

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

FINAL VERSION AUTO ROLLOVER

1. INTERPRETATION

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

Anniversary: the day before the Anniversary of the Commissioning Date in each year.

Business Day: a day other than a Saturday, Sunday or public holiday in England 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.

Commissioning Date: has the meaning set out in clause 2.2.

Conclusion Letter: a letter which is to be written or is deemed to be written from the Customer to the Supplier on termination of this Contract in the form of the second schedule hereto or such other form as the Customer and the Supplier agree in writing.

Conditions: these terms and conditions as amended from time to time in accordance with clause 10.2.

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

Customer: the person or firm who purchases the Services from the Supplier.

Deliverables: the supply of equipment and the provision of consumables for that equipment intended (if correctly operated) to avoid and reduce the incidence of Legionella in the Premises of the Customer as specifically agreed between the Supplier and the Customer and the provision of regular sampling of water from the Premises at the number of sample points and at the time intervals as identified in the Order

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Materials: means the equipment installed by the Supplier.

Order: the order by the Customer for the supply of Services, as set out in the Proposal of the Supplier as sent to the Customer including the Specification.

Pod: the equipment and its container containing the physical Deliverables as set out in the Specification and in these Terms and Conditions for the supply of services "Pods" shall have a corresponding meaning.

Premises: the premises of the Customer as identified in the Order.

Services: the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Specification.

Specification: the description or specification for the Services provided in writing by the Supplier to the Customer.

Standard Charges from time to time of the Supplier: the Standard Charges from time to time of the Supplier as set out or referred to in the Third Schedule hereto or as increased from time to time in accordance with paragraph 5.1(c) or as notified to the Customer in some other way.

Supplier: Proeconomy Limited (registered in England and Wales with company number 02861698).

Term: means the period of 1 year from the Commissioning Date subject to continuation in accordance with Clauses 5.1(c) and 5.1(d) the parties hereto acknowledging that as a result of this the Agreement could continue indefinitely.

2. BASIS OF CONTRACT

2.1 The Order when agreed to by the Customer constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Contract shall start:

(a) In respect of Deliverables which consist of new equipment when the Supplier shall have commissioned the equipment so it is operating and shall confirm in writing that the Services have commenced and that the Deliverables are operating correctly;

(b) In respect of Deliverables which are not new equipment and are existing installation supported and Services supplied by the Supplier the date indicated in writing by the Supplier to the Customer (Commissioning 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.

3. SUPPLY OF SERVICES

- 3.1 The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2 Time shall not be of the essence for performance of the Services.
- 3.3 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

4. OBLIGATIONS OF THE CUSTOMER

- 4.1 The Customer shall:
- (a) ensure that the and any information it provides to the Supplier is accurate;
 - (b) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Premises and free unfettered and sole access to the Pods, and other facilities as reasonably required by the Supplier;
 - (c) provide the Supplier with such information as the Supplier may require in order to supply the Services, and ensure that such information is accurate;
 - (d) prepare the Premises for the supply of the Services;
 - (e) not to alter adapt or change in any way the Materials or the Pods or the Deliverables or allow any other person to do so and in particular not to dismantle or carry out work on the Materials or the Pods or the Deliverables in an attempt to or with the intention of revealing or establishing how they work with a view to establishing and reverse engineering the process of the Supplier or for any other purpose whatsoever;
 - (f) not to allow any person any access to the Materials and in particular the Customer accepts and acknowledges that if a competitor of the Supplier were to have access to the Materials or certain parts and aspects of them the commercial interests of the Supplier could be materially damaged because certain Materials contain trade secrets of the Supplier;
 - (g) to provide all reasonable assistance to the Supplier in the performance of its obligations ;
 - (h) to provide a 13amp 240 volts electricity supply to the Pods continuously at all times so that there should be no power cuts whatsoever or if there are power cuts to immediately notify the Supplier to enable the Supplier to take remedial action;
 - (i) to prevent and protect the Materials and the Pod and the Deliverables from any damage (whether malicious damage or accidental damage) whatsoever and to indemnify the Supplier in respect of any such damage;

- (j) in the event of any damage to the Pod and the Deliverables to pay to the Supplier the reasonable cost of the Supplier in repairing and remedying such damage (save where in the reasonable opinion of the Supplier such damage is as a result of fair wear and tear);
- (k) If in accordance with its accounts department rules and conditions the Customer needs to supply an order number to the Supplier the Customer will supply that order number promptly, efficiently and without demand to the Supplier and the Customer shall pay to the Supplier a reasonable hourly rate for time expended by personnel of the Supplier in contact with the personnel of the Customer to endeavour to obtain any order number needed, such hourly rate to be at a minimum of £30.00 per hour;
- (l) To pay all invoices within 30 days of the date thereon.

