

TERMS AND CONDITIONS OF CARSHALTON BOILER SERVICES LTD (the "Company")

These Terms and Conditions apply to all Services and Goods provided by the Company

1 Definitions

- 1.1 Acceptance Form – shall mean a form providing a Quotation for installation work and signed by the Customer;
- 1.2 Contract – shall mean an agreement for Goods and Services between the Customer and the Company including these terms and conditions (the "Terms) Job Sheet; Extra Works Sheet, Acceptance Form or Cover Plan 1,2,3;
- 1.3 Contract Price – shall mean the total amount agreed to be paid by the Customer for the Goods and Services as set out on the Job Sheet, Acceptance Form , Extra Works Sheet or Cover Plan 1,2,3 Contract as may be amended by agreement from time to time;
- 1.4 Cover Plan 1,2,3 – shall mean a contract entered into whereby the Company provides various levels of service and repair as set out in the Cover Plan 1,2,3;
- 1.5 Customer – shall mean the person, firm or company for whom the Company provides Goods or Services;
- 1.6 Due Date – shall mean date payment of an invoice is to be made in accordance with the Terms;
- 1.7 Extra Works Sheet – shall mean written list of Services or Goods agreed between the Customer and the Company in addition to those set out in an Acceptance Form Quotation or Job Sheet;
- 1.8 Goods – shall mean the products supplied by the Company pursuant to the Contract;
- 1.9 Guarantee Periods – shall (unless otherwise stated) mean the period of 365 days when applied to any parts or boilers installed but if applying to Services provided by the Company, "Services Guarantee Period", the Guarantee Period shall be one month from the date the Company completed the Services;
- 1.10 Hourly Labour Charge – shall mean such hourly charge advised by the Company for Services which is chargeable from the point of attendance at the Premises and covers diagnosis of faults as well as provision of Services and may include travelling time to acquire Goods but shall not be applied in circumstances where the Company is unable to diagnose a fault;
- 1.11 Initial Visit – shall mean the first visit to the Premises by an Engineer made within one month of signing the Cover Plan 1,2,3
- 1.12 Installation – shall mean the installation of a new boiler or system or pipes rather than service and breakdown of the Customer's existing product;
- 1.13 Interest Rate – shall mean 4% above the base rate of NatWest Bank plc or any other High Street Bank which may be substituted;

- 1.14 Job Sheet – shall mean a document operating as an invoice to the Customer together with identification of Customer and Specification additional provisions and quotation;
- 1.15 Premises - shall mean the buildings and premises owned or leased by the Customer at which the Contract is to be performed;
- 1.16 Quotation – shall mean the estimate of charges and the Goods and Services to be provided with respect to installation of a new boiler as set out on the Acceptance Form or Job Sheet and entitled “Quotation” and shall be valid for acceptance for 30 days;
- 1.17 Services – shall mean a description of all works to be carried out by the Company as set out on a Job Sheet, Acceptance Form or Cover Plan 1,2,3 or otherwise agreed in writing between the parties;
- 1.18 Snagging – shall mean those matters which the Company has a responsibility to make good but shall exclude the painting of radiators, decorating, carpentry work or boxing of any pipework or tiling or lifting or re-laying of carpets;
- 1.19 Specification – shall mean a description of the Services and the provision of any boiler systems, pipework or other parts (“Goods”) to be provided under the Contract and set out either on the Job Sheet or otherwise agreed and confirmed in writing signed by both parties. For the avoidance of doubt no amendments or additions, whether discussed with a surveyor or agents of the Company or otherwise, may be included in the Quotation, or form part of the Contract, unless in writing and signed by both parties;
- 1.20 Terms – shall mean these Terms and Conditions;
- 1.21 Working Hours – shall mean 8.00am to 4.30pm Monday to Friday.

