

# Terms and Conditions for the Provision of Services - Time and Materials



## 1 INTERPRETATION

1.1 In these Conditions the following definitions apply;  
"Agreement": the agreement between the Supplier and the Customer for the provision of time and materials breakdown services as requested by the Customer, which shall be subject to these Conditions.  
"Business Hours": 8:30 am to 5:30 pm Monday to Friday excluding bank and public holidays in the UK  
"Charges": the sums payable by the Customer for the T&M Services.  
"Conditions" the terms and conditions as set out in this document which may be varied by the Supplier from time to time.  
"Customer" the recipient of the T&M Services.  
"Equipment": the Customer's equipment which shall be subject to the Services.  
"Services": the repair or reactive breakdown services and provision of parts provided by the Supplier to the Customer from time to time on a time and materials basis;  
"Supplier": JLA Limited (Registered in England and Wales with company number 01094178) and any of its group companies, successors or assignees

## 2 BASIS OF AGREEMENT

2.1 The Customer agrees and acknowledges that it is entering into the Agreement as a business not a consumer and that any person signing on behalf of the Customer has its authority to do so.  
2.2 These Conditions apply to the Agreement (and to any request for the provision of the Services) to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.  
2.3 The Agreement constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Agreement.  
2.4 The person who enters into this Agreement on behalf of the Customer warrants that they have the appropriate and necessary authority to do so and acknowledges that they are entering the Customer into a binding contract with the Supplier subject to the Conditions.

## 3 THE SERVICES

3.1 The Supplier shall provide the Services with reasonable care and diligence but otherwise all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.  
3.2 The Supplier shall use reasonable endeavours to attend on the date and time agreed with the Customer, however, the Supplier shall not be liable for any direct, indirect or consequential losses caused by any delay, whether such delay is caused by the Supplier or by any act or omission of the Customer or failure by the Customer to comply with any term of this Agreement. Time for performance of the Services shall not be of the essence of this Agreement.  
3.3 On attendance by the Supplier following a request for Services, the Supplier will provide the Customer with a quotation for the provision of such Services. Upon acceptance by the Customer, the applicable Services will be performed.  
3.4 Any Service visits not required must be cancelled before the engineer attends. The Supplier may charge a fee for wasted time for:  
3.4.1 visits which are no longer required but are not cancelled at least 24 hours before the service engineer is scheduled to attend;  
3.4.2 Calls attended where no access is gained;  
3.4.3 Calls attended where the machine is in good working order and there is no fault found.

## 4 EXCLUDED SERVICES

4.1 The Supplier will not provide the Services in respect of:  
4.1.1 domestic or light industrial equipment;  
4.1.2 any work on ducting extraction;  
4.1.3 coffee machines  
4.1.4 water coolers; and  
4.1.5 mobile LPGs.

## 5 REPLACEMENT PARTS/ GUARANTEE/ RETURNS

5.1 In providing the Services, the Supplier reserves the right to use parts which are reconditioned or not provided by the original manufacturer of the Equipment, provided that in the Supplier's reasonable opinion, such parts can satisfactorily perform their particular function.  
5.2 The Supplier warrants in relation to any new original or single replacement part that on delivery and for a period of 90 days from the date of delivery ("Warranty Period") the parts shall:  
5.2.1 conform in all material respects with their description; and  
5.2.2 be free from material defects in design, material and workmanship.  
5.3 Subject to clause 5.4 if;  
5.3.1 the Customer gives notice to the Supplier during the Warranty Period and within a reasonable time of discovery that the parts do not comply with the warranty set out in clause 5.2; and  
5.3.2 the Supplier is given a reasonable opportunity of examining such parts and, acting reasonably, agrees that the parts are defective and none of the situations in clause 5.4 apply;  
the Supplier shall, at its option, repair or replace the defective

parts or refund the price of the defective parts. This shall be the Customer's sole and exclusive remedy in respect of a breach of the warranty set out in clause 5.2.

5.4 The Supplier shall not be liable for the parts' failure to comply with the warranty set out in clause 5.2 in any of the following events:  
5.4.1 the Customer makes any further use of the equipment incorporating such Parts after giving notice in accordance with clause 5.3.1;  
5.4.2 the Customer alters or repairs such Parts without the written consent of the Supplier;  
5.4.3 the defect arises as a result of fair wear and tear, any failure or malfunction in any supply service, wilful damage, negligence, poor maintenance or working conditions;  
5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded.  
5.6 The risk in the parts shall pass to the customer upon installation.  
5.7 Title to the parts shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Services.

