



## Order Confirmation

Landlord:	
Landlord Address:	
Telephone:	
Email:	
Date:	
Duration:	
Payment terms:	
Additional Conditions:	

By signing below, the Landlord confirms that they have read the attached Terms and Conditions of Business of James Frew Ltd and agrees that, subject to the Additional Conditions specified in this Agreement, they will be bound by all such terms, to the exclusion of any terms and conditions of the Landlord.

Signed for by Landlord: -

Signed:  
.....

Name:.....

## 1. TERMS AND CONDITIONS OF BUSINESS FOR LANDLORDS

### DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions the following definitions apply unless otherwise stated:

**“Adhoc Support” or “Adhoc Support Services”** means James Frew provides adhoc services in the absence of a Support Agreement will be based on a “as and when available” basis and is subject to quotation.

**“ASHP”** means air source heat pumps.

**“Business Day”** means a day 8.00am to 5.00pm (other than a Saturday, Sunday, or any public holiday).

**“Landlord Pricing Policy”** means the pricing structure first agreed and subject to amendment after the Service has commenced based on the actual workload, Landlord’s usage and/or complexity of the work carried out by us.

**“Contract”** means the contract between the Company and the Landlord for the supply of Services subject to these Terms and the signed Quotation.

**“Contract Price”** means the price for the Service (including subscriptions, hourly and day rates or fixed priced services) set out in the Order Confirmation.

**“Contract Term”** means the duration or length of contract for James Frew to delivery services as outlined in the Quotation document.

**“Data Protection Laws”** means all laws in any relevant jurisdiction that relate to data protection, privacy, the use of information relating to individuals, and/or the information rights of individual including, without limitation, the Data Protection Act 1998, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and (from 25 May 2018) the GDPR, and any other laws in force from time to time which implement the GDPR, and all applicable formal and informal guidance, rules, requirements, directions, guidelines, recommendations, advice, codes of practice, policies, measures or publications of any Regulatory Authority, and the equivalent in any other relevant jurisdictions, all as amended or replaced from time to time including UK GDPR.

**“Digital Signature”** means an electronic signature that allows the Landlord to instruct James Frew to carry out Work.

**“ECO4”** means the Energy Company Obligation (ECO) grant scheme provided by the Scottish Government. These grants are subject to qualification via the Scottish Government application process.

**“Gas Safety Certificate”** means the report which outlines the gas appliances tested as part of an annual gas safety check. Also known as a CP12.”

**“James Frew Ltd” “GasSure” or “The Company”** a limited company, incorporated in Scotland under company number SC036286 with its registered office is at 83 New Street Stevenston, Ayrshire, KA20 3HD.

**“Landlord”** means any individual or person who is a director of a limited company, who contracts with James Frew to provide services to a Tenant or number of Tenants will be classed as a business or business entity and subject to these business-to-business terms and conditions. The Landlord is also identified in the Order Confirmation as contracting for the Service and includes their successors or personal representatives who purchases Services from the James Frew and whose details are set out in the Order Confirmation.

**“Location”** means the site or the landlord’s property or site where the Work is being carried out.

**“Material Change”** means a change or sufficient amendments which results in a different

objective or outcomes or results in a change of context or complexity of the Work.

**“Oil-based” or Oil** means Oil-based central heating system.

**“On Demand Services”** means the Service offered by James Frew that is subject to payment in advance of the Service commencing, the service will be based on a “as and when available” basis and is subject to quotation.

**“Order Confirmation”** means the documentation or email, together with these terms and conditions or referring to these terms and conditions in which we specify in the Quotation, shall form a binding contract.

**“Quotation”** means the written quotation prepared by the Company which contains a proposal for providing Services.

**“Services”** means the services (the Service or Work) the Company will provide to the Landlord as specified in the Quotation.

**“Sign off” or “Signed Off”** means the Landlord’s instruction to James Frew by signature or digital signature or email to proceed with agreed stages of the Work as set out in the Quotation. Landlord’s request for all services that require further information prior to a quotation more fully described in the Order Confirmation (all quotations are subject to Site Survey), James Frew being the sole arbiter of this issue.

**“Snagging”** means minor issues related to the installation being carried out by us, for example cosmetic damage to the structure including scrapes, scratches and wear and tear sustained during installation.

**“Specifications”** means the specifics of the Services as stated in the Quotation Signed Off by the Landlord prior to any Services commencing.

**“Support Service”** means the standard support packages provided by James Frew to support the Services. Support packages are subject to additional terms and conditions available through, [www.jamesfrew.co.uk](http://www.jamesfrew.co.uk) or [www.gassure.com](http://www.gassure.com).

