



BFES Terms and Conditions: Maintenance and Repair – 11.02.2021

1. Definitions and Interpretation

- 1.1. In these conditions the following words shall (unless the context otherwise requires) have the following meanings:
 - 1.1.1. "Asset Register" means the asset register (if any) in the quotation.
 - 1.1.2. "BFES", "The Company", "We", "Us" or "Our" etc. meaning BF Engineering Service Ltd (BFES), its trading divisions, subsidiaries, or associated companies.
 - 1.1.3. "Call Out" means the first visit and subsequent visits to a single item of equipment to complete a repair as originally diagnosed.
 - 1.1.4. "Contract Anniversary" means the date stated the contract automatically renews or the anniversary of commencement of the primary contract period.
 - 1.1.5. "Contract Customer" means a Customer who has entered into a Maintenance Contract with BFES.
 - 1.1.6. "Contract Fee" means fee payable by you annually or as agreed within the contract.
 - 1.1.7. "Customer" or "You" means the client or customer for whom the quotation was prepared or who has ordered goods or services with BFES.
 - 1.1.8. "Equipment" or "Goods" means the equipment supplied pursuant to the quotation or listed in the asset register.
 - 1.1.9. "Hours of Business" means 9.00am to 5.00pm Monday to Friday excluding Bank Holidays.
 - 1.1.10. "Maintenance Contract" means any contract between parties for the ongoing and/or regular maintenance and servicing of equipment incorporating these terms and conditions.
 - 1.1.11. "Non-Contract Customer" means a Customer who has not entered into a Maintenance Contract with BFES.
 - 1.1.12. "Prevailing Contract Rate" means labour charges as applied to your contract and additional items and materials as agreed depending on your service agreement excluding VAT.
 - 1.1.13. "Primary Period" means the period of contract stated on the quotation or 365 days from the signed agreement.
 - 1.1.14. "Quotation" means our quotation for the supply of goods and / or services.
 - 1.1.15. "VAT" means Value Added Tax applied to all charges at the prevailing rate.
- 1.2. In these conditions, reference to any statute or statutory provisions shall, unless the context so requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.
- 1.3. Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.4. A reference to writing or written includes faxes and emails.
- 1.5. The headings in these conditions are for convenience of reference only, they do not form part of the contract and shall not affect its validity or construction.
- 1.6. Nothing contained herein shall have the effect of restricting or excluding rights accruing to the supplier under the Sale of Goods Act 1979 or the Supply of Goods and Services Act 1982.