2 The Contract

- 2.1 The Terms shall apply to the Contract and take precedence over any other terms and conditions or specification from the Customer, if any.
- 2.2 The Customer shall be deemed to have contracted with the Company and accepted the Terms by accepting delivery of the Goods or permitting provision of the Services by the Company. In the case of Installation, the Contract shall be formed when a signed Acceptance Form is returned to the Company.
- 2.3 The Customer accepts that the Company may subcontract the provision of any of the Services to third parties or subcontractors but the Company agrees that it shall remain liable for the actions of such subcontractors or third parties.
- 2.4 Under Cover Plan 1, 2 or 3 attendance to the Premises, the Company will use best endeavours to attend the Premises within 24 hours depending on the severity of the fault but will not guarantee that attendance.

- 2.5 The callouts and visits to Premises under Cover Plan 1, 2 and 3 are subject to a maximum of £1,000 worth of callout, parts and costs in any given 12 month contract excluding value of replacements of any gas appliance or Cover Plan 1, 2 and 3.
- 2.6 In the case of Cover Plan 1, 2 and 3 this does not cover any upgrading to the system for any cosmetic or newly imposed regulatory or industry standards to replace any part that is not in the Company's sole discretion defective.
- 2.7 In the case of pipework becoming frozen, in the internal external pipework would not be covered in the event that leakage of frozen pipes results in damage to the boiler. Similarly, if main supply of electricity, water or gas occur, any resetting or purchase of appliance would not be covered by the Cover Plans 1, 2 and 3.
- 2.8 In the case of a Cover Plan 1, 2, 3, this does not cover any remedy or replacement to the vented or unvented cylinder on the central heating or hot water system. The Cylinder Thermostat and Feed & Expansion Tank will be covered by the Company but exclusion will apply to any Immersion Heater present. This restriction will also apply to any removal or damage caused by sludge or scale, and furthermore to any repairs or replacements to an Extended Flue or Plume Management Kit. Any additional individual exclusions shall be made clear at the beginning of the contract to the customer and shall therefore be applied as of the beginning of the Contract.
- 2.9 The customer hereby agrees to a four week exclusion period at the commencement of the contract, this shall apply to the first year only should the Contract be rolled into subsequent years. The customer also agrees that should there be a break in said Contract and the renewal date is broken, they will be requested to forego a renewal which will require a repetition of the four week exclusion clause.

3 Customer's Obligations

- 3.1 The Customer will provide the Company with such information and any particular product chosen by the Customer and appropriate access to the Premises; services and facilities at their Premises as may be reasonably required by the Company to perform the Contract including, but without limitation, access to the mains electricity, water and other services.
- 3.2 The Customer will advise the Company in advance of the provision of any Services in the event the Customer is aware of any defect in the gas, electricity, plumbing and water systems on the Premises. If the Customer fails to provide this advice, the Company shall not be responsible for any increased costs or inability to provide the Services that may result.
- 3.3 The Customer will obtain all the necessary licences or authorities which may be needed in connection with the Goods and the Services.
- 3.4 Following completion of the Contract, the Customer agrees that he shall follow all instructions provided by the Company and advice given as to the use and maintenance of the Goods. In the event the Customer fails to do this, in addition to any other limitation of liability, the Company shall expressly not be liable for any loss claim or costs resulting from such failure.
- 3.5 The Customer warrants that he either owns the Premises or has sufficient authority to enter into this Contract without obtaining the consent of any third party.

