



**1st Fix Maintenance Services Limited  
General Terms and Conditions**

## Terms of Business<sup>1</sup>

Please read these Terms of Business carefully, as they set out our and your legal rights and obligations in relation to our services.

### 1. Definitions and interpretation

1.1 In these Terms of Business:

“**Business Day**” means any week day, other than a bank or public holiday in England;

“**Business Hours**” means between [08:00] and [17:00] on a Business Day;

“**Charges**” means the charges payable by the Customer to the Contractor in respect of an Engagement, which will be made up from the following elements:

[(a) a non-refundable deposit of the amount specified in the Acceptance of Work;]

[(b) the [other] charges specified in the Acceptance of Work;]

[(c) The Contractors Hourly Rate multiplied by the number of person-hours spent by the Contractors personnel<sup>2</sup> performing the Services

[(d) The Materials Costs;]

“**Customer**” means the customer for Services under an Engagement as specified in the Acceptance of Work;

“**Effective Date**” [means, in relation to an Engagement, the date when the Contractor receives a copy of the Acceptance of Work relating to that Engagement signed by the Customer (such Acceptance of Work having been previously signed by the Contractor and sent to the Customer) [providing the signed Acceptance of Work is received by the Contractor within the period of [30] days following the date of signature of the Acceptance of Work by the Contractor]];<sup>3</sup>

“**Engagement**” means a contract between the Contractor and the Customer for the supply of Services incorporating these Terms of Business and a Acceptance of Work, and any amendments to such a contract from time to time;

“**Equipment**” means the equipment used by the Contractor in the course of providing the Services;

“**Force Majeure Event**” means an event, or a series of related events, that is outside the reasonable control of the party affected (including power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, severe adverse weather conditions, riots, terrorist attacks and wars);

[“**Hourly Rate**” means the Contractors [standard] hourly labour rate as [specified in the Acceptance of Work / published on the Contractors website on the Effective Date / notified by the Contractor to the Customer] and varied in accordance with Clause [8];]<sup>4</sup>

“**Materials**” means all materials, fittings, components and/or parts supplied by the Contractor to the Customer in the course of the provision of the Services;

“**Materials Costs**” means the costs of the Materials calculated [in accordance with the Contractors standard price list from time to time / as the actual costs of the relevant Materials to the Contractor [plus a minimum [40] per cent] handling charge];

[“**Minimum Term**” means the period specified as such in the Acceptance of Work;]<sup>5</sup>

“**Premises**” means the premises of the Customer where the Services will be provided by the Contractor, as specified in the Acceptance of Work;

“**Services**” means the services supplied or to be supplied by the Contractor to the Customer under an Engagement, details of which are set out in the Acceptance of Work [(or, to the extent that no such details are set out in the Acceptance of Work, details of which will be agreed between the parties acting reasonably from time to time)];

“**Acceptance of Work**” means the Acceptance of work document issued by the Contractor to the Customer detailing the scope of the Services and other matters relating to an Engagement, and signed by both parties;

“**Contractor**” means [1st fix maintenance services ltd], a company incorporated in [England and Wales] (7852408) having its registered office at Unit 26 Breakfield, Ullswater Industrial Estate, Coulsdon, Surrey, CR5 2HS

“**Term**” means the term of an Engagement.

1.2 In these Terms of Business, a reference to a statute or statutory provision includes a reference to:

(a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and

(b) Any subordinate legislation made under that statute or statutory provision.

1.3 The Clause headings do not affect the interpretation of these Terms of Business.

1.4 In these Terms of Business, “persons” include companies, partnerships, limited liability partnerships, unincorporated associations and trusts.

1.5 The ejusdem generis rule is not intended to be used in the interpretation of these Terms of Business.<sup>6</sup>

### 2. Engagements

An Engagement will come into force on its Effective Date and will continue in force [until the Services agreed in the Acceptance of Work have been completed and all amounts due under the Acceptance of Work have been paid, upon which it will terminate automatically (unless previously terminated in accordance with Clause [13]) / indefinitely, unless and until terminated in accordance with Clause [13]].

