

Terms and Conditions: JLA Response



1 INTERPRETATION

1.1 In these Conditions the following definitions apply:
"Additional Services": the additional services set out in the Confirmation.
"Agreement": the contract between the Supplier and the Customer for the provision of Services which is subject to the Conditions.
"Asset List": the document completed by the Customer detailing the age, description and condition of the Equipment.
"Business Hours": 9:00am to 5:00pm on a Working Day.
"Commencement Date": the date as set out in the Confirmation or an alternative date as determined in accordance with clause 2.7.3.
"Conditions": the terms and conditions as set out in this document which may be varied by the Supplier from time to time.
"Confirmation": the Supplier's written confirmation of the Customer's Order.
"Customer" as set out on the Confirmation.
"Equipment": the equipment specified in the Confirmation.
"Excluded Services": those services listed at clause 5.
"Order": the Customer's order for the supply of the Services, which may take the form of an order form, the Customer's written acceptance of the Supplier's quotation or an oral request for the purchase of Services, as the case may be.
"Price": the price payable for the Services as set out in the Confirmation.
"Service Plan" the Supplier's breakdown service offering as selected by the Customer and set out in the Confirmation.

"Services": the services to be provided by the Supplier as identified and defined in the applicable Service Plan, and, where applicable, any Additional Services, but excluding the Excluded Services.
"Supplier": JLA Limited (Registered in England and Wales with company number 10194178) and any of its group companies, successors or assignees
"Unsuitable": referring to the state of the Equipment as defined in clause 2.7 "Working Day" a day (other than a Saturday, Sunday or public holiday in England and Wales) when the banks in London are open for business.

2 BASIS OF AGREEMENT

2.1 The Customer agrees and acknowledges that it is entering into the Agreement as a business not a consumer and that any person signing on behalf of the Customer has its authority to do so.
2.2 These Conditions apply to the Agreement 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.
2.3 The Confirmation constitutes the acceptance by the Supplier of the Order, in accordance with these Conditions at which point the Agreement shall come into existence. Any quotation for the Services given by the Supplier shall not constitute an offer.
2.4 The Supplier shall only provide the Services under this Agreement in respect of the Equipment.
2.5 The Agreement 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 Agreement.
2.6 The person(s) who signs this Agreement on behalf of the Customer warrant(s) that they have the appropriate and necessary authority to do so and by signing are entering the Customer into a binding contract with the Supplier on the terms of the Agreement. Where two or more persons are named as the Customer, their liability shall be joint and several.
2.7 The Supplier reserves the right to carry out a full inspection of the Equipment prior to the Commencement Date and/or to request that the Customer completes an Asset List. If the Supplier considers in its sole discretion that the Equipment is not in good operating condition, not suitable for the Services, beyond economic repair or hazardous (any of which shall make the Equipment "Unsuitable"), it may at its sole discretion choose to:
2.7.1 cancel and not enter into the Agreement; or
2.7.2 notify the Customer of an increase in the Price quoted or an amendment to the Equipment covered by the Agreement; or
2.7.3 where practicable, postpone the Commencement Date until such time as the Equipment is remedied by the Customer so as to no longer be Unsuitable. In such circumstances, the Supplier shall have no responsibility to the Customer for any loss whether direct, indirect or consequential, but shall repay any prepayments less an administration fee of £50. If no pre-payment has been made, the Supplier will send the Customer an invoice for such administration fee, to be paid in accordance with clauses 7.4 and 7.5.

3 TERM AND TERMINATION

3.1 This Agreement shall commence on the Commencement Date, and shall continue for the period set out in the Confirmation (the "Initial Term").
3.2 At the end of the Initial Term, the Agreement shall continue on an annual basis, with each 12 month period being an "Extended Term" (and the Initial Term and each Extended Term being a "Term"), unless and until terminated in writing in accordance with these terms and conditions. All outstanding payments due for the relevant Term shall become immediately payable on termination for whatever reason.
3.3 The Customer and the Supplier shall each have the right to terminate this Agreement in respect of the Services without reason upon three (3) months' written notice, such notice to expire at the earliest at the end of the current Term.
3.4 Without prejudice to any other provision in these terms and conditions, the Supplier has the right to terminate the Agreement with immediate effect by giving written notice to the Customer in the following circumstances:
3.4.1 a material breach by the Customer; or
3.4.2 the Equipment becoming Unsuitable as set out in clause 2.7; or
3.4.3 the Customer being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or any application for administration or receivership or similar proceedings being made in respect of the Customer; or
3.4.4 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer; or
3.4.5 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer; or
3.4.6 (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver; or
3.4.7 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets; or
3.4.8 (being an individual) the Customer is the subject of a bankruptcy order, dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or
3.4.9 the Customer's financial position deteriorating to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfill its obligations under the Agreement are placed in jeopardy; or
3.4.10 the Customer failing to make a payment due under the Agreement on the due date for payment.
3.5 If the Agreement is terminated during the Initial Term for any reason, any prepayments for the Services which relate to a period after termination will be repaid on a pro rata basis less an administration fee of £50. If no premium has been prepaid, the administration fee will be invoiced upon termination and payable in accordance with clauses 7.4 and 7.5.

