



# Service & Maintenance Contract Conditions

1. **COMFORT'S RESPONSIBILITIES**
  - 1.1 Comfort Service & Maintenance (hereinafter referred to as "CSM") will carry out routine maintenance to the Equipment as described in the Maintenance Schedule. In addition CSM shall at the additional expense of the Customer carry out such further works of repair and overhaul as may be requested in writing by the Customer.
  - 1.2 CSM will report to the Customer details of replacement parts and consumable materials used at each visit, and will also notify the Customer of any further worn or defective parts observed during the visit.
  - 1.3 CSM will also provide a call-out service for breakdown subject to payment as described in Clause 4.3 below.
  - 1.4 Basic Service visits will be made during normal working hours at a time mutually convenient to the customer and CSM. Breakdown service work and other works of maintenance, repair and replacement will be performed by CSM as soon as reasonably practicable after the request by the Customer in writing. Where the Customer requires to specify the time for works to be performed by reference to any particular day, then CSM must be given at least 48 hours notice of the time allocated. CSM shall under no circumstances be liable in the event that it is unable to perform its obligations hereunder at any time specified. Times stated are given as accurately as possible and represent statements of intention but are in no way contractually binding.
2. **EXCLUSIONS**

The following works are not covered under the Total Contract Fee, and will be charged for in addition to the contract fee. CSM will not be required to carry out any of the following under this contract; and such work, if to be carried out by CSM, shall be carried out during the normal working hours of CSM and as soon as reasonably possible.

  - 2.1 Attention to faults caused by defects or blockages in the Customer's drainage system, failures in the supply of water, electricity or other services.
  - 2.2 Work performed by CSM outside normal working hours at the Customer's request.
  - 2.3 Repair of the Equipment necessitated by accidental or willful damage, or by defective works performed by persons other than those employed by or authorised in writing by CSM.
  - 2.4 Repairs necessary as a result of fair wear and tear, except as provided in the Maintenance Schedule.
  - 2.5 Work on ancillary gear or equipment attached to or adjacent to the Equipment.
  - 2.6 Damage or deterioration due to misuse negligence or incorrect operation.
3. **CUSTOMER'S RESPONSIBILITIES**
  - 3.1 The Customer will permit access to the Equipment at times reasonably requested by CSM and subject to reasonable notice. He will provide free of charge all necessary lifting gear, lighting, power and water.
  - 3.2 The Customer will be responsible for all loss or damage howsoever caused (otherwise than by neglect or default of CSM or its employees) to all machinery or materials brought onto the Customer's premises by CSM for the performance of its obligations, and shall adequately insure against such loss.
  - 3.3 The Customer will use the Appliance in accordance with the instructions or any directions issued by the manufacturer of the Appliance or CSM.
4. **PAYMENT**

Payment will be made by the Customer as follows:-

  - 4.1 The Contract will be paid by the Customer by equal installments in advance of each maintenance visit at the Payment Intervals forthwith upon receipt of invoice from CSM.
  - 4.2 If the Customer notifies CSM of his intention to pay the full years Contract Fee in advance, CSM will raise an invoice showing the appropriate discount and payment will be made against this invoice in advance of the Commencement Date.
  - 4.3 CSM will raise invoices at CSM's then current rates in respect of all materials and parts (other than parts subject to manufacturer's warranty) used during the course of all work carried out and in respect of all labour employed in carrying out additional works under Clause 1.1 above. If the Total contract Fee does not include a Breakdown Extension, CSM will also raise invoices for all works carried out under Clause 1.3 above. Payment will be made by the Customer for all invoices raised under this sub-clause within thirty days from the date of invoice.
  - 4.4 The contract Fee is based on the Equipment remaining situate at the stated premises and with convenience of access as existing at the date hereof. If the Equipment is moved to other premises or access restricted then CSM reserve the right to increase the Contract Fee.
  - 4.5 If the Customer fails to make payment to CSM as provided under this Clause, then without prejudice to CSM's rights under Clause 6.2 below, CSM may charge interest at a rate of 3% above National Westminster Bank base rate on all amounts overdue.
5. **STATEMENT AND REPRESENTATIONS**

The Customer accepts that all statements made by CSM's servants, agents or sub-contractors do not form part of any contract and constitute statements of opinion only of such persons.