### 3. Services

3.1 The Contractor will supply the Services to the Customer in accordance with the terms of each Engagement. The Services will be provided [during Business Hours] by the Supplier during appointments commencing [on the dates and at the times agreed between the parties [in writing] [acting reasonably] / on the dates and at the times specified in the Acceptance of Work]. [The Customer acknowledges that work for other customers may lead to the Contractors personnel arriving late for an appointment and agrees that the Contractor will not be in breach of its obligations under the Agreement by virtue of the Contractors personnel being late for a booking.]

3.2 [Subject to Clause [3.3],] where the Customer wishes to reschedule an agreed booking for the provision of the Services, the Customer must send a written request to the Contractor, which must be received by the Contractor at least [5] Business Days before the date of the booking. In these circumstances, the parties will use all reasonable endeavours to agree to an alternative booking.

3.3 Where the booking does not take place because the Customer is in breach of the Customer's obligations under the Agreement, or where the Customer requests the rescheduling of a booking otherwise than in accordance with Clause [3.3]:

(a) the Contractor may in its sole discretion refuse to agree an alternative booking, in which case, the Customer will be liable for the anticipated Charges of the booking (including any Materials Costs in respect of Materials actually purchased by the Contractor for the booking), such

amount to be calculated by the Contractor acting reasonably; and

(b) If the Contractor agrees to the rescheduling of the booking, such agreement will be conditional upon the Customer paying to the Contractor a rescheduling or cancellation fee of [£50].]

3.4 The Contractor may suspend the provision of the Services if the Customer fails to pay by the due date any amount due to the Contractor in respect of an Engagement.

3.5 The Contractor may sub-contract the provision of the Services; providing that if the Contractor does sub-contract the provision of the Services, the Contractor will remain liable to the Customer for the performance of the sub-contracted obligations.

3.6 From time to time during the Term the Contractor may be unable to supply the Services by reason of personnel illness or personnel shortage, in which case:

(a) The Contractor will use reasonable endeavours to engage alternative personnel to supply the Services; and

(b) subject to the compliance of the Contractor with Clause [3.6(a)], the Contractor will not be in breach of the terms of the Engagement by virtue of any failure to supply the Services arising out of such inability.]7

3.7 The Contractor will ensure that all personnel involved in the provision of the Services at the Premises have:

(a) Been interviewed by the Contractor;

(b) Supplied proof of identity and satisfactory references to the Contractor;

and

(c) Have been adequately trained in the performance of the services and the use of the equipment.8

3.8 Upon the completion of the Services [and each discrete stage of the Services], the Contractor shall be responsible for removing and properly disposing of any waste materials and debris produced in the course of the supply of those Services.

OR

3.8 The Customer acknowledges that the removal and disposal of waste materials and debris produced in the course of the supply of the Services shall be the responsibility of the Customer.]

3.9 The Contractor shall not be responsible for any redecoration required as a result of the supply of the services unless these works are part of an estimate

3.10 The Customer acknowledges that the provision of Services may require or lead to the testing of the Customer's pre-existing systems, and that testing may result in the identification of pre-existing faults. The Customer further acknowledges that the costs for repair of such pre-existing faults are not (unless expressly agreed otherwise by the Contractor in writing) included in any agreed Charges or previously given estimates.

#### **4. Materials**

4.1 Each written quotation for the supply of Materials given by the Contractor to the Customer will be deemed to be an offer by the Contractor to supply Materials to the Customer subject to these Terms of Business.

4.2 A contractual obligation for the Contractor to supply the Materials to the Customer will come into force when the Customer gives or sends to the Supplier its [written] acceptance of a quotation issued by the Contractor[, providing that the acceptance is received by the Contractor within [10] Business Days of the date of issue of the quotation].

4.3 Unless otherwise agreed [in writing]:

(a) All Materials will be delivered by the Contractor to the Premises and installed by the Contractor through the Services;

[(b) The Contractor will be responsible for arranging loading, carriage, transport and unloading of the Materials;]

[(c) The Contractor will be responsible for paying all costs relating to loading, carriage, transport and unloading of the Materials; and]

[(d) Risk in the Materials will pass from the Contractor to the Customer upon the delivery of the Materials to the Premises.]

[4.4 Legal and equitable title to the Materials will pass from the Supplier to the Customer upon the later of:

(a) Installation of the Materials; and

(b) Receipt by the Contractor of all amounts due from the Customer to the Supplier in respect of the supply and installation of the Materials.]