4 THE SERVICES

4.1 The Services will be provided by the Supplier or its agents during Business Hours (unless otherwise agreed by the Supplier or stated in the Service Plan) in accordance with the relevant Service Plan, provided that, the Supplier will use reasonable endeavours to meet any specified response or fix times. For the avoidance of doubt, any response or fix times are not guaranteed by the Supplier.
4.2 The Supplier also offers Additional Services such as annual gas checks, duct cleaning and other services. If these are included in the Agreement (as indicated in the Confirmation) any associated charges will be included in the Price. If such Additional Services are not included in the Agreement they can be purchased for an additional fee.
4.3 If, at any time, the Customer requires Services in addition to those included in its current Service Plan the Customer will have the right, upon request, to upgrade to a more suitable Service Plan at the cost then applicable to the relevant Service Plan. The Customer may also at any time request the provision of Additional Services, subject to payment of the then applicable specified fee (or a pro-rata amount of such fee).
4.4 The Supplier will use reasonable endeavours where Services are required to attend by the following Working Day. The Supplier shall not be liable for any direct, indirect or consequential losses caused by any delay, whether such

delay is caused by the Supplier or by any act or omission of the Customer or failure by the Customer to perform any obligation in or comply with any term of this Agreement. Time for performance of the Services shall not be of the essence of this Agreement.
4.5 The Supplier reserves the right to use parts which are reconditioned or not provided by the manufacturer of the Equipment, provided that in the Supplier's reasonable opinion, such parts can satisfactorily perform their particular function.

4.6 The Supplier shall provide the Services with reasonable care and diligence but otherwise all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
4.7 All service visits not required must be cancelled before the engineer attends. The Supplier shall charge a fee for wasted time for:
4.7.1 Service visits which are no longer required but are not cancelled within a reasonable time before the service engineer attends;
4.7.2 Calls attended where no access is gained;
4.7.3 Calls attended for an issue which is excluded under clause 5; or
4.7.4 Calls attended where the machine is in good working order and there is no fault found.

5 EXCLUDED SERVICES

5.1 The provision of the Services will not cover:
5.1.1 Kitchen appliances which are not deemed to be those that require annual servicing or are of a plug and play type equipment;
5.1.2 Replacement parts which due to prolonged use over time or a lack of maintenance or neglect are worn out and at the end of their expected serviceable life;
5.1.3 In the case of hot cabinets and similar appliances: replacement bulbs and oven door seals;
5.1.4 In the case of refrigeration appliances: replacement seals;
5.1.5 In the case of ironers: replacement feed belts, ironing belts and covers;
5.1.6 In the case of dryers: lint screens;
5.1.7 Plumbing external to the machine maintenance;
5.1.8 Boiler inspections required for purposes other than machine maintenance; and/or
5.1.9 External softener and booster water pumps;
5.2 The Services will not be provided in respect of repairs required due to faults, loss or damage caused by:
5.2.1 debris found in the wash tank or pump of the dishwashers and glasswashers due to lack of pre-rinsing or due care and attention when operating;
5.2.2 any malfunction in the supply of electricity, water, gas, steam or any other supply service or the incorrect setting of a thermostat or control on the equipment;
5.2.3 any part of the Equipment which is connected to the incoming services (water, steam, electricity, gas, ducting, detergent feed etc.) e.g. blocked filters as a result of impure water supply, or poor wash quality due to empty detergent bottles;
5.2.4 lack of cleaning or descaling, including where this causes or contributes to the failure of component parts;
5.2.5 lack of de-fluffing or removal of lint build up;
5.2.6 Misuse vandalism or abuse. Specifically, where a machine is used with more than a 20% variation from the intended load (either under use or overuse) or, in the case of a dishwasher, incorrect loading or failure to remove food debris prior to loading;
5.2.7 foreign objects found in the Equipment;
5.2.8 trailing cables, non-metallic parts or a device connected to the services for isolation or protection of that same service;
5.2.9 incorrect installation or from inadequate or faulty ventilation, ducting or drainage systems;
5.2.10 Where the machine is coin operated, adjustments to the coin mechanism or repairs caused by the use of worn, damaged or wrong coins;
5.2.11 neglecting to fill the salt container/softener on dishwashers
5.3 Full kitchen breakdown plans shall not cover:
5.3.1 Extraction motors which are inaccessible or over 6ft high where sited;
5.3.2 Hand held equipment;
5.3.3 Domestic equipment;
5.3.4 Any work on the ducting extraction; or
5.3.5 Loss of earnings or refrigeration contents resulting from machine failure.

