

CONDITIONS

Maintenance Service

1. (a) BWT UK Ltd (hereinafter called the "Company") will maintain [at the agreed intervals], the Equipment to a reasonable standard [in response to the Customer's requests for maintenance or service].
- (b) In the event of any actual or suspected malfunction of the Equipment the Customer will inform the Company as soon as possible and in any event within 96 hours of discovery.
- (c) The Company will not be responsible for maintaining or servicing any accessories, the electricity supply or the water supply pipes unless specifically included in the Agreement.

Payment

2. (a) The Customer will pay the Standard Maintenance Charges specified overleaf (incl.VAT) within 15 days of the date of the Company's invoice. If payment is not received into the Company's account by the due date interest shall thereafter be payable on the amount from time to time outstanding at the rate of 2.5% over HSBC plc base rate calculated on a daily basis on all overdue amounts. Prices include VAT at 17.5% and are subject to review at the time of renewal or a change in the VAT rate.
- (b) The Company shall have the right to impose a charge in addition to the Standard Maintenance Charge per visit to reflect any increase in costs on account of:-
 - (i) an accident affecting or neglect of the Equipment;
 - (ii) the Customer's instructions or lack of instructions;
 - (iii) unsuitable or unprepared sites, inadequate working space, access or lack of services;
 - (iv) any interruptions, abortive visits or delays caused by the Customer;
 - (v) failure by the Customer to observe obligations in paragraph 4 below;
 - (vi) any other act or omission of the Customer which prevents or hinders the fulfilment of the Company's obligations, under this Agreement.

The Customer agrees to pay any such additional maintenance charge in accordance with sub-paragraph (a) above.

- (c) Any emergency repairs or repair which in the Company's reasonable opinion is outside the scope of normal maintenance and service (including unusually large or complex repairs or involving work off the premises where the Equipment is located) will be charged for in addition to the Standard Maintenance Charge at the Company's additional rates in force at such time and notified to the Customer in writing.
- (d) On each anniversary of the Agreement the Company shall have the option of raising the Standard Maintenance Charge. Any such increase to be notified in advance in writing to the Customer. In the event of such increase, the Customer shall be entitled to terminate this Agreement upon giving one month's notice in writing to the Company, such notice shall be given by the Customer within 15 days of the date of the notice of increase.

Duration

3. This Agreement shall continue in force from the date hereof and, subject to paragraph 2 (d) above, may be terminated after expiry of one year from the date of this Agreement by either party giving to the other not less than 3 months notice in writing.

Customer's obligations

4. (a) The customer will not permit the Equipment to be serviced or maintained other than by the Company.
- (b) The customer will observe any operating instructions given by the Company.
- (c) The customer will not modify the Equipment without the Company's approval.

Limitation of Liability

5. (a) Nothing in this Agreement shall limit the Company's liability for death or personal injury directly attributable to its negligence.
- (b) Save as otherwise provided herein the Company shall be under no liability whatsoever in respect of any loss, damage or claim (whether direct, indirect or consequential) arising as a result of or in connection with this Agreement, the maintenance of the Equipment by the Company or the Company's failure to maintain the Equipment whether arising from the Company's negligence or otherwise. In any event, the Company's liability under this Agreement (save as provided for under paragraph 5(a) above shall not exceed £100) in aggregate.

Determination of Agreement

6. The Company may (without prejudice to any other claim or remedy) suspend performance of, or determine this or any other Agreement with the Customer by written notice if:-
 - (a) the Customer shall breach any provision of this or any other Agreement with the Company; or
 - (b) distress or execution is levied against any of the Customer's assets; or
 - (c) a judgement against the Customer remains unsatisfied for more than seven days; or
 - (d) (if a company) a receiver is appointed over any of the Customer's assets or a winding-up petition is presented against the Customer or resolution is passed for the winding-up of the Customer (otherwise than for the purposes of amalgamation or reconstruction); or
 - (e) (if an individual) the Customer is made bankrupt or enters into a composition with his creditors; or
 - (f) the Customer shall in the Company's reasonable opinion appear unable to fulfil its obligations as they fall due.

General

7. (a) The construction of this Agreement is not to be affected by any heading.
- (b) Reference to the plural shall include the singular and vice versa.
- (c) The rights of the parties under this Agreement are personal and may not be assigned, delegated or otherwise transferred (whether in whole or in part) without the prior written consent of both parties.
- (d) Notices may be given to either party by being handed to an officer of the other party or being sent to the party's address set out above by facsimile or first class post. Any such notice posted shall be deemed to have been received at the time when in the ordinary course it would have been received.
- (e) Any waiver by either party of any breach of the terms of this Agreement by the other shall be without prejudice to the rights of either party and shall not be deemed a waiver of any subsequent or continuing breach by either party.
- (f) This Agreement shall be governed by English law and the parties submit to the non exclusive jurisdiction of the English courts.
- (g) A variation to the Agreement shall only be binding if it is recorded in a document signed by a Director of the Company.
- (h) The Agreement constitutes the entire agreement between the parties and there are no agreements or understandings between them other than as set out herein; provided that nothing in this paragraph shall limit or exclude liability for fraud. The terms of this Agreement shall prevail notwithstanding any terms or conditions which the Customer may submit purport to impose.
- (i) The Company shall not be responsible for any failure to perform its obligations hereunder where such failure is in whole or part caused by events beyond its reasonable control.
- (j) No person who is not a party to this Agreement shall have any rights under the Contract (Rights of Third Parties) Act 1999, as the same may be amended, to enforce any term of this Agreement.

ME0937