[4.5 Until title to the Materials has passed to the Customer:

(a) The Customer will hold the Materials as fiduciary agent and bailee of the Contractor; and

(b) The Customer will:

(i) Not remove the Materials from the Premises;

(ii) Not deface, destroy, alter or obscure any identifying mark on the Materials;

(iii) Ensure that no charge, lien or other encumbrance is created over the Materials; and

(iv) Deliver up the Materials to the Supplier upon demand.]

[4.6 The Contractor shall be entitled without further notice to inspect or recover possession of any Materials to which it retains title; and the Customer grants to the Contractor and its employees and agents an irrevocable licence to enter at any time any premises where the Materials is or may be situated for the purpose of inspecting or removing any such Materials the title in which has remained with the Contractor.]

[4.7 The Contractor may bring an action for the price of Materials, notwithstanding that title to the Materials has not passed to Customer.]

4.8 The Contractor reserves the right to charge a fee for the collection of materials from its supplier except with respect to works for which there is an estimate. If the collection occurs whilst the Contractors are on site, the time taken will be treated as an addition to the Works and charged at the relevant rate. If the materials are ordered for subsequent collection and delivery, a charge may be made by the Contractor of £50 plus VAT. Materials will be supplied at cost net after the Contractors normal mark-up cover, handling, stock maintenance etc.

#### **[5. Contractor Equipment9**

5.1 The Contractor may [with the agreement of the Customer] store Equipment at the Premises.

5.2 The Customer must not use, move or otherwise interfere with Equipment stored at the Premises, save in accordance with the express instructions of the Contractor.

5.3 Save to the extent caused by the actions or omissions of the Contractor or its personnel, the Customer will be responsible for all damage to and loss of Equipment whilst the Equipment is at the Premises.]

#### **6. Premises**

6.1 The Customer will:

- (a) provide to the Contractor prompt access to the Premises as required for the provision of the Services, and ensure that the Contractor will be able to access all areas at the Premises reasonably necessary for the provision of the Services;
- (b) Ensure that no other tradesmen will be working at the Premises during the provision of the Services, except with the Contractors express consent;
- (c) [Unless agreed otherwise with the Contractor,] ensure that prior to the commencement of the provision of the Services the areas of the Premises where the Services will be provided will be suitably cleared of all furnishings, appliances, equipment, items and debris that will or may prevent or inhibit the provision of the Services or may be damaged by the carrying out of the Services (whether as a result of dust, fumes or otherwise);
- (d) Maintain the Premises in good order for the supply of the Services, and in accordance with all applicable laws;
- [(e) [where the Customer is a business customer and not a consumer,] be responsible for ensuring the health and safety of the Contractors personnel, agents and subcontractors whilst they are at the Premises;]
- [(f) [where the Customer is a business customer and not a consumer,] inform the Contractor of all health and safety rules and regulations and any reasonable security requirements that apply at the Premises; and]
- [(g) [Where the Customer is a business customer and not a consumer,] maintain reasonable insurance cover for the Contractors personnel, agents and subcontractors whilst they are working at the Premises (including reasonable public liability insurance).]
- [6.2 In the performance of the Services at the Premises, the Contractor shall comply with all reasonable health, safety and security policies and regulations advised to the Contractor by the Customer.]
- [6.3 The Contractor will use reasonable measures to secure any keys (or other access mechanisms such) provided by the Customer to the Contractor for the purpose of enabling the Contractors personnel to enter the Premises.]

## **7. Customer obligations**

- 7.1 The Customer must provide to the Contractor access to [toilets, a water supply, a mains electricity supply and a waste water facility] at the Premises.
- 7.2 The Customer will provide to, or procure for, the Contractor any:
- (a) Support and advice;
- (b) Information and documentation; and
- (c) Third party co-operation; Reasonably necessary to enable the Contractor to discharge its obligations under any Engagement.
- [7.3 The Customer shall be responsible for giving any and all prior notifications and obtaining any and all legal and governmental consents and permits, required by law in relation to the Services.]
- [7.4 The Customer will indemnify the Contractor and will keep the Contractor indemnified against any and all losses, costs, expenses, damages and liabilities (including legal expenses and amounts paid in settlement of legal claims or proceedings) arising directly or indirectly out of any breach by the Customer of Clause [5, 6 or 7].]

