

Culligan (UK) Limited

Terms and Conditions Maintenance Agreement



1 Interpretation

1.1 DEFINITIONS

Agreement the Agreement between the Supplier and the Customer for the Maintenance of the Units in accordance with these Conditions.

Business Day a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Commencement Date the date which is 7 days after the date on which the Customer signs this contract or, if later, the date on which the Contract commences as set out in the Order

Conditions the terms and conditions set out in this document, as amended from time to time in accordance with Condition 11.5.

Contract the contract between the Supplier and the Customer for the Maintenance of the Units in accordance with these conditions.

Customer the person, partnership, unincorporated association, company or other organisation named in the Order.

Deposit a deposit charged for each bottle purchased, which will be refunded when returned, provided the bottle remains undamaged. For the avoidance of doubt there are no deposits in relation to hydration packs.

Extension Period the extension period of this Maintenance agreement is 12 months

Force Majeure Event an event or circumstance beyond a party's reasonable control.

Initial Period the relevant period for the Maintenance of Units as set out in the Order.

Maintenance the Maintenance of Units in accordance with Condition 3.

Order the Customer's order for purchase of the Units, as set out in the Customer's purchase order form or the Customer's written acceptance of the Supplier's quotation, as the case may be.

Payments the sums payable by the Customer as defined in Condition 5.1 and set out in the Order or as varied under Condition 5.2.

Specification any specification for the Units, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.

Standard Payment Terms 30 days from invoice date unless otherwise stated.

Supplementary Charges the charges set out in Conditions 5.3 to 5.6.

Supplier Culligan (UK) Limited (registered in England and Wales with company number 02418453).

Units any water cooler machines and associated goods and equipment (or any substitute for such items) to which this Contract applies.

1.2 Interpretation

1.2.1 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.2 any phrase introduced by the terms **including**, **include**, or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.3 unless the context requires otherwise, words in the singular shall include the plural and, in the plural, shall include the singular.

1.2.4 a reference to **writing** or **written** includes emails.

2 Basis of contract

2.1 The terms of Contract shall consist of the Order and these Conditions to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Neither these Conditions nor the Order shall be modified without the written agreement of the Supplier.

3 Maintenance of Units

3.1 The Contract shall commence on the Commencement Date and, unless terminated earlier in accordance with Condition 9, shall continue for the Initial Period and then shall automatically renew for consecutive Extension Periods.

3.2 The Supplier shall carry out routine periodic servicing of the Units (**Maintenance**) as set out in the Order and which shall include:

3.2.1 replenishment of any consumables and bottles; and

3.2.2 non-routine maintenance or repairs shall be carried out in accordance with Condition 6 below.

4 Non-routine repair and maintenance

4.1 Upon any fault occurring with the Units or if the Units become a health and safety hazard:

4.1.1 the Customer shall notify the Supplier as soon as possible and take such steps as are reasonably necessary to mitigate the effect of such fault or hazard; and

4.1.2 subject to Condition 6.2, the Supplier shall, as soon as reasonably practicable, take all proper steps to correct the fault at its own cost by repairing or replacing all or part of the Units.

4.2 The Payments include the provision of non-routine repairs required as a result of a malfunction or component failure but do not include the repair of any faults in the Units arising from or in connection with:

4.2.1 misuse, vandalism, incorrect environmental conditions (including, without limitation, incorrect temperature levels), mains electrical surges or failures; or

4.2.2 any other accidental, negligent or wilful damage for which Supplementary Charges will be payable.

5 Prices, supplementary charges and other charges

5.1 Where the Customer's total monthly payment in respect of Maintenance (**Price**) is less than £20 per month, the Price shall be payable by the Customer on receipt of the Supplier's invoice which shall be issued annually in advance without deduction, counterclaim or set-off.

5.2 The Supplier may vary the Prices as follows:

5.2.1 at any time where performance of its obligations under the Contract become more difficult and/or costly as a result of new laws or regulations or a change in existing laws or regulations, including those which result in increases in National Insurance contributions and other staff costs;

5.2.2 to take account of an increase in the Supplier's operating costs including (without limitation) increases in fuel prices.

Supplementary charges

5.3 The Supplier reserves the right to recharge to the customer, any unforeseen costs incurred by the Supplier, beyond the Suppliers control.

5.4 Supplementary Charges and other charges referred to in this Condition 5 are payable at the rates current at the time that the relevant services are provided, or costs incurred and Standard Payment Terms shall apply.

