

KITCHENFM TERMS AND CONDITIONS

These conditions and the details set out in the signature sheet and attached KitchenFM proposal constitute all the terms of the Kitchen Facilities Management (KitchenFM) agreement by which PKL Group (UK) Ltd shall provide the use of certain items of equipment to the client along with maintenance and management services. These terms shall apply in place of and prevail over any terms or conditions contained or referred to in any client's order or in PKL's quotation or acknowledgement of order or in correspondence or elsewhere or implied by trade, custom, practice or course of dealing unless specifically agreed to in writing. For the absence of doubt, should any provision outlined in the KitchenFM proposal conflict with any of the terms outlined below then the terms outlined below shall prevail.

This Agreement shall be governed by and construed in accordance with English law and the parties hereto hereby submit to the non-exclusive jurisdiction of the English courts.

1 PERIOD OF AGREEMENT

- 1.1 This Agreement will commence on the date when the Signature Sheet is signed on behalf of both parties.
- 1.2 Subject to these terms and conditions the Contract Period shall be a minimum of sixty months and will terminate hereafter at the later of the expiry of not less than six months written notice from either party and the expiry of the notice referred to in clause 6 below. The first date on which such notices shall be capable of expiring shall be the last day of the Minimum Contract Period of sixty months.

2 DELIVERY, INSTALLATION AND COLLECTION

- 2.1 The Client is responsible for providing and maintaining appropriate services (Lead Up Services) to connection points as specified in the Service Drawing provided to it by PKL.
- 2.2 Once the Client informs PKL that the Lead Up Services have been installed and are operational PKL will inspect the Site and verify that the Lead Up Services have been installed in accordance with the Service Drawing.
- 2.3 Within five working days of such verification, PKL will deliver the Equipment to the Site. The Client will provide facilities for the disposal of packaging. PKL will subsequently install and commission the Equipment. Should PKL be obstructed or prevented by the Client or its employees or contractors in delivering or installing the Equipment, or within 5 working days of an agreed installation date the installation date is changed by the Client or its employees or contractors, the Client shall be responsible for all reasonable costs incurred by PKL as a result. Where the client plans a phased, or interrupted installation on separate, non-consecutive dates the Client shall be responsible for all reasonable costs incurred by PKL as a result.
- 2.4 Installation of the Equipment shall be deemed to have been completed when PKL gives notice to the Client that the installation is practically complete and the Equipment is ready for use.
- 2.5 Should the constraints of the Site be such that further specialist equipment, or enabling works become necessary in order to install the Equipment then additional costs incurred will be the responsibility of the Client.

3 INSURANCE

- 3.1 The Client shall insure and keep insured the Equipment under a comprehensive insurance policy (without restriction or excess) to its full replacement value with effect from the date of delivery of any part of the Equipment to the Site against all usual risks including loss or damage by fire, flood, accident or any other cause (including without limitation all payments becoming due at the rate applicable under this Agreement in respect of any part of the Equipment damaged or destroyed by or due to any of the risks against which the Client is obliged to insure from the date upon which such damage or destruction occurs until receipt by PKL of the insurance moneys in respect thereof) and further ensure that the interest of PKL is noted on the insurance policy so that in the event of loss or damage to the Equipment PKL will have the benefit of an indemnity from an insurance company to the full value of the loss, damage or claim.
- 3.2 The Client will also fully and completely indemnify PKL against any loss, cost, claim or demand which PKL may suffer incur or sustain as a result of or in connection with any actual or alleged injury to person or loss of or damage to property and financial or economic loss caused by or consequent upon any use or misuse of the Equipment or any part of it save for any such injury, loss or damage which results from PKL's negligence.

4 SERVICE AND MAINTENANCE

- 4.1 It is the responsibility of PKL to maintain and conduct the appropriate number of preventative maintenance visits at a date agreed with the client. Although exact timings cannot be specified, the maintenance will be carried out within the morning or afternoon of that date. Type. The Client is to permit access to complete preventative maintenance within Normal Working Hours. Where the Client will not permit preventative maintenance during Normal Working Hours, the maintenance will be charged at an hourly rate. The Types of equipment are as detailed in the attached schedules, and the way that each type is dealt with is as follows:
 - 4.1.1 Type 1. PKL core full risk equipment. PKL will replace the Client's current own Type 1 equipment, or where the Client has no existing equipment will supply the Client, with PKL-owned equipment required, starting from the contract start date. PKL will be fully responsible for the maintenance of this equipment and all costs, parts, labour and replacement (but not upgrades) associated with it, apart from those replaced as a result of mis-use or malicious damage. Any replacement equipment shall be PKL Core Equipment or equivalent. The agreed monthly fee will not change when PKL put in PKL-owned equipment for redundant or expired Client's equipment of this type.

