

STUDROCK INDUSTRIAL BOILERS LIMITED

CONDITIONS OF MAINTENANCE SERVICES



1. DEFINITIONS

In these conditions the following words have the following meanings unless the context requires otherwise:-

Additional Services means any services and/or work performed by the Company as requested by the Customer and/or deemed necessary by the Company in respect of the Equipment, and which are not included in the Services, and including, for the avoidance of doubt any adjustments, amendments or alterations to the Services;

Commencement Date means the date on which the Agreement for provision of the Services shall begin, in accordance with clause 3.2 below;

Company means Studrock Industrial Boilers Limited: Company Number 04385037; Registered Office, Unit 51, Britannia Way, Britannia Enterprise Park, Lichfield, Staffordshire, WS14 9UY;

Agreement means the agreement between the Customer and the Company for the provision of the Services;

Customer means the company whose name and address is set out in the Quotation and to whom the Company supplies the Services;

Equipment means the equipment of the type referred to in the Quotation and which is covered by the Services;

Fees means the Company's charges for the Services as specified in the Quotation and including for the avoidance of doubt, any annual service charge, as amended from time to time, in accordance with this Agreement;

Goods means any goods, products and/or materials relating to the Equipment utilised by the Company in the performance of the Services;

Liability means any liability, whether in contract, tort (including negligence), breach of statutory duty, for any and/or all damages, claims, proceedings, actions, awards, expenses, costs, compensation payments and any other losses and/or liabilities;

Location means the Customer's premises at which the Equipment is located as set out in the Quotation and at which the Company will provide the Services;

Quotation means the quotation made and/or sent by the Company to the Customer by e-mail, telephone, post or fax, and setting out the Fees and other details relating to the Services and/or Goods;

Scope of Works means the Services to be provided by the Company to the Customer: as set out in the Quotation; and/or as discussed and as subsequently set out in the Quotation;

Services means the maintenance, repair services and/or work to be performed by the Company for the Customer in respect of the Equipment as set out in the Quotation and which includes for the avoidance of doubt, the Scope of Works;

Site Requirements means the requirements for preparation of the Location by the Customer, as set out in the Quotation and/or clause 6 below, as the case may be;

Standard Rates means the Company's standard charges from time to time in force for labour, Goods and/or Additional Services;

Term means the period from the Commencement Date until completion of the provision of the Services in accordance with this Agreement;

Visit means each and/or any visit by the Company to the Location to carry out any part of the Services.

2 BASIS OF AGREEMENT

2.1 These conditions shall govern the agreement between the Customer and the Company to the exclusion of any other terms or conditions.

2.1 Orders placed by the Customer leading to an Agreement for Services which is not expressed to be subject to these conditions shall still be subject to them.

2.2 These conditions supersede all previous terms and conditions relating to the supply of Services and shall replace any terms and conditions previously notified to the Customer.

2.3 No variation to these conditions shall be binding on the Company unless contained in the Quotation or agreed in writing between the Customer and one of the Company's authorised representatives.

2.4 The Company's employees, sub-contractors and/or agents are not authorised to make any representations or warranties concerning the Services unless confirmed by the Company in writing.

2.5 The Customer acknowledges that they do not rely on any representation and/or warranty that has not been made in accordance with these conditions.

3. ORDERS

3.1 Quotations shall be available for acceptance for a period of 30 days. Quotations may be withdrawn by the Company at any time during this period by oral or written notice.

3.2 The Agreement between the Customer and the Company shall come into effect on the Customer's acceptance of the Quotation or the Company's acceptance of the Customer's order in accordance with clause 3.4 below, as the case may be.

3.3 No order for Services shall be deemed accepted by the Company until confirmed in writing by one of the Company's authorised representatives.

3.4 The Company is not bound by any terms and conditions provided by the Customer. Where the Customer provides the Company with a purchase order attaching the Customer's terms and conditions, any subsequent action by the Company (including, without limitation, providing any of the Goods and/or Services) will not constitute acceptance by the Company of those terms and conditions.

3.5 The Customer shall be responsible for the accuracy of the Services and for giving the Company any information necessary to perform the Services.