5.5 All Payments are subject to the addition of VAT at the prevailing rate which shall be additionally payable by the Customer in full.

6 Customer's obligations

6.1 The Customer shall notify the Supplier of any material changes to their details including address and invoicing details.

6.2 The Customer agrees and covenants with the Supplier as follows:

6.2.1 to allow the Supplier and its agents full, convenient and safe access to the Units during such hours as may be necessary to perform its obligations under the Contract;

6.2.2 not to interfere with the Units (including but not limited to attempting to repair, adjust or modify the Units);

6.2.3 to care for and operate the Units in accordance with all relevant instructions;

6.2.4 not to connect the Units (other than with the Supplier's prior written consent) to any other equipment;

6.2.5 where the type of Unit supplied allows the Customer to fill containers with water supplied by the Customer, the Customer shall be wholly responsible for the quality of the water and the cleanliness of the containers used.

6.2.6 to promptly carry out such action to the Units as may be advised by the Supplier from time to time;

6.2.7 to take all reasonable steps to eliminate any cause of a fault as set out in Condition 6.2; and

6.2.8 to notify the Supplier immediately of any loss or damage to the Units and/or the bottles.

6.3 Where the Units supplied under the Contract are manufactured or customised to the Customer's own specifications or requirements, the Customer acknowledges that:

6.3.1 the Units are required for the purposes of a business carried on by the Customer;

6.3.2 the Units were selected by the Customer and acquired at its request by the Supplier from its supplier for the purposes of the Contract; and

6.3.3 the Supplier's supplier is not the agent of the Supplier unless this is required by law.

7

Data

7.1 For the purposes of this Condition 8, the following terms shall have the meaning defined in the Data Protection Legislation: **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures.**

7.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Condition 8 is in addition to, and

does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this Condition 8,

Applicable Laws means (for so long as and to the extent that they apply to the Provider) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.

7.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Provider is the Processor.

7.4 Without prejudice to the generality of Condition 7.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful collection of the Personal Data by the Provider on behalf of the Customer for the duration and purposes of the Contract.

7.5 Without prejudice to the generality of Condition 7.2, the Provider shall, in relation to any Personal Data processed in connection with the performance by the Provider of its obligations under the Contract:

7.5.1 process that Personal Data only on the documented written instructions of the Customer unless the Provider is required by Applicable Laws to otherwise process that Personal Data. Where the Provider is relying on Applicable Laws as the basis for processing Personal Data, the Provider shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Customer;

7.5.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

7.5.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

7.5.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

- (a) the Customer or the Provider has provided appropriate safeguards in relation to the transfer;
- (b) the data subject has enforceable rights and effective legal remedies;
- (c) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- (d) the Provider complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

7.5.5 assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

7.5.6 notify the Customer without undue delay on becoming aware of a Personal Data Breach;

7.5.7 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and

7.5.8 maintain complete and accurate records and information to demonstrate its compliance with Condition 7.

7.6 The Customer does not consent to the Provider appointing any third-party processor of Personal Data under the Contract.

7.7 Either party may, at any time on not less than 30 days' notice, revise this Condition 7 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

8 Termination

8.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice:

8.1.1 if the Customer breaches any condition of the Contract;

8.1.2 if the Customer fails to pay any amount due under the Contract on the due date for payment;

8.1.3 in the event of the Customer's abandonment of the Units and/or Bottles;

8.1.4 in the event of the Customer becoming bankrupt or insolvent or, being a company, making an assignment for the benefit of its creditors or ceasing to do business as a going concern or entering into liquidation, whether compulsory or voluntary, or having a receiver appointed or taking or suffering any similar action in consequences of debt; or

8.1.5 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

8.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in Conditions 8 to 8.1.5, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

8.3 The Maintenance of the Units pursuant to this Contract will start on the date of the Contract and shall continue for the Initial Period. The Customer may terminate the Contract by giving a minimum of 90 days' notice prior to the expiry of the Initial Period or subsequent Extension Period. Failure to give such notice in accordance with this Condition 8.3 shall mean the Contract shall be renewed for a further 12 months.

8.4 On termination of the Contract for any reason:

8.4.1 the Customer shall, without prejudice to the Supplier's other rights and remedies, pay to the Supplier on demand any and all Payments and other sums payable under the Contract up to the date of termination;

8.4.2 at the Supplier's discretion, pay a cancellation charge commensurate with the Supplier's costs incurred up to the date of termination plus the Supplier's loss of profit.

