

## TERMS & CONDITIONS OF PLANNED MAINTENANCE CONTRACT

### 1. DEFINITIONS

1.1 The following terms shall have the following meanings:

- (i) 'AAC&R' means Andrews Air Conditioning & Refrigeration Limited.
- (ii) 'Additional Work' means any work carried out on or in connection with the Equipment in addition to the Planned Maintenance Work.
- (iii) 'Contract' means the agreement consisting of these conditions, the Schedule and any amendments agreed between AAC&R and the Customer to provide the Planned Maintenance Works and Additional Works to the Customer or its successors or others for whom the said Customer is responsible.
- (iv) 'Customer' means the person or organisation identified as such in the Contract.
- (v) 'Equipment' means the plant or equipment identified in the Schedule.
- (vi) 'Planned Maintenance Works' means the work, details of which are set out in the Schedule.
- (vii) 'Quotation' means a quotation of AAC&R for any Additional Work.
- (viii) 'Schedule' means the schedule to these terms.
- (ix) 'Standard Maintenance Charge' means the charge stated as such in the Contract.
- (x) 'Service' means the Planned Maintenance Work and the Additional Work.

### 2. EXISTENCE AND SCOPE OF CONTRACT

- 2.1 Subject to any variation under Clause 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These conditions apply to all contracts for the provision of Services by AAC&R and 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 AAC&R. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of AAC&R which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

### 3. THE SERVICE

- 3.1 AAC&R shall carry out the Planned Maintenance Work described in and at the frequency or on the occasions set out in the Schedule.
- 3.2 AAC&R shall, with reasonable promptness during AAC&R's normal working hours, attend at the request of the Customer to carry out necessary Additional Work.
- 3.3 AAC&R shall subject to its availability supply parts and materials necessary to the carrying out of the Planned Maintenance Work and the Additional Work but does not warrant their availability.

### 4. THE CHARGES

- 4.1 The Customer shall pay the Standard Maintenance Charge stated and upon the terms set out in the Schedule.
- 4.2 The parties agree that AAC&R may review and increase the Standard Maintenance Charge annually.
- 4.3 In consideration for the provision of the Services the Customer shall pay the Standard Maintenance Charge together with the cost of any Additional Works and parts and materials supplied pursuant to Clause 2.3 as set out in the Quotation.
- 4.4 In the event that payment is not made in accordance with the agreed terms, either in full or otherwise, then the whole of the account whether due or not shall become payable and become overdue and be payable forthwith. Furthermore in the event of late or non payment in

accordance with these terms and conditions (or any other terms so agreed in writing), AAC&R reserve the right to rely on the Late Payment of Commercial Debts (Interest) Act 1998, and charge, at a daily rate, until payment, interest upon the debt then due at the rate prevailing at the date of default (currently 8% above the prevailing Bank of England base rate) together with the late payment charges set out in the Act, until payment or sooner settlement.

- 4.5 Without prejudice to any other remedy available to it, AAC&R shall be entitled to suspend provision of the Services without liability to the Customer for so long as any amount due to AAC&R remains unpaid and for up to six days after the Customer makes full payment of the amount due.

## 5. WARRANTY BY THE COMPANY

- 5.1 AAC&R warrants that it will perform the Services with reasonable skill and care.  
5.2 AAC&R warrants that the Customer shall have free and unencumbered title and enjoy quiet possession of any parts or materials supplied under this agreement and that such parts or materials shall be satisfactory quality and reasonably fit for their purpose.  
5.3 AAC&R does not give any warranty in regard to the performance of the Equipment.

