

This contract replaces any previous contract: September 2017

**1. Definitions**

In this Agreement, the following terms shall have the following meanings:

- 'Commencement Date' the meaning given in clause 9 and overleaf;
- 'Equipment' the equipment described in Schedule 1;
- 'Maintenance Charges' and 'Maintenance Contract' the meanings set out overleaf
- 'Maintenance Services' the 12 month minimum period of cover with an option to renew annually.
- 'Parties' the services described in Schedule 2 by reference to the appropriate Maintenance Service level as shown overleaf;
- 'Excluded Works' the Supplier and the Customer, and 'Party' shall mean either one of them; and the meaning set out overleaf.
- 'Excluded Works' the exclusions described in Schedule 3.

**2. Maintenance Services**

2.1 The Supplier will provide the Customer with Maintenance Services at the Maintenance Service Level in respect of the Equipment on the following terms and conditions which, with the Supplier's standard conditions of sale from time to time in force, shall constitute the entire Maintenance Contract between the Supplier and the Customer.

2.2 The Maintenance Services will be provided seven days per week including public, bank and local holidays. However, routine repair work including boiler servicing will only be carried out between 8.00 AM and 5.00 PM Monday to Friday during April to September inclusive.

2.3 The Supplier will endeavour to respond promptly and if possible within 24 hours to requests for Maintenance Services.

**3. Exclusion from Maintenance Services**

The Maintenance Services do not include the Excluded Works and the Supplier shall be entitled to charge for the Excluded Works at its normal hourly rate

**4. Maintenance Charges**

4.1 Maintenance Charges are payable monthly in advance by Direct Debit to the bank account nominated from time to time by the Supplier.

4.2 Additional services (including emergency visits outside the hours specified in clause 2.2 above and Excluded Works) and the cost of replacement parts not covered by a parts warranty given by the Supplier will be the subject of extra charges in accordance with the Supplier's terms then in force payable within 30 days of the date of the Supplier's invoice.

4.3 The Supplier may:

- 4.3.1 adjust its Maintenance Charges by written notice not later than 30 days before any anniversary of the Commencement Date; and
- 4.3.2 if the Customer does not pay the adjusted Maintenance Charges on the due date terminate this Agreement immediately and without notice.

4.4 The Maintenance Charges are payable without any deductions or withholding of any kind and are inclusive of VAT.

**5. Customer's obligations**

To facilitate the provision by the Supplier of Maintenance Services the Customer shall:

- 5.1 keep and operate the Equipment in a proper and prudent manner.
- 5.2 use the Equipment in a suitable environment with proper power supplies and in accordance with instructions and advice of the Equipment manufacturer and the Supplier;
- 5.3 not move the Equipment or make any addition, modification or adjustment to it without the Supplier's prior written consent;
- 5.4 maintain and make available to the Supplier records of the operation, and any malfunction of the Equipment; and

**6. Liability**

6.1 The Supplier shall use its reasonable endeavours to keep the Equipment in efficient operating condition but shall have no liability at all for any loss or damage of any kind arising from any stoppage, breakdown or failure of the Equipment however occasioned.

6.2 The Supplier shall have no liability for any damage to the Customer's property unless occasioned by the Supplier's negligence.

6.3 The Agreement by the Supplier to supply the Maintenance Services in respect of the system in no way implies that the system is fitted in accordance with current building regulation or Gas Safe standards. If it becomes apparent to the Supplier that the system is not fitted to acceptable standards the Supplier may terminate this agreement without any further liability to and without any reimbursement of any charges made.

**7. Replacement parts**

Replaced parts are the Supplier's property until paid for.

**8. Force majeure**

If the performance of this Agreement or any obligation under it is prevented, restricted or interfered with by reason of circumstances beyond the reasonable control of the Party obliged to perform it, the Party so affected (upon giving prompt notice to the other Party) shall be excused from performance to the extent of the prevention, restriction or interference, but the Party so affected shall use his or its best endeavours to avoid or remove the causes of non-performance and shall continue performance under this Agreement with the utmost dispatch whenever such causes are removed or diminished.

**9. Commencement and term of agreement**

This Agreement starts on the Commencement Date and remains in force until it is terminated on any anniversary of the Commencement Date by not less than 3 weeks written notice by either Party to the other.