## **8. Estimates, Charges and payment**

- 8.1 The Customer will pay the Charges to the Contractor in accordance with the provisions of this Clause [8].
- 8.2 Before the commencement of the Services, the Contractor may provide to the Customer a written estimate of the Charges. The Customer acknowledges that such an estimate may not reflect the actual Charges due in respect of the Engagement. [The Contractor will promptly notify the Customer of any material increase in the likely amount of any Charges that have been previously estimated by the Contractor]
- 8.2a The Contractor may estimate the amount of time it will take to provide the Services, but the Customer acknowledges that any such estimate is not a firm or fixed price quotation, it's an estimate of the likely minimum cost of the works, based on the information made available to the Contractor thus the Contractor shall not be bound by any such estimate. The Contractors final price will be calculated on the basis specified in the estimate, if any, or, if none in accordance with the Contractors rate card. The Contractor reserves the right to increase the price before carrying out the works by an amount equivalent to any increase to the Contractor in the cost of relevant materials, labour, equipment hire or transport since the date upon which the Contractors estimate, written, emailed, oral was given, save that if this would increase the estimated price by more than 10%, the Customer may cancel the contract provided it does so before the Works are begun, any material are ordered or any relevant material is hired
- (b) Any estimate by the Contractor is subject to withdrawal by the Contractor at any time before receipt of an unqualified acceptance from the client and shall be deemed to be withdrawn unless so accepted within 28 days from its date
- 8.3 Any deposit specified must be paid 7-14 days in advance of the provision of the Services. The Contractor may issue an invoice for the other Charges to the Customer [from time to time during the Term / on or after the dates set out in the Acceptance of Work / at any time after the relevant Services have been delivered to the Customer]. The Customer will pay invoiced Charges to the Contractor [immediately upon presentation of the invoice
- (a) Account customers: The Contractor will seek to submit invoices to Account Customers on completion of works; payment must therefore be made by the Account Customer within 30days after the date of issue of the invoice
- (b) The Contractor shall not be required to issue or deliver any certificates, guarantees or other similar documents regarding the Works until payment has been made in full.
- (c) Where the works have been completed subject to snagging, 95% of all amounts outstanding must be paid on such completion. This can be broken into 50% initial payment, 45% halfway stage payment and 5% final snagging payment. There may be instances with regards to smaller works which will have a 50% 50% payment ratio. All other works are paid in full on completion. The customer must provide access to the Contractor without delay for the snagging to be finalised. The balance of 5% will become payable upon the finalisation of the snagging or, if access has not been made available to carry out the snagging within 14 days of, at the expiry of such 14 day period.
- (d) Where the customer is represented by a third party (such as a managing agent, tenant or other occupier, contractor or other representative), in the event of non-payment by the customer, the third party will be responsible for payment unless the Contractor has agreed otherwise in writing
- 8.4 All amounts stated in the Acceptance of Work or in relation to an Engagement are inclusive or exclusive of all value-added taxes, as stated
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- 8.5 Charges must be paid in cash or by debit or credit card, bank transfer or by cheque using such payment details as are notified by the Contractor to the Customer from time to time.

8.6 If the Customer does not pay any amount properly due to the Contractor in connection with any Engagement, the Contractor may:

- (a) Charge the Customer interest on the overdue amount at the rate of [4] % per year above the base rate of [Bank of England] from time to time (which interest will accrue daily and be compounded quarterly; or
- (b) [If the customer is not a consumer,] claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

8.7 The Contractor may elect to vary the Hourly Rate by giving to the Customer not less than [30 days'] written notice of the variation [expiring at the end of any calendar year] [, providing that any such variation shall not result in a percentage increase in the Hourly Rate during the Term in excess of the percentage increase during the same period in the Retail Prices Index (all items) published by the UK Office for National Statistics].<sup>11</sup>

[8.8 The amount of time spent by the Contractors personnel during each Services appointment will be rounded up to the nearest [half hour] for the purposes of calculating the Charges by reference to the Hourly Rate.]

[8.9 The Contractor will:

- (a) Ensure that the personnel providing the Services complete records of their time spent providing those Services;
- (b) Retain such records and evidence during the Term and for a period of [12 months] following the end of the Term; and
- (c) Supply such records and evidence to the Customer within [10] Business Days following receipt of a written request to do so.]