**“Tenant”** means the householder and end user of the service, who is the Tenant of the Landlord, and where the Landlord has contracted with James Frew to provide services.

**“Work Safe”** means that the Location is safe for James Frew to deliver services (in line with all relevant legislation) and all facilities are in place before any Service can commence.

**“Writing”** includes any written paper document, any fax, and any email correspondence.

1.2 Terms means these terms and conditions as updated from time to time by The headings in this document are inserted for convenience only and shall not affect the construction or interpretation of these Terms.

1.3 This Contract supersedes any written or oral representations, statements, understandings, or agreements, except where specifically varied by written agreement by James Frew.

## **2. TERMS AND CONDITIONS**

2.1. These Terms shall apply to all agreements concluded between the Company and the Landlord to the exclusion of any other terms that the Landlord seeks to impose.

2.2 These Terms and the Quotation may only be varied by express written agreement between the Company and the Landlord.

2.3 Whilst every effort is made to ensure that costing estimates are accurate, the Company reserves the right to amend any Quotation, should an error or omission occur.

2.4 Where applicable, the Landlord must be aware, the Service thereafter will be subject to the Services as described in the Quotation.

## **3. THE CONTRACT**

3.1 The Quotation constitutes an offer by the Landlord to purchase the Services in accordance

with these Terms. The Landlord shall ensure that the terms of the Quotation and any relevant Specifications are complete and accurate.

3.2 The Landlord agrees that digital signature where applicable (Note: the Landlord must be aware by signing the document in this manner they will be entering into a binding Agreement; we recommend the Landlord uses a certification service provider when using digital signature technology).

3.3 The Quotation shall only be deemed to be accepted when the Company receives a signed Contract or when the Company has started to provide the Services having received the Quotation, whichever happens first, at which point the Contract shall come into existence.

3.4 The Contract constitutes the entire agreement between the Company to provide the Services to the Landlord and for the Landlord to purchase those Services, in accordance with these Terms.

#### **4. COMPANY OBLIGATIONS AND WARRANTIES**

4.1 The Company warrants that it will provide the Services as stipulated in the Quotation using reasonable care and skill to conform in all material respects with the Specifications as outlined in the Quotation.

4.2 The Company shall use all reasonable endeavours to meet any performance dates specified in the Quotation, but any such dates shall be estimates only and time shall not be of the essence for the provision of the Services. The Company shall not be liable for any delay in delivery of the Services caused by a Force Majeure event or the Landlord's failure to provide the Company with adequate delivery instructions or any other instructions relevant to the supply of the Services.

4.3 The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law.

4.4 The Company shall be entitled to use subcontractors for the provision of the Services provided always that the Company shall remain liable to the Landlord for the performance of the Services as if it had carried them out itself.

4.5 We shall exercise reasonable skill, care, and diligence in the performance of the installation services (subject to Snagging).

4.6 The Landlord is responsible for ensuring their employees and staff using James Frew Services are aware of all health and safety issues related to using the Service.

4.7 The Landlord agrees that the Company can conduct a Site Survey. In the event that the Landlord will not agree to a Site Survey, the Order will not be accepted by the Company.

4.8 If any exclusion, disclaimer, or other provision contained in this Agreement is held to be invalid for any reason by a court of competent jurisdiction and James Frew becomes liable thereby for loss or damage that may lawfully be limited, such liability whether in contract, tort (including negligence) or otherwise, will not exceed the total charges paid by the Landlord in the one month preceding such liability arising.

#### **5. CUSTOMER'S OBLIGATIONS AND INDEMNITIES**

5.1 The Landlord shall provide assistance and technical information to the Company, as reasonably required by the Company in sufficient time to facilitate the execution of the Quotation in accordance with any estimated delivery dates or milestones. The Landlord shall have sole responsibility for ensuring the accuracy of all information provided to the Company and warrants and undertakes to the Company that the Landlord's employees, end users, contractors and third-party suppliers assisting in the execution of the Quotation have the necessary skills and authority.

5.2 Any dates quoted for delivery of services are approximate only and we shall not be liable to you for any delay in delivery of services howsoever caused. Time for delivery shall not be of the essence unless stated in the Quotation.

5.3 James Frew shall carry out minor changes requested by the Landlord to any aspects of the

Service during delivery of the Service or following Completion of Work, however in the event that the Landlord requires a Material Change (in respect of which James Frew shall be sole arbiter) to any aspect of the Service, additional charges may be payable by the Landlord.