## 6. LIMITATIONS OF LIABILITY

- 6.1 Unless otherwise provided in these Conditions under no circumstances shall AAC&R have any liability of whatever kind for:  
(a) Any damage to the Equipment, other than as caused by AAC&R.  
(b) Any damage caused to the property on which the Equipment is installed.  
6.2 Except as expressly provided elsewhere, AAC&R shall have no liability to the Customer for any loss or damage of any nature arising from any breach of any express or implied warranty or condition of the contract or any negligence, breach of statutory or other duty on the part of AAC&R, or in any other way out of or in connection with the performance or purported performance of or failure to perform the Contract.  
6.3 Except as expressly provided elsewhere in the Contract, AAC&R shall not be liable for any claims in respect of economic loss, loss of production, loss of profit, loss of opportunity loss of bargain or other indirect or consequential injury loss or damage caused directly or indirectly by any breach of the contract or any negligence on the part of AAC&R or on the part of any of its employees agents or others for whom it is responsible in connection with or arising out of the supply of the Equipment or the Services or the installation repair or maintenance of the Equipment or in connection with any statement given or made, or failure to give advice or warning on behalf of AAC&R except that such exclusion shall not apply to any implied term as to quality or fitness for any general or particular purpose where the Customer deals as a Consumer as defined in Section 12 of the Unfair Contract Terms Act 1977.  
6.4 Nothing in this agreement limits or excludes the liability of AAC&R:  
(a) for death or personal injury resulting from negligence; or  
(b) for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by AAC&R; or  
(c) for any liability incurred by a Customer dealing as a Consumer as a result of any breach by AAC&R of the clause as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.  
6.5 AAC&R'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 this agreement shall be limited to the Standard Maintenance Charge actually paid by the Customer over the preceding 12 months.

## 7. OBLIGATIONS OF THE CUSTOMER

- 7.1 The Customer warrants that all Equipment has previously been maintained in accordance with the manufacturer's standard specification. In the event of a breach of the warranty in this **Clause 7.1** AAC&R shall be under no liability to provide the Services and may terminate the Contract without liability to the Customer immediately upon giving notice to the Customer.

- 7.2 If the Services are to be performed at the premises of the Customer or at its request at the premises of any other person then the Customer warrants and undertakes to AAC&R throughout the term of the Contract as follows:
- (a) That the Customer has full power and authority to enter into the contract and to permit AAC&R to perform the Services and that all necessary consents authorising the Services have been obtained.
  - (b) To grant to AAC&R's employees agents and contractors full and unrestricted safe access to the site as AAC&R shall from time to time require in order to discharge its obligations under the Contract
  - (c) To make available free of charge at the site such facilities as AAC&R shall reasonably require to enable the Services to be performed safely expeditiously and without any interruption by any activity of the Customer including but without limitation adequate and safe working space, storage, office furniture equipment and all electrical mains power water and/or other fuel supplies and cables necessary for the Services, suitably rated fused switch isolator between the incoming mains distribution board and AAC&R's tools plant and equipment, any craneage hoisting and/or lowering gear specialist lifting tackle scaffolding ladders and removable platforms.
  - (d) To provide adequate security and protection for all the tools, plant and equipment and materials on site.
  - (e) To take all reasonable precautions to protect the health and safety of AAC&R's employees agents and contractors while carrying out the services.
  - (f) To allow AAC&R's employees, agents and contractors reasonable access to the Customer's employees for the purpose of investigation and discussion in connection with the Services and to communicate the identity of the employee who shall act as the contact point and channel of communication with AAC&R in the provision of the Services.
  - (g) Not to carry out any maintenance, alteration, adjustment or other such work on the Equipment without forthwith notifying the AAC&R of such work.
- 7.3 Without prejudice to any other right or remedy it possesses under the Contract, AAC&R may claim the amount of any loss and/or expense incurred by it resulting from any breach by the Customer of its obligations under **Clause 7.1**.

