maintenance shall be notified by the Customer to the Supplier within 7 days of the delivery of the Goods or date of Repair or maintenance visit or; in the case of defect which is not reasonably apparent on inspection, within 7 days of the defect coming to the Customer's attention and in any event within 3 calendar months.

5.13 Any claim under this condition must be in writing and must contain full details of the claim including the part numbers of any allegedly defective Goods.

5.14 The Supplier shall have no liability with regard to any claim in respect of which the Customer has not complied with the claims procedures in these conditions.

### PART 6 GENERAL

6.1 The Supplier may sub-contract the performance of the contract in whole or in part.

6.2 The Customer shall not assign (without first obtaining the Supplier's written consent) the contract in whole or in part.

6.3 The Supplier shall have a lien on all the Customer's property in the Supplier's possession for all amounts due at any time from the Customer and may use, sell or dispose of that property as agent for and at the expense of the Customer and apply the proceeds in and towards the payment of such amounts on 28 days notice in writing to the Customer. On accounting to the Customer for any balance remaining after payment of any amounts due to the Supplier and the costs of sale or disposal the Supplier shall be discharged of any liability in respect of the Customer's property.

6.4 The Supplier may at its discretion suspend or terminate the supply of any Goods or any agreement for the provision of Maintenance Services if the Customer fails to make any payment when and as due or otherwise defaults in any of his obligations under the Contract or any other contract with the Supplier or becomes insolvent, has an administrative receiver appointed of its business or; is compulsorily or voluntarily wound up or the Supplier bona fide believes that any of those events may occur, and in case of termination may forfeit any deposit paid.

6.5 If the Goods are manufactured in accordance with any design or specification provided or made by the Customer the Customer shall compensate the Supplier in full on demand for all claims, expenses and liabilities of any nature in connection with them, including any claim whether actual or alleged, that the design or specification infringes the rights of any third party.

6.6 Except for any which is expressly agreed to be included in the Contract all tools, patterns, materials, drawings, specifications and other data provided by the Supplier shall remain its property and all technical information, patentable or unpatentable, copyright and registered designs arising from the execution of any orders shall become the property of the Supplier.

6.7 The Supplier shall be entitled to recover from the Customer any costs incurred (including, but not restricted to, the Supplier's own administrative or engineering costs, legal costs and bailiff's costs) by the Supplier in recovering any sums due to the Supplier by the Customer including any action taken by the Supplier pursuant to condition 2.7 or 6.3 whether or not legal proceedings are actually issued.

6.8 This Contract shall be governed by English law and the Customer consents to the exclusive jurisdiction of the English courts in all matters regarding it except to the extent that the Supplier invokes the jurisdiction of the courts of any other country.

6.9 Any notice given under this contract shall be in writing and may be served:

6.9.1 personally by registered or recorded delivery mail;

6.9.2 by telex or facsimile transmission (the latter confirmed by telex or post); or

6.9.3 by any other means which any party specifies by notice to the others.

6.10 Each party's address for the service of notice shall be its above mentioned address or such other address as it specifies by notice to the others.

6.11 A notice shall be deemed to have been served:

6.11.1 if it was served in person at the time of service;

6.11.2 if it was served by post 48 hours after it was posted;

6.11.3 if it was served by telex or facsimile transmission, at the time of transmission;

6.12 The Supplier may at any time by written notice (in addition to any other rights) terminate this contract or suspend its performance of all or any of its obligations arising under it immediately and without liability for compensation or damages if:

6.12.1 any payment of money payable by the Customer under this deed is not paid on the due date whether demanded or not;

6.12.2 the Customer fails to comply in all material respect with the Contract, any circumstances arise which give reasonable grounds in the Supplier's opinion for its belief that the Customer has or may become incapable of performing its obligations under this contract;

6.12.3 the Customer convened a meeting of its creditors or suffers a petition to be presented or a meeting to be convened or other action to be taken with a view to its liquidation except (with the written approval of the Supplier) for the purposes of and followed by amalgamation or reconstruction;

6.12.4 for any reason anything is done or omitted to be done as a result of which the Customer is or is liable to be struck of the Register of Companies;

6.12.5 an administration order is made in relation to the Customer;

6.12.6 the Customer makes or seeks to make any composition or arrangement with its creditors;

6.12.7 the Customer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

6.12.8 the Customer purports to assign the burden or benefits or change the benefits of this contract;

6.12.9 if any party takes or threatens any action including but without limitation the commencement of legal proceedings to enforce or foreclose any lien or mortgage over or in respect of any property of the Customer or to forfeit any estate or interest of the Customer in any of their premises or enters or seeks to enter into possession of them.

