

# TERMS & CONDITIONS OF PLANNED MAINTENANCE CONTRACT

March 2005

## 1. DEFINITIONS

The following terms shall have the following meanings:

- (i) 'Additional Work' means any work carried out on or in connection with the equipment in addition to the Planned Maintenance Work.
- (ii) 'Company' means Andrews Air Conditioning & Refrigeration Limited.
- (iii) 'Equipment' means the plant or equipment identified in the Agreement.
- (iv) 'Owner' means the person or organisation identified as such in the Agreement.
- (v) 'Planned Maintenance Works' means the work referred to in Clause (2.1) and described in Appendix hereto.
- (vi) 'Standard Maintenance Charge' means the charge stated as such in the Agreement.
- (vii) 'Service' means the Planned Maintenance Work and the additional work.
- (viii) 'Agreement' means the agreement between the Company and the owner set out on the Company's standard form for Planned Maintenance Contracts.

## 2. THE SERVICE

- 2.1 The Company shall carry out on the equipment the Planned Maintenance Work described in and at the frequency or on the occasions set out in the Agreement.
- 2.2 The Company shall, with reasonable promptness during the Company's normal working hours, attend at the request of the Owner to carry out necessary Additional work.
- 2.3 The company shall subject to its availability supply parts and materials necessary to the carrying out of the Planned Maintenance Work and the Additional Work but does not warrant their availability.

## 3. THE CHARGES

- 3.1 The Owner shall pay the Standard Maintenance Charge stated and upon the terms set out in the Agreement.
- 3.2 Planned Maintenance Contracts not paid via Standing Order or Direct Debit arrangements will be subject to an annual price review, with the contract premium being increased by an amount equal to the increase in the RPI.
- 3.3 The Owner shall, in addition to Standard Maintenance Charge, pay the charges made by the Company, in respect of any Additional Work carried out pursuant to Clause 2.2 and in respect of any parts or materials supplied pursuant to Clause 2.3, within 30 days of such charges being invoiced by the Company.
- 3.4 In the event that payment is not made in accordance with the agreed terms, either in full or otherwise, then the whole of the account whether due or not shall become payable and become overdue and be payable forthwith. Furthermore in the event of late or non payment in accordance with these terms and conditions (or any other terms so agreed in writing), Andrews Air Conditioning & Refrigeration Ltd reserve the right to rely on the Late Payment of Commercial Debts (Interest) Act 1998, and charge, at a daily rate, until payment, interest upon the debt then due at the rate prevailing at the date of default (currently 8% above the prevailing Bank of England base rate) together with the late payment charges set out in the Act, until payment or sooner settlement.

## 4. WARRANTY BY THE COMPANY

- 4.1 The Company warrants that it will perform the service with reasonable skill and care.
- 4.2 The Company warrants that the Owner shall have free and unencumbered title and enjoy quiet possession of any parts or materials supplied under this agreement and that such parts or materials shall be satisfactory quality and reasonably fit for their purpose.
- 4.3 The Company does not give any warranty in regard to the performance of the equipment and subject to the foregoing, all conditions warranties, terms and undertakings express or implied statutory or otherwise in respect of the performance by the Company of the services are excluded.

## 5. LIMITATIONS OF LIABILITY

- 5.1 The following provisions of this clause 5 set out the Company's entire liability to the Owner in respect of any breach of its obligations under this agreement and any representation, statement or tortuous act or omission arising under or in connection with this agreement but, for the avoidance of doubt, do not exclude or limit any liability that the Company may have in respect of death or personal injury but do not confer any right or remedy upon the Owner to which it would not otherwise be entitled.
- 5.2 The Company shall not be liable in respect of any loss of profits, goodwill or any special, indirect or consequential or economic loss (including loss or damage suffered by the Owner as a result of an action brought by a third party) even if such loss was reasonably foreseeable or the Company was aware of the prospect of such loss.
- 5.3 The Company shall not be liable for any breach, act or omission unless the Owner serves written notice upon the Company giving full details of such within 14 days of becoming aware of the same.
- 5.4 The Company's entire liability for any breach, act or omission or any related combination or series of such shall, in respect of physical damage to the property of the Owner, be limited to the amount stated in the

Page 1 of 3

Agreement and in any other respect be limited to the Standard Maintenance Charge for the immediately preceding 12 months.