**10. Termination on default etc**

Either Party may at any time by written notice (in addition to any other rights) terminate this Agreement or suspend his or its performance of all or any of his or its obligations under it immediately and without liability for compensation or damages if:

- 10.1 The Customer fails to comply in all material respects with this Agreement;
- 10.2 The Customer dies, becomes bankrupt, has a receiving order made against him, makes any arrangement with his creditors generally or takes or suffers any similar action as a result of debt;

**11. Not assignable**

11.1 The Supplier reserves the right to assign this Agreement and to sub-contract all or any of its obligations.

11.2 This Agreement is personal to the Customer who may not without the Supplier's prior written consent:

- 11.2.1 Assign or dispose of it;
- 11.2.2 Part with any interest in it; or
- 11.2.3 Grant any lease or licence or delegate any of the rights conferred by it.

**12. Variation**

No variation or amendment of this Agreement or oral promise or commitment related to it shall be valid unless committed to writing and signed by or on behalf of both Parties.

**13. Notices**

13.1 Any notice to be given under this Agreement shall be in writing and shall be sent by first class mail or air mail, or by facsimile or e-mail (confirmed by first class mail or air mail) to the address or to the facsimile number of the relevant Party set out overleaf, or such other address or facsimile number as that Party may from time to time notify the other Party in accordance with this clause.

13.2 Notices sent as above shall be deemed to have been received 3 working days after the day of posting (in the case of inland first class mail), or 7 working days after the date of posting (in the case of air mail), or on the next working day after transmission (in the case of facsimile messages, but only if a transmission report is generated by the sender's facsimile machine recording a message from the recipient's facsimile machine, confirming that the facsimile was sent to the number indicated above and confirming that all pages were successfully transmitted), or next working day after sending (in the case of e-mail).

13.3 In proving the giving of a notice it shall be sufficient to prove that the notice was left, or that the envelope containing the notice was properly addressed and posted, or that the applicable means of telecommunication was addressed and dispatched and dispatch of the transmission was confirmed and/or acknowledged as the case may be.

**14. Law and jurisdiction**

The validity, construction and performance of this Agreement shall be governed by English Law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

**15. Third parties**

For the purposes of the Contracts (Rights of Third Parties) Act 1999 and notwithstanding any other provision of this Agreement this Agreement is not intended to, and does not, give any person who is not party to it any right to enforce any of its provisions.

**Schedule 1**

<b>The Equipment</b>	Make:	Model:	Serial Number
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**Schedule 2**

**Maintenance Services**

**Service Level:**

- |                |  |
|----------------|--|
| 1. ServiceCare | <b>Services Provided:</b>  |
| 2. BoilerCare  | - Annual boiler service and safety check and priority call out service (excludes labour, parts and consumables).   |
| 3. SystemCare  | - Service care plus unlimited priority call outs to the boiler and its integral controls (includes labour and parts, excludes consumables).  |
|                | - Boiler care plus unlimited call outs to the external controls, pumps, valves, heating pipe work, hot water cylinder and radiators (includes parts and labour, excludes consumables). |

**Schedule 3**

**Exclusions**

- 1. Modifications or additions to the Equipment;
- 2. Peripheral items and consumables (lists of which are available from the Supplier);
- 3. Items which in the Supplier's opinion can no longer be subject to economical maintenance and for which the Supplier has submitted a refurbishment cost estimate payable in addition to the Maintenance Charges unless work is authorised within 30 days of the date of the estimate;
- 4. Defects resulting, in the Supplier's reasonable opinion, from misuse or neglect of or accident to the Equipment or failure to follow the instructions or advice of the Supplier or the Equipment manufacturer;
- 5. Visits in addition to those (if any) specified in this agreement; or
- 6. The repair or replacement of parts which the Supplier requires to carry out away from the site named in this agreement but which the Customer for security reasons or otherwise is unwilling to release to the Supplier.
- 7. Any problem relating to the original installation of the system.
- 8. Any problem due to the failure of the water, gas or electricity supplied to the system.
- 9. Any problem relating to the lime scaling of the system due to the hardness of the water supply.
- 10. Any problem relating to the build-up of deposits within the system including but not limited to corrosion deposits.
- 11. The failure of the heat exchanger will mean that the boiler is beyond economical repair.
- 12. Any problem caused by lightning strike, frost, explosion, flood, storm, fire impact or other similar causes.
- 13. Any problem caused through negligence, misuse or third party interference whether wilfully or accidentally.
- 14. Any problems relating to the hot water supply from the cylinder to and including the taps and washers.
- 15. Adjustment of time and temperature controls.
- 16. The structure of the building including but not limited to pipe work and flues concealed within it.
- 17. Any faults present at the time of signing this agreement or that occur within 28 days, at the Commencement Date.
- 18. Replacement of flues.
- 19. Any problem relating to heating appliances including, but not limited to, fan assisted radiators, towel rails, immersion heaters, designer radiators, primatic cylinders, thermal stores, unvented cylinders, custom made cylinders and glass fronts on back boiler fires.