## 6 CUSTOMER'S OBLIGATIONS

6.1 The Customer will make the Equipment available and provide a safe working environment to enable the Supplier's engineers to provide the Services. This includes, but is not limited to, ensuring that Equipment (and any other equipment in respect of which Services are requested by the Customer) is shut down and cool before the Supplier's engineer arrives.  
6.2 The Customer shall ensure that where any Equipment requires uninstalling prior to delivery of the Services, this shall be done in advance of the Supplier attending. If this is not done, and the Supplier is required to carry out such uninstallation and reinstallation, the Supplier may make an additional charge for labour for such works, and in all cases the Supplier shall not be liable for any damage caused to the surrounding area, including decoration and flooring.  
6.3 The Customer shall co-operate with the Supplier in all matters relating to the supply of the Services and provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises and other facilities as reasonably required by the Supplier in order to provide the Services.

## 7 CHARGES AND PAYMENT

7.1 The Charges for the Services shall be calculated on a time and materials basis in accordance with the Supplier's standard charge out rates.  
7.2 The Supplier shall invoice the Customer on completion of the Services.  
7.3 The Customer shall pay each invoice submitted by the Supplier in full and cleared funds within 30 days of the date of the invoice without any set off, counterclaim, and deduction or withholding. Time for payment shall be of the essence of the Agreement.  
7.4 If the Customer fails to make payment in accordance with clause 7.3 the Supplier may:  
7.4.1 suspend provision of any further Services;  
7.4.2 require the Customer to pay interest on the overdue amount at the rate of 4% per annum above the base lending rate of the Bank of England (such rate accruing on a daily basis from the due date until the date of actual payment of the overdue amount); and/or  
7.4.3 treat the failure to pay as a material breach and terminate the Agreement.  
7.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT).

## 8 LIMITATION OF LIABILITY

8.1 Nothing in this Agreement shall limit or exclude the Supplier's liability for:  
8.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);  
8.1.2 fraud or fraudulent misrepresentation;  
8.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;  
or  
8.1.4 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.  
8.2 Subject to clause 8.1;  
8.2.1 the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, revenue or savings, or any indirect or consequential loss arising under or in connection with the Agreement; and  
8.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total amount actually paid by the Customer to the Supplier under this Agreement for the Services in respect of which the claim relates.

## 9 FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Agreement to the extent that such failure or delay is caused by a Force Majeure Event. A "Force Majeure Event" means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable.

## 10 GENERAL

10.1 Assignments and other dealings  
10.1.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement.  
10.1.2 The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Agreement without the prior written consent of the Supplier.  
10.2 Notices  
10.2.1 Any notice or other communication given to a party under or in connection with the Agreement shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre paid first class post or other next working day delivery service, commercial courier, fax or e mail.  
10.2.2 A notice or other communication shall be deemed to have been received:  
if delivered personally, when left at the address referred to in clause 10.2; 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e mail, at 9:00 am on the Business Day after transmission.  
10.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.  
10.3 Severance  
10.3.1 If any provision or part provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part provision shall be deemed deleted. Any modification to or deletion of a provision or part provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.  
10.3.2 If any provision or part provision of the Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.  
10.4 Waiver. A waiver of any right or remedy under the Agreement or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.  
10.5 Third party rights. A person who is not a party to the Agreement shall not have any rights under or in connection with it, nor shall they have any right to enforce its terms.  
10.6 Variation. Except as set out in these Conditions, no variation of the Agreement, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Supplier.  
10.7 Governing Law. The Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.  
10.8 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non contractual disputes or claims).

11 DATA PROTECTION  
11.1 The Supplier is entitled to make searches about the Customer at credit reference agencies. The agencies may record details of searches whether or not the Supplier agrees to enter into the Agreement.  
11.2 The Supplier may use credit scoring methods to assess whether or not to enter into the Agreement with the Customer and, in some cases, to verify the Customer's identity. This information may also be used for debtor tracing, to prevent money laundering, and to help with the Supplier's credit risk and fraud protection activities.  
11.4 The Supplier will store the Customer's contact details on its customer database which will be shared with other members of the JLA Group and external third parties (such as sub contractors) acting on the Supplier's behalf as necessary to fulfil the Supplier's obligations under the Contract.  
11.5 The Supplier may also use the Customer contact details to contact the Customer from time to time about other products and services provided within the JLA Group. If as a Customer you do not wish the Supplier to use your personal data in this way then please tick this box and return a copy of these Conditions to the Supplier for the attention of Marketing at Meadowcroft Lane, Ripponden, West Yorkshire, HX6 4AJ or alternatively email dataprotection@jla.com with the words "I do not wish to receive any further information about other products and/or services provided within the JLA Group."