- 3.6 The Company shall provide all Services and/or Additional Services with reasonable care and skill.
- 3.7 The Company shall ensure that all the Company's representatives performing the Services are competent in performing work of the type performed by them as Services.
- 3.8 During the Term the Customer shall not directly and/or indirectly request the provision of and/or have provided to them by any third party any services the same or similar to the Services in respect of the Equipment without first obtaining the prior written consent of the Company.

4. SERVICES

- 4.1 The Company will provide the Services in relation to the Equipment which is installed at the Location.
- 4.2 The Company shall not be obliged to provide any of the Services in relation to any equipment which does not form part of the Equipment.
- 4.3 The Company shall be entitled to sub-contract the provision of any part of the Services to the Customer.
- 4.4 The Company's representative will visit the Location to provide the Services on the dates set out in the Quotation and/or as agreed in writing between the Company and the Customer.
- 4.5 Where the Services include the Customer's annual servicing of its Equipment for insurance purposes, the inspection and/or testing of the Equipment by an insurance surveyor shall be organised by the Company or the Customer as the case may be. Any such inspection and/or testing shall be the sole responsibility of the Customer.

5. ADDITIONAL SERVICES

- 5.1 Any Additional Services will be carried out by the Company upon acceptance by the Company of a request from the Customer.

6. SITE FOR SERVICES

- 6.1 The Customer must provide the Company's representatives with relevant facilities at the Location so that they can prepare and clean themselves up before and after their work.
- 6.2 The Customer must comply with the Company's Site Requirements prior to provision of the Services by the Company.
- 6.3 The Customer must cease operation and use of the Equipment when the Company's representative is attending the Location, to allow the Company's representative to inspect the Equipment and/or provide the Services.
- 6.4 The Customer must comply with the reasonable instructions of the Company's representative at the Location in relation to the Equipment in order to allow them to provide the Services.
- 6.5 The Customer will allow and/or procure sufficient access to the Company's representative to allow them to carry out the Services.
- 6.6 The Customer will allow and/or procure sufficient unloading space, parking facilities and/or access to power supplies to allow the Services to be carried out.
- 6.7 The Customer will ensure that the Location where the Services are to be performed is cleared and prepared before the Services are due to commence.

- 6.8 The Customer will ensure that the position of the Equipment is appropriate for the Equipment and/or Services to be operated and/or performed without giving rise to or causing any faults and/or defects to occur.
- 6.9 The Customer will ensure that all health and safety requirements are satisfied before the Company's representative arrives at the Location.
- 6.10 The Customer shall be responsible for provision of access for the Company to all necessary power supplies as set out in the Site Requirements. The Company shall incur no obligations should the Equipment fail to function correctly as a result of variation in and/or failure of mains services and/or connections, or any errors made and/or damage caused by electrical engineers or other employees of the Customer.

7. PERFORMANCE

- 7.1 The Company will use its reasonable commercial endeavours to ensure performance of the Services on the dates and times specified in the Quotation.
- 7.2 Where the Services are to be performed in stages, each separate stage shall constitute a separate and distinct contract and failure by the Company to deliver, and/or any claim by the Customer in respect of, any stage shall not entitle the Customer to repudiate this Agreement as a whole.
- 7.3 The Customer shall have no right to reject the Goods and/or Services and shall have no right to rescind for late performance unless the due date for performance has passed and the Customer has served on the Company a written notice requiring the Agreement to be performed, giving not less than 14 days in which to do so and the notice has not been complied with.
- 7.4 If the Customer at any time refuses to allow performance of the Services and/or Additional Services then the Company shall be entitled to withhold performance of the Services and to treat this Agreement as repudiated by the Customer and shall have the right to rescind this Agreement.

