



Terms and Conditions for Service and Maintenance Agreements

These terms and conditions (the “Conditions”) explain the rights, obligations and responsibilities of all parties to the Contract (hereafter defined). Where we use the word “you” or “your” it means the Customer; “we”, “us” or “our” means, as the circumstances require, Eaton-Williams Services Limited (with whom you are contracting) and/or its employees, servants, agents and/or duly authorised representatives.

Please read the following Conditions carefully, as they form the basis of our Contract with you. Your attention is specifically drawn to Conditions 6, 12, 14 and 16 to 18 which limit our liability to you.

1. Definitions and Interpretation

1.1. For the purpose of these Conditions except where expressly stated to the contrary, the following words shall have the following meanings:

Associated Company shall mean companies which are our (direct or indirect) subsidiaries and/or holding companies and any other subsidiaries of our holding companies and any other company which is designated by us to be an Associated Company.

Equipment shall mean all plant, vehicles, machinery, stores, tools and other things brought on to the Site by the Company and required for the execution and completion of the Works.

Conditions shall mean these conditions.

Contract	shall mean the agreement between you and us for the performance of the Works including the Order Form, the Conditions and all other documents to which reference may properly be made in order to ascertain the rights and obligations of the parties under the said agreement.
Delivery Note	shall mean the note confirming delivery of the Materials for the purposes of Condition 3.2.
Materials	shall mean any goods to be supplied under the Contract including, but not limited to, any machine, article, tool and / or device together with any accessories whether manufactured by us, an Associated Company or a third party.
Order Form	shall mean the offer (for the purposes of Condition 2 below) in the form set out at Schedule I hereto.
Site	shall mean the address specified by you to which delivery of the Materials and/or at which the Services shall be made and/or performed by us and, where the context permits, shall be deemed to include any items of air conditioning, air movement and chiller equipment contained therein.
Services	shall mean the installation of any of the Materials to be supplied, and any work and labour to be done and provided by us under the Contract (whether in relation to Materials supplied by us or materials supplied by any other party) including, without limitation, any periodic maintenance of your air conditioning, air movement and chiller system situated at the Site including inspection and maintenance to maintain the system to a standard which is safe and efficient having regard to our standards and working practices applied by us to such a system.
Works	shall mean the supply of the Materials along with the provision of the Services by us to you excluding the activities listed at Schedule II to these Conditions.

- 1.2. In these Conditions, words importing any gender include every gender; the singular include the plural number and vice versa; persons include firms, companies and corporations and vice versa;
- 1.3. The headings to clauses of these Conditions are not to affect the interpretation of any clauses;
- 1.4. In the event of an inconsistency between these Conditions any other document (including the Order Form) or representation, these Conditions shall take precedence, unless it is expressly agreed in writing, for the purpose of this Condition 1.4, that the terms of that other document or representation shall prevail over these Conditions.

2. The Order Form

- 2.1. Our Order Form shall constitute an offer to you from us to undertake the Works. No quotation or other writing estimate shall constitute an offer by us, but only an invitation to treat. Unless validly accepted under Condition 2.2 below, our offer to you (contained in the Order Form) shall be deemed to have been withdrawn after the expiry of 28 days from the date shown on the Order Form.

- 2.2. Your acceptance of our offer (contained in the Order Form) is only valid if communicated to us (and actually received by us) in writing. No acceptance is valid if actually received by us in excess of 28 days after the date shown on the Order Form.

3. Your Risks

- 3.1 Should any Materials be lost or damaged by your acts or omissions or of others (excluding our servants or sub-contractors) such Materials shall be replaced by us at your expense.
- 3.2 You are required to acknowledge receipt of all Materials delivered to the Site and all Works conducted at the Site by signing an appropriate Delivery Note.