5.4 The Landlord shall be obliged to inform the Company immediately of changes or any decision made that will affect the Service and any other material information regarding the technical infrastructure which may affect the Services delivered by the Company.

5.5 The Landlord is responsible for providing a satisfactory level of cooperation and for providing all necessary Landlord Information and access to enable James Frew to deliver a quality service including;

5.5.1 signature of the James Frew Order Confirmation.

5.5.2 provision to James Frew promptly of all information where applicable including any documentation reasonably required by James Frew;

5.5.3 digital signature where applicable (Note: the Landlord must be aware by signing the document in this manner they will be entering into a binding Agreement; we recommend the Landlord uses a certification service provider when using digital signature technology);

5.5.4 Sign Off where applicable.

5.5.5 adhere to the Landlord Pricing Policy.

5.5.6 provision of suitable access for delivery, including make Work Safe environment for James Frew to deliver Services.

5.6 The Landlord shall indemnify and keep the Company indemnified fully against all liabilities, costs and expenses whatsoever and howsoever incurred by the Company in respect of any third-parties as a result of the provision of the Services in accordance with the Quotation, or the content of the Landlord's advertising or web pages which result in claims or proceedings against the Company for infringement of any Intellectual Property Rights or other proprietary rights of third parties, or for breach of confidentiality or contract or for defamation.

5.7 The Landlord undertakes to comply with all applicable rules, regulations, codes of practice and laws relating to its use of the Services, and equivalent legislation and hereby agrees to indemnify and to keep the Company indemnified in respect of any and all costs, claims or proceedings whatsoever brought against the Company by any third-party in connection with any breach of the same by the Landlord.

5.8.1 Landlord agrees to indemnify, keep indemnified and hold harmless James Frew from and against any claims and,

(a) any breach by Landlord of any terms of the Agreement;

(b) by Landlord's client or contractors (or users (including the Tenant or end user) of the Service.

5.8.2 You shall indemnify James Frew against any claims which may be made by third parties against James Frew in this regard and any costs and expenses incurred by James Frew in dealing with such claims.

5.8.3 The Landlord agrees and understands that no indemnity can be applied to the Work unless payment is received in full by James Frew. In no circumstances will James Frew take responsibility for the design aspect of the Service or attribute indemnity to such Services.

#### **ADDITIONAL LANDLORD TERMS AND CONDITIONS**

5.9 Unless otherwise agreed at the point of contract, in the event James Frew receives a call from the Tenant requesting services, every call from the Tenant will be classed as a "Call Out" (a legitimate request for Services).

5.10 James Frew will have no liability for any delay for responding to a "Call Out," in the event if the Landlord is not able to sanction a call out.

5.11 All calls are recorded, and this includes recording calls that capture the Tenants request for Services (all recorded calls will be deleted after 30 days).

5.12 In the event James Frew cannot gain access to the Landlords property to deliver Services, James Frew will charge for rearrangement of the appointment, James Frew being the sole arbiter of this issue.

5.13 The Landlord is responsible for ensuring their Tenant(s) using James Frew Services are aware of all health and safety issues related to using the Service.

5.14 Unless otherwise agreed; all 12-month contracts will renew automatically on a 12-month basis unless the Landlord offers one month's notice 30 days prior to the end of the contract period.

5.15 The Landlord understands and agrees, that We cannot be held responsible for any repairs which arise as a result of Your failure to inform us of any problems or Your misuse of the central heating system, boiler, Covered Appliances and plumbing and drainage systems.

5.16 The Agreement is based upon the Landlord paying for the Service in advance and based upon our acceptance of the Landlord's payment, prior to the Service commencing through our third-party payment service (for example Square) to be at the election of James Frew.

5.17 You confirm that the credit/debit card that is being used is Yours. All credit/debit cardholders are subject to validation checks and authorisation by the card issuer. If the issuer of Your card refuses to authorise payment, We will not accept Your deposit and We will not be liable for any delay or non-delivery, and We are not obliged to inform You of the reason for the refusal. We are not responsible for Your card issuer or bank charging You as a result of our processing of Your credit/debit card payment in accordance with the Order Confirmation.

5.18 The Landlord shall not be entitled by reason of any set-off, counter-claim, abatement, or other deduction to withhold payment of any amount due to James Frew.

5.19 The Landlord is responsible for paying for any charges associated with using their debit or credit card.

Your obligations – with regards to installations

5.20 It is Your responsibility to allow our engineer access to Your property to carry out services at the time agreed with us.

