



**NEW AIR SOUTHERN LIMITED
TERMS AND CONDITIONS FOR SERVICES**

(“CONDITIONS”)

1 DEFINITIONS AND INTERPRETATION

1.1 In these Conditions the following definitions apply:

“Affiliate” means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;

“Applicable Law” means all applicable laws, legislation, statutory instruments, regulations and governmental guidance having binding force whether local or national;

“Bribery Laws” means the Bribery Act 2010 and all Applicable Laws in connection with bribery or anti-corruption and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010;

“Business Day” means a day other than a Saturday, Sunday or bank or public holiday in England;

“Conditions” means New Air’s terms and conditions of supply set out in this document;

“Confidential Information” means any commercial, financial or technical information, information relating to the Services, plans, know-how or trade secrets which is obviously confidential or has been identified as such;

“Contract” means the agreement between New Air and the Customer for the supply and purchase of Services incorporating these Conditions and the Estimate (if applicable) and including all their respective schedules, attachments, annexures and statements of work;

“Control” means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and **“Controls”**, **“Controlled”** and **“under common Control”** shall be construed accordingly;

“Customer” means the named party in the Contract which has agreed to purchase the Services from New Air and whose details are set out in the Estimate (if applicable);

“Deliverables” means describe any third party goods and/or parts that may be provided in connection with the Services;

“Estimate” means the cost estimate provided by New Air to the Customer for the Services;

“Force Majeure” means an event or sequence of events beyond a party’s reasonable control preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster, pandemic or epidemic, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Contract, strike, lockout or boycott or other industrial action including those involving New Air’s or its suppliers’ workforce, but excluding the Customer’s inability to pay or circumstances resulting in the Customer’s inability to pay;

“Installation Services” means the installation of the Customer’s air conditioning and/or refrigeration units and/or ventilation systems;

“Intellectual Property Rights” means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in software, rights in Confidential Information, rights to invention, rights to sue for passing off, domain names and all other intellectual property rights and similar rights and, in each case:

- (a) whether registered or not;
- (b) including any applications to protect or register such rights;
- (c) including all renewals and extensions of such rights or applications;
- (d) whether vested, contingent or future;
- (e) to which the relevant party is or may be entitled, and
- (f) in whichever part of the world existing;

“Location” means the address or addresses for performance of the Services as set out in the Estimate or as agreed between the parties;

“Modern Slavery Policy” means New Air’s anti-slavery and human trafficking policy in force and notified to the Customer from time to time;

“New Air” means New Air Southern Limited, a company incorporated and registered in England with company number 01393494, whose registered address is at Unit 8

Compass Point Ensign Way, Hamble, Southampton, Hampshire, SO31 4RA;

“**Personnel**” means all employees, officers, staff, other workers, agents and consultants of New Air, its Affiliates and any of their sub-contractors who are engaged in the performance of the Services from time to time;

“**Planned Preventative Maintenance Services**” means the maintenance of the Customer’s air-conditioning and/or refrigeration units and/or ventilation systems;

“**Price**” has the meaning set out in clause 7.1;

“**Repairs and Servicing Services**” means the ad-hoc/emergency call out repairs and servicing of the Customer’s air-conditioning and/or refrigeration units and/or ventilation systems;

“**Services**” means the Installation Services and/or the Planned Preventative Maintenance Services and/or the Repairs and Servicing Services (as applicable) as set out in the Estimate or as agreed between New Air and the Customer and to be performed by New Air for the Customer in accordance with these Conditions; and

“**VAT**” means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Services.

1.2 In these Conditions, unless the context requires otherwise:

1.2.1 a reference to the Contract includes these Conditions, the Estimate (if applicable), and their respective schedules, appendices and annexes (if any);

1.2.2 any clause, schedule or other headings in these Conditions is included for convenience only and shall have no effect on the interpretation of the Conditions;

1.2.3 a reference to a ‘party’ includes that party’s personal representatives, successors and permitted assigns;

1.2.4 a reference to a ‘person’ includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person’s personal representatives, successors and permitted assigns;

1.2.5 a reference to a ‘company’ includes any company, corporation or other body corporate, wherever and however incorporated or established;

1.2.6 a reference to a gender includes each other gender;

1.2.7 words in the singular include the plural and vice versa;

1.2.8 any words that follow ‘include’, ‘includes’, ‘including’, ‘in particular’ or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;

1.2.9 a reference to ‘writing’ or ‘written’ includes any method of reproducing words in a legible and non-transitory form; and

1.2.10 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time.