4.2 If the performance of the Supplier 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 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 where reasonable; and
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the failure or delay of the Supplier to perform any of its obligations..

5. CHARGES AND PAYMENT

5.1 The Charges for the Services shall be as set out below:

- (a) the Charges shall be calculated in accordance with the fees agreed and set out in the Order or the Standard Charges from time of the Supplier as appropriate;
- (b) the Charges for any work carried out by the Supplier including but not solely limited to the work referred to in paragraph 4.1(j) and (k) shall be calculated in accordance with the standard charges from time to time of the Supplier or if work carried out is not included in the standard charges from time to time of the Supplier such reasonable charges as the Supplier shall indicate to the Customer.
- (c) in the period of between 6 weeks and 4 weeks before the Anniversary the Supplier may (but is not obliged to) indicate to the Customer that the Charges agreed and set out in the Order and the standard charges from time to time of the Supplier shall increase and the amount of the increased Charges as set out in the Order and in the standard charges from time to time of the Supplier;

- (d) unless the Customer exercises the rights of termination set out in Clause 8.3 the Charges in respect of the year of the Term commencing on the day after the Anniversary to which the notice referred to in paragraph c relates shall be as set out in the notice referred to in paragraph c and this contract shall continue and the Term shall continue for the year commencing on the day after the Anniversary to which the notice referred to in paragraph 5.1(c) relates;
- (e) the Supplier shall not be obliged to give any notice as referred to in Clause 5.1(c) and if no such notice shall be given the Supplier shall notify the Customer in the period referred to in Clause 5.1(c) in which case the Term shall continue and the Charges shall not increase;
- (f) The Customer acknowledges and accepts that the charges of the Supplier include charges for the provision of silver and copper and that the costs of such items are dependent on and linked to market forces which are outside the control of the Supplier and in the event of unusual or excessive increases in the prices of such commodities the Supplier reserves the right to increase charges on one month's notice to the Customer;
- (g) Any notice issued by the Supplier as referred to in paragraph (c) above or paragraph (f) above shall be deemed to be received by the Customer when it is sent by the Supplier by post, email, fax or any other medium reasonably selected by the Supplier and the statement of a member of personnel of the Supplier that such notice has been submitted will be conclusive and binding on the parties hereto save in the case of manifest and obvious error.

5.2 The Supplier shall invoice the Customer in advance.

5.3 The Customer shall pay each invoice submitted by the Supplier:

- (a) within 30 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier on it's invoice to the Customer, and

time for payment shall be of the essence of the Contract.

5.4 All amounts payable by the Customer under the Contract are exclusive of value added tax.

5.5 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 2% per annum above the base rate of H.S.B.C. Bank PLC. The Customer shall pay the interest together with the overdue amount.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Materials shall be owned by the Supplier.

7. CONFIDENTIALITY

- 7.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 7 shall survive termination of the Contract. The Customer acknowledges and accepts that by virtue of certain items of Equipment being at its premises it is deemed to have access to secret know how which is the property of the Supplier.

- 7.2 The Supplier or the Customer can use any information they have about each other in a positive and helpful way as publicity informing the public about the successful performance of the Services and the Deliverables in advertising or publicity material or other material which supports the respective business of either the Supplier or the Customer PROVIDED THAT if either the Supplier or the Customer shall form the opinion that any publicity used by the other in connection with this Clause is not positive and helpful and shall notify the other of this then the party receiving such notice shall cease using such information in such way as soon as reasonably possible.

8. TERMINATION

- 8.1 Without limiting its other rights or remedies, either party may terminate the Contract:
- (a) with immediate effect by giving written notice to the other party if the other party commits a material breach of any term of the Contract;
 - (b) On 90 days written notice if the other party commits a breach of any of the term of the Contract which is remediable and fails to remedy that breach within a reasonable period (not less than 30 days) of notice in writing to do so.

