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Terms & Conditions of Business...  
Date: May 2020

Callver

Please read these Terms and Conditions of Business carefully, as they set out our and your legal rights and obligations in relation to our services to you. By allowing service, you agree to abide by the terms set out herein.

## 1. Definitions and interpretation

1.1 In these Terms of Business:

“**Business Day**” means any week day or a Saturday, excluding bank or public holidays in England;

“**Business Hours**” means between 06:00 and 22.00 on a Business Day and 07.00 and 18.00 on a Saturday;

“**Charges**” means the charges specified in the Quotation or where such additional works are requested by the Customer shall mean the Supplier's Hourly Rate multiplied by the number of man-hours spent by the Supplier's personnel performing the Services payable by the Customer to the Supplier, which may be varied in accordance with Clause 8 hereof;

“**Consumables**” means the cleaning consumables used by the Supplier in the course of providing the Services;

“**Customer**” means the customer for Services under an Engagement as specified in the Quotation;

“**Customer Representatives**” means the persons specified as such in the Quotation;

“**Effective Date**” means, the date of commencement by the Supplier of the Services in relation to an Engagement, or the date when the Supplier receives a copy of the Quotation relating to that Engagement signed by the Customer whichever is the earlier;

“**Engagement**” means an agreement between the Supplier and the Customer for the supply of Services incorporating these Terms of Business and a Quotation, and any amendments to such an agreement from time to time and such agreement may be made verbally or in writing;

“**Equipment**” means the cleaning equipment used by the Supplier in the course of providing the Services or the cleaning equipment made available by the Customer to the Supplier for the purpose of the Supplier providing the Services;

“**Force Majeure Event**” means an event, or a series of related events, that is outside the reasonable control of the party affected (including but not limited to power failures, industrial disputes affecting any third party, changes to the law, disasters, extreme weather conditions, explosions, fires, floods, riots, terrorist attacks and wars);

“**Hourly Rate**” means the Supplier's hourly labour rate as specified in the Quotation or as notified in writing by the Supplier to the Customer subject to variation in accordance with Clause 8 hereof;

“**Minimum Term**” means the period specified as such in the Quotation;

“**Premises**” means the premises of the Customer where the Services will be provided by the Supplier, as specified in the Quotation;

“**Services**” means the cleaning services supplied by the Supplier to the Customer under an Engagement, details of which are set out in the Quotation (or, to the extent that no such details are set out in the Quotation, details of which will be agreed between the parties acting reasonably from time to time);

“**Specification**” means the specification of services document issued by the Supplier to the Customer detailing the scope of the Services and other matters relating to an Engagement;

“**Supplier**” means The Callver Cleaning Co of 17 Crossfell Road, Leverstock Green, Hertfordshire. HP3 8RF;

“**Supplier Representatives**” means the persons specified as such in the Quotation; and

“**Term**” means the term of an Engagement.

1.2 In these Terms of Business, a reference to a statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- (b) Any subordinate legislation made under that statute or statutory provision.

1.3 The Clause headings do not affect the interpretation of these Terms of Business.

- 1.4 In these Terms of Business, "persons" include companies, partnerships, limited liability partnerships, unincorporated associations and trusts.
- 1.5 The ejusdem generis rule is not intended to be used in the interpretation of these Terms of Business; it follows that a general concept or category utilised in these Terms of Business will not be limited by any specific examples or instances utilised in relation to such a concept or category.

## 2. Engagements

Each Engagement will come into force on its Effective Date and will continue in force until the Services agreed in the have been completed, upon which it will terminate automatically (unless previously terminated in accordance with Clause [13])

## 3. Services

- 3.1 The Supplier will supply the Services to the Customer in accordance with the terms of each Engagement.
- 3.2 The time for delivery of the Services will not be of the essence of the parties' agreement.
- 3.3 The Supplier may sub-contract the provision of the Services; providing that if the Supplier does sub-contract the provision of the Services, the Supplier will remain liable to the Customer for the performance of the sub-contracted obligations.
- 3.4 The Supplier may suspend the provision of the Services if the Customer fails to pay by the due date any amount due to the Supplier in respect of an Engagement.
- 3.5 From time to time during the Term the Supplier may be unable to supply the Services by reason of personnel illness or personnel shortage, in which case:
- (a) The Supplier will use reasonable endeavours to engage alternative personnel to supply the Services; and
  - (b) Subject to the compliance of the Supplier with Clause 3.5(a), the Supplier will not be in breach of the terms of the Engagement by virtue of any failure to supply the Services arising out of such inability.
- 3.6 The Supplier will ensure that all personnel involved in the provision of the Services at the Premises have:
- (a) been interviewed by the Supplier;
  - (b) supplied proof of identity and satisfactory references to the Supplier; and
  - (c) have been trained by the Supplier in the use of the Equipment and Consumables.
  - (d) been made aware of the importance of confidentiality to the customer's business and their contractual commitment to maintain confidentiality in the provision of the services in accordance with clause 17.
- 3.7 Services will not be provided on Christmas Day, Boxing Day, New Year's Day, Bank or public holidays.

## 4. Premises

- 4.1 The Customer will:
- (a) provide to the Supplier prompt and safe access to the Premises as required for the provision of the Services;
  - (b) be responsible for ensuring the health and safety of the Supplier's personnel, agents and subcontractors whilst they are at the Premises;
  - (c) maintain the Premises in good order for the supply of the Services, and in accordance with all applicable laws;
  - (d) inform the Supplier of all health and safety rules and regulations and any reasonable security requirements that apply at the Premises; and
  - (e) maintain reasonable insurance cover for the Supplier's personnel, agents and subcontractors whilst they are working at the Premises (including reasonable public liability insurance).
- 4.2 In the performance of the Services at the Premises, the Supplier shall comply with all reasonable health, safety

and security policies and regulations advised to the Supplier by the Customer.

- 4.3 The Supplier will use reasonable measures to secure any keys (or other access mechanisms) provided by the Customer to the Supplier for the purpose of enabling the Supplier's personnel to enter the Premises.

## **5. Equipment and Consumables**

- 5.1 The Supplier may with the agreement of the Customer store Equipment and Consumables at the Premises.
- 5.2 The Customer must not use, move or otherwise interfere with Equipment or Consumables stored at the Premises, save in accordance with the express written instructions of the Supplier
- 5.3 Save to the extent caused by the actions or omissions of the Supplier or its personnel, the Customer will be responsible for all damage to and loss of Equipment and/or Consumables whilst the Equipment and/or Consumables are at the Premises.
- 5.4 In the case of the Customer providing to the Supplier the Equipment and Consumables for the purposes of the Services the Supplier will only use such Equipment and Consumables for the purpose of providing the Services and the Customer will ensure that all such Equipment and Consumables are safe, in good working order, and suitable for use in connection with the Services.

## **6. Customer obligations**

- 6.1 The Customer must provide to the Supplier access to a water supply, a mains electricity supply, waste water facilities, rubbish disposal and recycling facilities (where possible)
- 6.2 The Customer will provide to, or procure for, the Supplier any:
- (a) support and advice;
  - (b) information and documentation;
  - (c) third party co-operation; and
  - (d) governmental, legal or regulatory licences, consents or permits;

reasonably necessary to enable the Supplier to discharge its obligations under any Engagement.

- 6.3 The Customer will indemnify the Supplier and will keep the Supplier indemnified against any and all losses, costs, expenses, damages and liabilities (including legal expenses and amounts paid in settlement of legal claims or proceedings) arising directly or indirectly out of any breach by the Customer of Clause 4.1 or Clause 5.3.

## **7. Representatives**

The Customer will ensure that all instructions in relation to the matters contemplated in these Terms of Business will be given by a Customer Representative to a Supplier Representative, and the Supplier:

- (a) may treat all such instructions as the fully authorised instructions of the Customer; and
- (b) will not comply with any other instructions in relation to the matters contemplated in these Terms of Business without first obtaining the consent of a Customer Representative.

## **8. Charges and payment**

- 8.1 The Customer will pay the Charges to the Supplier in accordance with the provisions of this Clause 8.
- 8.2 The Supplier may issue an invoice for the Charges to the Customer from time to time during the Term on or after the dates set out in the Invoice.
- 8.3 The Customer will pay the Charges to the Supplier within the time as specified in the Invoice or as amended in writing. Alternatively, payment must be made each time, and on each day service is made or on a regular basis as agreed. Standing Order arrangements are made with the assurance that services paid for in advance will take place in line with any schedule or any payments made for service not used will be refunded as long as any notice period has elapsed, and a credit is still due.
- 8.4 All amounts stated on any Invoice or in relation to an Engagement are exclusive of all value-added taxes, which will be added to those amounts and payable by the Customer to the Supplier at the appropriate rate at the time of works completing.

- 8.5 Charges may be made by debit or credit card (if facilities allow), by bank transfer or by cheque (using such payment details as are notified by the Supplier to the Customer from time to time).
- 8.6 If the Customer does not pay any amount properly due to the Supplier in connection with any Engagement, the Supplier may:
- (a) charge the Customer interest on the overdue amount at the rate of 4% per year above the base rate of NATWEST Bank Plc from time to time (which interest will accrue daily until the date of actual payment, be compounded quarterly, and be payable on demand); or
  - (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 or
  - (c) Levy a late penalty charge of £100.00+VAT or 2% of the due balance whichever is higher, and this may be levied one day after the original date payment was due.
- 8.7 The Supplier may elect to vary the Charges and/or Hourly Rate by giving to the Customer not less than 14 days' written notice of the variation expiring at the end of any calendar quarter year, providing that any such variation shall not result in the Charges and/or Hourly Rate increasing more than twice per calendar year. (Any increase will not be any higher than 10% of the original costs unless the scope of works changes to justify an increase at a higher rate.)
- 8.8 Legal Action. Should the customer fail to make payment for any invoice for a period of 30 days over the specified time, legal proceedings may be sought to recoup the arrears. A letter confirming the details will be sent, by Special Delivery, and the charge for this will be added to the balance. The Company will then seek the services of a third-party debt recovery agent, whose charges will be added to the balance and collected from the customer.
- 8.9 Should payment not be received within the due time, and it be decided to suspend service because of non-payment, charges will still apply during the period of suspension, and will apply until payment for the outstanding amounts are received, or until service is terminated and notice periods have been completed.

## 9. Warranties

- 9.1 The Customer warrants to the Supplier that it has the legal right and authority to enter into and perform its obligations required by each Engagement.
- 9.2 The Supplier warrants to the Customer that:
- (a) it has the legal right and authority to enter into and perform its obligations required by each Engagement; and
  - (b) the Services will be performed with reasonable care and skill.
- 9.3 If the Customer believes that Services have not been provided in accordance with Clause 9.2(b), then the Customer must:
- (a) notify the Supplier promptly; and
  - (b) allow and enable the Supplier to inspect the Premises and re-perform the relevant Services.
- 9.4 All of the parties' liabilities and obligations in respect of the subject matter of these Terms of Business are expressly set out in these Terms of Business. To the maximum extent permitted by applicable law, no other terms concerning the subject matter of these Terms of Business will be implied into these Terms of Business, any Engagement, or any related contract.

## 10. Limitations and exclusions of liability

- 10.1 Nothing in the Engagement will:
- (a) limit or exclude the liability of a party for death or personal injury resulting from negligence;
  - (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
  - (c) limit any liability of a party in any way that is not permitted under applicable law; or

(d) exclude any liability of a party that may not be excluded under applicable law,

and, if you are a consumer, any statutory rights which you have, which cannot be excluded or limited, will not be affected by the Engagement.

10.2 The limitations and exclusions of liability set out in this Clause 10 and elsewhere in the Engagement:

(a) are subject to Clause 10.1; and

(b) govern all liabilities arising under the Engagement or in relation to the subject matter of the Engagement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty.

10.3 The Supplier will not be liable to the Customer for any losses arising out of a Force Majeure Event.

10.4 The Supplier will not be liable to the Customer in respect of any business losses, such as loss of or damage to profits, income, revenue, use, production, anticipated savings, business, contracts, commercial opportunities or goodwill.

10.5 the Supplier will not be liable to the Customer in respect of any loss or corruption of any data, database or software.

10.6 the Supplier will not be liable to the Customer in respect of any special, indirect or consequential loss or damage.

10.7 the Supplier's aggregate liability to the Customer will not exceed the total amount paid or (if greater) payable by the Customer to the Supplier under the Engagement.

## 11. Force Majeure Event

11.1 Where a Force Majeure Event gives rise to a failure or delay in the Supplier performing its obligations required by any Engagement (other than obligations to make payment), those obligations will be suspended for the duration of the Force Majeure Event.

11.2 The Customer may in the case of a Force Majeure Event temporarily suspend the Engagement for a period of up to one week on the provision of 48 hours advance notice in writing to the Supplier, without penalty.

## 12. Termination

12.1 Either party may terminate an Engagement at any time by giving at least 30 days' written notice (unless agreed differently and stated on the contract for service) to the other party unless otherwise provided for in the Quotation expiring at any time after the end of the Minimum Term.

12.2 Either party may terminate an Engagement immediately by giving written notice to the other party if the other party:

(a) commits any material breach of any provision of these Terms of Business or the relevant Quotation, and:

(i) the breach is not remediable; or

(ii) the breach is remediable, but the other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so; or

[(b) persistently breaches these Terms of Business and/or the relevant Quotation.