2 APPLICATION OF THESE CONDITIONS

2.1 These Conditions apply to and form part of the Contract between New Air and the Customer. They supersede any previously issued terms and conditions.

2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer’s purchase conditions, specification or other document shall form part of the Contract except to the extent that New Air otherwise agrees in writing.

2.3 No variation of these Conditions or to an Estimate or to the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of each of New Air and the Customer respectively.

3 INSTALLATION SERVICES

3.1 You may make an enquiry at any time by contacting us via telephone or email using the contact details set out on our website. You may also request a call back using the request form set out on our website, accessible [here](#).

3.2 If you are interested in purchasing our Installation Services, following your initial enquiry, a member of our projects teams will call you to discuss your needs which may include attending your premises to carry out a free of charge onsite assessment.

3.3 Information obtained pursuant to this call and/or onsite assessment will be used to design and select a cost effective solution and a formal Estimate will be provided to you.

3.4 If you choose to accept the Estimate provided, subject to these Conditions, a contract for the Services will be created between us and you.

- 3.5 We may ask you to provide drawings (where required) and information regarding construction details and site conditions (including the availability of working and storage areas with suitable access roads, the existence of any abnormalities such as heat, fumes, dust and asbestos etc.). We may require these details prior to entering into a contract with you in order to provide an Estimate for supply of the Services.
- 3.6 Unless New Air withdraws the offer constituted by the Estimate, the offer shall remain in effect and capable of being accepted by the Customer for 30 Business days from the date on which New Air provided the Estimate to the Customer, after which it shall automatically lapse and be withdrawn.

4 PLANNED PREVENTATIVE MAINTENANCE SERVICES

- 4.1 If you are interested in purchasing our Planned Preventative Maintenance Services, you may make an enquiry at any time by contacting us via telephone or email using the contact details set out on our website. You may also request a call back by filling in the request form on our website, accessible [here](#).
- 4.2 Our on call engineer will then contact you to discuss your needs and obtain some information from you, which will be used to provide you with a formal Estimate for Planned Preventative Maintenance Services
- 4.3 If you choose to accept the Estimate provided, subject to these Conditions, a contract for the Services will be created between us and you.
- 4.4 Unless New Air withdraws the offer constituted by the Estimate, the offer shall remain in effect and capable of being accepted by the Customer for 30 Business days from the date on which New Air provided the Estimate to the Customer, after which it shall automatically lapse and be withdrawn.
- 4.5 Planned Preventative Maintenance Services are usually provided on an annual contract basis during which Customers for Planned Preventative Maintenance Services only will receive:
- 4.5.1 two routine maintenance onsite visits at the Customer's Location per year at approximately six monthly intervals, or as otherwise agreed between the parties in writing;
- 4.5.2 access to reduced hourly rates for any Repairs and Servicing Services and should you wish to purchase Repairs and Servicing Services we will use reasonable endeavours to offer a maximum 4 hour response time.

5 REPAIRS AND SERVICING SERVICES

- 5.1 If you are interested in purchasing our Repairs and Servicing Services, you may make an enquiry at any time by contacting us via telephone or email using the contact details set out on our website. You may also request a call back by filling in the request form on our website, accessible [here](#).
- 5.2 A member of our team or on-call engineer will call you to discuss your needs and provide you with our engineer's hourly rates for a call out visit to attend your Location to provide Repairs and Servicing Services.
- 5.3 If you choose to accept the hourly rates provided to you and purchase Repairs and Servicing Services, subject to these Conditions, a contract for the Services will be created between us and you. An engineer will then attend your Location as soon as possible for an onsite call-out assessment to carry out Repairs and Servicing Services.
- 5.4 If pursuant to the onsite call-out assessment, further remedial work and/or parts are required, the engineer or a member of our team will provide you with a formal Estimate.
- 5.5 If you choose to accept the Estimate provided, subject to these Conditions, a contract for the Services will be created between us and you.