4 Price

- 4.1 The Price payable by you for the Works is the sum stated in our Order Form, increased or reduced by such sums (if any) as permitted under this Condition 4. Unless otherwise expressly stated in our Order Form, the Price is exclusive of any taxes or duties payable in relation to the Works, including but not limited to value added tax (“VAT”). To the extent that such taxes or duties are properly chargeable on the Works, you shall pay such tax in addition to the Price at the relevant rate.
- 4.2 Unless otherwise expressly agreed in writing, the Price is based upon:
- 4.2.1 the advice, information, drawings and specifications (the “**Specifications**”) supplied by you to us regarding your requirements for the Works. In the event there is any discrepancies, errors or omissions in the Specifications, our additional costs caused by such discrepancies, errors or omissions shall be added to the Price and payable by you;
- 4.2.2 full and free access to the Site (as required to complete the Works) will be made available to us between the hours of 8 a.m. and 5 p.m. Monday to Friday inclusive (excluding bank and other public holidays in England and Wales). In the event that such access is not given (whether by your fault or not), our additional costs caused by that failure (including, but not limited to payment of overtime or weekend wages) shall be added to the Price and payable by you;
- 4.2.3 your providing the facilities specified in Condition 5 below. In the event that such facilities are not provided (whether by your fault or not), our additional costs caused by such failure shall be added to the Price and payable by you; and
- 4.3 In the event that we are required to undertake activities that are not included within the Works (as set out at Schedule II to these Conditions) in order to perform the Works, we may increase the Price payable by you by including an addition service fee for such activities (which will be calculated by reference to our “Call Out Rates” as set out under the Order Form).

5 The Site

- 5.1 Unless otherwise agreed in writing, you shall at your own expense and at such time or times as may be specified by us:
- 5.1.1 provide covered and secured waterproof accommodation within the Site or the immediate vicinity of the Site to ensure the safe custody of and to minimise deterioration of the Materials and our Equipment whilst at the Site;

- 5.1.2 provide any and all labour and/or equipment required to offload the Materials upon their arrival at the Site ("**Offloading Facilities**");
- 5.1.3 provide adequate facilities (including, but not limited to, the Offloading Facilities and parking for our vehicles, employees, servants and agents) and personnel at the Site to handle the Materials and our Equipment during the Works;
- 5.1.4 ensure that all our access to the Site is free from all obstructions;
- 5.1.5 ensure any and all preparation and/or construction necessary to receive the Materials and/or conduct the Works have been completed prior to the commencement of the Works (including, but not limited to, ensuring that the walls, floors and ceilings of the Site are capable of supporting the Materials and loads imposed upon them by the Works);
- 5.1.6 ensure that there is a sufficient and continuous supply of electric light, power and water available at all areas at the Site necessary for the performance of the Works by us;
- 5.1.7 provide any health and welfare facilities which may be required by law under the applicable regulations current from time to time for our employees whilst they are situated at the Site or any other premises for the purposes of our performance of the Contract; and
- 5.1.8 supply to us all such plans, data and information (including, but no limited to the Site plans and levels) as are reasonably necessary from time to time for us to conduct the Works.
- 5.2 Without prejudice to any other right or remedy we have may have, we reserve the right to suspend and/or cancel our performance of the Contract in the event that you fail (whether by your fault or not) to comply with any of the requirements under this Condition 5.

6 Limitation of Liability and Indemnity

- 6.1 We will not be liable for any loss or damage whatsoever (whether direct, indirect, consequential or for loss of profits) in any way suffered by you unless such loss or damages arise out of or are caused by the negligence, wilful misconduct or breach of the Contract; for the avoidance of doubt and without limitation to the foregoing, we will not be liable as a result of:
 - 6.1.1 any inadequacy, stoppage, breakdown or failure of the Materials (whether on the grounds of negligence or otherwise) by reason of the fact that we may have inspected, advised on or approved the Specifications, Materials and/or the Works; or
 - 6.1.2 any delay to the Works due to the need to replace lost or damaged Materials under Condition 3.3 above.
- 6.2 You shall at all times indemnify us and hold us harmless against any and all losses, claims, damages, charges and expenses (save those that arise out of, or are caused by, our negligence, wilful misconduct or breach of warranty) for:
 - 6.2.1 any personal injury (including death) suffered by any person;
 - 6.2.2 any loss or damage to the Materials and/or our Equipment whilst at the Site during the performance of the Works; or
 - 6.2.3 damage to property belonging to any person to which we may be liable or be deemed to be liable under the Contract.

