

Terms And Conditions

(First Issued 01/01/2009)

(Updated 11/06/2014) Section 11 updated, Sections 22 onward added

1. For the purpose of these terms & conditions the following words shall have the following meanings:
 - (a) "The Company" shall mean Emanuel Spence Maintenance Services Ltd.
 - (b) "The Customer" shall mean the person or organisation for whom the Company agrees to carry out works &/or supply materials.
The Operative or Engineer shall mean the representative appointed by the Company or the franchisee.
2. The "Agreed Date" shall mean the starting or date materials are ordered.
3. The Company reserves the right to refuse or decline work at its own discretion. Where the Company agrees to carry out works for the Customer those works shall be undertaken by the designated operative of Company at its absolute discretion.
4. HOURLY RATE WORK. The total charge to the Customer shall consist of the cost of materials supplied by the Company (not exceeding the trade purchase price of materials + 65%) & the amount of time spent by the operative in carrying out works (including all reasonable time spent in obtaining unstocked materials) charged in accordance with the Company's current hourly rates. The Customer shall only be charged for the time spent related to the Customer's work, all other time, personal mobile calls etc. is non-chargeable. All charges are subject to VAT at the prevailing rate except in cases where the work carried out is zero rated.
5. FIXED PRICE WORK shall be given as a firm cost, (manifest errors exempted) including Labour & Materials, and shall be within 10% over and above the equivalent total hourly rate cost. All costs are plus VAT at the prevailing rate.
6. Where a written estimate has been supplied to the Customer the total charge to the Customer referred to in the estimate should not exceed the actual time taken by more than 20% but may be revised in the following circumstances:—
 - (i) if after submission of the estimate the Customer instructs the Company (whether orally or in writing) to carry out additional works not referred to in the estimate.
 - (ii) if after submission of the estimate there is an increase in the price of materials.
 - (iii) if after submission of the estimate it is discovered that further works need to be carried out which were not anticipated when the estimate was prepared .
 - (iv) if after submission of the estimate it is discovered that there was a manifest error when the estimate was prepared.
7. The Company shall not be under any obligation to provide an estimate to the Customer & shall only be bound (subject as hereinafter) by estimates given in writing to the Customer & signed by a duly authorised representative of the Company. The Company shall not be bound by any estimates given orally or in which manifest errors occur.
8. Material Collection and Travelling Time.
Travelling to site outside the TS and DL areas and collection of non-stock items is chargeable but:
 - (a) Time must be kept to a minimum & reasonable.
 - (b) The Customer must be informed wherever possible when the operative leaves the premises.
 - (c) If the collection or travelling time is likely to exceed 60 minutes the customer must be additionally informed of the circumstances.
 - (d) Only one engineer is allowed to leave the job to collect parts.
 - (e) The collection of materials which should be normally stocked items is non-chargeable.
9. Invoices are due for payment immediately upon delivery to the Customer. Any part of that invoice which remains unpaid shall carry interest at the rate of 4% over the base rate until payment in full is received by the Company. A late payment charge of £15 may be levied.
10. Where the date &/or time for works to be carried out is agreed by the Company with the Customer, then the Company shall use its best endeavours to ensure that the operative shall attend on the date & at the time agreed. However, the Company accepts no liability in respect of the non attendance or late attendance on site of the operative/engineer or for the late or non delivery of materials.
11. The Customer shall accept sole liability to discharge the Company's account unless he/she discloses to the Company when initially instructing the Company to carry out work &/or supply materials that he/she is acting on behalf of a third party (including, but not limited to, a Limited Company or partnership) & receiving a written estimate) the name of the third party appears on the written estimate.

12. If the Customer cancels their instructions prior to any work being carried out or materials supplied then the Customer shall be liable for any related expenditure together with the profit that would have been made by the Company had the work been carried out &/or materials supplied in accordance with such instructions.

If any consents, licenses or other permissions are needed from any third parties such as landlords, planning authorities, local authorities or similar, it shall be the Customer's responsibility to obtain the same in advance of the commencement of the Services.

The Customer shall ensure that the Company can access the Property at the Agreed Times to render the Services.

