

Landlord Cover
Terms and Conditions

The Client's attention is particularly drawn to the provisions of clause 8 (Limitation of liability).

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Additional Charges: the costs of the Additional Services, as set out in the Specification or as agreed between the Supplier and the Client from time to time.

Additional Services: any additional services provided by the Supplier to the Client which are not included within the scope of services as set out in the Specification.

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Client: the person or firm who purchases the Services (and Goods, if applicable) from the Supplier.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 12.8.

Contract: the contract between the Supplier and the Client for the supply of Goods and/or Services in accordance with these Conditions.

Client: the person or firm who purchases the Goods and/or Services from the Supplier.

Force Majeure Event: has the meaning given to it in clause 11.

Goods: any parts that are supplied and fitted by the Supplier during the course of the provision of the Services.

Order: the Client's order for the supply of Services (and the Goods, if applicable), being the Client's written acceptance of the Specification.

Property: any property in relation to which the Supplier is engaged to provide the Services.

Services: the services supplied by the Supplier to the Client as set out in the Specification.

Specification: the details of the Services to be provided by the Supplier to the Client, including the charges for such Services.

Supplier: Whites of Winchester Limited registered in England and Wales with company number 12632364.

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes fax and email..

2. Basis of contract

- 2.1 The Order constitutes an offer by the Client to purchase Services (and Goods, if applicable) in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence and the Services shall be provided from the date set out in the Specification (**Commencement Date**).
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

3. Quality of Goods

- 3.1 The Supplier warrants that the Goods shall:
 - (a) conform in all material respects with their description;
 - (b) be free from material defects in design, material and workmanship;
 - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
 - (d) be fit for any purpose held out by the Supplier.
- 3.2 Subject to clause 3.3, if:

- (a) the Client gives notice in writing to the Supplier within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 3.1;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Client (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Client's cost,

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

3.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 3.1 if:

- (a) the Client makes any further use of such Goods after giving a notice in accordance with clause 3.2;
- (b) the defect arises because the Client failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the Client alters or repairs such Goods without the written consent of the Supplier;
- (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (e) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

3.4 Except as provided in this clause 3, the Supplier shall have no liability to the Client in respect of the Goods' failure to comply with the warranty set out in clause 3.1.

3.5 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

4. Title and risk

4.1 The risk in the Goods shall pass to the Client on once they have been fitted.

4.2 Title to the Goods shall not pass to the Client until the Supplier receives payment in full (in cash or cleared funds) for the Goods.

5. Supplier obligations

5.1 The Supplier shall supply the Services to the Client in accordance with the Specification in all material respects.

- 5.2 The Supplier shall use all reasonable endeavours to meet the target response times set out in the Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 5.3 The Supplier reserves the right to amend the 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 Client in any such event.
- 5.4 The Supplier warrants to the Client that:
- (a) the Services will be provided using reasonable care and skill;
 - (b) it will comply with any policies and procedures of the Client or its agent;
 - (c) it will record all emergency incidents in an incident log and make such incident log available to the Client or his designated representative on request.

6. Client's obligations

- 6.1 The Client shall:
- (a) prior to the Commencement Date:
 - (i) ensure that the Property is in a good state of repair and that the appliances and equipment conform to any regulations in force at the time and, where applicable, the manufacturer's instructions;
 - (ii) ensure that the boiler and electrics have been regularly serviced;
 - (iii) ensure that the Property has all required certificates;
 - (iv) ensure that the Property is adequately insured; and
 - (v) ensure that the location of the stopcock is communicated to his representative and the Supplier.
 - (b) co-operate with the Supplier in all matters relating to the Services, including but limited to providing details of the contact(s) at each Property and designate a primary contact for each Property;
 - (c) ensure that the Services are only requested in the case of incidents that could reasonably be considered to be emergencies and shall be responsible for any Additional Costs;
 - (d) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Property as reasonably required by the Supplier to provide the Services;
 - (e) provide the Supplier with such information or procure that its designated primary contact 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;

- (f) obtain and maintain all necessary consents (including from the residents of the Property) which may be required for the Services before the date on which the Services are to start. and
- (g) notify the Supplier of any changes to the details of the Property.