6 EXCLUDED SERVICES

- 6.1 Unless expressly stated otherwise, Services do not include the following:
- 6.1.1 building, plumbing and electrical work or the associated work of other trades;
- 6.1.2 the supply and erection of scaffolding, ladders, moveable platforms, hoisting and/or lowering gear necessary for the execution or performance of the Services;
- 6.1.3 the cost of operating any part of the Customer's air-conditioning or refrigerators to which the Services relate to; or
- 6.1.4 the cost of any fuel, water or electricity used at the Customer's site.
- 6.2 In the event that the items listed at 6.1.1 to 6.1.4 are expressly listed and included within the Estimate, the costs incurred by New Air in providing such items shall be reimbursed by the Customer to New Air.
- 6.3 Marketing and other promotional material relating to the Services are illustrative only and do not form part of the Contract.

7 PRICE

- 7.1 The price for the Services shall be as set out in the Estimate or as agreed between the parties (the “**Price**”).
- 7.2 The Prices are exclusive of VAT (or equivalent sales tax).
- 7.3 The Customer shall pay any applicable VAT to New Air on receipt of a valid VAT invoice.
- 7.4 In the event that the Customer provides inadequate or inaccurate drawings, information, specifications or details in connection with clause 3.5 above, which results in a variation of the specification and design requirements of the Customer (the “**Variation**”), we reserve the right to increase the Price to reflect any additional costs incurred as a result of the Variation.
- 7.5 New Air may increase the Price prior to delivery to reflect any increase in cost due to:
- 7.5.1 any factor beyond the control of New Air (including foreign exchange fluctuations, change in law, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 7.5.2 any request by the Customer to change the delivery date(s), Location(s), the Estimate or specification; or
- 7.5.3 in relation to Services (including where any applicable parts are provided by a third party) any delay or suspension of work, mistakes, overtime, unusual hours or time spent by New Air’s Personnel onsite where they are unable to perform the Services caused by any act or omission of the Customer (including a failure to comply with clause 10.1) or failure of the Customer to give New Air adequate or accurate drawings or information or instructions.

8 PAYMENT

- 8.1 New Air will typically invoice the Customer for the Services on completion of the relevant Service or onsite visit. New Air reserves the right to issue interim invoices in its reasonable discretion, for example in respect of costs of procuring Deliverables or in respect of Services of longer duration or where several onsite visits are required.
- 8.2 The Customer shall pay all such invoices:
- 8.2.1 in full without deduction or set-off, in cleared funds within 30 days of the date of each invoice; and

8.2.2 to the bank account nominated by New Air.

8.3 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date:

8.3.1 New Air may, without limiting its other rights, charge interest on such sums at 8% a year above the base rate of the Bank of England from time to time in force, and

8.3.2 interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

9 NEW AIR OBLIGATIONS

9.1 The Services shall be performed by New Air at the Location on the date(s) specified in the Estimate, or as agreed between the parties.

9.2 The Services shall be deemed performed on completion of the performance of the Services as specified in the Estimate or as agreed between the parties.

9.3 New Air shall use its reasonable endeavours to meet estimated dates for performance, but any such dates are indicative only.

9.4 New Air shall not be liable for any delay in or failure of performance caused by:

9.4.1 the Customer’s failure to make the Location available;

9.4.2 the Customer’s failure to prepare the Location in accordance with New Air’s instructions, or as required for the performance of the Services;

9.4.3 the Customer’s failure to provide New Air with adequate instructions for performance or otherwise relating to the Services; or

9.4.4 Force Majeure.

10 CUSTOMER OBLIGATIONS

10.1 The Customer shall:

10.1.1 ensure that the terms of the Estimate and any drawings or information provided to New Air are complete and accurate;

10.1.2 where required provide New Air, its employees, agents, consultants and subcontractors, with clear, uninterrupted access to the Customer’s premises (including vehicle access and free and clear access to loading and unloading bays and (where available) free of

charge onsite parking), office accommodation or other facilities as reasonably required by New Air;

agents, employees, or any other person under the Customer's control.