- 4.1.2 Type 2. PKL purchased inherited full risk equipment. This equipment is identical to Type 1 in all ways, other than PKL will pay the Client the sum specified in the signature sheet to take ownership of the equipment after the contract start date. PKL will be responsible for all maintenance as above, but will not take ownership of this equipment until payment is made.
- 4.1.3 Type 3 . gPKL/Client shared risk equipment. This applies to equipment identified as specialist equipment, which will remain under the ownership of the Client. PKL would be responsible for all maintenance apart from parts, which will be charged to the Client at cost plus 15%. When Type 3 equipment needs to be replaced, PKL would buy and install the replacement equipment. The monthly fee would, in those circumstances, increase in line with the new equipment added, at standard KitchenFM rates. Once PKL owns Type 3 equipment, it would be subject to the same conditions as Type 1 equipment, with the exception of consequences of termination. Should the Client terminate the contract at the end the minimum period, due to the specialist nature of Type 3 equipment, it is agreed that the Client will buy back from PKL any Type 3 equipment that has been purchased by PKL. The price to be paid by the Client would be based upon net book value of each item in PKL's balance sheet at the time.
- 4.2 It is the responsibility of the Client to ensure that properly skilled personnel operate, clean and care for the Equipment in accordance with the instructions provided. PKL will upon request provide up to four days' awareness sessions each year to the Client's staff at a location to be specified by PKL. If in the opinion of PKL any malfunction of the Equipment is caused by misuse, neglect or malicious vandalism, scaled water, impact damage or broken knobs or frets the cost of repair will be charged to the Client. If in the opinion of PKL the malfunction of the Equipment is caused by incorrect usage, insufficient gas or electrical supply or any other problem unrelated to the equipment, PKL will charge the Client a full call-out charge at PKL rates at the time, including all transport charges.
- 4.3 In the event of malfunction of the Equipment the Client should contact PKL in the manner as prescribed from time to time. The Client must quote the reference details of the relevant piece of Equipment along with the nature of the malfunction.
- 4.4 The Client shall fully clean down the Equipment daily and show due diligence in the treatment of the Equipment. If PKL in its absolute discretion shall consider that the Equipment shall require cleaning at any time while it is on hire to the Client in order to ensure its efficient operation or its continued efficient operation, PKL shall be entitled to clean the Equipment and charge the cost of doing so to the Client.
- 4.5 In the event of the Equipment becoming unusable through fire, flood or explosion and the Client wishes to continue providing a catering service at the Site then PKL will use reasonable endeavours to provide emergency facilities (utilising the PKL hire fleet) to enable the Client to continue to provide at least a reduced service. Such emergency facilities will be provided free of any hire charge for up to two week but the Client will be responsible for reimbursing delivery, installation and further hire costs.

5 PAYMENT TERMS

- 5.1 The Minimum Monthly Payment is as set out on the Signature Sheet.
- 5.2 The payments due under this Agreement will increase on the first and all subsequent anniversaries of the Commencement Date by a percentage equating to Retail Price Index (for all items) for the preceding twelve month period or alternatively, at the option of PKL, any other recognised method of calculating inflation that may replace the Retail Price Index.
- 5.3 The Client will pay to PKL value added tax at the rate ruling for taxable supplies provided by PKL from time to time on all payments made under this Agreement.
- 5.4 The payments due under this Agreement are payable by the Client on the dates specified on the Signature Sheet. PKL will provide a VAT invoice to the Client in respect of each payment falling due under this Agreement but the Client's liability to make payment is not dependent on PKL delivering or the Client receiving any such invoice.
- 5.5 No allowance or deduction shall be permitted from the payments due in respect of any period during which for whatever reason the Equipment shall not be used by the Client or the Equipment is unusable or the management services to be provided under this Agreement are suspended for any reason whatsoever. If the Equipment has been destroyed or severely damaged by any of the events against which the Equipment has been or should have been insured pursuant to clause 3 above the payments due in respect of the Equipment shall continue to fall due until PKL receives the insurance value of the Equipment specified on the Signature Sheet. If any part of the Equipment is destroyed or severely damaged by any such insured event the payments in respect of that part of the Equipment shall continue to be paid until PKL receives the full insurance proceeds relating thereto and thereupon the payments payable in respect of the Equipment shall be reduced by an amount equal to that payable in respect of the destroyed or damaged part of the Equipment.
- 5.6 In the event of late payment PKL reserves the right to charge interest at the rate of 4% above the base rate of Barclays Bank PLC (compounded monthly) on any amount outstanding from time to time before as well as after any judgement from the due date for payment until the date of payment in full thereof.