2. Services Provided by The Company

- 2.1. Reactive Breakdowns (Non-Contract Customers)
 - 2.1.1. General Scope and Exclusions
 - 2.1.1.1. It is understood that no Maintenance Contract has been created upon a Non-Contract Customer using the services of BFES and any work carried out is on an ad-hoc basis but subject always to these terms.
 - 2.1.1.2. Call out and labour charges will be communicated prior to attendance and a record of agreement from the Customer will be kept on file.
 - 2.1.1.3. Call out and labour costs are charged at the prevailing non-contract charge rate.
 - 2.2. Maintenance Contracts (Contract Customers)
 - 2.2.1. General Scope and Exclusions
 - 2.2.1.1. This contract is for the servicing of equipment contained in the Asset Register or as specified and shall apply as long as the equipment is operated and installed in accordance with the manufacturer's instructions/specifications.
 - 2.2.1.2. The contract does not apply to services supplying equipment (gas, electrical or water installation) unless specified as such within the contract.
 - 2.2.1.3. Should our technicians consider any equipment immediately dangerous we will withdraw the equipment from this contract and issue the relevant warning certificates, until the situation is rectified to our technician's satisfaction. In areas of dispute, we would recommend an independent survey and accept no liability for costs of this survey.
 - 2.2.1.4. Where equipment is deemed beyond economical repair, obsolete or unsafe (as determined by our technician) the equipment will be removed from this contract.
 - 2.2.1.5. Additional equipment will not be covered under this contract unless approved by BFES. We reserve the right to adjust the Contract fee to cover additional equipment.
 - 2.2.1.6. Modifications or alterations and additions required by the manufacturer during the period of contract will be at your expense.
 - 2.2.1.7. Defects to equipment are only covered up to the local point of isolation under the scope of this contract. The means of local isolation (e.g power switch, water valve, gas valve) is not covered under this agreement. Where a piece of equipment has failed due to an incorrect or faulty service the Company reserves the right to charge at the prevailing rate.
 - 2.2.1.8. Equipment that is damaged due to poor water quality and limescale is not covered under this contract unless BFES have been specifically contracted to maintain the water quality within the contract.
 - 2.2.1.9. The Company will provide equipment to gain access to heights of up to 2 metres. Equipment above this height may be subject to additional charges to the Customer.
 - 2.2.1.10. We reserve the rights to invoice you for any abortive calls.
 - 2.2.2. Silver or Gold (Ad Hoc Cover)
 - 2.2.2.1. Call out and labour costs are charged at the prevailing contract charge rate.
 - 2.2.3. Platinum (Comprehensive Cover)
 - 2.2.3.1. Call outs and associated labour costs are included in this contract (within Our Hours of Business) to the number of calls detailed in the quotation.
 - 2.2.3.2. Calls attended above the number of included calls will be invoiced at the prevailing contract rate.
 - 2.2.3.3. Calls attended at request outside of Our Hours of Business will be invoiced at the prevailing contract rate.
 - 2.2.3.4. At request we can provide a 24-Hour emergency service (charges will apply, and contractual obligations are based around specific service level agreements).
 - 2.2.4. All Contracts (Silver, Gold and Platinum)
 - 2.2.4.1. We will provide the services as detailed within the Quotation and in accordance with the Asset Register or equipment detailed and agreed.
 - 2.2.4.2. We will provide all certification, including calibration, electrical and gas as required for equipment contained within the Asset Register and/or within the quotation within The Company Hours of business.
 - 2.2.4.3. Following each service visit you will receive a report detailing emergent faults identified that are considered outside normal servicing. We will submit an estimate to complete the detailed repair works and on your written instruction will proceed with the repairs. On completion of the works to return the equipment to current manufacturers standards we will raise an invoice for payment to include parts and labour. Where our repair recommendations are not implemented the equipment will be removed from this contract.
 - 2.2.4.4. The Company reserves the right to charge if any of the fault or damage is caused by misuse or negligence by the customer, third party, or if brought about by intruders, accident, any environmental conditions, thunder, lightning, flooding, insects, vermin or act of god.
 - 2.2.4.5. Special service visits, such as insurance inspections on equipment are not covered within this contract unless specified within the quotation. These visits will be charged at the prevailing contract rate.
 - 2.2.4.6. Only new faults to equipment are covered by this contract, pre-existing faults with equipment shall be brought to the customer's attention, associated labour and call out charges to cover these pre-existing faults will not be covered.