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

- (a) the Supplier shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 6.2; and
- (b) the Client shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Client Default.

7. Charges and payment

7.1 The price for Goods shall be the price communicated to the Client from time to time.

7.2 The charges for Services shall be as set out in the Specification

7.3 The Supplier reserves the right to increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date and the first such increase shall take effect no earlier than the first anniversary of the Commencement Date;

7.4 In respect of Goods, the Supplier shall invoice the Client on or at any time after the supply of the Goods during the course of providing the Services. In respect of Services, the Supplier shall invoice the Client in advance and the monthly payments shall be taken by standing order.

7.5 The Client shall pay any invoice submitted by the Supplier:

- (a) within 7 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Client; 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.

7.6 The charges for the Services are inclusive of amounts in respect of value added tax chargeable from time to time (**VAT**).

7.7 All amounts payable by the Client in relation to Goods and/or Additional Services are exclusive of VAT . Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Client, the Client 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 or Goods at the same time as payment is due for the supply of the Services or Goods.

7.8 If the Client 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 Client 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 7.8 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%.

7.9 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).

8. Limitation of liability: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

8.1 The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £5 million per claim. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Client is responsible for making its own arrangements for the insurance of any excess loss.

8.2 The restrictions on liability in this clause 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

8.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

8.4 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
- (d) defective products under the Consumer Protection Act 1987.

8.5 Subject to clause 8.4, the Supplier's total liability to the Client shall not exceed the total charges paid by the Client to the Supplier for the Services, the Additional Services and/or any Goods.

8.6 This clause 8.6 sets out specific heads of excluded loss:

- (a) Subject to clause 8.3 and clause 8.4, clause 8.6(b) excludes specified types of loss.
- (b) The following types of loss are wholly excluded:
 - (i) loss of profits;

- (ii) loss of agreements or contracts;
- (iii) loss of anticipated savings;
- (iv) damage to goods or furniture at the Property; and
- (v) indirect or consequential loss.

8.7 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 3 and clause 5. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

8.8 This clause 8 shall survive termination of the Contract.

9. Termination

9.1 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract by giving the Client not less than 30 days' written notice.

9.2 Without affecting any other right or remedy available to it, the Client may terminate the Contract by giving the Client not less than 3 months' written notice, provided that the .

9.3 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 its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 5 Business Days after receipt of notice 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, in the case of an individual, becoming bankrupt;
- (c) 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.

9.4 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 Client if the Client fails to pay any amount due under the Contract on the due date for payment.

9.5 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 or any other contract between the Client and the Supplier if the Client fails to pay any amount due under the Contract on the

due date for payment, the Client becomes subject to any of the events listed in clause 9.3(b) to clause 9.3(c), or the Supplier reasonably believes that the Client is about to become subject to any of them.

10. Consequences of termination

- 10.1 On termination of the Contract, the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Client immediately on receipt.
- 10.2 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 [or expiry], including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination .
- 10.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

11. Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 12 weeks, the party not affected may terminate the Contract by giving 30 days' written notice to the affected party.

12. General

12.1 Assignment and other dealings

- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Client shall not 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 Supplier.

12.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:

- (i) 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 last known address (in any other case); or
 - (ii) sent by email to the address communicated from time to time.
- (b) Any notice or communication shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 12.2 (b) (iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

12.3 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. If any provision or part provision of the Contract is deemed deleted under this clause 12.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

12.4 Waiver. No failure or delay by a party to exercise any right or remedy provided under the Contract 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.

12.5 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.

12.6 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of 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 or negligent misrepresentation based on any statement in the Contract.

12.7 Third party rights.

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

12.8 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 authorised representatives).

12.9 Governing law. The Contract and any dispute or 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 England and Wales.

12.10 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales 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.