

## SERVICE TERMS & CONDITIONS

The Customer's attention is particularly drawn to the provisions of clause 6.

### 1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

“Additional Charge(s)”; shall have the meaning given to it in clause 5.1.

“Business Day”; a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

“Charges”; the charges payable by the Customer for the supply of the Services in accordance with clause 5.

“Commencement Date”; has the meaning set out in clause 2.1.

“Conditions”; these terms and conditions which govern the Contract between the Supplier and the Customer, as amended from time to time in accordance with clause 12.7.

“Contract”; the Service Agreement between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

“Customer”; the person, firm or corporate entity who purchases Services from the Supplier as stated on the Service Agreement.

“Equipment”; the equipment installed at the Customer's Site which is detailed in the Service Agreement.

“Service Agreement”; the service agreement issued by the Supplier to the Customer detailing the Services that are required by the Customer.

“Services”; the services to be supplied by the Supplier to the Customer on the Equipment installed at the Site, as set out in the Specification.

“Site”; the premises where the Equipment is installed and where the Services will be provided by the Supplier.

“Specification”; the description or specification of the Services provided in writing by the Supplier to the Customer which are printed on the Service Agreement.

“Supplier”; P3 Pumps Limited registered in England and Wales with company number 9701094, whose registered office and trading address is 21 Church Street, Saffron Walden, Essex, CB10 1JW.

1.2 In these Conditions, the following rules apply:

- (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 personal representatives, successors or permitted assigns;
- (c) a reference to **writing** or **written** includes faxes and e-mails.

### 2. BASIS OF CONTRACT

2.1 The Service Agreement issued to the Customer by the Supplier constitutes a quotation only and shall not constitute an offer. The Customer, in signing and returning the Service Agreement, shall have made an offer to the Supplier to purchase the Services in accordance with the terms detailed in the Service Agreement and in these Conditions.

2.2 The Service Agreement shall only be deemed to be accepted when the Supplier issues written confirmation of receipt and acceptance of the Service Agreement to the Customer, at which point and on which date the Contract shall come into existence (“Commencement Date”).

2.3 The Contract 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 Contract.

2.4 These Conditions apply to the Contract 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.

2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 90 days from its date of issue.

### 3. SUPPLY OF SERVICES

3.1 The Supplier shall supply the Services to the Customer in accordance with the Service Agreement and the Specification in all material respects.

- 3.2** The Supplier shall use its reasonable endeavors to meet any performance dates specified in the Service Agreement, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services. Once the Supplier and the Customer have agreed on a date for the Services to be carried out such date shall become a **“Service Visit”** and shall be defined accordingly in these Conditions.
- 3.3** The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 3.4** The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.5** The Supplier will issue a report to the Customer relating to the operation and condition of the Equipment and any remedial works required following each Service Visit.
- 3.6** In the event that the Customer’s Service Agreement does not include parts and labour then the Supplier shall be authorised by the Customer to carry out any essential repair works (including the replacement of component parts) at the time of the Service Visit provided the cost of such essential repair works shall not exceed £250 plus VAT. If the cost of such essential repair work shall exceed the sum of £250 plus VAT then this work shall not be undertaken prior to the Company receiving confirmation from the Customer to carry out the work and if authorisation is not received from the Customer at the time of the Service Visit then Additional Charges will be incurred by the Supplier in re-visiting the Site to carry out the essential repair works which shall be payable by the Customer in accordance with clause 5.
- 3.7** The Customer acknowledges that the Services shall not include any of the following additional works, unless they are specifically included within the Specification:
- (a)** major chamber cleans due to a high build up of fat, human waste or limescale;
  - (b)** blockages due to abuse of the Equipment by the Customer or any third party caused by (but in no way limited to) sanitary products, condoms, face / baby wipes and items that would not normally be flushed down a toilet;
  - (c)** any build up of macerated kitchen waste;
  - (d)** maintenance of and repairs to incoming and discharge pipe work;
  - (e)** incorrect installation of any equipment, including the Equipment, by any third party;
  - (f)** inability to lift manhole covers caused by (but in no way limited to) poor installation, grout and paint between the manhole cover and the frame, or due to obstruction such as being covered by a heavy object; and
- if the Supplier identifies that such additional work is required then it shall first provide the Customer with a quotation for this work based on the Supplier’s Additional Charges and will seek the Customer’s consent to carry out the additional works.