The Customer shall have the option of giving the Company a set of keys to the Property or being present at the Agreed Times to give the Company access. The Company warrants that all keys shall be kept safely and securely.

The Customer shall ensure that the Company has access to electrical outlets and a supply of hot and cold running water.

The Customer must give the Company at least 24 hours notice if the Company will be unable to provide the Services on a particular day or at a particular time. The Company will not invoice for cancelled Visits provided such notice is given. If less than 24 hours notice is given the Company shall invoice the Customer at their normal rate.

13. If, after the Company shall have carried out the works, the Customer is not wholly satisfied with the works then the Customer shall give notice in writing within 12 months to the Company & shall afford the Company, and its insurers, the opportunity of both inspecting such works, & carrying out any necessary remedial works if appropriate. The Customer accepts that if he fails to notify the Company as aforesaid then the Company shall not be liable in respect of any defects in the works carried out.
14. The Guarantee shall be for labour only in respect of faulty workmanship for 12 months from the date of completion with the manufacturers warranty in force. The Guarantee will become null & void if the work/appliance completed/supplied by the Company is:
 - (a) Subject to misuse or negligence.
 - (b) Repaired, modified or tampered with by anyone other than a Company operative. The Company will accept no liability for, or guarantee suitability, materials supplied by the Customer & will accept no liability for any consequential damage or fault.
15. The company will not guarantee any work in respect of blockages in waste & drainage systems, air locks etc. The company will not guarantee any work undertaken on instruction from the customer & against the written or verbal advice of the operative/engineer. Work is guaranteed only in respect of work directly undertaken by the company & payment in full has been made. Any non-related faults arising from recommended work which has not been undertaken by the company will not be guaranteed. The company shall not be held liable or responsible for any damage or defect resulting from work not fully guaranteed or where recommended work has not been carried out. Work will not carry a guarantee where the customer has been notified by the operative either verbally or indicated in ticked boxes or in Comments/ Recommendations of any other related work which requires attention. The customer shall be solely liable for any hazardous situation in respect of Gas Safe Register Regulations or Gas Warning Notice issued.
16. Where the Company agrees to carry out works on installations of inferior quality or over ten years old at that date no warranty is given in respect of such works & the Company accepts no liability in respect of the effectiveness of such works or otherwise.
17. Engineers may operate under their own Gas Safe Register Registration & as such may be solely responsible for any Gas related work & subsequent liability.
18. The Company shall be entitled to fully recover costs or damages from any operative/engineer/contractor whose negligence or faulty workmanship results in the Company being made liable for those damages or rectification of the work.
19. These terms & conditions may not be released, discharges, supplemented, interpreted, varied or modified in any manner except by an instrument in writing signed by a duly authorised representative of the Company & by the Customer. Further, these terms & conditions shall prevail over any terms & conditions used by the Customer or contained or set out or referred to in any documentation sent by the Customer to the Company; by entering into a contact with the Company the Customer agrees irrevocably to waive the application of any such terms & conditions.
20. Title to any goods, supplied by the Company to the Customer shall not pass to the Customer but shall be retained by the Company until payment in full for such goods has been made by the Customer to the Company. Until such time as title in the such goods has passed to the Customer:

(i) the Company shall have absolute authority to repossess, sell or otherwise deal with or dispose of all any or part of such goods in which title remains vested in the Company,
(ii) for the purpose specified in (i) above, the Company or any of its agents or authorised representatives shall be entitled at any time & without notice to enter any premises in which goods or any part thereof is installed, stored or kept, or is reasonably believed so to be.
(iii) the Company shall be entitled to seek a court injunction to prevent the Customer from selling, transferred or otherwise disposing of such goods.
Notwithstanding the foregoing, risk in such goods shall pass on delivery of the same to the Customer, & until such time as title in such goods has passed to the Customer, the Customer shall insure such goods to their replacement value & the Customer shall forthwith, upon request, provide the Company with a certificate or other evidence of such Insurance.