8 PRICE AND PAYMENT

- 8.1 All Additional Services will be charged for by the Company on the basis of time spent and materials used, or in accordance with clause 8.2 below, whichever is applicable.
- 8.2 Once the Company's representative is at the Location and has inspected the Equipment, the Company will use its reasonable endeavours to estimate and inform the Customer of the likely cost of the Additional Services before the Company carries out any further work. However, any such amount is only an estimate and is not binding upon the Company.
- 8.3 The price of the Goods and/or Additional Services shall be as quoted to the Customer by the Company at the date of the acceptance of the order for those Goods and/or Additional Services in accordance with clause 5.1 above.
- 8.4 The price of the Goods is exclusive of all costs and charges of packaging, insurance and transport of the Goods which shall in addition be payable by the Customer.
- 8.5 Where any breakdown of the Goods and/or Equipment is due to any of the events set out in clauses 13.2 and/or 13.3 below, the Services provided during the visit specified in clause 12.1 below, will be charged for at the Company's Standard Rates.
- 8.6 The Company shall be entitled to revise any annual service charge rates.
- 8.7 The Fees and charges for any Additional Services are exclusive of any applicable VAT for which the Customer shall additionally be liable.

- 8.8 The Company's terms of payment for the Services, Goods, Additional Services and/or any annual service charge are net cash within 30 days of invoice, unless agreed otherwise in writing. Time for payment shall be of the essence.
- 8.9 If the Customer fails to make any payment in full on the due date the Company may charge interest (both before and after judgement) on the amount unpaid at the rate of 4% above the base rate from time to time of the Company's bank. Such interest shall be compounded monthly. If the Customer disputes any invoice, they must notify the Company in writing within 5 days of the date of the invoice.
- 8.10 Any monies received by the Company from the Customer may be applied by the Company at its option against any additional administrative costs and interest charged prior to application against any principal sums due from the Customer.
- 8.11 The Company shall be entitled to invoice each stage of any Additional Services separately.
- 8.12 The Customer shall pay all sums due to the Company under this Agreement without any set-off, deduction, counterclaim or any other withholding of monies.
- 8.13 Payment shall not be deemed to have been made until the Company has received either cash or cleared funds in respect of the full amount outstanding.
- 8.14 If any Services are cancelled and/or this Agreement is terminated or delivery and/or performance is suspended before completion of the Services, the Company shall be entitled to be paid for any Goods ordered, any pre-payments made to third parties and on a quantum meruit basis for any part of the Services performed. The Company may invoice the Customer accordingly and such monies shall be immediately due for payment.
- 8.15 If the Customer delays the performance of any Services on a Visit by the Company's representative, then the length of time of the delay may be charged for by the Company on the basis of time spent and materials used.
- 8.16 If the Customer cancels any Visit and/or provision of Services by giving less than 3 clear working days notice, then the cancelled Visit and/or Services may be charged for by the Company, on the basis of time spent and materials ordered and/or used.

9. CONFIDENTIALITY

- 9.1 Each party agrees with the other that it will keep all confidential business information regarding the other party confidential and not disclose or use such information which may be disclosed to it or which it may learn except where such information is public knowledge or it is required to be disclosed by law.

10. PROPERTY AND RISK

- 10.1 Risk of damage to or loss of the Goods utilised in the Services shall pass to the Customer once utilised in the performance of the Services. The Company will replace free of charge any Goods in which risk has passed to the Customer if they are damaged or lost due to the neglect or default of the Company's employees or other representatives.
- 10.2 The Company shall retain title and ownership of any Goods utilised in the Services until the Company has received payment in cash or cleared funds for all sums due to the Company under this Agreement and any other agreement between the Company and the Customer.

11. DEFAULT

11.1 If :-

- 11.1.1 the Customer fails to make any payment to the Company on the due date;
- 11.1.2 the Customer breaches the terms of this Agreement and, where the breach is capable of remedy, has not remedied the breach within 14 days of receiving notice requiring the breach to be remedied;
- 11.1.3 the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 11.1.4 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- 11.1.5 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 (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 11.1.6 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 11.1.7 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 (being a company);
- 11.1.8 the holder of a qualifying charge over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 11.1.9 a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
- 11.1.10 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 1211.1.2 to clause 11.1.9 inclusive;
- 11.1.11 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- 11.1.12 the Customer's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfil its obligations under this Agreement has been placed in jeopardy;

then the Company shall have the right, without prejudice to any other remedies, to exercise any or all of the rights set out in clause 11.2 below.