5.21 We may charge You additional costs incurred by us in any of the following circumstances:

5.21.1 if our engineer cannot gain access or considers that the circumstances are such that it is difficult or dangerous to carry out the work or where there is a risk to health and safety;

5.21.2 if there is a presence of hazardous materials or infestation or should our engineer be subject to any abuse (physical or verbal); or

5.21.3 if You call out an engineer when there is not a problem with Your central heating system, boiler, Covered Appliance, plumbing or drainage systems; in all of the above cases You will be charged on the basis of prices quoted separately. The engineer may at his discretion discontinue the provision of the services.

5.22 In all cases the Landlord is responsible for the welfare of their Tenant and you the Landlord are solely responsible for all the relevant legislation that requires You to act as a Landlord under the Law; this includes the responsibility to renew any relevant certificates necessary to maintain the property.

## **6. AMENDMENTS TO CONTRACT**

6.1 Should the Landlord require a change to any aspect of an Order or in or any other aspect of this Agreement, such change shall be requested in writing. James Frew shall advise the Landlord of the effects including any increase in the Charges which may result, and the Agreement shall be modified to reflect such changes.

## **7. OUR SUBSCRIPTION PLANS (HOME PLANS BY GASSURE)**

We have two subscription plans which are described below. Please note the limitations and conditions in clause 7.

### **GasSure Silver**

7.1 Our Silver level subscription covers the annual inspection and service of Your central heating system (as defined in clause 8.7) and any additional appliances as may be agreed between us (“Covered Appliances”), for an additional charge.

7.2 Our Silver level subscription also includes repair (where We consider repairs to be economically viable) and maintenance services if Your central heating system or any other Covered Appliance breaks down or if emergency repairs are required (including any spare parts).

7.3 Electrical installation cover (as defined in clause 10.1) is included in the Silver level subscription.

7.4 Annual inspection, service and repair of Your gas fire may be added to the Silver level for an additional charge on the basis of a fixed price quoted separately.

7.5 Our Silver level subscription includes an unlimited number of callouts to deal with breakdowns of Your central heating system, electrical installation repairs or other covered Appliances.

### **GasSure Gold**

7.6 Our Gold level subscription includes cover for Your central heating system, and any other Covered Appliances as outlined in respect of the Silver level subscription (in Clauses 8.7 to 8.10).

7.7 Our Gold level subscription also includes the following plumbing cover:

7.7.1 repair or replacement inside Your home of any of the following:

7.7.2 all water supply (hot and cold) pipes from the mains stopcock inside Your home;

7.7.3 toilet cisterns;

7.7.4 water leak on immersion heaters; and

7.7.5 cold water storage tanks.

7.8 This also includes the following drainage cover:

7.8.1 unblocking or repair of drains within Your property boundary; and

7.8.2 all waste and rainwater drainage within Your property up to the connection to public drains or communal drains.

7.9 Electrical installation cover (as defined in clause 10.1) is included in the Gold level subscription.

7.10 Annual inspection, service and repair of Your gas fire may be added to the Gold level for an additional charge on the basis of a fixed price quoted separately.

7.11 Our Gold level subscription includes an unlimited number of callouts in connection with plumbing and drainage and electrical installation cover (please refer to Clause 8.13 for exclusions and additional conditions relating specifically to unlimited callouts in connection with plumbing and drainage and electrical cover).

### **ASHP and Oil**

7.12 Our ASHP and Oil Services subscription includes cover for both the air and oil-based heating systems. The Service includes, a one-off service fee, a monthly subscription charge and minimum call out charge. Parts are chargeable and the call out fee is covered for the first 90 days only, as further described in the Quotation.

### **EXCLUSIONS AND ADDITIONAL CONDITIONS**

This clause outlines conditions and exclusions which apply to our subscription plans. Please read it carefully.

## 8. DISCLAIMER AND LIMITATION OF LIABILITY

8.1 The User uses the Service at its own risk and in no event shall James Frew be liable for any direct, consequential, incidental or special damage or loss of any kind (except personal injury or death resulting from James Frew's negligence) including, but not limited to, inability to use social media, loss of money, the User's identity theft, data breach, loss of or corruption of data or the User's inability to use the Service, however caused and whether arising under contract or tort, including negligence or otherwise except as expressly provided herein.

8.2 If any exclusion, disclaimer or other provision contained in this Agreement is held to be invalid for any reason by a court of competent jurisdiction and James Frew, becomes liable thereby for loss or damage that may lawfully be limited, such liability whether in contract, tort (including negligence but specifically excluding personal injury or death resulting from James Frew's negligence) or otherwise, will not exceed the value of Service (price paid for the Service) immediately preceding such liability arising.