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- 2.2.4.7. Where a repair or first-time fix is not authorised by the Customer subsequent return visits to repair the asset will be charged at the prevailing rate.
- 2.2.4.8. The Company reserves the right to stop or postpone any external or internal works subject to weather or safety conditions.
- 2.2.4.9. Consumable items such as filters, lamps and cleaning products are not covered by this contract.
- 2.2.4.10. We will endeavor to respond to all breakdown calls within a reasonable time of notification. Should you refuse access to our technician this is accountable and will be charged at the prevailing contract rate.
- 2.2.4.11. Where parts are no longer available for equipment it will be deemed unserviceable and removed from the contract.
- 2.2.4.12. Replacement equipment will be accepted for old in this contract.
- 2.2.4.13. The Company reserves the right to withhold certification until full payment for the works detailed has been received.
- 2.2.4.14. Should any equipment be lawfully sold, transferred, or removed from your premises with our prior consent, we will give you credit in respect of the standard contract fee paid by you as relates to the proportion of the unexpired period of the relevant year of the contract, if and when you enter into a new contract with us in respect of the equipment.
- 2.2.4.15. We reserve the rights to invoice for any abortive calls.
- 2.2.5. Duration of Maintenance Contracts
 - 2.2.5.1. This Contract is for an initial term of the Primary Period. Subject to clause 2.2.6 on each Contract Anniversary the contract will automatically be renewed with the same conditions.
 - 2.2.5.2. The company reserves the right to increase its charges as required on each Contract Anniversary.
- 2.2.6. Termination of Maintenance Contract
 - 2.2.6.1. The contract may be terminated by
 - 2.2.6.1.1. Either party not less than 90 days' notice in writing to the other, stating that the agreement is to terminate at the end of the Primary Period or the next Contract Anniversary if outside the Primary Period.
 - 2.2.6.1.2. Should you wish to cancel your services prior to your Contract Anniversary or renewal date you will be liable for the full contract period without deduction or retention.
 - 2.2.6.2. The Company may terminate the Contract at any time by giving notice in writing to the Customer if the Customer:
 - 2.2.6.2.1. Commits a material breach of Contract and such breach is not remediable;
 - 2.2.6.2.2. Commits a material breach of the Contract which is not remedied within 14 days of receiving written notice of such breach; or
 - 2.2.6.2.3. Has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 30 days after the Company has given notification that the payment is overdue.
 - 2.2.6.2.4. Stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
 - 2.2.6.2.5. Is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Company reasonably believes that to be the case; or
 - 2.2.6.2.6. Becomes the subject of any insolvency process under the Insolvency Act 1986; Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Company at any time up to the date of termination.
- 2.2.7. Your obligations
 - 2.2.7.1. You agree to be responsible for maintenance and upkeep of all main services and connections to the equipment, and to arrange regular inspections in respect of the maintenance of such services. We shall not incur any liability or obligation as a result of failure or inconsistencies in the mains services and connections.
 - 2.2.7.2. It is your responsibility to ensure the correct services are supplied to equipment within this contract.
 - 2.2.7.3. You agree that the relocation, repair or adjustment of the equipment will only be carried out by, or under the strict supervision, or in accordance with the recommendation, of our technician. If this clause is breached then we shall be relieved of our obligations under this contract until such time as our technician, on a chargeable basis at our charge rate, corrects any damages incurred.
 - 2.2.7.4. You must notify us of any proposed alterations to the premises which may affect the operation of the covered equipment.

3. Replacement Parts Guarantee

- 3.1. Any replacement part supplied or fitted will be the original manufacturer of the original component, where this is not possible alternative parts that we consider to be suitable will be used at our discretion.
- 3.2. Any replacement part used will be covered by a guarantee for one month provided that the defect is brought to our attention within one month of replacement.
- 3.3. Our inability to repair or replace the part in question will not be a breach of this contract.

4. Payment

4.1. Non-Contract Customers

- 4.1.1. If the Customer is not an account holder approved in writing by BFES all invoices are payable before delivery of the goods or immediately following submission of a pro forma invoice from BFES whichever is the earlier and that date shall be the due date.
- 4.1.2. If the Customer is an approved account holder all invoices are payable net within 30 days of the date of invoice and that date shall be the due date.
- 4.1.3. BFES reserve the right to require the Customer to pay for the Goods in advance and to recharge or refuse discount if the Customer fails to maintain credit account arrangements satisfactory to BFES.
- 4.1.4. Invoices and quotes will be raised and dispatched electronically. Paper copies sent by Royal Mail will incur an admin charge of £20 per copy.
- 4.1.5. VAT is payable by you on all amounts due.

4.2. Maintenance Contracts

- 4.2.1. If you have opted to pay in advance, on an annual basis, then you may do so BACS provided that the payment reaches us within 30 days of the invoice date. If you select to pay by instalments, you must make payment by direct debit or standing order.
- 4.2.2. Charges for any work and/or parts in addition to that covered in by your chosen service contract will be raised by a further invoice and charged at our standard charge rate.
- 4.2.3. Payment of the standard contract fee will be made by the agreed method.
- 4.2.4. The standard contract fee will be set out in our invoice to you and is payable once the contract fee is agreed with you.
- 4.2.5. The terms of payment of the standard contract fee will be agreed with you and set on the front of the invoice.
- 4.2.6. You must pay all sums due to us under this agreement free and clear without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law
- 4.2.7. We shall be entitled to charge you all costs incurred by us in relation to the enforcement of any of our right under this contract.
- 4.2.8. Should any payment not reach us by its due date, we shall be entitled to terminate this contract and you shall pay any outstanding monies unpaid by the date of termination, any outstanding balance in respect of the standard contract fee and you shall pay interest on any amount not paid by its due date at 2% above HSBC base rate.
- 4.2.9. We may terminate this contract if payment is not made within the period stated on the front of invoice or within 30 days of its date, if this occurs, we shall also require all accrued including the cost of all labour, parts and any loss or damage we may have incurred.
- 4.2.10. BFES reserve the right to require the Customer to pay for the Goods in advance and to recharge or refuse discount if the Customer fails to maintain credit account arrangements satisfactory to BFES.
- 4.2.11. Invoices and quotes will be raised and dispatched electronically. Paper copies sent by Royal Mail will incur an admin charge of £20 per copy.
- 4.2.12. VAT is payable by you on all amounts due.