- 6.3 If we are held to be liable for any breach of the Contract, or shall become liable to you in any way howsoever, our liability to you shall in no circumstances exceed a sum equal to the amount of the Price already received by us at the time of the occurrence of our liability to you.
- 6.4 Nothing in these Conditions shall exclude or limit our liability for death or personal injury caused by our negligence, or exclude or limit any other type of liability which it is not permitted to be excluded or limited as a matter of law.

7 Payment

- 7.1 Unless otherwise agreed in writing, we will deliver to you invoices in relation to the Works, and payment of the Price shall be paid by you, in the following manner:
- 7.1.1 in respect of Materials, in advance of delivery to the Site (or otherwise); and
- 7.1.2 in respect of Service, quarterly in advance of those Services being provided.
- 7.2 For all payment obligations, time of payment shall be of the essence.

8 Events of Default

- 8.1 The following are considered "Events of Default":
- 8.1.1 you do not comply with any term of the Contract, including any of these Conditions;
- 8.1.2 you do not accept delivery of Materials when tendered by us;
- 8.1.3 you repudiate or otherwise terminate the Contract for any reason whatsoever (otherwise than in consequence of a breach of the Contract by us);
- 8.1.4 any process of distress or execution levied upon your goods;
- 8.1.5 if a bankruptcy or winding up petition is presented against you or if you enter into or propose entering any insolvency procedure (including, but not limited to the making of any proposal for a composition or arrangement with your creditors, bankruptcy, administration, administrative receivership or liquidation).
- 8.2 In the event that you commit and Event of Default we may, without prejudice to any other right or remedy we may have:
- 8.2.1 charge you interest upon any sum that has become due under this Contract for which you have failed to pay us from the date such a sum becomes due to the date of payment by you at a rate of 2 per cent per annum over the Bank of England minimum lending rate from time to time (subject to a minimum rate of 5 per cent);
- 8.2.2 store any Materials for which delivery has not been accepted in our, or any other, warehouse and you will be immediately liable for the costs of such storage along with the additional charges for handling and transportation of the Materials from the date the delivery was refused to the date the delivery is accepted by you;
- 8.2.3 suspend the Works generally until the Event of Default is remedied by you (and after resumption of the Works there to be such extensions of time for performance of the contract as are reasonable in the circumstances);
- 8.2.4 terminate the Contract and/or any other agreement we may have with you, without giving rise to any liability on our part for such termination, provided that such payments

remain in arrears for at least 7 days after a written demand is delivered to you by us stating that we intend to terminate the relevant contract;

- 8.2.5 resell the Materials and any loss on such resale shall be paid by the Customer;
- 8.2.6 require delivery up of any Materials or goods in your possession for which the Title (for the purposes of Condition 10 below) remains vested in us (on default of which we may cause peaceable entry onto the Site or any other premises where the relevant Materials or goods are located for the purpose of recovering them, all costs of such recovery to be paid by you);
- 8.2.7 charge to you a sum representing the sum necessary to put us into the same financial position we would have been in had the Contract been performed by you, such charge to be payable within 30 days of us notifying you of it; and/or
- 8.2.8 require immediate payment of the Price by you along with acceptance of any further Materials or Works required by us under the Contract (for the avoidance of doubt, this is irrespective of the fact that title to Materials or goods, for the purposes of Condition 10 below remained vested in us).

9 Right of Set Off

- 9.1 No right of set off shall exist in respect of any claims by you against us unless and until such time as such claims are accepted by us in writing and until such time you shall not withhold all or any part of any sum which has become due for payment under the Contract.