10.1.3 where applicable for the Services:

- (a) prepare the Customer's premises for the supply of the Services or if applicable the provision of the Deliverables including providing clear access to the area where the Deliverables shall be provided;
- (b) clearing the site and performing such other preparatory works notified by New Air to the Customer as being necessary to perform the Services or if applicable, provide the Deliverables;
- (c) provide to New Air free of charge, lighting as necessary and power at the appropriate voltage;
- (d) provide suitable waste disposal containers onsite, free of charge;
- (e) provide suitable storage and preparation facilities onsite, free of charge; and
- (f) provide onsite washing and toilet facilities free of charge.

10.2 If New Air's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation:

10.2.1 without limiting or affecting any other right or remedy available to it, New Air shall have the right to suspend performance of the Services until the Customer remedies the default;

10.2.2 New Air shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Customer's failure or delay to perform any of its obligations set out at clause 10.1; and

10.2.3 the Customer shall indemnify New Air on demand for any costs or losses sustained or incurred by New Air arising directly or indirectly from the Customer's default.

10.3 The Customer shall indemnify New Air against all damages, costs, claims and expenses suffered by New Air arising out of or in connection with any injury to New Air Personnel or any loss or damage to any equipment on the Customer's site (including equipment belonging to third parties and sub-contractors), in each case which is caused by (or by the negligence of) the Customer, its

11 DEFECTS AND WARRANTIES

11.1 Except as set out in this clause 12, New Air gives no warranty and makes no representations in relation to the Services (and where applicable, the Deliverables) and all warranties and conditions whether express or implied by statute, common law or otherwise are excluded to the extent permitted.

11.2 New Air warrants that, at the time of performance, the Services shall:

11.2.1 conform in all material respects to their description as set out in the Estimate;

11.2.2 be free from material defects; and

11.2.3 be supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, Part II s 13.

11.3 As the Customer's sole and exclusive remedy, New Air shall, at its option, remedy, re-perform or refund the Services that do not comply with 11.2 (as applicable), provided that:

11.3.1 the Customer serves a written notice on New Air not later than five Business Days from performance in the case of defects discoverable by a physical inspection, or within a reasonable period of time from performance in the case of latent defects; and

11.3.2 such notice specifies that some or all of the Services do not comply with 11.2 (as applicable) and identifies in sufficient detail the nature and extent of the defects; and

11.3.3 the Customer gives New Air a reasonable opportunity to examine the claim of the defective Services.

11.4 In respect of any Deliverables provided, the Deliverables shall conform in all material respects to the specification provided by the manufacturer for the duration of the manufacturer's warranty of the Deliverables (the "Defect Period").

11.5 Unless otherwise agreed in writing, New Air shall have no liability for any failure of the Deliverables to meet any performance figures quoted by New Air.

11.6 The Customer warrants that it has provided New Air with all relevant, full and accurate information as to the Customer's business and needs.

12 ANTI-BRIBERY

- 12.1 For the purposes of this clause 12 the expressions 'adequate procedures' and 'associated with' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.
- 12.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that:
- 12.2.1 all of that party's personnel;
- 12.2.2 all others associated with that party; and
- 12.2.3 all of that party's sub-contractors;
- involved in performing the Contract so comply.
- 12.3 Without limitation to clause 12.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.
- 12.4 The Customer shall immediately notify New Air as soon as it becomes aware of a breach or possible breach by the Customer of any of the requirements in this clause 12.

13 ANTI-SLAVERY

- 13.1 New Air shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy.
- 13.2 The Customer shall notify New Air immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached the Modern Slavery Act 2015 or any other anti-slavery laws, applicable from time to time or is subject to an investigation relating to an alleged offence or prosecution under the Modern Slavery Act 2015. Such notice to set out full details of the circumstances concerning the breach or potential breach.

14 INSURANCE

- 14.1 The Customer and New Air shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under these Conditions.
- 14.2 On reasonable request by the other party, the Customer or New Air (as applicable) shall supply, so far as is reasonable, evidence of

the maintenance of the insurance and all of its terms from time to time applicable.