- 3.6 The Customer acknowledges that in the event it is proved that there was an existing problem at the Customer's premises prior to any installation or provision of services, then the Customer shall be required to pay for any remedial services and callout by the Company and the Company shall not be responsible for remedying any existing problem. In addition, a Customer shall not be granted a Cover Plan 1,2,3, if a prior survey undertaken by the Company concludes that the boiler or system is unsatisfactory and the onus on the Customer is to remedy such faults at the Customer's expense prior to any Cover Plan 1,2,3 being granted.
- 3.7 In addition to existing problems set out in clause 3.6, where the Company surveyor is unable to view under floors, wood or concrete or where pipework enters walls so that any potential existing problem cannot be reasonably detected, in such situations, the Customer shall be responsible for paying for the required remedial work or callout visits.
- 3.8 Customer acknowledges that any service under a Cover Plan 1,2,3 must be completed within one month of Cover Plan 1,2,3 commencing or any renewal of such contract.
- 3.9 The Customer acknowledges that in the event a breakdown occurs in the first 4 weeks of a new Cover Plan 1,2,3 being accepted, Carshalton Boilers will not be liable for any cost to rectify the breakdown. This does not apply to the renewal of the Cover Plan 1,2,3.

4 Payment Provisions

- 4.1 The Contract Price comprises:-
- 4.1.1 a charge for Services based on the Hourly Labour Charge as agreed between the parties and set out on the Job Sheet and shall be based on work done during Working Hours. Any request that requires the Company to work outside Working Hours shall incur an additional charge. The Customer expressly acknowledges that if the Installation is completed in less or more time than estimated, unless amendments and extra Goods or Services have been agreed on an Extra Works Sheet increase in cost, the cost of the Installation remains as in the Quotation;
 - 4.1.2 price for all Goods used or fitted as set out in the Quotation or Job Sheet;
 - 4.1.3 any other cost or charge as set out on the Job Sheet which may include services or replacement of the boiler system or pipework that the Company has not previously worked on and which may therefore not be covered under either of the Guarantee Period;
 - 4.1.4 in the case of Cover Plan 1,2,3 any chemicals or extra parts required to service or maintain the heating system are not included within the Contract Price.
- 4.2 In the case of Installations, fifty per cent of the Contract Price shall be paid upon signing of the Acceptance Form and the balance of the Contract Price is paid upon completion of the Services. Such balance is due upon completion irrespective of any Snagging that might be required.
- 4.3 In the case of Services and breakdown, the Customer must pay the Contract Price as set out on the Invoice immediately on completion of the Services.

- 4.4 In the case of a Cover Plan 1,2,3, payment for the first 12 months is payable upon signing the Cover Plan 1,2,3 Contract and must be received by the Company in cleared funds prior to the Initial Visit. All subsequent renewal fees will be advised to the Customer at the Company's sole discretion one month prior to the end of any 12 month period of the Cover Plan 1,2,3 Contract and shall be payable in full by the anniversary in order for the Cover Plan 1,2,3 Contract to continue.
- 4.4.1 In the event the Customer upgrades a Cover Plan in the middle of a Contract Term, then the Customer shall pay the difference of the cost by way of increased Direct Debits from the month following the upgrade. If the Customer downgrades a Cover Plan, then the Company may in its sole discretion, agree to reduce the Direct Debits for the remainder of that Contract Term.
- 4.5 In the event the Contract Price covers Goods of a significant cost, the Company may require the Customer to pay part of the Contract Price in advance. This will be as set out on the Job Sheet.
- 4.6 The parties agree that the Contract Price may be increased by the Company acting in its sole discretion in the event the actual cost to the Company increases; the Specification is changed by agreement; the Customer causes any delay which occasions cost to the Company; Goods or Services are required by the Customer with exceptional urgency; the Customer gives incorrect or inadequate information and further costs are incurred by the Company as a result or any of the events in clauses 3.2, 3.6 or 3.7 occur.
- 4.7 All Prices quoted including the Contract Price do not include VAT or any tax similar in nature which will be added to the Contract Price and paid by the Customer at the current rate.
- 4.8 If payment is not made by the Customer by the Due Date, then the Company may add interest at the Interest Rate on any amount outstanding calculated on a daily basis.
- 4.9 In addition to its right to charge interest, the Company may add any reasonable costs and expenses (including legal costs or any third party debt recovery services) incurred by the Company in the collection of any overdue amount, and the Company can refuse to deliver or install any balance of Goods or provide any further Services, or guarantee of such services until the Contract Price has been paid.
- 4.10 If payment is made by cheque or other negotiable document, payment is not deemed to have been made until such payment has been honoured.
- 4.11 Full payment is required even if the Company must return to remove rubbish from the Premises.
- 4.12 In the case of change of ownership of Premises – for Cover Plan 1,2,3 Contract Customers only – the benefit of any part of the Contract remaining and for which payment has been made, may be assigned to the new owner of the Premises.
- 4.13 In the case of Cover Plan 1,2,3, if the Customer cancels a Cover Plan before the end of the Contract, then the Customer shall be liable for payment of any works carried out during that time before cancellation, including parts and labour and out of hours call out service visit during that year.

5 Risk and Title

- 5.1 Risk in all Goods passes to the Customer upon delivery to the Premises.
- 5.2 The Company, whilst using reasonable endeavours, to keep to any suggested timeframe, shall not be responsible for any exact time for the delivery of any Goods or performance of Services under the Contract and for the avoidance of doubt, time shall not be of the essence.
- 5.3 Notwithstanding the generality of clause 5.2, the Company shall under no circumstances be responsible for delay caused by factors beyond its control, whether as a result of failure of the Customer or not.
- 5.4 Notwithstanding that risk passes to the Customer upon delivery of the Goods, title in the Goods does not pass to the Customer until the Company has been paid the full Contract Price.
- 5.5 Until title in the Goods passes to the Customer upon payment of the full Contract Price, the Customer shall hold such Goods as bailee for the Company and shall keep such Goods separate from all other goods in its possession separately identifiable as the Company's property. Until title to such Goods passes to the Customer (upon payment of full Contract Price) the value of such Goods shall be held in trust for the Company and the Customer shall insure and keep insured the Goods to their full Contract Price against all risks until such date as title in the Goods passes from the Company to the Customer.

6. Recalls and Guarantee

- 6.1 In the event the Customer has any complaint or issue with any of the Goods or Services, then in the event that is reasonably brought to the attention of the Company within 14 days of completion of the Contract then, provided the alleged defect is a result of the Goods or Services provided by the Company under the Contract, then any attendance on the Premises by the Company shall be free of charge.
- 6.2 If no such notification is received within that time, the Customer will be deemed to have accepted the Services and any Goods so provided by the Company within 14 days, and will not then be entitled to reject them.
- 6.3 The Company shall use its best endeavours to remedy any default in the Services within the Services Guarantee Period and shall carry out such reasonable work as is necessary to remedy those Services.
- 6.4 The Company's obligation under this clause in relation to any fault in Goods shall not exceed the extent of the manufacturer's guarantee provided to the Company from the manufacturer under the Guarantee Period and shall be for full replacement or repair provided the defect is notified within the Guarantee Period .
- 6.5 The Customer's obligations at clause 3 shall apply and any failure may affect the provision of any guarantee under this clause 6.

- 6.6 In the event the Customer fails to make full payment either for Installation or Services then the Customer acknowledges that the Services Guarantee Period may not apply and the Company may not be obliged to honour this or return to the Premises free of charge with respect to any Installation.
- 6.7 In the event that the Customer contracts with a third party to service or remedy any apparent fault with any Installation or Services, without the Company's knowledge or agreement, the Company may refuse to return to the Premises to provide further services until full payment has been received and the Customer agrees to pay for further return visits if appropriate.

7 Warranties by the Company

- 7.1 The Company warrants that it will provide the Goods and Services in an appropriate and professional manner to comply with the Specification and to such standard reasonably expected in the industry using the services of suitably qualified personnel and further warrants that all new Goods supplied shall carry an appropriate manufacturer's warranty.

8 Limitation of Liability

- 8.1 The Company shall have no responsibility to remedy any defects outside the Guarantee Periods or to bear any liability under these Terms for losses occasioned by Customer fault under clause 3.4.
- 8.2 The Company expressly excludes any liability for indirect or consequential loss of any kind whatsoever and, subject to clause 8.3, shall limit its liability for direct loss to the Contract Price, or one year's fee in the case of the Cover Plan 1,2,3
- 8.3 Nothing in this clause shall remove the Company's liability for death or personal injury caused by its own negligence or those of its agents or subcontractors under the Contract.
- 8.4 Where any specific risk is identified on Contract, the Company shall not be liable for such risk or event and the Customer agrees to bear such risk.
- 8.5 In particular, the Company shall not be liable for any associated faults or issues arising from a previous installation not the work of the Company. The Company shall, if requested, service and repair such faults, but at agreed cost to the Customer.

9 Termination

- 9.1 The Company may terminate this Contract or suspend its performance with immediate effect on written notice if:-
- 9.1.1 the Customer becomes bankrupt, a bankruptcy petition is entered or the Customer makes any arrangement with his creditors generally.
- 9.1.2 the Customer commits a material breach of this Contract which is not remedied within 7 days of notice;

- 9.1.3 the Customer refuses to take delivery of the Goods or any part of them or to permit the Company to provide the Services on such date it arranged;
- 9.1.4 the Customer defaults in paying the Price or any part of it.
- 9.2 Upon termination of this Contract for whatever cause the Customer shall pay the Company;
 - 9.2.1 all monies then outstanding under the Contract including any additional charges agreed;
 - 9.2.2 the total value of Goods delivered and Services performed up to the date of termination, the Price for which shall then become payable immediately;
 - 9.2.3 any cancellation charges payable to the Company or its subcontractors;
 - 9.2.4 the cost of removal of any property of the Company from the Premises.
- 9.3 Termination of this Contract shall not affect any rights of the parties accrued to them up to the date of termination.
- 9.4 In the case of the Cover Plan 1,2,3 Contract, the Company may terminate the Contract upon receiving unsatisfactory results following the Initial Visit. In such cases the Company shall return any monies already paid by the Customer less reasonable costs incurred in the Initial Visit.

10 General

10.1 Variations

No variation of the Contract including but without limitation any change to the Goods and Services to be provided, shall be effective unless in writing and signed off by both parties;

10.2 Assignment

The Company shall be allowed to assign its rights and obligations under this Contract;

- 10.3 Neither party shall be liable for any delay in performing or falling to perform any of its obligations under this Contract due to any force majeure event including any act of God, war, strike, lock-out, industrial action, fire, flood, drought, tempest or other event beyond the reasonable control of either party.

10.4 Notices

All notices to be given under this Contract shall be in writing and shall be sent to the address of the Customer and Company as given on the Job Sheet by first class post or delivered by hand.

10.5 No delay or failure by the Company to exercise any of its powers, rights or remedies under this Contract will operate as a waiver of them and any waiver, to be effective must be in writing.

10.6 If any part or clause of this Contract is found to be invalid, unlawful or unenforceable then such part will be severed from the remainder of this Contract which will continue to be valid and enforceable to the fullest extent permitted by law.

10.7 Entire Agreement

The Contract and all documents referred to therein and within these Terms is the complete and entire agreement between the parties.

10.8 Set off

The Company shall be entitled to set-off against any monies payable to it by the Customer under this Contract, any monies which may be payable by it to the Customer, whether under this Contract or otherwise. The Customer shall not be entitled to any right of set-off.

10.9 Jurisdiction

The Contract is governed by the laws of England and Wales and the parties agree to submit the non-exclusive jurisdiction of the Courts of England and Wales.

10.10 Third Party Rights

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no party other than the Company or Customer shall have a right to benefit from the Contract.

10.11 Waiver

Any delay or waiver of any rights by the Company under these Terms shall be deemed a waiver of such rights or waive of any subsequent breach by the Customer.