10 Title

- 10.1 Notwithstanding that risk in the Materials shall pass to you upon their arrival at the Site, we shall retain full legal and beneficial interest in those Materials until you have paid the full Price of the Contract.
- 10.2 For so long as you are in possession of the Materials but legal and beneficial interest remains in us:
 - 10.2.1 you hold such Materials as bailee and fiduciary and must treat the Materials in a manner that a prudent owner would (including, but not limited to insuring the Materials);
 - 10.2.2 you may use the Materials and sell them in the ordinary course of business but, until the Price is paid in full (a) you hold such proceeds of sale on trust for us; (b) you agree to equitably assign to us any right you have against the purchaser of the Materials; and (c) your right to sell the materials in this manner may be revoked either in writing by the Company at any time or automatically upon your entering in one of the processes set out above a Condition 8.1.5;
 - 10.2.3 you may not pledge or otherwise charge by way of security the Materials until the Price is paid in full;
 - 10.2.4 if you cause the Materials to be incorporated in or attached to or used as components for or in the manufacture of other goods, the full legal and beneficial interests in the new goods shall vest in and remain with us, and you shall hold such goods subject to this Condition 10.
- 10.3 We have your permission to enter the Site (or any other premises) to inspect our Equipment, or Materials or goods to which title remains vested in us, that are located there upon reasonable notice to you.

11 Patents and Copyright

- 11.1 Where Works are undertaken or any part thereof shall consist of any article to be manufactured, altered or worked upon by us in accordance with the Specifications, you warrant to us that any such article or the design or the construction thereof shall not in any way infringe any patent, copyright, design right or any other protection subsisting in favour of third parties and agree to indemnify us against all actions, claims and demands which may be made against it by such third parties including any costs and expenses incurred by the Company in respect thereof.
- 11.2 In all other cases, in the event of any claim being made against you in respect of infringement or alleged infringement of patent, copyright, design right or other protection in respect of the Works, you shall inform us immediately. Thereupon we are at liberty (in our absolute discretion) to conduct all negotiations for the settlement of any such claim or any litigation or proceedings which may arise therefrom. Our liability to you in any such cases (whether or not you are permanently prohibited from using the results of the Works by reason of such claim) shall be limited to:
- 11.2.1 in the case of Materials, accepting a return of the said Materials and refunding you their purchase less a fair value representing the benefit which was derived from the use of the Materials whilst it remained in your possession; or
- 11.2.2 in the case of Services, refunding you the purchase price paid less a fair value representing the benefit which was derived from receipt of the Services.
- 11.3 Any specification and/or drawing prepared by or on behalf of us submitted with or expressly referred to in an Order Form shall form part of the Contract. The copyright of all such specifications and/or drawings remains ours or our suppliers' (as the case may be) and may not be divulged or used without our permission in writing.

12 Warranties

- 12.1 We warrant that the Services will be carried out with reasonable standards of care and skill and that the Materials provided will be fit for the purpose of the Works.
- 12.2 If within a period of 12 months after (a) you have taken possession of a Material or (b) a Service have been completed and any fault is found in the relevant Material or Service which is not attributable wholly or in part to (a) not being maintained by you in accordance with the manufacturers' recommendations; (b) inexpert installation or repair by persons other than us or an authorised sub-contractor or (c) fair wear and tear and is a fault within our control, then in each such case we shall, subject to having been paid in full for the relevant Material or Service, at our own expense and sole discretion either repair or replace the faulty Material or re-perform the Service (as the case may be) provided that notice of the fault is given in writing to us by registered post not more than 7 days after the expiry of the said period of 12 months. This warranty does not extend to parts, materials or equipment not manufactured by us, in respect of which you shall only be entitled to the benefit of any such warranty or guarantee as given by the manufacturer to us.

13 Substitution of Materials

- 13.1 The Company reserves the right to substitute without prior notice or consultation other Materials for any which may be specified in the Contract provided that the operating capabilities and technical properties are not adversely affected.

14 Alterations to Design or Specification

- 14.1 Any alteration to the Specifications requested by you shall be notified to us in writing. Any costs incurred in complying with such alterations shall be added to the Price of the Contract and shall be accordingly paid for by you.

15 Sub-Contracting

- 15.1 We reserve the right to sub-contract any part of our performance of the Contract, but in so doing we will not be relieved of any liabilities under the Contract.

16 Time of Performance and Force Majeure

- 16.1 Time for performance of any of our obligations under the Contract shall not be of the essence of the Contract and may not be made of the essence by notice.
- 16.2 Whilst we undertake to make every reasonable endeavour to perform the Works as near to the date specified for delivery as possible, all orders are accepted subject to delays caused by fires, industrial disputes, non-availability of raw materials or through any other cause whatsoever beyond our control (**Force Majeure Event**). We shall not incur any liability or be responsible for any inconvenience, costs, losses or damages (for all of the foregoing whether direct, indirect, consequential or otherwise) suffered by you arising from a Force Majeure Event and / or any delay caused by a Force Majeure Event (unless otherwise specifically agreed by us in writing).

17 Statutory and Bye-Law Approvals

- 17.1 It shall be your responsibility to obtain all necessary permissions and licences and to conform to the provisions of any Act of Parliament and to any bye-laws, orders, agreements and regulations for the time being in force affecting the Works under the Contract and you shall pay and indemnify us against all fees, costs, claims and actions payable by us in connection therewith.
- 17.2 If you are a tenant of the Site (or any other place of our performance of the Works) you shall procure the permission of your landlord in respect of any Works. We may assume that such permission has been obtained and shall have no liability for any loss or damage howsoever arising from your failure to obtain such permission.

18 Completion / Cleaning

- 18.1 We will make every reasonable effort to clear the Site of all surplus materials and waste, the latter being placed on a central dump to be provided by you for subsequent disposal by you and we will make every reasonable effort to leave any installation clean and ready for use but we accept no liability whatsoever for any deposits of dirt or other materials, or damage to the installation, subsequent to the completion of the Works, occasioned by you or any third party.
- 18.2 When fixing some Materials and other equipment it may be necessary for our engineers to cut into walls or ceilings blind. In these circumstances, we cannot take responsibility for pipes and other cables that may become damaged unless we are provided, prior to the Works being performed, a specific plan showing the whereabouts of such pipes or cables.
- 18.3 We cannot be held liable for any damage that is unavoidably caused to decorations, fittings and the like as a result of any Works.
- 18.4 On completion of the Contract all surplus Materials supplied by us shall unless otherwise agreed remain our property and be removed from the Site by us together

with our Equipment (if any). Until such removal, you must continue to take reasonable precautions for the safe custody of such surplus Materials and Equipment.

19 Completion / Take-Over

- 19.1 Upon the practical completion of the Works you must issue to us a take-over certificate in the form nominated by us and signed by your authorised representative upon which shall be certified the date on which the Works were completed and you shall be deemed to have taken over the Works on the date so certified. Where the Works are to be undertaken in defined phases, the take-over of each phase shall be executed in the same manner as if it constituted the whole of the Works.

20 Contracts (Rights of Third Parties) Act 1999

- 20.1 A person who is not a party to the Contract shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract (including these Conditions) except that our Associated Companies can enforce our rights under the Contract (including these Conditions).

21 Waiver

- 21.1 No waiver of any of the rights, remedies or obligations under the Contract by any party shall operate unless in writing and expressly stated to be a waiver for the purposes of this Condition 21. For the avoidance of doubt, any election by any party to pursue a particular right or remedy will not constitute a waiver of its other rights and remedies under the Contract, and no waiver of any of the parties' rights, remedies or obligations under the Contract shall be implied from their conduct.

22 Severability

- 22.1 If any provision or part of the Contract (including these Conditions) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 22.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the intention of the parties.

23 Assignment

- 23.1 We are free to assign or sub-license, or grant any security interest over, any of our rights or obligations under the Contract without your prior written consent.
- 23.2 You may not assign or sub-license, or grant any security interest over, any of your rights or obligations under these Conditions, or any document referred to in them, without our prior written consent.

24 Notice

- 24.1 Any demand or notice given under these Conditions shall be in writing and may be served personally, by registered or recorded delivery mail, by facsimile transmission (confirmed by post), or by any other means which any party specifies by notice to the other.
- 24.2 Subject to Condition 24.1 above, each party's address for the service of notice shall be its address set out under the Order Form.

24.3 A notice shall be deemed to have been served (a) if it was served in person, at the time of service, (b) if it was served by post, 24 hours after it was posted, and (c) if it was served by facsimile transmission, at the time of the transmission.

25 Applicable Law

25.1 The Contract shall, unless otherwise agreed in writing, shall be construed in accordance with the laws of England and Wales and any legal action resulting therefrom shall be subject to the exclusive jurisdiction of the courts of England and Wales.



SCHEDULE I

ORDER FORM

This is an Order Form for the purposes of Condition 2.1 of our Terms and Conditions for Service and Maintenance Agreements (“the Conditions”). This Order Form is an offer for the provision of the Services and supply of the Materials (collectively “the Works”) by us to you.

Please read the following Order Form carefully as it will form the basis of our Contract with you along with the Conditions which expressly form part of our Contract with you. The terms and definitions referred to in this Order Form as those as set out under the Conditions.

A copy of the Conditions can be provided to you upon request and can also be viewed on our website (address below). We specifically refer you to Conditions 6, 12, 14 and 16 to 18 which limit our liability to you.

Please be advised that our payment terms are set out under Sections I and J below and Condition 7 of the Conditions. We respectfully request that these payment terms are complied with and must advise that, should any portion of your account become overdue for payment, interest will be levied on that overdue amount.

All payments should be made to Eaton-Williams Service Limited.

EATON-WILLIAMS SERVICE LIMITED
Registered Office – 6 New Street Square, London, EC4A 3LX
Head Office – Fircroft Way, Edenbridge, Kent, TN8 6EZ
Incorporated in England and Wales under Company Registration Number 00783156
Telephone – 01732 868282
Facsimile – 01732 865709

www.eaton-williams.com/ews

A	Us	EATON-WILLIAMS SERVICE LIMITED
B	Our address (for the purpose of Condition 24)	6 New Street Square, London, EC4A 3LX
B	You	[add name]
C	Your address (for the purpose of Condition 24)	[add address]
D	The Site	[add address]
E	Your contact name and contact details	[add contact details]
F	Description of the Materials to be provided (if applicable)	[add description of Materials]
G	Description of Service to be supplied (if applicable)	[add description of Services]
H	Term	[Our Contract with you in respect of Works shall take effect from the date of the first payment in respect of the Works and shall continue in force for an initial period of 1 year and thereafter from year to year unless and until terminated by delivery of a minimum of 3 months' written notice of termination by either you or us.]
I	Price	[Set out price, excluding VAT] + VAT
J	Payment Details	[Set out instalment plan if by instalments] All payments should be made to Eaton-Williams Service Limited by [method – i.e. cheque, bank transfer etc... - provide bank details]

SCHEDULE II

Activities excluded from the Works (unless otherwise expressly agreed) are:

1. any Services upon, or supply of Materials to items of your equipment that has been damaged by fire, water, extreme ambient conditions or your misuse;
2. any Services upon, or supply of Materials to items of your equipment which in our opinion can no longer be subject to economical maintenance;
3. modifications or additions to items of your equipment;
4. such visits as are necessary to effect any mandatory modifications to items of your equipment that are required by the manufacturer (save that the quarterly preventative maintenance visits are expressly included within the meaning of the Works);
5. replacement of consumables;
6. provision of replacement parts;
7. cost of removal of part or all of the items of equipment in respect of which Works are to be undertaken to our premises for repair;
8. emergency or service visits;
9. aborted visits, for whatsoever reason; and
10. any other exclusions set out by us in the Order Form.