8.5 In the event that:

8.5.1 the Customer seeks to terminate the Maintenance of one or more of the Units or the Contract in its entirety, otherwise than in accordance with the notice requirements in Condition 8.3; or

8.5.2 any of the circumstances in Condition 8.1 occur and as a result the Supplier elects to terminate the Contract, the Customer shall pay to the Supplier, in addition to the sums payable under Condition 8.4, the following sums by way of liquidated damages:

- (a) the charges which would have become payable if the notice requirements in Condition 8.3 were complied with; and
- (b) a fee up to £175.00 per Unit at the Supplier's reasonable discretion to cover the costs of administration and collection of the Units and bottles.

8.6 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

8.7 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

9 Limitation of liability

9.1 Subject to Condition 9.2, all conditions, warranties and representations, whether express or implied and whether arising by reason of statute, common law or otherwise relating to the quality of the Units, their suitability or fitness for purpose and their conformity with description or sample are expressly excluded from the Contract to the fullest extent permitted by law. In particular, any published pictures or descriptions of the Units are for indication purposes only and actual products supplied may differ from such pictures or descriptions.

9.2 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

9.2.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

9.2.2 fraud or fraudulent misrepresentation;

9.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or

9.2.4 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

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- 9.3 Subject to Condition 9.1:
- 9.3.1 the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect, consequential or special loss or damage arising under or in connection with the Contract;
- 9.3.2 the Supplier's liability for loss or damage to property including fixtures and fittings caused by an act or omission of the Supplier or its agents, employees or sub-contractors shall not exceed £1,000,000 per incident; and
- 9.3.3 the Supplier's total liability to the Customer in any 12-month period caused by an act or omission of the Supplier or its agents, employees or sub-contractors in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total payments paid to the Supplier in such 12-month period;
- 9.4 The Customer shall indemnify the Supplier against any or all of the following:
- 9.4.1 any loss or damage to the Units, howsoever arising
- 9.4.2 any and all damage, loss, liability or expenses which the Supplier may suffer or incur as a result of a claim by a third party; and
- 9.4.3 all costs and expenses (including without limitation enquiry agents, debt collection agents and legal costs on a full indemnity basis) incurred or sustained by the Supplier in enforcing any of the terms of this Contract.
- 10 Notices**
- 10.1 Any notice required or permitted to be given under the Contract shall be deemed to have been validly given if served personally upon that party or if sent by first class pre-paid post or other next working day delivery service or sent by email to the address of that party as stated in the Contract, its last known address or its registered office.
- 10.2 A notice or other information sent by first class pre-paid post shall be deemed to have been received by the other party within 48 hours after the date of posting. Any notice or other information sent by email shall be deemed to have been received by the other party at the time that it was transmitted.
- 11 General**
- 11.1 If the Customer's own systems require it, the Customer shall provide a correct purchase order number at the time of placing the Order.
- 11.2 The Supplier (but not the Customer) may at any time assign, novate, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract (in whole or in part) to any other party without the consent of the Customer.
- 11.3 The person or persons who sign the Contract on behalf of the Customer warrant that they have the appropriate and necessary authority to do so and to bind the Customer to the terms set out herein. Where two or more persons are stated to be the Customer, each of those persons shall be jointly and severally liable for performance of the Customer's obligations under the Contract.
- 11.4 Acceptance of this agreement can be via manual signature, electronic signature or verbally recorded and the Customer confirms that the method of acceptance which it has used to enter into this Contract is valid and binding on it.
- 11.5 This Contract constitutes the entire agreement between the parties and may only be modified by agreement in writing, such variation to be signed by the parties (or their authorised representatives). If any part of it shall, for any reason, be found or held illegal, invalid or unenforceable, this shall not affect the remainder of its terms which shall survive and be construed as if the illegal, invalid or unenforceable part had not been contained in the Contract.
- 11.6 No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.
- 11.7 No failure or delay by the Supplier to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 11.8 The parties agree that it is not practical to obtain signatures for all services performed and so the Customer accepts that the Supplier's computerised records of the services provided under the Contract will be adequate proof of the fact that those services have been delivered.
- 11.9 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.
- 11.10 If at any point the Supplier undergoes a change of legal entity, this contract and all conditions within, will transfer to the new legal entity.