CSM shall only be bound by the terms of this contract and other written statement signed by a Director of CSM.
6. **GUARANTEE**
  - 6.1 CSM hereby guarantee that if any materials supplied or work performed by it are or is proved to its satisfaction to be defective, it will promptly at the request of the Customer rectify such defect in the Equipment free of charge.
  - 6.2 CSM will indemnify the Customer against any legal liability for injury or damage to any person or to any property to the extent directly caused by its negligence in performing its obligations hereunder, but not otherwise, provided that:
    - 6.2.1 The total liability of CSM for damage to the property of the Customer shall not exceed £5,000,000 for any one act or default, and
    - 6.2.2 CSM shall not be liable to the Customer for any loss of use of the Equipment or other plant or equipment or for loss of profits or of contracts or for any consequential loss, damage or injury of any kind whatsoever whether to the Customer or third parties otherwise than in respect of claims for personal injuries or death arising by virtue of negligence on the part of CSM.
  - 6.3 In the event that the Customer fails to notify CSM in writing within fourteen days of it becoming aware of circumstances which would entitle it to make a claim against CSM pursuant to these Conditions then CSM shall not be liable to the Customer to the extent that CSM are thereby prejudiced by reason of inconvenience or expense due to such delay in notification.
  - 6.4 The liability of CSM to the Customer in relation to any claim whatsoever in respect of goods or services supplied by any Specialist Sub-contractor as specified in the Schedule or other performance or failure in performance by such Specialist Sub-contractor of any of its obligations shall be limited to the liability of such Specialist Sub-contractor to CSM and the Customer shall fully and effectively indemnify CSM from and against any such claim if made against CSM by any third party whatsoever.
  - 6.5 This guarantee is given in lieu of all other conditions, warranties or undertakings expressed or implied by common law or statute which are hereby expressly excluded.
7. **TERMINATION**

This agreement will start on the Commencement Date and continue in force and effect until the Termination. This agreement may be terminated by giving three months' notice in writing to the other at the address shown on the face of this agreement, unless previously terminated under one of the following sub-clauses:-

  - 7.1 Either party may terminate this agreement at any time by notice in writing given to the other at the address shown on the face of this agreement if the other party:-
    - 7.1.1 commits a breach of the terms of this agreement which, if capable of remedy has not been remedied within 30 days of receipt of notice specifying the breach.
    - 7.1.2 becomes bankrupt or insolvent of compounds with creditors or proceedings are commenced for its liquidation (other than for a voluntary winding up for the purpose of re-construction or amalgamation) or if a Receiver or Manager is appointed of all or any part of its assets or undertaking.
  - 7.2 CSM shall be entitled to terminate this agreement forthwith by notice in writing if the customer shall fail to make payment for any reason of any sums due from it hereunder within 30 days from the date due for payment as provided by this agreement or if the Customer purports to assign the benefit of this agreement without the consent in writing of CSM.
8. **FORCE MAJEURE**

Neither party shall be under any liability whatsoever for any delay, loss or damage caused wholly or in part by Act of God, governmental restriction, condition or control or by reason of any act done or not done pursuant to a trade dispute whether such dispute involves employees or not by reason of any other act, matter or thing beyond its reasonable control.
9. **LEGAL**

Subject to the obligations of CSM under the above conditions and to the provisions of the Unfair Contract Terms Act 1977 CSM shall not be liable for any loss or damage caused by or arising from the failure of CSM to fulfil its obligations under this agreement and this contract shall be governed and interpreted exclusively according to the law of England and shall be subject to the jurisdiction of the English Law Courts.

  - 9.1 Where for any reason the repair or replacement of a part cannot be carried out at the address of the customer then CSM will notify the customer and the repair or replacement will be the subject of a separate agreement between the customer and CSM.
  - 9.2 **TRANSFER OF ACCOUNT** - The customer shall not transfer this contract to any other person without the written consent of CSM.
  - 9.3 **NOTICES** - Any notice which has to be given by CSM will be in writing and deemed duly delivered if sent to or left at the address of the customer given in this contract or to any other address which the customer has notified CSM in writing at his address for service and any notice which has to be given by the customer will be in writing and deemed duly delivered if sent to or left at the address of CSM given in this contract.