#### **4. CUSTOMER’S OBLIGATIONS**

- 4.1** The Customer shall:
- (a)** Ensure that the terms of the Service Agreement and any information contained within the Specification are complete and accurate;
  - (b)** Co-operate with the Supplier in all matters relating to the Services;
  - (c)** Provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer’s Site as reasonably required by the Supplier in order to deliver the Services;
  - (d)** Provide the Supplier with such information as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
  - (e)** Prepare the Customer’s Site for the supply of the Services;
  - (f)** Obtain and maintain all necessary licenses, permissions and consents which may be required before the date on which the Services are to start in order to allow the Supplier to deliver the Services;
  - (g)** give the Supplier at least 3 Business Days prior notice of any cancellation or proposed change to a Site Visit and failure to give the Supplier sufficient notice shall result in the Charges for delivery of the Services being due in full and the Customer shall accordingly be required to pay Additional Charges in relation to any rescheduled Site Visit;
  - (h)** Carry out in a timely fashion any remedial work that is identified by the Supplier; and
  - (i)** Pay the Charges and Additional Charges in a timely fashion and in accordance with clause 5.
- 4.2** If the Supplier’s performance of any of its obligations under the Contract is prevented or delayed by any act or omission by The Customer or failure by the Customer to perform any relevant obligation (**“Customer Default”**):

- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) The Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from The Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2;
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default; and
- (d) the Customer accepts that the Supplier will need to charge Additional Charges for any rearranged Site Visit or emergency call outs outside of normal working hours being 09:00 to 17:30 on a Business Day ("**Normal Working Hours**"), following a Customer Default.

## 5. CHARGES AND PAYMENT

- 5.1 Subject to the provisions of clause 5.2, the Charges for the Services shall be as detailed in the Service Agreement. In the event that the Supplier is required to carry out any additional work on the Customer's Equipment then such additional services shall be charged on a time and materials basis and shall be calculated in accordance with the Supplier's standard parts and labour rates, as stated on the Service Agreement and as amended from time to time (the "**Additional Charges**").
- 5.2 The Supplier reserves the right to increase its Charges and Additional Charges, provided that the Charges and labour charges cannot be increased more than once in any 12 month period. The Supplier will give the Customer written notice of any increase in the Charges three calendar months before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within ten Business Days of the date of the Supplier's notice and the Supplier shall have the right without limiting its other rights or remedies to terminate the Contract by giving one calendar month's written notice to the Customer.
- 5.3 For Customers on a standing order contract, subject to the provisions of clause 5.6, the Supplier shall invoice the Customer annually in advance of delivering the Services for the upcoming Contract period and the Customer shall settle this invoice by direct debit in twelve equal calendar monthly payments.
- 5.4 For Customers who are on a pay as you go contract, the Supplier shall invoice the Customer on completion of each Service Visit and following any additional works carried out on the Equipment and the Customer shall pay each invoice submitted by the Supplier:
  - (a) in full and in cleared funds to a bank account nominated in writing by the Supplier.
  - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier.
- 5.5 The Customer authorises the Supplier to invoice any Additional Charges incurred by the Supplier in carrying out essential repair works as detailed in clause 3.6 or for those Additional Charges arising under clause 4.1(g) these will be due within 5 working days from site visit date.
- 5.6 A Customer on a contract who requires the Supplier to carry out a Service Visit on the Commencement Date shall have the full amount of that Service Visit debited from its bank account prior to the agreed Service Visit date and the balance of the Charges shall be settled by direct debit via GoCardless in six equal calendar monthly payments.
- 5.7 Time for payment of the invoices issued by the Supplier, in accordance with the provisions of clauses 5.3, 5.4, 5.5 and 5.6 will be a material term of the Contract and the Supplier is permitted to suspend the delivery of any Services until such time as the Charges and Additional Charges have been settled in full by the Customer and for the avoidance of doubt it is not possible for the Supplier to collect payments outside of Normal Working Hours and so any breakdown of Equipment outside of Normal Working Hours for Customers in default of the payment terms in clauses 5.3, 5.4, 5.5 and 5.6 will result in a delay before the Supplier can take full payment of any arrears and then schedule a Site Visit to provide the Services.
- 5.8 All amounts payable by the Customer arising under the Contract are exclusive of amounts in respect of value added tax ("**VAT**") which includes any change in the rate of VAT from time to time or any replacement tax and any statutory charges imposed by the government from time to time. Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer 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 at the same time as payment is due for the supply of the Services.
- 5.9 Save in relation to an invoice disputed by the Customer in good faith but only until the dispute is finally determined in accordance with clause 5.11, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per cent per annum above base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