## **6. OBLIGATIONS OF THE OWNER**

- 6.1 The Owner shall permit the Company at all reasonable times to have access to the equipment and reasonable facilities to enable the Company to carry out the Service during the Company's normal business hours.
- 6.2 The Owner shall not carry out any maintenance, alteration adjustment or other such work on the equipment without forthwith notifying the Company of such work.

## **7. TERMINATION**

- 7.1 This agreement shall commence on the date stated and shall continue for a period of 5 years unless amended as shown within paragraph 16. The Owner can terminate the agreement by giving not less than 3 calendar months notice of the renewal date. A penalty charge may be levied.
- 7.2 This agreement may be terminated forthwith by the Company if the Owner fails to comply with any of its obligations under this agreement and such failure if capable of being remedied remains unremedied for 7 days after being called to the Owner's attention by written notice from the Company.
- 7.3 This agreement shall automatically terminate if: -
  - (i) The Owner dies, becomes bankrupt, has a receiving order made against him, makes any arrangement with his creditors generally or takes or suffers any similar action as a result of debt.
  - (ii) The Owner purports to assign the burden or benefits or charge the benefits of this agreement.
  - (iii) The Owner convenes a meeting of its creditors or suffers a petition to be presented or a meeting to be convened or action to be taken with a view to its liquidation except for the purpose of and followed by amalgamation or reconstruction.
  - (iv) A receiver or administrative receiver is appointed of any of the Owner's property.
  - (v) Any execution or distress is levied upon the Owner's goods or on the property where the equipment is installed.
  - (vi) The Owner being a partnership is dissolved.
- 7.4 Any termination of this agreement pursuant to this clause 7 shall be without prejudice to any other rights a party may have under or in connection with this agreement and shall not affect any accrued rights or liabilities of either party or the coming into or continuance in force of any provision of this agreement which is expressly or by implication intended to operate on or after such termination.

## **8. WAIVER**

- 8.1 The Company may release or compromise the Owner's liability under this agreement or grant to the Owner time or other indulgence without affecting the Owner's liability.

## **9. FORCE MAJEURE**

- 9.1 The Company shall not be liable for any failure in the performance of any of its obligations under this agreement caused by factors outside its control.

## **10. VARIATION**

- 10.1 The Company reserve the right to amend the Maintenance Agreement at its sole discretion.

## **11. PREVIOUS CONTRACTS**

- 11.1 This agreement is in substitution for all previous contracts express or implied between the Company and the Owner, which are hereby terminated by mutual consent from the commencement date.

## **12. LAW AND JURISDICTION**

- 12.1 English law shall govern this agreement and the Owner consents to the exclusive jurisdiction of the English Courts in all matters regarding this agreement except to the extent that the Company invokes the jurisdiction of the Courts of any other country.

## **13. NOTICES**

- 13.1 Any notice given under this agreement shall be in writing and may be served personally by registered or recorded delivery mail or by telex or facsimile transmission and each party's address for the service of notice shall be his last known address within the jurisdiction notified to the other party in writing.

## **14. VALIDITY**

- 14.1 This agreement shall not be binding until signed on behalf of the Owner and on behalf of the Company by its duly authorised Manager.

## **15. EXCLUSIONS**

- 15.1 Andrews Air Conditioning & Refrigeration Ltd reserve the right to decline any agreement where the equipment is in excess of five years old or has not previously been maintained to the manufacturers standard specification.

15.2 The sum does not include for the following, which will be charged at the current rates: -

1. Consumables (cleaning material).
2. Conden-cide
3. Damage due to customer misuse or vandalism.

#### 16 PERIOD OF AGREEMENT

• 12 MONTHS	• Please initial
• 24 MONTHS	• Please initial
• 36 MONTHS	• Please initial
• 48 MONTHS	• Please initial
• 60 MONTHS	• Please initial

We agree to be bound by the terms & conditions and confirm our acceptance.

Authorised Signatory (Owner)

Authorised Signatory (AAC&R)

Name:  
Position:  
Date:

Name:  
Position:  
Date: