

Terms and Conditions for Maintenance - SmartMist Systems

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1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

Definitions:

- **Business Day:** A day other than a Saturday, Sunday, or public holiday in England when banks in London are open for business.
- **Charges:** The charges payable by the Customer for the supply of the Services in accordance with clause 5.
- **Commencement Date:** The date when the Contract comes into existence as defined in clause 2.2.
- **Conditions:** These terms and conditions as amended from time to time in accordance with clause 11.5.
- **Contract:** The contract between the Supplier and the Customer for the supply of servicing and maintenance Services for SmartMist systems in accordance with these Conditions.
- **Control:** As defined in section 1124 of the Corporation Tax Act 2010.
- **Customer:** The person or firm who purchases Services from the Supplier.
- **Customer Default:** As set out in clause 4.2.
- **Deliverables:** The maintenance work undertaken by the Supplier, as set out in the Order.
- **Intellectual Property Rights:** All intellectual property rights including patents, utility models, rights to inventions, copyright and neighboring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use and protect the confidentiality of confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered, and including all applications and rights to apply for and be granted renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- **Order:** The Customer's order for Services as set out in their purchase order form or written acceptance of a quotation.
- **Services:** The maintenance services including the Deliverables supplied by the Supplier to the Customer as set out in the Specification.

- **Specification:** The description or specification of the Services provided in writing by the Supplier to the Customer.
- **Supplier:** SmartMist Systems Ltd, registered in England and Wales with company number 12885272.
- **Supplier Materials:** As set out in clause 4.1(h).

Interpretation:

- References to legislation include all amendments and re-enactments.
- "Writing" includes email but excludes other forms of electronic communication unless otherwise stated.

2. Basis of Contract

2.1. The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2. The Order shall only be deemed accepted when the Supplier issues a written acceptance, creating the Contract.

2.3. By signing the Order, the Customer acknowledges and agrees to be bound by these Conditions, which are referenced in the Order and available at [insert link to agreement].

2.4. These Conditions apply to the Contract to the exclusion of any other terms the Customer may seek to impose.

2.5. Any quotation given by the Supplier is valid for 20 Business Days from its date of issue and does not constitute an offer.

3. Supply of Services

3.1. The Supplier shall supply the Services in accordance with the Specification in all material respects.

3.2. The Supplier shall use reasonable endeavors to meet any performance dates but such dates are estimates only.

3.3. The Supplier reserves the right to amend the Specification to comply with any legal or regulatory requirements or if the amendment does not materially affect the quality of the Services.

3.4. The Supplier warrants that the Services will be provided with reasonable care and skill.

3.5. If defects in the Services appear within twelve months of completion (Warranty Period) due to causes other than fair wear and tear or improper use, the Supplier will rectify the defects if notified within the Warranty Period.

3.6. The Supplier shall service its own systems, third-party systems installed by the Supplier, and systems installed by other parties. However, the Supplier shall not take any responsibility for the design and/or installation of systems installed by other parties.

4. Customer's Obligations

4.1. The Customer shall:

- Ensure the terms of the Order and Specification are complete and accurate.
- Co-operate with the Supplier in all matters relating to the Services.
- Provide necessary access to the system control unit, pipework, and nozzles.
- Obtain and maintain necessary licenses and consents.
- Keep Supplier Materials in good condition and return them upon request.

4.2. If the Supplier's performance is prevented or delayed by any act or omission by the Customer (Customer Default):

- The Supplier may suspend performance until the Customer remedies the Default.
- The Supplier shall not be liable for any costs or losses incurred due to the Customer Default.
- The Customer shall reimburse the Supplier for any costs incurred due to the Default.

4.3. Clear working conditions must be provided. If not, additional charges may apply.

4.4. The Customer is responsible for arranging appointments for access to the property. If access is not granted at the agreed time, the Supplier reserves the right to charge the full fee for any return visit.

4.5. The Customer must notify the Supplier immediately of any warning notifications or activations from the system. Failure to do so may void the warranty.

5. Charges and Payment

5.1. The Charges shall be a fixed fee agreed in advance and specified in the Order.

5.2. Payment structure:

- 100% payment in advance prior to the commencement of Services.

5.3. Payment terms:

- Payments shall be made in full without any set-off or deduction.

5.4. If access is not granted at the agreed appointment time, the Supplier reserves the right to charge the full fee for any return visit.

6. Intellectual Property Rights

6.1. All Intellectual Property Rights in connection with the Services shall be owned by the Supplier.

7. Limitation of Liability

7.1. The Supplier's total liability shall not exceed the Charges paid by the Customer.

7.2. The Supplier shall not be liable for any indirect or consequential losses.

7.3. The Supplier shall not be liable for any damage caused by the malfunction of the system unless such malfunction is directly caused by the Supplier's negligence during the installation or maintenance process.

7.4. The Supplier shall not be liable for any loss or damage arising from the Customer's failure to follow the Supplier's recommendations regarding the use and maintenance of the system, including failing to act on warning lights and signals.

7.5. The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £5,000,000 per claim. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange, and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

7.6. Subject to clause 7.7, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any of the following types of loss or damage arising under or in connection with the Contract:

- loss of profits;
- loss of sales or business;
- loss of agreements or contracts;
- loss of anticipated savings;
- loss of use or corruption of software, data, or information;
- loss of or damage to goodwill;
- indirect or consequential loss.

7.7. Nothing in these Conditions shall limit or exclude the Supplier's liability for death or personal injury caused by its negligence, fraud, or fraudulent misrepresentation.

8. Termination

8.1. Either party may terminate the Contract by giving one month's written notice.

8.2. Either party may terminate with immediate effect if the other party commits a material breach or faces insolvency.

8.3. The Supplier may suspend Services if the Customer fails to pay any amount due.

9. Consequences of Termination

9.1. On termination, the Customer shall immediately pay all outstanding invoices.

9.2. The Customer shall return all Supplier Materials.

9.3. Termination or expiry of the Contract shall not affect any rights, remedies, obligations, or liabilities that have accrued up to the date of termination or expiry.

10. Assignment and Transfer of Agreement

10.1. The Customer may transfer this Agreement, including all warranties and obligations, to future owners of the property in the event of a sale.

10.2. The Customer must notify the Supplier in writing of any transfer of ownership, providing the new owner's contact details.

10.3. The new owner must agree in writing to be bound by the terms of this Agreement.

11. General

11.1. Force Majeure: Neither party shall be liable for delays caused by events beyond their control.

11.2. Assignment: The Supplier may assign its rights; the Customer may not without written consent.

11.3. Confidentiality: Both parties shall keep confidential information secure.

11.4. Entire Agreement: This Contract constitutes the entire agreement.

11.5. Variation: No variation shall be effective unless in writing and signed by both parties.

11.6. Waiver: No failure or delay to exercise any right shall constitute a waiver.

11.7. Severance: If any provision is invalid, the remaining provisions shall remain in force.

11.8. Notices: Must be in writing and delivered by hand, post, or email to specified addresses.

11.9. Third Party Rights: The Contract does not confer rights on any third parties.

11.10. Governing Law: English law governs the Contract.

11.11. Jurisdiction: The courts of England and Wales shall have exclusive jurisdiction.

11.12. Termination Contact: To terminate this agreement, please contact Kirstie at kirstie@mistingsolutions.co.uk.