15 LIMITATION OF LIABILITY

- 15.1 The extent of the parties' liability under or in connection with the Contract (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 15.
- 15.2 Subject to clauses 15.5 and 15.6, New Air's total liability shall not exceed the sum of the total Price payable by the Customer to New Air under the Contract.
- 15.3 Subject to clauses 15.5 and 15.6, New Air shall not be liable for consequential, indirect or special losses.
- 15.4 Subject to clauses 15.5 and 15.6, New Air shall not be liable for any of the following (whether direct or indirect):
- 15.4.1 loss of profit;
- 15.4.2 loss or corruption of data;
- 15.4.3 loss of use;
- 15.4.4 loss of production;
- 15.4.5 loss of contract;
- 15.4.6 loss of opportunity;
- 15.4.7 loss of savings, discount or rebate (whether actual or anticipated);
- 15.4.8 harm to reputation or loss of goodwill.
- 15.5 The limitations of liability set out in clauses 15.2 to 15.4 shall not apply in respect of any indemnities given by the Customer under the Contract.
- 15.6 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 15.6.1 death or personal injury caused by negligence;
- 15.6.2 fraud or fraudulent misrepresentation; and
- 15.6.3 any other losses which cannot be excluded or limited by Applicable Law.

16 INTELLECTUAL PROPERTY

The Customer warrants that any specification, design or instruction given by it to New Air will not infringe any Intellectual Property Rights or other rights of any third party and the Customer indemnifies New Air in respect

of any damages, losses, costs, expenses or claims arising in relation thereto.

17 FORCE MAJEURE

Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from Force Majeure. The party subject to the Force Majeure event shall promptly notify the other party in writing when such event causes a delay or failure in performance and when it ceases to do so. If the Force Majeure event continues for a continuous period of more than 30 days, the party not affected may terminate the Contract by written notice to the other party.

18 TERMINATION

18.1 Without affecting any other right or remedy, New Air may terminate the Contract with immediate effect by giving written notice to the Customer if:

18.1.1 the Customer commits a material breach of the Contract which (if such breach is remediable) it fails to remedy within a period of 7 days after being notified in writing to do so; or

18.1.2 the Customer:

- (a) makes any voluntary arrangement with its creditors or becomes subject to administration or liquidation;
- (b) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
- (c) suspends or threatens to suspend, or ceases, or threatens to cease, to carry on all or a substantial part of its business;
- (d) becomes subject to any analogous procedure or circumstance analogous to any of the above in any relevant jurisdiction; or
- (e) New Air reasonably believes that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly,
(each an “**Insolvency Event**”).

18.2 On termination of the Contract, the Customer shall immediately pay to New Air, all of New Air’s outstanding unpaid invoices and any accrued interest thereon. In respect of Deliverables supplied but for which no invoice has yet been submitted, New Air shall submit an invoice for such Deliverables which shall be payable by the Customer immediately on receipt.

18.3 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

19 NOTICES

19.1 Notices under this agreement will be in writing and sent to the other party at its address or email address set out in the Estimate, or such other address or email address as may have been notified by that party for such purposes. Notices may be given, and will be deemed received:

19.1.1 by hand: on receipt of a signature at the time of delivery;

19.1.2 by pre-paid first class post or recorded delivery post: at 9.00 am on the second Business Day after posting; and

19.1.3 by email: on receipt.

20 GENERAL

20.1 The Customer expressly agrees to keep all Confidential Information confidential and not to copy the same nor to supply the same to any third party for any purpose whatsoever nor to use the same except for the purpose of the Contract.

20.2 These Conditions and the Estimate constitute the whole agreement, between the parties and supersede any previous arrangement or understandings between them relating to its subject matter.

20.3 The Customer shall not, without the prior written consent of New Air, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Conditions. New Air may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Conditions and an affiliate of New Air may perform the Contract.

20.4 The Contract does not establish any joint venture, trust, fiduciary or other relationship between the parties.

20.5 If any provision (or part of a provision) of these Conditions is or becomes invalid or unenforceable it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable.

20.6 No failure or delay by New Air to exercise any right or remedy provided under these Conditions or by law shall constitute a waiver of that or any other right or remedy.

- 20.7** If there is a conflict between the terms contained in the Conditions and the terms of the Estimate (if applicable), the terms of the Conditions shall prevail.
- 20.8** No one other than a party to this Contract or any affiliate of New Air shall have any right to enforce its terms.
- 20.9** A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.
- 20.10** If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

21 GOVERNING LAW AND JURISDICTION

- 21.1** 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.
- 21.2** 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).