8.3 The User must make every effort to secure their username, passwords details and should not under any circumstance disclose their username and password and details to a third party or by an email request. James Frew, nor its directors, employees or representatives will be liable for damages arising out of or in connection with the use of this Website or the Landlord Content, materials or Service included on this Website. This is a comprehensive limitation of liability that applies to all damages of any kind.

8.4 It is the User's responsibility to maintain and update browser, firewall or anti-virus and anti-spyware software. The User must protect their computer and/or device and ensure they update all security software by downloading the latest security patches from relevant software provider.

8.5 James Frew cannot guarantee 100% uptime and endeavours to provide services as described on the Website.

8.6 The Landlord must take full responsibility for the decisions involved when choosing the Service and during the time they use the Service and understands and accepts that any decision made to use the Service is entirely at their own risk.

### Central heating systems

8.7 When We refer to the central heating system, We are referring to the gas fired central heating boiler, flues, conventional radiators and radiator valves, conventional heating controls, conventional open vented hot water cylinder feed and expansion tank, heating pipe work, and the gas supply from the meter to the appliances.

8.8 Please note that specialist heating controls (such as Hive, Nest, Sangamo etc.) are not covered by our subscription plans. We may be unable to cover specialist radiators such as bespoke, designer, or decorative radiators. In such circumstances, we will make this clear to You during initial inspection.

8.9 Please note that cylinders within the central heating system and/or boiler are only covered for repair. Replacements are not included in the subscription, however, can be provided on request for an additional charge.

8.9.1 Unvented cylinders e.g., Megaflow, BoilerMate and other thermal store water storage systems are excluded from the subscription. Favourable quotes can be provided on request for repair or replacement.

8.10 Our subscription plans do not extend to removing sludge, waterscale or other waste material from Your central heating system. This work is always charged separately on the basis of prices quoted to You separately.

### Covered Appliances

8.11 Where a Covered Appliance includes a gas fire, the parts in respect of repairs to the gas fire covered by Your subscription plan are included up to a maximum of £100 per repair. The price of

parts will be the prices of our suppliers (such as Wolseley UK). If We think that the price of parts will exceed £100, We will let You know as soon as reasonably possible.

8.12 Our obligations to You under the subscription plans cover repairs and maintenance only. Unless expressly mentioned in these terms, our subscription plans do not include improvements to Your central heating system, electrical installation, any Covered Appliance, drainage, or plumbing systems.

#### **Gold subscription plans**

8.13 In respect of Gold subscription plans, the following items are excluded from the plumbing and drainage cover:

8.13.1 taps, washers, stopcocks, external water supply, lead, or steel pipes;

8.13.2 repetitive drain cleaning; and

8.13.3 communal drains, commercial use drains and self-contained drains (including without limitation septic tanks, electrical installation, and soakaways).

#### **Silver, and Gold subscription plans**

8.14 In respect of Silver and Gold (where fixed cost boiler repairs are carried out as part of Your Silver and Gold plan), and all Gold and Silver subscription plans, if the cost of all materials and labour required to repair Your boiler and/or central heating system exceeds £500 (calculated on the basis of the prices of our suppliers and our labour costs), and Your boiler is more than 10 years old, We may determine that it would be uneconomical to repair Your boiler. In this event We will advise You of this and will offer a discount on a new boiler which discounted price will be valid for 30 days. If You have not decided to go ahead with a new boiler (the Work) within this 30-day period, We may thereafter cancel Your subscription plan (please see clause 12), in which case We shall refund the subscription fees You have paid since either of the following dates, whichever is the later:

8.14.1 the day after the most recent date when We provided services (including any repairs, annual servicing, or any Gas Safety Certificate) to You under Your subscription plan.

#### **Specific exclusions / limitations**

8.15 Our subscription plans do not include any of the following:

8.15.1 joiner works required for access to repair (such as lifting of floors, floor coverings, laminate, carpets, removing of kitchen units, flue boxing);

8.15.2 building works (such as brick chimney repairs, removal of and re-laying paving/driveway surfaces to access drainage/pipework, soakaways, toby stopcocks);

8.15.3 other than electrical installation cover as referred to in clause 6.16, electrician work (such as replacement or repair of wiring upstream of appliance isolator);

8.15.4 pipework work (such as lead, steel or iron pipework repair or replacement, system blockages due to corrosion);

8.15.5 work involving the use of scaffolding or mobile elevated work platforms (MEWPs), for example, "cherry pickers" or "scissor lifts"); or

8.15.6 work to repair any damage or defects caused by attempted repairs by You or a third party, negligent, malicious, or intentional damage, fire, lightning, explosions, flood, storm, tempest, frost, impact, or other external causes including failure of the public electricity or water supply (unless any of these are caused by the negligence of our contractor).

8.15.7 In respect of Silver and Gold subscription plans, after the commencement date of Your subscription, if the cost of work and materials in connection with any repairs or work to be carried out exceeds £300 (as calculated on the basis of the prices of our suppliers and our labour costs), any such work in excess of £300 shall not be included in the subscription and may be carried out

subject to additional payment on the basis of our quote provided to You separately.

8.15.8 In respect of Silver and Gold subscription plans, for the first ninety (90) days, if the cost of work and materials in connection with any repairs or work to be carried out in one rolling calendar year exceeds £800 (as calculated on the basis of the prices of our suppliers and our labour costs), any such work in excess of £800 shall not be included in the subscription and may be carried out subject to additional payment on the basis of our quote provided to You separately.

## **9. CONFIDENTIALITY**

9.1 Each party will keep confidential any Confidential Information disclosed to it by the other. Neither party will disclose any Confidential Information to any third party, save to its agents, subcontractors, advisers or to an employee who needs to have access to such Confidential Information in connection with the performance of any obligations under the Landlord Agreement, PROVIDED THAT the disclosing party will be responsible for ensuring that any person to whom it makes any such disclosure complies with this Clause.

9.2 This Clause 9 shall survive termination of this Agreement.

## **10. ELECTRICAL INSTALLATION**

10.1 When We refer to the electrical installation, We are referring to consumers units and all fixed wired final circuits throughout the property, and all accessories connected to final circuits i.e., socket outlets, light switches, lighting pendants etc.

10.1.1 Our subscription plans do not include any of the following:

10.1.2 any equipment that belongs to Distribution Network Operators (DNO), for example, cable-head, cut-out fuses and meter;

10.1.3 appliances that are connected to the electrical installation, for example, cookers, electric heaters including storage and panel/convector heaters, microwaves, kettles, and any white goods like washing machines, tumble driers, dish washers etc.;

10.1.4 decorative light fittings, lighting control systems, security alarms, smoke alarms and co detectors;

10.1.5 TV and audio-visual equipment;

10.1.6 latent defects within the electrical installation; (although We may be able to provide a separate quote to rectify any latent defects within the electrical installation).

10.1.7 Where electrical installation forms part of Your subscription plan, the parts in respect of repairs to the electrical installation covered by Your subscription plan are included up to a maximum of £200 per repair. The price of parts will be the prices of our suppliers (such as CEF). If We think that the price of parts will exceed £200, We will let You know as soon as reasonably possible.

## **11. PAYMENT**

11.1 Subject to any special terms which we may agree with you in the Order Confirmation or otherwise in writing, all charges shall be based upon the Landlord paying James Frew in advance of any Work taking place. Payable 14 days from date of invoice.

11.2 Payment by the Landlord shall be made by BACS, at the election of James Frew and as confirmed in the Order Confirmation.

11.3 Without prejudice to the foregoing, all charges for Services are non-refundable in the event of early cancellation by the Landlord.

11.4 Time of payment shall be of the essence of the Agreement. You shall not be entitled to set off or withhold any payment for any reason whatsoever. Subsequently, in certain circumstances expediting of services delivery following late payment may incur additional costs due to be

payable by the Landlord.

11.5 If you fail to make payment within the period specified in clause 11.1 then, without prejudice to any other right or remedy available to us, we shall be entitled to;

11.6 suspend any further service provision to you; and/or

11.7. suspend performance of the Services; and/or

11.8. cancel the Agreement.

11.9. The Landlord shall not be entitled by reason of any set-off, counter-claim, abatement, or other deduction to withhold payment of any amount due to James Frew.

11.10 If the Landlord's cheque is returned by the bank as unpaid for any reason, James Frew reserves.

11.11 the right to levy a "returned cheque" charge.

11.12 If you are late in making a payment under this Agreement for 30 consecutive days or more, we reserve the right to pass the matter to a reputable debt recovery company and you shall reimburse us on demand for all costs, expenses and losses associated therewith (including lost profit) or enter the court process to recover payments due if necessary.