- 11.2 If any of the events set out in clause 11.1 above occurs in relation to the Customer then:
- 11.2.1 the Company may withhold the performance of any Services, Additional Services and/or Goods, and/or cease any Services and/or Additional Services in progress;
 - 11.2.2 the Company may cancel, terminate and/or suspend without Liability to the Customer the Agreement and/or any agreement with the Customer by notice in writing;
 - 11.2.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry; and
 - 11.2.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect; and/or
 - 11.2.5 all monies owed by the Customer to the Company shall forthwith become due and payable.
- 11.3 If the Company is unable to carry out the Services and/or Additional Services itself it may at its option sub-contract the provision of those services to a third party operator.

12 REPAIRS/REPLACEMENTS

- 12.1 Should any breakdown of the Equipment and/or Goods occur, the Customer shall promptly inform the Company and allow the Company to visit the Location and inspect, service, repair and/or replace the relevant Equipment and/or Goods or any part of them. The Company reserves the right to replace within a reasonable time, rather than to repair any defective Equipment and/or Goods or any part of such Equipment.
- 12.2 The Company will at its option either refund the price, repair, replace free of charge or re-perform any defective Goods, Services and/or Additional Services where the defect is apparent on inspection provided that the defect is notified to the Company within 14 working days of delivery of such Goods, or performance of such Services and/or Additional Services.
- 12.3 Any defective Goods must be returned to the Company for inspection if requested by the Company before it will have any Liability for defective Goods. If the Goods shall prove to be defective then the Company shall reimburse the Customer for the cost of returning the defective Goods.
- 12.4 The Company shall have the right upon its request to inspect the subject-matter of any allegedly defective Services and/or Additional Services, and the Company will not have any Liability for defective Services and/or Additional Services until the Company has been allowed to make such inspection.
- 12.5 The Company may at its sole discretion replace, repair free of charge, re-perform or refund the price of defective Goods, Services and/or Additional Services which are not notified to the Company within the specified time limit where in the Company's opinion the defect would not have been ascertainable on inspection and has been notified to the Company as soon as reasonably practicable.

13 LIMITATIONS ON LIABILITY

- 13.1 The Company shall have no Liability for defective Goods, Services and/or Additional Services where the defect has been caused or contributed to by the Customer.
- 13.2 The Company shall have no Liability in respect of any faults in the Goods arising after risk in the Goods has passed which is caused by any subsequent mechanical, chemical, electrolytic or other damage not due to a defect in the Goods as appropriate.
- 13.3 The Company shall have no Liability in respect of any faults or defects in the Goods and/or Equipment caused by wilful damage, abnormal working conditions, failure to follow the Company's instructions, misuse, alteration or repair of the Goods and/or Equipment without the Company's approval, improper maintenance, improper positioning of the Equipment in accordance with clause 6.8 above, or negligence on the part of the Customer or a third party.
- 13.4 The Company shall have no Liability to the Customer if the price for the Goods, the Services and/or Additional Services has not been paid in full by the due date for payment.
- 13.5 The Company shall have no Liability to the Customer for any loss of any sort however suffered by the Customer as a consequence of the Equipment or any part of it being unusable for any period.
- 13.6 The Company shall have no Liability to the Customer for any breakdown and/or defect in the Equipment where a Visit has been postponed and/or forfeited and the breakdown and/or defect could have been prevented if the requested Visit had taken place.
- 13.7 The Company shall have no Liability for damage, loss, liability, claims, costs or expenses caused or contributed to by the Customer continued use of defective Equipment, Goods, Services and/or Additional Services after a defect has become apparent or suspected or should reasonably have become apparent to the Customer.
- 13.8 The Customer shall give the Company a reasonable opportunity to remedy any matter for which the Company is liable before the Customer incurs any costs and/or expenses in remedying the matter itself. If the Customer does not do so the Company shall have no Liability to the Customer.
- 13.9 The Customer shall produce to the Company written evidence of any claims for which it is alleged that the Company is liable together with written details of how the loss was caused by the Company and the steps taken by the Customer to mitigate the loss before the Company shall have any Liability for the claim by the Customer.
- 13.10 The Company shall have no Liability to the Customer to the extent that the Customer is covered by any policy of insurance and the Customer shall ensure that its insurers waive any and all rights of subrogation they may have against the Company.
- 13.11 The Company shall have no Liability to the Customer for any delay in performance of the Services and/or Additional Services, to the extent that any such delay was caused or contributed to by any delay or breach in delivery of Services and/or Additional Services by any insurance surveyor in accordance with clause 4.4 above.
- 13.12 The Company shall have no Liability to the Customer for any:-
 - 13.12.1 consequential losses and/or other similar losses (including loss of profits and/or damage to goodwill); and/or
 - 13.12.2 special damages and indirect losses; and/or