6 TERMINATION

- 6.1 Without prejudice to PKL's right to be paid all sums which have become due under this Agreement PKL may terminate the Contract Period by notice to the Client with immediate effect on the occurrence of any of the following events:-

- 6.1.1 If the Client shall fail to pay any of the payments agreed to be paid by the Client to PKL under this Agreement punctually on the due date and such failure shall continue for a period of seven days; or
 - 6.1.2 If the Client shall be in breach of any term of this Agreement. Should a breach occur and such a breach lasts for more than 7 days, PKL will write to the client confirming the breach and the need for the breach to be rectified. If no response is received within 7 days of the deemed receipt of this letter, PKL will send a further letter giving 7 days notice of termination; or
 - 6.1.3 If the Client shall do or allow to be done any act or thing which may prejudice or endanger PKL's property or rights in the Equipment; or
 - 6.1.4 If the Client shall die; or
 - 6.1.5 If the Client shall have a bankruptcy order made against him; or
 - 6.1.6 If the Client shall be liquidated or wound up or have a petition for winding up presented against it or pass a resolution for voluntary winding-up (otherwise than for reconstruction or amalgamation to which PKL shall have given its written consent); or
 - 6.1.7 If a petition for the appointment of an administrator is presented against the Client or if the Client has an administrative receiver or receiver or manager appointed over the whole or any part of its assets; or
 - 6.1.8 If the Client shall convene any meeting of its creditors or make a deed of assignment or arrangement or otherwise compound with its creditors; or
 - 6.1.9 If any steps shall be taken to levy a distress or execution or if a distress or execution shall be levied or threatened to be levied upon any chattels in the possession of the Client; or
 - 6.1.10 If the Client shall abandon the Equipment.
- 6.2 Upon termination of the Contract Period under this clause 6 PKL shall cease to provide management services and may at any time thereafter retake possession of the Equipment owned by PKL.

7 CONSEQUENCES OF TERMINATION

- 7.1 Immediately upon this Agreement being terminated pursuant to Clause 6 above the Client shall pay to PKL:-
- 7.1.1 All arrears of payment then due;
 - 7.1.2 All future payments due to PKL from the date of termination until the first date the Contract Period could have lawfully been terminated by notice given by the Client on the date of termination subject to a discount to represent early payment;
 - 7.1.3 All expenses and costs incurred by PKL (including legal costs in full) in retaking possession of the Equipment and/or enforcing its rights under this Agreement.
- 7.2 In the event that the Client cancels this Agreement by notice in writing to PKL before taking delivery of the Equipment, PKL reserves the right to charge a fee to the Client representing PKL's loss resulting from cancellation of this Agreement.

8 HEALTH AND ENVIRONMENTAL MATTERS

- 8.1 It is the responsibility of the Client to ensure that the kitchen layout and design conforms with operational, legal, health and safety requirements.
- 8.2 It is the responsibility of the Client to comply with all laws or regulations concerning the Equipment, the kitchen in which it is installed and all products to be used or which have been used in the kitchen and the Client will indemnify PKL and keep PKL indemnified against any loss, cost, claim, demand or expense which PKL may suffer, incur or sustain arising out of any claim made against PKL or notice served on it alleging failure to comply with or under any such law or regulation in connection with the Equipment during the Contract Period.

9 INSPECTION

- 9.1 The Client shall at all times allow PKL, its agents or servants or any person authorised by PKL, to have reasonable access to the Site to inspect, test, adjust, repair or replace the Equipment and to collect the Equipment upon Termination.
- 9.2 The Client shall procure that all necessary consents from third parties are obtained and kept in force to permit PKL to have access to the Equipment at all times for the purpose of this Agreement.

10 OWNER'S MARKS

- 10.1 For the absence of doubt, the PKL-owned Equipment will always remain in the ownership of PKL. The Client will not remove, obscure, alter or deface in any way any of PKL's nameplates, bar codes, signs, engravings or other indications of ownership on any of the Equipment.
- 10.2 The Client will procure that none of the Equipment becomes affixed to any land and will indemnify PKL against any loss, cost, claim, demand, liability or expense which PKL may suffer, incur or sustain as a result of any person, firm or company claiming that any Equipment has become affixed to any property.

11 SUB-LET, CHANGES OF SITE AND EQUIPMENT

- 11.1 The Client shall not sell, mortgage, charge, pledge, part with possession of, or otherwise deal with the Equipment or purport to do any such things and shall protect the Equipment against distress, execution or seizure and shall indemnify PKL against all damages, losses, costs, charges and expenses which PKL

- may suffer, incur or sustain in consequence of failure by the Client to observe and perform this condition except in the case of Government requisition.
- 11.2 PKL may assign the benefit of this Agreement and transfer the burden in whole or in part and PKL may delegate to any person all or any of the rights, remedies, powers or privileges conferred on it hereunder or provided by the law. Subject to obtaining the prior written consent of PKL (that PKL shall not unreasonably withhold but may be provided subject to conditions) the Client may assign the benefit of this Agreement (but not part only thereof) upon payment of an administration fee.
- 11.3 The Client will remain liable for all damage to the Equipment or any part of it caused by any person, firm or company to which the Client allows to operate the Equipment and for any charges raised by PKL in accordance with these terms and conditions.
- 11.4 The Client will not move the Equipment or any part of it from the Site unless the Client obtains PKL 's prior written consent to any such move.
- 11.5 The Client may from time to time wish to substitute an item of equipment for an alternative item from PKL's Core Equipment fleet. A maximum of 5 changes of equipment at the client's request are permitted during the duration of the contract. Subject to availability, such exchanges may be made without penalty save for reasonable administration, transport and installation charges. Should the substituted item of equipment be in a higher or lower price band than the monthly amount payable shall be adjusted accordingly save that it shall never fall below the Minimum Monthly Payment as adjusted for inflation. Where the client specifies equipment that is not PKL Core Equipment at the start or any time during the contract, the client shall not be entitled to exchange this equipment within the Minimum Contract Period.
- 11.6 PKL may from time to time wish to substitute or update an item of Equipment for an alternative item of equivalent or improved specification. Such substitutions will be made without charge to the Client who shall provide such assistance and co-operation to PKL as might reasonably be required in order to carry out the substitution.

12 EXCLUSIONS AND LIABILITY

- 12.1 The Equipment shall be deemed to be complete, in good order and condition and satisfactory to the Client unless PKL receives notification within 7 days of the Commencement Date.
- 12.2 No warranty or representation is given or made that the Equipment is suitable for the purpose required by the Client whether or not that purpose has been made known to PKL.
- 12.3 In the event of malfunction, failure or poor or partial performance of the Equipment or any part of it and subject to the provisions of Clause 12.6 below, the liability of PKL shall be limited to repairing or replacing the Equipment or the relevant part.
- 12.4 The terms set out in these conditions together with the terms set out in the Signature Sheet constitute all the terms of this Agreement. Subject thereto, all conditions, warranties and representations, expressed or implied by statute, common law or otherwise, in relation to the Equipment and the Services are hereby excluded and PKL shall be under no liability to the Client for any loss, damage or injury, direct or indirect, resulting from PKL's non-performance or poor, partial or late performance under this Agreement and whether or not caused by the negligence of PKL, its employees or agents save that PKL shall accept liability for death or personal injury caused by the negligence of PKL and for any fraudulent misrepresentation made by PKL.
- 12.5 Without prejudice to the above provisions, no liability will attach to PKL for any financial loss or any consequential loss or damage due to any failure in or poor or partial performance or late delivery of the Equipment or any part thereof (and in particular PKL will accept no liability for loss or damage to food due to defects in or breakdown of any refrigeration equipment included in the Equipment), or any breach of this Agreement whatsoever by PKL for any cause whatsoever, including the negligence of PKL or PKL's employees save that PKL shall accept liability for death or personal injury caused by the negligence of PKL and for any fraudulent misrepresentation made by PKL.
- 12.6 The following exclusions apply to the Agreement unless specifically agreed in writing between PKL and the Client:
- 12.6.1 Vending machines and counter drinks equipment unless otherwise stated.
 - 12.6.2 Builders work.
 - 12.6.3 Electrical and mechanical installations. (Including ventilation interlock systems)
 - 12.6.4 Decorations, suspended ceilings, light fittings, floor coverings and interior fixtures and fittings.
 - 12.6.5 Telephone and data points.
 - 12.6.6 Space heating.
 - 12.6.7 Fire alarms, detection and fire fighting equipment.
 - 12.6.8 Emergency lighting, signage etc.
 - 12.6.9 Hygiene clean of catering equipment and building fabric.
 - 12.6.10 Local authority approvals. (Planning, Building or EHO).
 - 12.6.11 Earth bonding.
 - 12.6.12 Builder's work scaffolding and electrical connections to ventilation systems, when quoted.
 - 12.6.13 Water treatment.
 - 12.6.14 Testing of existing water services and chlorination of pipe work.
 - 12.6.15 Break tanks, header tanks, and pressure reducing valves.
 - 12.6.16 Modifications to existing drainage points, tundishes, adaptors and gratings etc.