- 5.10** The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 5.11** If a Customer wishes to dispute any invoice issued by the Supplier it must do so within ten Business Days of the invoice date and the Customer must write to the Supplier within that time setting out the grounds of its dispute. The Supplier shall then have a further period of ten Business Days from receipt of the Customer's written dispute to consider its terms and to decide whether or not there is any merit to the Customer's dispute and the Supplier shall then write to the Customer within that time with its final determination on the dispute and the amount due under the disputed invoice. Absent of manifest error or fraud the Supplier's decision in the matter of a disputed invoice shall be final.
- 6. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 6.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:**
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;**
  - (b) fraud or fraudulent misrepresentation; or**
  - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).**
- 6.2 Subject to clause 6.1:**
- (a) 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:**
    - (i) any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract and the Services provided by the Supplier;**
    - (ii) work carried out by any third parties including (but in no way limited to) defects caused by incorrect fitting or erection of the Equipment, usage of any third party equipment and misuse or neglect, interference with or attempted repairs or servicing to the Equipment whether by a third party or the Customer;**
    - (iii) defects in the Equipment or, subject to the provisions of clause 10, any replacement component parts fitted by the Supplier, or any other third party equipment; and**
  - (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed either the Contract value or any amount recoverable under the Supplier's insurance policies in place from time to time (less any excess payable by the Supplier under such policies), whichever is the greater sum.**
- 6.3 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.**
- 6.4 This clause 6 shall survive termination of the Contract.**
- 7. TERM AND TERMINATION**
- 7.1** Subject to the provisions of clauses 7.3, from the Commencement Date this Contract shall continue for the minimum term stated on the Service Agreement (the "**Initial Contract Term**") and thereafter shall continue from year to year (each a "**Further Contract Term**") until such time as it is terminated in accordance with the provisions of clause 7.2.
- 7.2** Without limiting its other rights or remedies, either party may terminate the Contract on expiry of or after the Initial Contract Term or any Further Contract Term by giving to the other party not less than three months' written notice prior to the anniversary of the Commencement Date.
- 7.3** Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer shall default in or commit a material breach of any of its obligations to the Supplier and (if such a breach is remediable) fails to remedy that breach within 20 Business Days of that party being notified in writing to do so;**
  - (b) (in the case of a natural person) if the Customer shall make or offer to make any arrangement or composition with creditors or shall become insolvent or commit any act of bankruptcy or suffer the filing of a petition of bankruptcy or a receiving order in bankruptcy shall be presented or made against the Customer;**
  - (c) (in the case of a corporate body) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or makes any arrangement or composition with its creditors or a petition is filed, a notice given or a resolution is passed for the winding up of the Customer;**

- (d) if the effect of any legislation, regulation, judgement or decree of the governments of the United Kingdom or a court of competent jurisdiction adversely affects the trading conditions or the terms of trade between the Supplier and its suppliers;
- (e) the Customer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 7.4 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within twenty Business Days after being notified in writing to do so.
- 7.5 Without limiting its other rights or remedies, the Supplier may suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 7.3, or if the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 7.6 The Initial Contract Term for a plan is 12 months.
- 8. CONSEQUENCES OF TERMINATION**
- 8.1 On termination of the Contract for any reason:
- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (c) clauses which expressly or by implication survive termination shall continue in full force and effect.
- 9. DISTANCE SELLING**
- 9.1 The Consumer Protection (Distance Selling) Regulations 2000 will apply to this Contract if it has been entered into between the Customer and the Supplier by any means of distance communication which shall include letters, advertising (with order form), catalogues, telephone sales calls, electronic mail, radio advertising or generally when the Customer does not physically meet any employee or representative of the Supplier to enter into the Contract.
- 9.2 Where the Distance Selling Regulations apply to this Contract the Customer shall have a right to cancel the Contract by giving notice to the Supplier within a period of seven Business Days from the Commencement Date and upon cancellation of the Contract by the Customer in accordance with this clause 9.2 the Contract shall be treated as if it had not been made at all and any sums paid by the Customer shall be returned by the Supplier within 30 days of the notice of cancellation.
- 9.3 If the Customer requires the Supplier to carry out the Services before the expiry of the Customer's right to cancel, as detailed in clause 9.2 above, then the Customer's right to cancel the Contract shall expire immediately upon the commencement of the performance of the Services by the Supplier.
- 9.4 The Services provided by the Supplier under this Contract shall benefit from the warranty detailed in clause 10 of these Conditions.
- 10. WARRANTY**
- 10.1 The Supplier's workmanship and any replacement parts fitted and installed by the Supplier in carrying out the Services are guaranteed for twelve months and shall come with a twelve month warranty which will include free attendance at the Site by one of the Supplier's engineers, free labour and replacement of the faulty part provided that the fault has not arisen as a consequence of any deliberate or negligent actions by or misuse of the Equipment by the Customer.
- 11. FORCE MAJEURE**
- 11.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 11.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

**11.3** If the Force Majeure Event prevents the Supplier from providing any of the Services for more than four weeks, either party shall, without limiting their rights or remedies under the Contract, have the right to terminate this Contract immediately by giving written notice to the other party.

## **12. GENERAL**

### **12.1 Assignment and other dealings.**

- (a)** The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b)** The Customer shall not, without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed), 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 Contract.

### **12.2 Notices.**

- (a)** Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed, in the case of the Supplier, to its registered office or, in the case of the Customer, to the address given on the Service Agreement 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.
- (b)** A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2(a); if sent by pre-paid first class post or other next working day delivery service, at 10.00 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, one Business Day after transmission.
- (c)** The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### **12.3 Severance.**

- (a)** If any provision or part-provision of the Contract 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 Contract.
- (b)** If any provision or part-provision of this Contract 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.

**12.4 Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising 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 its 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, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

**12.6 Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

**12.7 Variation.** The Customer must check the Supplier's website regularly for any changes to or variation of these Conditions and so far as reasonably possible the Supplier will provide notice of such changes and variations of these Conditions to the Customer but any failure by the Supplier to notify the Customer of such changes shall not affect the validity of such a variation and save in relation to any material changes of these Conditions the Customer is deemed to have automatically consented to such variations by the Supplier.

**12.8 Governing law.** This Contract, 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.

**12.9 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 this Contract or its subject matter or formation (including non-contractual disputes or claims).