- 8.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract if the Customer fails to pay all outstanding amounts within thirty days after being notified in writing to do so.
- 8.3 The Customer may if it reasonably concludes that the increased charges referred to in any notice served by the Supplier in accordance with Clause 5.1(c) are excessive or unreasonable terminate this Contract within a period of 2 weeks after receipt of the notice referred to in paragraph 5.1(c) by written notice addressed to the Managing Director of the Supplier sent and received by recorded delivery post only at the Registered Office of the Supplier.

9. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the outstanding unpaid invoices and interest of the Supplier 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 Customer shall return any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Premises and take possession of them;
- (c) the Customer shall write the Conclusion Letter to the Supplier and if the Customer fails to do so the Supplier is hereby appointed on behalf of the Customer as its agent and attorney with full power and right to sign the Conclusion Letter on behalf of the Customer and deliver a copy of it to the Customer and a statement by the Supplier that the Conclusion Letter has been issued by the Customer to the Supplier shall be conclusive evidence that such letter has been written.

10. GENERAL

10.1 Assignment and other dealings.

- (a) The Customer shall not, without the prior written consent of the Supplier, assign, any or all of its rights or obligations under the Contract.

10.2 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Supplier and in particular no standard terms or conditions of the Customer whether provided by the Customer to the Supplier or otherwise published or made available or generally known shall apply to this Contract.

10.3 **Recycling.** The Customer acknowledges and accepts that the Supplier is committed to recycling which will involve and include:

- (a) Recycling of silver and copper Pods by melting them down; and
- (b) Reuse of the Pod enclosure as originally supplied as part of the Deliverables at the end or sooner termination of this Contract; and
- (c) The Customer will use all reasonable endeavours to assist the Supplier in such recycling and will indemnify the Supplier against any costs wasted or expenses if they are unable to do so.

FIRST SCHEDULE

FORMAT OF ORDER FORM

Please let me have your format of order form for insertion here

SECOND SCHEDULE

FORMAT OF CONCLUSION LETTER

Letter from the customer to proeconomy.

Dear Sirs,

We confirm that our contract and terms of business with you have been terminated and will end on [date to be inserted] which in this letter is called "the end date".

We absolve you from any responsibilities to us in any respect from the end date. We acknowledge that from and after the end date we may suffer Legionella in our systems. We accept that the risk of suffering legionella in our systems is entirely our risk and not your risk in any respect. In particular we acknowledge that if you do not sample water, change electrodes, or maintain the system which you have installed at our Premises as part of the Deliverables we will not in any way hold you responsible for any outbreak of Legionnaire Disease.

We also acknowledge and accept that with effect from 1st September 2015 only supplies of copper and silver from you will comply with the EC Biocide Products Directive Reference No. 98/8/EC.

After the end date we may call for your assistance in relation to legionella in our systems. If we do we acknowledge that you may for any reason (or no reason) decline to provide such assistance. If you do provide such assistance it will be on such terms and at such fees that you require. We accept that we will pay in advance such fees that you require for the provision of such assistance.

THIRD SCHEDULE

Schedule of Charges Relevant at the date of publication of these Terms of Business subject to increase in accordance with Clause 5.1(c) and 5.1(f).

1. These charges are not exhaustive. They are intended to be indicative and of assistance to the Customer and are intended to cover most points but not all points.
2. Should the behaviour of the Customer make it impossible or inordinately difficult for the Supplier to comply with its recycling policy in relation to Pod enclosure as referred to in Clause 10.3 for each Pod enclosure not recyclable in this way a charge of a minimum of £250 increased by reference to the price or value specified from time to time reasonably by the Supplier for copper or silver.
3. Labour costs a minimum of £50 and a maximum of £100 per visit plus a fee of £150 per call out; if there is a call out and the Supplier concludes no work is required (a needless call out) there will be no labour cost but the call out charge will still be payable in addition to the labour costs as referred to in clause 3(d) of this Schedule.
4. Emergency call out figure (and an emergency is defined as a call requesting attendance within 24 hours) £200.
5. Replacement of a flow sensor £500.