11.13 In the event of the Landlord prematurely cancels the Agreement or any portion thereof, James Frew shall be entitled to 100% of the Contract Price including payment of time invested identified in the Quotation, plus the total sum of expenses incurred by James Frew, at the sole discretion of James Frew.

11.14 Unless otherwise agreed, the Landlord must be aware that third-party costs are payable by the Landlord in advance of the service commencing, this includes certain software or other third-party services.

11.15 All equipment supplied shall remain the property of the Company until payment is made in full or all sums due under all contracts and/or Agreements between the Company and the Landlord.

## **12. DELAYS AND LIABILITY**

12.1 The Company shall not be liable for any changes made without notice by the Landlord or a third-party employed by the Landlord affecting the Services delivered by the Company. Preceding or subsequent work connected with any adjustments required as a result of such changes shall be charged to the Landlord in accordance with these Terms and subject to quotation at the Company's discretion.

12.2 The Company shall use all reasonable endeavours to deliver Services relating to the Order Confirmation. However, the Company shall not be liable for delayed or non-conforming performance due to changes made by any third-party or other matters beyond the Company's control and reserves the right to make changes to Services where appropriate.

12.3 If the Landlord does not implement some or all of the Company's recommendations, the Company shall not bear any liability for any lack of success experienced by the Landlord relating to the Services.

12.4 James Frew have no responsibilities with regards to the Landlord being approved for any Scottish Government initiative including "ECO4".

12.5 James Frew shall have no liability for delay or for any effect upon the quality of the Works caused by external activities, third-party failures or problems suffered as a result of the Landlord's lack of communication or the lack of accessibility or cooperation of the Landlord.

## **13. INTELLECTUAL PROPERTY RIGHTS**

13.1 All Company-owned content and materials including all pre-existing Trademarks shall remain the sole property of the Company or its respective suppliers and the Company or its suppliers shall be the sole owner of all rights in connection therewith.

#### **14. CONFIDENTIALITY AND PERSONAL DATA**

14.1 Each party agrees to comply with its respective obligations under the Data Protection Act and all subsequent Acts including GDPR.

14.2 The Landlord shall be obliged to indemnify the Company for any loss, including costs incidental to legal proceedings, suffered by the Company as a result of the processing of personal data which the Landlord has contributed being in contravention of the Data Protection Act. The parties shall be obliged to notify the other party without undue delay of any claims raised against a party as described in the present clause.

#### **15. TERM, TERMINATION AND ASSIGNMENT**

15.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if the other party:

15.2 commits a material breach of the Contract and (if such breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

15.3 becomes or is bankrupt or is unable to pay your debts.

15.4 The Company shall, in addition to all other rights and remedies under these Terms be entitled to terminate this Contract without notice in the event that any of its charges or the Contract Price for the Services are not paid in accordance with these Terms.

15.5 The Landlord shall not be permitted to assign or transfer all or any part of its rights or obligations under the Contract and these Terms without the prior written consent of the Company.

15.6 The Company shall be entitled to assign or subcontract any of its rights or obligations under the Contract and these Terms and the Landlord acknowledges that certain elements of the Services will be provided by third-parties.

15.7 In the event of early cancellation no refund is due to the Landlord.

#### **16. SERVICE WARRANTY AND REPAIR SERVICE**

16.1 Unless otherwise agreed, all Service supplied by us includes a one-year manufacturer's warranty (excluding any other services offered by James Frew, which is not guaranteed) which commences five days after the Service is Completed or on Completion of the Work. We shall assign the remaining period of the manufacturer's warranty to You with effect from the date of delivery of the Service and, we will hold it in trust for your benefit. Such warranty shall be invalidated if you or a third-party tamper with or conduct any work on the Service in any way, that's not already agreed or part of the Scope of Works.

16.2 For the avoidance of doubt we shall not be responsible nor liable for any compatibility issues relating to any Service not supplied by us where we were not consulted or where we were consulted but our advice was not heeded and acted upon.

16.3 Following delivery of the Service, the Landlord shall be liable for the Service; should the Service subsequently either suffer damage or require repair not covered by the Warranty, the incident should be treated as an insurance issue and the Landlord liable to replace or pay for the damaged Service.

16.4 James Frew will, from the date of delivery of the Service; and following inspection of the Service, it is proven to the reasonable satisfaction of James Frew to not comply with the specification due to defects in design or assembly (other than specified in the Scope of Works or Architect/Engineering Drawings), repair the Service, this obligation will not apply where:

16.4.1 the Service has been altered in any way whatsoever, or has been subject to misuse or unauthorised repair;

16.4.2 the Landlord has failed to communicate to James Frew any change in installation arrangements that may affect the Service.