- 13.12.3 business interruption, third party compensation, loss of business, contracts and/or opportunity
- 13.13 The Customer shall be under a duty to mitigate any loss, damage, costs or expenses that it may suffer.
- 13.14 The Company shall be liable to the Customer for any direct losses caused by the Company's breach of this Agreement, any negligent act and/or omission and any breach of statutory duty by the Company.
- 13.15 The Company's total Liability to the Customer shall not exceed the total amount of the Fees. To the extent that any Liability of the Company to the Customer would be met by any insurance of the Company, then the Liability of the Company shall be extended to the extent that such Liability is met by such insurance.
- 13.16 Each of the limitations and/or exclusions in this Agreement shall be deemed to be repeated and apply as a separate provision for each of:
 - 13.16.1 Liability for breach of Agreement;
 - 13.16.2 Liability in tort (including negligence); and
 - 13.16.3 Liability for breach of statutory duty;

except clause 13.15 above which shall apply once only in respect of all the said types of Liability.

- 13.17 Nothing in this Agreement shall exclude or limit the Company's Liability for death or personal injury due to its negligence or any Liability which is due to the Company's fraud or any other Liability which it is not permitted to exclude or limit as a matter of law.
- 13.18 All warranties, terms, conditions and duties implied by law relating to fitness, quality or adequacy are excluded to the fullest extent permitted by law.

14. GENERAL

- 14.1 The Company reserves the right to make changes to the specification of the Services and/or Additional Services as required from time to time by law, applicable safety requirements or manufacturing requirements provided that they do not have a material adverse effect on the quality and/or performance of the Goods, Services and/or Additional Services.
- 14.2 The Customer agrees to indemnify and keep indemnified the Company against any and all losses, lost profits, damages, costs (including legal costs on a full indemnity basis), claims, actions and any other losses and/or liabilities suffered by the Company and arising from or due to any breach of this Agreement, any tortious act and/or omission and/or any breach of statutory duty by the Customer.
- 14.3 No waiver by the Company of any breach of this Agreement shall be considered as a waiver of any subsequent breach of the same provision or any other provision.
- 14.4 If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of this Agreement and the remainder of the affected provision shall be unaffected and shall remain in full force and effect.
- 14.5 Any notice required to be given under this Agreement shall be in writing and shall be sent to the party to whom it is given at its address specified in the Quotation by registered first-class post or other next working day delivery service, or by

commercial courier, fax or email. The addresses for the service of notices may themselves be altered by a valid notice served in a similar manner.

- 14.6 The Company shall not be liable to the Customer for any delay in performance of this Agreement to the extent that such delay is due to any events outside the Company's reasonable control including but not limited to acts of God, power failure, internet service provider failure, war, flood, fire, storms, earthquakes, hurricanes, tornados, labour disputes, industrial action, strikes, lock-outs, riots, civil commotion, malicious damage, explosion, governmental actions, acts of terrorism, acts of war and any other similar events. If the Company is affected by any such event then time for performance shall be extended for a period equal to the period that such event or events delayed such performance.
- 14.7 All third party rights are excluded and no third parties shall have any rights to enforce this Agreement.
- 14.8 This Agreement is governed by and interpreted in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English courts.