8.10 For the avoidance of doubt, the Charges do not include any charges relating to the Services that are levied by any energy supplier or energy network operator, unless agreed otherwise by the parties in writing. Such charges will be payable by the Customer [direct to the supplier or operator] in addition to the Charges.

## **9. Warranties**

9.1 The Customer warrants and represents to the Contractor that it has the legal right and authority to enter into and perform its obligations required by an Engagement.

9.2 The Contractor warrants to the Customer that:

- (a) It has the legal right and authority to enter into and perform its obligations required by an Engagement;
- (b) The Services will be performed with reasonable care and skill;<sup>12</sup>
- (c) [subject to the Customer's compliance with Clause [7.3],] the Services will be provided in accordance with all applicable laws and regulations in force at the date of the supply of the relevant Services, and Contractor and the Contractors personnel hold all necessary certifications and accreditations to enable them legally to perform the Services.

[9.3 If the Customer believes that Services have not been provided in accordance with Clause [9.2(b)], then the Customer must:

- (a) Notify the Contractor promptly; and
- (b) Allow and enable the Contractor to inspect the Premises and re-perform the relevant Services.]

9.4 The Contractor warrants that:<sup>13</sup>

- (a) The Contractor has (or will have at the relevant time) the right to sell the Materials to the Customer;
- (b) The Materials will be sold free from any charge or encumbrance [, subject to Clause [4]];
- (c) The Customer shall enjoy quiet possession of the Materials [, subject to the rights referred to in Clause [4]];
- (d) The Materials will correspond to any description of the Materials issued by the Contractor to the Customer;
- (e) The Materials will be of satisfactory quality;
- (f) The Materials will be fit for the purpose of replacing any materials that they are used to replace;
- (g) The Materials will comply with all laws, rules and regulations applicable to the Materials in the United Kingdom [and all standards agreed between the parties]; and
- (h) The Materials will bear all mandatory marks and signs associated with the laws, rules, regulations and standards referred to in Clause [9.4(g)].

9.5 All of the parties' warranties and representations in respect of the subject matter of the Engagement are expressly set out in these Terms of Business and in the Acceptance of Work. To the maximum extent permitted by applicable law and subject to Clause [10.1], no other warranties or representations concerning the subject matter of the Engagement will be implied into the Engagement or any other contract.

## **10. Limitations and exclusions of liability<sup>14</sup>**

10.1 Nothing in the Engagement will:

- (a) Limit or exclude the liability of a party for death or personal injury resulting from negligence;
- (b) Limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
- (c) Limit any liability of a party in any way that is not permitted under applicable law; or
- (d) Exclude any liability of a party that may not be excluded under applicable law,<sup>15</sup> And any statutory rights that a party has as a consumer, that cannot be limited or excluded, will not be limited or excluded by the Engagement.

10.2 The limitations and exclusions of liability set out in this Clause [10] [and elsewhere in the Engagement]:

- (a) Are subject to Clause [10.1]; and
- (b) Govern all liabilities arising under the Engagement or in relation to the subject matter of the Engagement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty.

10.3 The Contractor will not be liable to the Customer for any losses arising out of a Force Majeure Event.

10.4 The Contractor will not be liable to the Customer in respect of any business losses, such as loss of or damage to profits, income, revenue, use, production, anticipated savings, business, contracts, commercial opportunities or goodwill.<sup>16</sup>

10.5 [Where the Customer is a business customer,] the Contractor will not be liable to the Customer in respect of any special, indirect or consequential loss or damage.<sup>17</sup>

10.6 [Where the Customer is a business customer,] the Contractors aggregate liability to the Customer will not exceed the greater of:

- (a) [£1]; and
- (b) The total amount paid and payable by the Customer to the Contractor under the Engagement.

10.7 Save to the extent that the Contractors negligence has resulted in the loss or damage, the Contractors will not be liable to the Customer in respect of any loss or damage arising out of pre-existing faults in the Customer's electrical, plumbing or gas systems, notwithstanding that such pre-existing faults may only become manifest during or following the performance of the Services.