5. Health and Safety

- 5.1. The equipment will be used safely without risk and in accordance to the manufacturers guidelines.
- 5.2. Upon your request, we will provide you necessary information regarding the design, construction and installation of the equipment, to ensure the equipment is safe and without risk to health when properly installed





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and used.

- 5.3. You agree to provide correct and sufficient training to any person who may use the equipment.
- 5.4. If BFES so requests the Customer shall supply BFES with a copy of its rules & regulations and health & safety policy.
- 5.5. The Customer will comply with all applicable statutory rules and regulations relating to the welfare and safety of BFES' employees carrying out their duties pursuant to this agreement and will at all times provide a suitable place of work comparable to that provided to the Customer's employees.
- 5.6. The Customer will indemnify BFES from any liability, claim, loss, damage costs and legal expenses in defending any action or claim resulting or arising from any breach by the Customer of clause 5.5. The Customer undertakes to maintain adequate levels of general insurance cover in this regard as recommended by an independent insurance broker.

6. Liability

- 6.1. The extent of BFES's liability under or in connection with any work carried out by BFES (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 6.
- 6.2. Subject to clause 6.3:
 - 6.2.1. We are not liable and do not accept any responsibility for any loss or damage caused by any change to or variation in any of the services that are connected to the equipment and we shall not be liable for any loss of and/or damage to property and or injury to persons in or on the premises by reason of the failure of the equipment to operate correctly in any respect or for whatever reason.
 - 6.2.2. Our total liability shall not exceed the sum payable by you under this contract.
 - 6.2.3. We shall not be liable for consequential, indirect, or special losses.
 - 6.2.4. We shall not be liable for any of the following (whether direct or indirect): loss of profit, loss of data, loss of use, loss of production, loss of contract, loss of opportunity, loss of savings, loss of goodwill, discount, or rebate (whether actual or anticipated) or harm to reputation.
- 6.3. Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
 - 6.3.1. Death or personal injury caused by negligence.
 - 6.3.2. Fraud or fraudulent misrepresentation.
 - 6.3.3. Any other losses which cannot be excluded or limited by applicable law.

7. Confidential Information

- 7.1. BFES may from time to time impart to the Customer certain confidential information of a commercially sensitive or technical nature and the Customer hereby agrees that it will use such information solely for the purpose of this agreement and that it shall not disclose such information whether directly or indirectly to any third party.

8. Force Majeure

- 8.1. In this clause 8 Force Majeure means an event or sequence of events beyond a party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract.
- 8.2. A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:
 - 8.2.1. promptly notifies the other of the Force Majeure event and its expected duration; and
 - 8.2.2. uses best endeavours to minimise the effects of that event.
- 8.3. If, due to Force Majeure, a party:
 - 8.3.1. is or shall be unable to perform a material obligation; or
 - 8.3.2. is delayed in or prevented from performing its obligations for a continuous period exceeding 14 days or a total of more than 30 days in any consecutive period of 60 days;
 - 8.3.3. the other party may, within 30 days, terminate the Contract on immediate notice.

9. General

- 9.1. The Customer may not assign or transfer any of its rights, duties and obligations without the written consent of BFES.
- 9.2. The Company reserves the right to update and revise terms and conditions as deemed appropriate by the company. Any changes and revision numbers will supersede existing or previous terms and conditions automatically. This will not affect contract duration. A copy of revised terms and conditions are available on request to existing customers.
- 9.3. If any term or provision in this Contract is found by a court to be illegal or unenforceable, in whole or in part, such term or provision or the relevant part shall be deemed not to form part of this Contract but the remainder of the Contract or of the part in question shall remain enforceable and shall not be affected.
- 9.4. The Company reserves the right to sell the ongoing contact to another provider that will continue to provide equivalent level of service and support for the agreed charges and terms and conditions. The original terms and conditions must be carried forward by such new provider until the customer formally enters a new agreement.

10. Governing law

- 10.1. The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 10.2. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).