## 8. TERMINATION

- 8.1 This Contract shall commence on the date stated in the Schedule and shall continue for a period of 5 years or such other minimum contract period as specified in the Schedule and shall continue thereafter until terminated.
- 8.2 The Customer can terminate the Contract at any time after expiry of the minimum contract period by giving not less than 3 calendar months notice.
- 8.3 Without prejudice to any other rights or remedies which the parties may have, AAC&R may terminate the Contract without liability to the Customer immediately on giving notice to the Customer if:
- (a) the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment; or
  - (b) the Customer commits a breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 21 days of that party being notified in writing of the breach; or
  - (c) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or
  - (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
  - (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party; or

- (f) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party; or
  - (g) a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or
  - (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or
  - (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
  - (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clauses 8.3(c) to condition 8.3(i) (inclusive); or
  - (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
  - (l) there is a change of control of the other party (as defined in section 574 of the Capital Allowances Act 2001).
- 8.4 On termination of the Contract (however arising), all sums payable by the Customer to AAC&R shall become immediately due and owing and the accrued rights of the parties as at termination shall not be affected.

## 9. WAIVER

- 9.1 AAC&R may release or compromise the Customer's liability under the Contract or grant to the Customer time or other indulgence without affecting the Customer's liability.

## 10. FORCE MAJEURE

- 10.1 AAC&R shall not be liable for any failure in the performance of any of its obligations under this agreement caused by factors outside its control.

## 11. VARIATION

- 11.1 AAC&R reserve the right to amend details of the Planned Maintenance Works as set out in the Schedule by giving not less than 1 months' notice to the Customer.
- 11.2 AAC&R reserves the right to amend the scheduling and routines of the Maintenance Works.

## 12. SETTLEMENT OF DISPUTES

- 12.1 Should any dispute or difference arise between the parties under the contract at any time including after its completion and whether before or after the termination, abandonment or breach of the contract then either party shall have the right to refer that dispute or difference for adjudication in accordance with the following conditions. For the avoidance of doubt, the following conditions are drafted to comply with Section 108 of the Housing Grants, Construction and Regeneration Act 1996 and any doubts or ambiguities shall be construed accordingly. Nothing in this clause shall be construed to deprive either party of its rights to commence proceedings in the Courts.
- 12.2 If any such dispute or difference arises then one party ("the Applicant") may serve upon the other ("the Responder") a notice in writing ("the Notice") which shall state in sufficient detail the nature of the dispute, the remedy sought together with a request to refer the dispute for adjudication.
- 12.3 The Notice under **Clause 12.2** shall also be served forthwith by the Applicant on the Adjudicator named in AAC&R's Quotation or if not so named, forthwith either upon his identity being subsequently agreed or upon him being appointed under **Clause 12.4** below as the case may be.
- 12.4 In the event that no Adjudicator is named in the contract, then the parties shall within four days of the Notice being served upon the Respondent agree upon a suitable Adjudicator. Failing agreement the Applicant shall and the Respondent may apply for an appointment to the

Academy of Construction (whilst at the same time serving a copy of the application on the other party) whose written notification of an appointment of an Adjudicator shall be served on both parties and shall be binding on both parties.

### **13. ADJUDICATION**

- 13.1 The adjudication is to be carried out in accordance with **Andrews Sykes Group plc Rules for Adjudication – Construction projects** (a copy of which is available at [www.andrews-sykes.com](http://www.andrews-sykes.com) or shall be provided on request) and with the object of securing the appointment of and the referral of the dispute to the Adjudicator within seven days and requiring a Decision by him within twenty-eight days of such referral.

### **14. LAW AND JURISDICTION**

- 14.1 English law shall govern this Contract and the Customer consents to the exclusive jurisdiction of the English Courts in all matters regarding this agreement except to the extent that the Company invokes the jurisdiction of the Courts of any other country.

### **15. NOTICES**

- 15.1 To be served effectively, any notice or communication in writing required to be given pursuant to these Conditions shall in the case of a notice or communication to AAC&R be sent to it at its address stated the Schedule and shall in the case of a notice or communication to the Customer at its registered office if the Customer is a company and in any other case to the address of the Customer last known to AAC&R. Any such notice or communication may be given by registered or recorded delivery post or facsimile transmission. To prove service in the case of a notice given by facsimile transmission it shall be sufficient to show that it was despatched to the correct facsimile number. Service shall be deemed to have been effected 24 hours after despatch by post or facsimile transmission.