21. The Company shall not be liable for any delay or for the consequences of any delay in performing any of its obligations if such delay is due to any cause whatsoever beyond its reasonable control, & the Company shall be entitled to a reasonable extension of the time for performing such obligations.
22. The Company shall only be liable for rectifying works completed by the Company & shall not be held responsible for ensuing damage or claims resulting from this or other work overlooked or subsequently requested & not undertaken at that time.
These terms & conditions & all contracts awarded between the Company & Customer shall be governed & construed in accordance with English law & shall be subject to the exclusive jurisdiction of the English law.

23. Cancellation of Contract During the Cooling off Period.

The Customer has a statutory right to a "cooling off" period. This period begins once the contract between the Company and the Customer is formed and ends at the end of 14 calendar days after that date.

If the Customer wishes to cancel the contract within the cooling off period the Customer should inform the Company immediately by a clear statement (e.g. a letter sent by post, fax or email to the postal address, fax number or email address specified on the Quotation or otherwise notified to the Customer). The Customer may use the Model Cancellation Form, but it is not obligatory.

To meet the cancellation deadline, it is sufficient for the Customer to send his or her communication concerning the exercise of the right to cancel before the cancellation period has expired.

If the Customer exercises the right to cancel he/she will receive a full refund of any amount paid to the Company in respect of the contract.

The Company will refund money using the same method used to make the payment, unless the Customer has expressly agreed otherwise. In any case, the Customer will not incur any fees as a result of the refund.

The Company will process the refund due to the Customer as a result of a cancellation without undue delay and, in any case, within the period of 14 days after the day on which the Company is informed of the cancellation.

If the Agreed Date falls within the cooling off period the Customer must make an express request for provision of the Services to begin within the 14 calendar day cooling off period. [This request forms a normal part of the ordering process.] By making such a request the Customer acknowledges and agrees to the following:

If the Services are fully performed within the 14 calendar day cooling off period, the Customer will lose the right to cancel after the Services are complete.

If the Customer cancels the Services after provision has begun but before it is complete the Customer will still be required to pay for the Services supplied up until the point at which the Customer informs the Company of his/her wish to cancel. The amount due shall be calculated in proportion to the full price of the Services and the actual Services already provided. Any sums that have already been paid for the Services shall be refunded subject to deductions calculated in accordance with the foregoing. Refunds, where applicable, will be issued within 7 days and in any event no later than 14 calendar days after the Customer informs the Company of his/her wish to cancel.

Clause 8 applies to cancellation of the Services after the 14 calendar day cooling off period has elapsed.

Cancellation after the Cooling Off Period

The Customer may cancel or reschedule the Job at any time before the Agreed Date. Subject to the provisions of clause 23 above, the following shall apply to cancellation or rescheduling:

If the Customer cancels the Job more than 28 days before the Agreed Date the Company shall issue a full refund of all sums paid, including the Deposit.

If the Customer reschedules the Job more than 28 days before the Agreed Date the Company shall retain all sums paid, including the Deposit and shall deduct all such sums from any related balance payable on the rescheduled Job.

If the Customer cancels the Job less than 28 days but more than 14 days before the Agreed Date the Company shall refund any sums paid less the Deposit.

If the Customer reschedules the Job less than 28 days but more than 14 days before the Agreed Date the Company shall retain any sums paid including the Deposit and shall deduct all such sums (excluding the Deposit) from any balance payable on the rescheduled Job. A new Deposit shall be payable on the rescheduled Job.

If the Customer cancels the Job less than 14 days before the Agreed Date the Company shall retain all sums paid and any outstanding sums shall become immediately payable. No refund shall be issued.

If the Customer reschedules the Job less than 14 days before the Agreed Date the Company shall retain all sums paid and any outstanding sums shall become immediately payable. No refund shall be issued and no sums paid will count toward the fees and Deposit payable on the rescheduled Job.

The Company may cancel the Job at any time before the Agreed Date and shall refund all sums paid, including the Deposit.

Deposit

At the time of accepting the Quotation or Estimate or not more than 7 Days thereafter the Customer may be required to pay a Deposit to the Company. The Deposit shall be 25% of the contract price or other if specified. Orders shall not be deemed confirmed until the Deposit is paid in full where a deposit is specified. Deposits for special orders are non refundable in the event of cancellation subject to clause 23 above.

Subject to the provisions of Clause 23 the Deposit shall be non-refundable.