10.8 Save to the extent that the Contractor's negligence has resulted in the loss or damage, the Contractor shall not be liable for any defects resulting from misuse, willful act or faulty workmanship by the Customer or anyone working for or under the direction of the Customer or any redecoration required as a result of the supply of the Services unless it's part of an estimate, also damage to drainage systems caused by root penetration or any outside force or any roofing work where the Contractor advises that the overall condition of the roof is poor and is in need of more extensive work and that the work to be undertaken involves less than 20% of the area of the roof or any work to repair an existing lock or fit any lock not supplied by the Contractor. The Contractor will not be liable for any fracture found in frozen pipes. The Contractor will not guarantee to clear blockages occurring in a frozen pipe or drain.

10.9 The Contractor undertakes to repair or make good any defect in completed work within six months of completion of the same to the extent that such defect arises from a breach of the Contractor's obligations under this contract and provided that the Contractor and his insurers are given the opportunity of inspecting the work and the alleged defect. If the Contractor returns to site at the Customer's request to review a claim under this undertaking, and it transpires that the defect had not arisen as a result of a breach of this contract, the Contractor reserves the right to charge the Customer for the visit at its standard rates, also the Contractor reserves the right not to carry out any Works where the Customer cannot provide any evidence that the work was originally carried out by the Contractor.

#### **[11. Distance contracts and consumer rights]**

11.1 This Clause [11] sets out the rights that consumers may have, in relation to an Engagement, under The Consumer Protection (Distance Selling) Regulations 2000.

11.2 This Clause [11] applies if and only if the Customer agrees to an Engagement:

(a) As a consumer; and

(b) Using any means of distance communication (including telephone, email and the internet).

11.3 Where this Clause [11] applies, the Customer may cancel an Engagement at any time within 7 working days, beginning on the day after the contract for that Engagement came into force, providing that the Contractor has not begun the provision of the Services if the Customer wishes to cancel an appointment for a visit by the Contractor, the Customer will incur a cancellation fee of £10 ( plus VAT) if the cancellation is made less than 24 hours ( but more than 2 hours ) before the time scheduled for the appointment and of £50 (plus VAT) if the cancellation is made 2 hours or less before the scheduled appointment time.

11.4 If the Customer cancels an Engagement in accordance with this provision, the Customer will receive a full refund of the Charges paid in respect of the Engagement (if any).

11.5 The Contractor will usually refund any money owed to the Customer using the same method used by the Customer to pay the Charges. The Contractor will process the refund due to the Customer as soon as possible and, in any case, within 30 days of the day the Contractor received the Customer's valid notice of cancellation. The notice of cancellation should be sent to the Contractor at the address set out in the Acceptance of Work.]

**12. Force Majeure Event** Where a Force Majeure Event gives rise to a failure or delay in the Contractor performing its obligations required by any Engagement, those obligations will be suspended for the duration of the Force Majeure Event.

#### **13. Termination**

13.1 Either party may terminate an Engagement at any time by giving [at least [7 Business Days' / 30 days']] written notice to the other party [expiring at any time after the end of the Minimum Term].

13.2 Either party may terminate an Engagement immediately by giving written notice to the other party if the other party:

(a) Commits any [material] breach of any term of the Engagement, [and:

(i) The breach is not remediable; or

(ii) The breach is remediable, but the other party fails to remedy the breach within [30] days of receipt of a written notice requiring it to do so; or]

[(b) Persistently breaches the terms of the Engagement.]

13.3 Either party may terminate an Engagement immediately by giving written notice to the other party if:

(a) The other party:

(i) Is dissolved;

(ii) Ceases to conduct all (or substantially all) of its business;

(iii) Is or becomes unable to pay its debts as they fall due;

(iv) Is or becomes insolvent or is declared insolvent; or

(v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;

(b) An administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;

(c) An order is made for the winding up of the other party, or the other party passes a resolution for its winding up [(other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Engagement)]; or

(d) (Where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs or is the subject of a bankruptcy petition or order.

13.4 The Contractor may terminate an Engagement immediately at any time by giving written notice to the Customer if the Customer fails to pay in full and on time any amount due to the Contractor whether due in respect of that Engagement or otherwise.

#### **14. Effects of termination**

14.1 Upon termination of an Engagement all the terms of the Engagement will cease to have effect, save that the following provisions of these Terms of Business will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses [1, 4.4 to 4.7, 7.4, 8.6, 8.8, 10, 14 and 17]. [In addition, Clause 5 will survive and continue to have effect for so long as Equipment remains in the possession or control of the Customer.]