- 12.6.17 Removal of rubbish and waste from site.
- 12.6.18 Ventilation modifications and air input systems.
- 12.6.19 Light equipment, gastronorm containers, and restaurant trays unless otherwise stated.
- 12.6.20 Insurance of works and equipment once delivered. (Public and Employees Liability and Professional Indemnity are included)
- 12.6.21 Furniture

13 GENERAL

- 13.1 Any delay or failure by to exercise any right or remedy under the terms hereof shall not constitute a waiver of it or them and any of PKL's rights or remedies may be enforced separately or concurrently with any other right or remedy now or in the future accruing to PKL to the effect that such rights are cumulative and not exclusive of each other.
- 13.2 The continuance of the payments under this Agreement and of the Client's liability for payment of all sums due under it shall not be affected in any way by the loss or theft of or any damage to or defect in the Equipment, whether latent or patent.

14 NOTICE

- 14.1 Any notice from one party to the other under this Agreement shall be in writing and shall be sufficiently served if sent by pre-paid post or delivered by hand or sent by facsimile transmission or email to the address of the other as shown on the Signature Sheet. Any notice shall be deemed to have been duly served if sent by post, 48 hours after the time of posting; if delivered by hand, at the date of delivery and if sent by facsimile or email, at the time of transmission (as evidenced by confirmation of satisfactory transmission by the sender's equipment).

15 DEFINITIONS

- 15.1 "PKL" means PKL Group (UK) Ltd (registered number 2308908) and its successors in title.
- 15.2 "the Client" means the person, firm, company, corporation or authority specified in the Signature Sheet as the Client and includes his, its or their successors or personal representatives.
- 15.3 "Signature Sheet" means the document giving details of the Client, the Equipment and the Management Services signed by the Client and incorporating these conditions into the Agreement.
- 15.4 "Equipment" means the equipment provided by PKL to the Client for the Client's
- 15.5 use, the main items of which are referred to in the Signature Sheet and includes any other equipment or goods of any nature whatsoever provided by PKL to the Client.
- 15.6 "Agreement" means the KitchenFM Agreement between PKL and the Client.
- 15.7 "the Site" means the location specified on the Signature Sheet where the Equipment is installed.
- 15.8 "Commencement Date" means the date of notice from PKL to the Client that the installation is practically complete and the Equipment ready for use.
- 15.9 "Minimum Contract Period" means sixty months from the date the Signature Sheet is signed by both parties or if later, the minimum period of contract as specified in the Signature Sheet.
- 15.10 "Contract Period" means the period from the Commencement Date until the day the Equipment is collected by PKL or PKL becomes obliged to collect the Equipment.
- 15.11 "Small Items" means items attached to or used in connection with the Equipment which would normally be expected to be changed a number of times during the life of the Equipment including light bulbs, door seals and thermocouples but not such things as detergents, softening salts, water filter cartridges and similar items.
- 15.12 "KitchenFM Proposal" means the proposal attached to the Signature Sheet setting out the obligations of both parties.
- 15.13 "Collection Date" means the date upon which the Equipment is collected from the Site by PKL following its disconnection from services by the Client.
- 15.14 "the Services" means the maintenance and management services to be provided by PKL to the Client specified in the Signature Sheet.

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