12.3 Either party may terminate an Engagement immediately by giving written notice to the other party if:

(a) the other party:

(i) ceases to conduct all (or substantially all) of its business;

(ii) is or becomes unable to pay its debts as they fall due;

(b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;

(c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party required by the Engagement);

12.4 The Supplier may terminate an Engagement immediately at any time by giving written notice to the Customer if the Customer fails to pay in full and on time any amount due to the Supplier whether due in respect of that Engagement or otherwise.

### 13. Effects of termination

13.1 Upon termination of an Engagement all the provisions of these Terms of Business and the Quotation will cease to have effect, save that the following provisions of these Terms of Business will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 6.3, 8.6, 10, 13, 14 and 16. In addition, Clause 5 will survive and continue to have effect for so long as the Equipment and Consumables remain in the possession or control of the Customer.

13.2 Termination of an Engagement will not affect either party's accrued liabilities or rights (including accrued rights to be paid) as at the date of termination.

13.3 Within 7 days of the termination of an Engagement, the Customer will make available for collection by the Supplier all Equipment and Consumables in the possession or control of the Customer at the date of termination.

### 14. Non-solicitation

The Customer will not without the Supplier's prior written consent, either during the term of any Engagement or within five years after the date of effective termination of the most recent Engagement, engage, employ or otherwise solicit for employment any employee or contractor of the Supplier who has been involved in the Engagement or the performance of the Services. This includes any employee working on behalf or any other company, involved in the Management or Directorship of another company or working on their own, except where the customer (or newly engaged cleaning company) is legally required to accept any employee, i.e. under TUPE regulations.

### 15. Notices

15.1 Any notice given under these Terms of Business must be in writing (whether or not described as "written notice" in these Terms of Business) and must be delivered personally, sent by pre-paid first class post, or sent by email for the attention of the relevant person, and to the relevant address, email address given below (or as notified by one party to the other in accordance with this Clause).

The Supplier

[The Callver Cleaning Company, 17 Crossfell Road, Leverstock Green, Hertfordshire. HP3 8RF / 01923 750510 admin@callver.com]

The Customer

[The address determined by where service is provided or the address of any agency or management company, or from any third party who instructed the supplier at the beginning of the engagement]

15.2 A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):

- (a) where the notice is delivered personally, at the time of delivery;
- (b) where the notice is sent by first class post, [48 hours] after posting; and
- (c) where the notice is sent by email, at the time of the transmission (providing the sending party retains written evidence of the transmission).

### 16. General

16.1 No breach of any term of any Engagement will be waived except with the express written consent of the party not in breach.

16.2 If a term of any Engagement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other terms of the Engagement will continue in effect. If any unlawful and/or unenforceable term would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the term will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant term will be deemed to be deleted).

16.3 No Engagement will constitute a partnership, agency relationship or contract of employment between the parties.



- 16.4 Neither these Terms of Business nor any Quotation may be varied except by a written document signed by or on behalf of each of the parties.
- 16.5 The Supplier may freely assign its rights and obligations under any Engagement without the Customer's consent – providing where the Customer is a consumer that such action does not serve to reduce the guarantees benefiting the Customer under the Engagement. Save as expressly provided in this Clause or elsewhere in these Terms of Business, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in any rights or obligations under any Engagement.
- 16.6 Each Engagement is entered into for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement relating to any Engagement are not subject to the consent of any third party.
- 16.7 Subject to Clause 10.1:
- (a) these Terms of Business and the relevant Quotation will constitute the entire agreement between the parties in relation to an Engagement, and supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter; and
  - (b) neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into an Engagement.
- 16.8 Each Engagement will be governed by and construed in accordance with the laws of England and Wales; and the courts of England will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with an Engagement.

## **17. Confidentiality**

- 17.1 The Supplier will keep in strict confidence all information of a confidential nature relating to the Customer and its business which comes into the knowledge or possession of the Supplier, or its employees, agents, consultants and sub-contractors, subject to Clause 1.3.
- 17.2 The Supplier shall ensure that all personnel involved in the supply of Services under the Engagement will be made very well aware that they are not to read, remove or interfere with any of the Customer's documents at the Premises, and that any such information is strictly confidential.
- 17.3 The Supplier may only disclose such information as they may be required to disclose by law, court order or government regulatory authority.

## **End of Terms & Conditions of Business**