6.13 Except as expressly provided for in this contract no variation or amendment of this contract or oral promise or commitment related to it shall be valid unless committed to writing and signed by or on behalf of both parties.

6.14 Orders for Goods which have to be made or ordered especially for the Customer will be charged in full unless written notice of cancellation is received not later than 8 weeks before the expected delivery date quoted in the Customer's order acknowledgment and manufacture of them or any components for them has not commenced on the date of that notice or in the case of items that have to be especially ordered the Supplier has not ordered the same. Stock items may be cancelled by written notice at any time before the Goods are allocated to the Contract but if a cancellation notice is received after the Goods have been allocated to the Contract then a packing and handling charge will be payable by the Supplier.

6.15 Site service and maintenance calls, deliveries and remedial works visits (site visits) are pre-arranged and/or as agreed at contract start up. In the event of a cancellation of a site visit, SK Heating and Cooling Ltd requires a minimum of 24 hours' notice of cancellation, notice of cancellation to be given in writing in every instance. Site visits which are aborted and have not been cancelled in the above prescribed way will incur a standard cancellation charge of £180 per engineer, £360 per team of two per half day. Cancellation charges will be levied in half day blocks only. In accepting these terms the client agrees these charges will be payable and do not require an order of any sort.

6.16 Standing time will be charged at a rate of £180 per engineer per half day or £360 per team of two, levied in half day blocks. In accepting these terms the Client agrees these charges will be payable and do not require an order of any sort.

6.17 Any works required over and above the initial scope of works will also be chargeable and will require a Variation Order/Instruction before these additional works can be undertaken.

6.18 In situations where prices are submitted on client request without a site survey or inspection of detailed drawings and/or asset lists, SK Heating and Cooling Ltd reserves the right to charge for work incurred beyond the hours or equipment specified in the quotation.

6.19 The Supplier shall not be liable for any failure in the performance of any of its obligations under this Contract caused by factors outside his control.

6.20 The Contract is subject to a 7 day 'cooling off period'. Cancellations in writing should be received by the Company within 7 working days of the order agreement. Notice of contract termination should be received not later than 3 months prior to any forthcoming service visit/s, if notice is not received full charges will apply

6.21 Construction work is governed by The Construction (Design and Management) Regulations 2015 which impose obligations on all parties to a construction project, including clients. For an overview of your obligations please go to: [www.citb.co.uk/health-safety-and-other-topics/health-safety/construction-design-and-management-regulations/cdm-guidance-documents/](http://www.citb.co.uk/health-safety-and-other-topics/health-safety/construction-design-and-management-regulations/cdm-guidance-documents/). Please note that we will not be acting as Principal Contractor or Principal Designer unless we have specifically agreed to do so in writing or you are a domestic client and we are required to do so by the Regulations.

### PART 7 WARRANTY

7.1 The Supplier will Repair or replace any Goods (including parts) the Customer can show have developed a fault without charge to the Customer for 12 months from the Commencement Date subject to the following:

7.1.1 the Customer must enter into an agreement for Maintenance Services and comply with the same;

7.1.2 the Customer must inform the Supplier of any fault immediately upon it becoming apparent and must follow the Supplier's recommendations as to action to be taken between the time the fault is developed and the time the Supplier inspects the Goods;

7.1.3 the Customer will be liable for the Supplier's call out charge and pay for the Supplier's time at hourly rate for the inspection of the Goods if the Customer purports to make a claim under this Warranty for Goods not covered by the same;

7.1.4 the Warranty does not cover ordinary wear and tear or consumable Goods;

7.1.5 the Customer is not in breach of any condition of the Contract in respect of any Goods or services supplied by the Supplier;

7.1.6 the Supplier shall not in any event have any liability to the Customer for damage to the Customer's property (including any of the Customer's property stored in the Customer's Equipment);

7.1.7 conditions 5.3 to 5.14 of the contract apply to this Warranty.

7.2 Where the Manufacturers provide a warranty that may be passed to the Customer the Supplier will provide that warranty but shall have no responsibility whatsoever in respect of any obligations on the Manufacturer specified therein.

**PART 8 PAYMENT TERMS** All invoice payments are due within 0 days of invoice date unless specifically agreed otherwise in writing.