14.2 Termination of an Engagement will not affect either party's accrued liabilities and rights (including accrued rights to be paid) as at the date of termination.

[14.3 Within [14] days of the termination of an Engagement, the Customer will [make available for collection by / deliver to] the Supplier all Equipment in the possession or control of the Customer at the date of termination.]

#### **[15. Non-solicitation]**

The Customer will not without the Contractors prior written consent, either during the Term or within [6] months after the date of effective termination of the Engagement, engage, employ or otherwise solicit for employment any employee or contractor of the Contractor who has been involved in the Engagement or the performance of the Services.]

**[16. Notices**

16.1 Any notice given under these Terms of Business must be in writing (whether or not described as “written notice” in these Terms of Business) and must be delivered personally, sent by pre-paid [first class / recorded signed-for] post, or sent by fax [or email],<sup>21</sup> for the attention of the relevant person, and to the relevant address, fax number or [email address] given below (or as notified by one party to the other in accordance with this Clause). The Contractor [1st fix maintenance services ltd, Unit 26 Breakfield, Ullswater Industrial Estate, Coulsdon, CR5 2HS, info@1stfix.com]

The Customer [The addressee, address, fax [and email address] given in [the Acceptance of Work]]

16.2 A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):

- (a) Where the notice is delivered personally, at the time of delivery;
- (b) Where the notice is sent by [first class / recorded signed-for] post, [48 hours] after posting; and
- (c) Where the notice is sent by fax [or email], at the time of the transmission (providing the sending party retains written evidence of the transmission).]

**17. General**

17.1 No breach of any term of an Engagement will be waived except with the express written consent of the party not in breach.

17.2 If a term of an Engagement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other terms of the Engagement will continue in effect. If any unlawful and/or unenforceable term would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the term will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant term will be deemed to be deleted).

17.3 No Engagement will constitute a partnership, agency relationship or contract of employment between the parties.

[17.4 No term of an Engagement may be varied except by a written document signed by or on behalf of each of the parties.]<sup>22</sup>

17.5 The Contractor may freely assign its rights and obligations under any Engagement without the Customer’s consent – providing where the Customer is a consumer that such action does not serve to reduce the guarantees benefiting the Customer under an Engagement. Save as expressly provided in the terms of the Engagement, the Customer must not without the prior written consent of the Contractor assign, transfer, charge, license or otherwise dispose of or deal in any rights or obligations under an Engagement.

17.6 An Engagement is entered into for the benefit of the parties and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement relating to an Engagement is not subject to the consent of any third party.<sup>23</sup>

17.7 Subject to Clause [10.1]:

(a) these Terms of Business and the relevant Acceptance of Work will constitute the entire agreement between the parties in relation to an Engagement, and supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter; and

(b) Neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into an Engagement.

17.8 Each Engagement will be governed by and construed in accordance with the laws of [England and Wales];<sup>24</sup> and the courts of [England]<sup>25</sup> will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with an Engagement.

**Acceptance of Work**

**Customer**

[Company name], a company incorporated in [England and Wales] (registration number [number]) having its registered office at [address].<sup>26</sup>

**Premises**

[Insert postal address (es) of the place(s) where the Services will be provided.]

**Services<sup>27</sup>**

The Services consist of [insert details].

The Services exclude [insert details].

**[Booking dates and times**

[Insert details]]

**Charges**

[Insert details - including Hourly Rate if relevant and details of any deposit.]

**[Minimum Term**

[E.g. 12 months]]

**[Customer notices**

[Insert address]]

**The parties have indicated their agreement to this Acceptance of Work and the Supplier's Terms of Business by signing below.**

Signed by .....

On.....

[(the Supplier) / for and on behalf of the Supplier]

Signed by .....

On.....

[(the Customer) / for and on behalf of the Customer]

26 Where the Customer is an individual, sole trader or partnership rather than a company, one of the following alternatives may be used:  
Individual: "[*individual name*] of [*address*]." sole trader: "[*individual name*] trading as [*business name*], which has its principal place of business at [*address*]" partnership: "[*partnership name*], a partnership established under [English] law having its principal place of business at [*address*]"

27 Alternatively, the details of the services can be agreed from time to time between the parties: see the definition of Services.