6 THE EQUIPMENT

6.1 The Customer shall not carry out or have carried out any repairs to or work upon the Equipment by unauthorised persons, and the Supplier shall not be responsible or liable for repairing or rectifying such work. Any losses, costs or rectification work resulting from this will be at the Customer's expense.
6.2 The Customer will make the Equipment available and provide a safe working environment to enable the Supplier's engineers to provide the Services. This includes, but is not limited to, ensuring that Equipment is shut down and cool before the Supplier's engineer arrives.
6.3 The Customer will ensure that the Equipment is not Unsuitable, that it is operated in accordance with the manufacturer's instructions and that routine maintenance procedures are carried out. Failure by the Customer to comply with this clause will be treated as a material breach of the Agreement giving the Supplier the right to, if it elects, treat such failure as a material breach and serve notice of termination with immediate effect in accordance with clause 3.4, and/or charge the Customer its reasonable costs, losses and expenses arising as a result of the Customer's failure.
6.4 Removal of Equipment from its original installation must be notified to the Supplier and a re-commissioning visit by the Supplier booked. The re-commissioning call will be chargeable at the cost prevailing at the time of the call and the Supplier will advise the Customer of such cost. Failure to request a re-commissioning visit will be viewed as a material breach of the Agreement giving the Supplier the right to, if it elects, serve notice of termination with immediate effect in accordance with clause 3.4, and/or charge the Customer its reasonable costs, losses and expenses arising as a result of the Customer's failure.
6.5 The Customer warrants that the information provided on the Asset List is a true and accurate representation of the Equipment and acknowledges that this Agreement is entered into on the basis that the Equipment is not, and does not become, Unsuitable.
6.6 If at any time during the Term the Supplier in its sole discretion determines that some or all of the Equipment has become Unsuitable, the Supplier may:
6.6.1 Remove the Unsuitable Equipment from the scope of the Agreement and the Agreement shall continue to apply only in respect of the remaining Equipment at an amended Price to take account of the removal of the Unsuitable Equipment; or
6.6.2 Immediately terminate the Agreement upon notice to the Customer. In both cases, where payment has been made in advance, the Customer will be entitled to a refund of the Price proportional to the remaining period of the Agreement after the deduction of any sums it owes the Supplier and an administration fee of £50.

7 PRICE AND PAYMENT

7.1 Without prejudice to clause 7.3 the Price for the Services will be reviewed by the Supplier three (3) months before the expiry of each Term and the Supplier will notify the Customer in writing of any proposed increase prior to the end of the Term. If the increase is unacceptable to the Customer, the Customer shall notify the Supplier in writing within 14 days of notification being despatched and, if agreement cannot be reached, the Supplier and the Customer shall each have the right to terminate the Agreement in relation to the Services at the end of that Term.
7.2 The Price for the Services shall increase annually by reference to any official index measuring change in the cost of goods and services as selected by the Supplier ("Relevant Index") for the twelve (12) months preceding that date, save that the annual rate of increase shall never be less than 2% irrespective of the Relevant Index. Such increases shall be added annually and compounded thereafter.
7.3 The Supplier reserves the right to increase the monthly fees in circumstances where the Asset List (or any other communication by the Customer) only outlines approximate quantities and ages of Equipment or does not specify the correct age of Equipment. If the Supplier determines that the Price per annum needs to be revised based on the quantity, age and/or condition of Equipment, the Supplier will inform the Customer in writing of the revised Price per annum and state if certain Equipment will not be covered by the Agreement. If the Customer does not confirm acceptance of the revised charges and exclusions within 14 days of the notification being despatched, the Supplier has the right to terminate the Agreement with no liability to the Customer other than to repay on a pro-rata basis any fees paid in advance by

the Customer.

7.4 The Price is normally invoiced in advance, by monthly direct debit but, if agreed otherwise by the Supplier in writing, the Price may be paid by direct debit at different intervals, or be invoiced in advance at agreed intervals and payable in full and cleared funds within 30 days of the date of invoice (unless otherwise agreed in writing by the Supplier), to the bank account nominated in writing by the Supplier. An administration fee may be charged if the Customer does not make all payments by direct debit. Time of payment is of the essence.

7.5 The Customer shall make all payments on the date due without any setoff, counterclaim, deduction or withholding and, without limiting its other rights or remedies, if the Customer fails to do so the Supplier may:
7.5.1 suspend provision of the Services;

7.5.2 require the Customer to pay interest on the overdue amount at the rate of 4% per annum above the base lending rate of the Bank of England (such rate accruing on a daily basis from the due date until the date of actual payment of the overdue amount); and/or
7.5.3 treat the failure to pay as a material breach and terminate the Agreement as set out in clause 3.4.

7.6 The Supplier reserves the right to charge an excess if the cost of replacing parts for any one appliance exceeds £1,000 in any 12 month period.
7.7 The Supplier reserves the right to charge the Customer for providing additional copies of the Agreement during a Term of the contract.

8 LIMITATION OF LIABILITY

8.1 Nothing in this Agreement shall limit or exclude the Supplier's liability for:
8.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
8.1.2 fraud or fraudulent misrepresentation; or
8.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
8.1.4 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
8.2 Subject to clause 8.1;
8.2.1 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 any loss of profit, revenue or savings, or any indirect or consequential loss arising under or in connection with the Agreement; and
8.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total amount actually paid by the Customer to the Supplier under this Agreement during the 12 month period immediately preceding the date of the claim.

9 FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Agreement to the extent that such failure or delay is caused by a Force Majeure Event. A "Force Majeure Event" means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable.

10 GENERAL

10.1 Assignments and other dealings
10.1.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement.
10.1.2 The Customer may not 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 Agreement without the prior written consent of the Supplier.
10.2 Notices
10.2.1 Any notice or other communication given to a party under or in connection with the Agreement shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) 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.
10.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 10.2.1; if sent by pre-paid first class post or other next working day delivery service, at 9:00 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, at 9:00 am on the Business Day after transmission.
10.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
10.3 Severance
10.3.1 If any provision or part-provision of the Agreement 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 Agreement.
10.3.2 If any provision or part-provision of the Agreement 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.
10.4 Waiver. A waiver of any right or remedy under the Agreement or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the 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.
10.5 Third party rights. A person who is not a party to the Agreement shall not have any rights under or in connection with it, nor shall they have any right to enforce its terms.
10.6 Variation. Except as set out in these Conditions, no variation of the Agreement, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Supplier.
10.7 Governing Law. The Agreement, 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.
10.8 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 the Agreement or its subject matter or formation (including non-contractual disputes or claims).

11 DATA PROTECTION

11.1 The Supplier is entitled to make searches about the Customer at credit reference agencies. The agencies may record details of searches whether or not the Supplier agrees to enter into the Agreement.
11.2 The Supplier may use credit-scoring methods to assess whether or not to enter into the Agreement with the Customer and, in some cases, to verify the Customer's identity. This information may also be used for debt-risking, to prevent money laundering, and to help with the Supplier's creditor-trail and fraud prevention activities.
11.3 If the Supplier enters into the Agreement with the Customer, the Supplier may provide on-going details to the credit reference agencies where the Customer fails to pay on time or defaults under the Agreement.
11.4 The Supplier will store the Customer's contact details on its customer database which will be shared with other members of the JLA Group and external third parties (such as sub-contractors) acting on the Supplier's behalf as necessary to fulfil the Supplier's obligations under the Contract.
11.5 The Supplier may also use the Customer contact details to contact the Customer from time to time about other products and services provided within the JLA Group. If as a Customer you do not wish the Supplier to use your personal data in this way then please tick this box and return a copy of these Conditions to the Supplier for the attention of Marketing at Meadowcroft Lane, Ripponden, West Yorkshire, HX6 4AU or alternatively email data.protection@jla.com with the words "I do not wish to receive any further information about other products and/or services provided within the JLA Group."