- 16.4.3 any maintenance requirements relating to the Service has not been complied with;
- 16.4.4 any instructions as to maintenance or care of the Service have not been complied with in all respects.
- 16.5 It is the Landlords responsibility to inspect the Service at the point of delivery. Any damages must be reported within 48 hours of the delivery time, and after such date will be deemed to be the Landlord's liability and the Landlord liable for replacement or cost of repair.
- 16.6 The Landlord shall be responsible for any periodic testing and or certification connected with the Service.
- 16.7 The Landlord is responsible for carrying out routine checks and any maintenance related to the Service.
- 16.8 The Landlord is responsible for all relevant paperwork and ensuring all legislative responsibilities are fulfilled to allow James Frew to deliver Services.
- 16.9 Landlord is solely responsible for the proper legal disposal of all Services purchased from James Frew at the end-of-life cycle of such Service and the Landlords sole responsibility to adhere with all relevant environmental legislation.

## **17. DISCLAIMER AND LIMITATION OF LIABILITY**

- 17.1 Except as expressly provided in this Agreement, no warranty, condition, undertaking or term, expressed or implied, statutory, or otherwise, as to the condition, quality, performance, durability or "fit for purpose" of the Services is given or assumed by us and all such warranties, conditions, undertakings, and terms are hereby excluded insofar as permitted by law.
- 17.2 WE SHALL NOT IN ANY CASE BE LIABLE TO YOU OR TO ANY OTHER PARTY FOR DIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL INDIRECT OR SIMILAR LOSS OR DAMAGES (INCLUDING ALL MANNER OF COSTS, FEES, AND EXPENSES) ARISING FROM BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE OR ANY OTHER CAUSE.
- 17.3 If any exclusion, disclaimer, or other provision contained in this Agreement is held to be invalid for any reason by a court of competent jurisdiction and James Frew Ltd becomes liable thereby for loss or damage that may lawfully be limited, such liability whether in contract, tort (including negligence but specifically excluding personal injury or death resulting from James Frew's negligence) or otherwise, will not exceed the value of the Order.
- 17.4 James Frew shall have no liability for delay or for any effect upon the quality of the Service caused by external activities, third party failures or problems suffered as a result of the Landlord's internal communication or the lack of accessibility or cooperation of the Landlord.
- 17.5 James Frew is only liable for delivering as stated in the Order and as outlined in the agreement.
- 17.6 James Frew will not be held responsible for any delay to the Service if payment is not received pursuant to Clauses 6 and 7 hereof.
- 17.7 James Frew cannot be held responsible for downtime or extensive periods of downtime not limited to and including;
- 17.7.1 unforeseen problems with Service.
- 17.7.2 power outages.
- 17.7.3 lack of Landlord preparation or failure to provide a sufficient Work Ready environment or Service necessary to complete the Work.
- 17.8 James Frew is not responsible for any Service, or any related Work purchased by the Landlord.
- 17.9 Unless otherwise agreed, it is the Landlords responsibility to maintain and protect the Service.
- 17.10 James Frew is not responsible for any compatibility issues or any performance issues with regards to the utilities or connecting to the Service.

17.11 In the event the Landlord is outside of area for delivery, we will deliver the Service to you at a pre-agreed delivery address and the Landlord will take full responsibility for the Service on delivery.

17.12 James Frew is not responsible for third-party mistakes or external delays and will not accept delay in payment to us from you as a result of such circumstances.

## 18. TERMINATION

18.1 James Frew may without prejudice to its other rights be immediately entitled to suspend or cancel each or any of its contracts with the Landlord upon the occurrence of any of the following:

18.1.1 the Landlord shall fail to make payment of any sum owing on the due date or commits any act of bankruptcy or makes any arrangements with its creditors or if any execution or distress is levied upon the Service by the Landlord; or

18.1.2 being a body corporate shall have a receiver or administrative receiver appointed or if any petition be presented for an administration order or if any petition be presented or resolution passed for the winding up of the same (otherwise than for the purpose of a bona fide amalgamation or reconstruction) or Compounds with its creditors or becomes insolvent or any step is taken to proceed to such winding up or receivership or if any court order is made upon or against any of the Landlord's property or anything similar or analogous to the foregoing occurs in any jurisdiction other than Scotland; or

18.1.3 the Landlord makes default in respect of any of its obligations under any of its contracts with James Frew. Any occurrence of the above events shall render all amounts owing in respect of Service provided by James Frew to the Landlord to become immediately due and payable.

18.2 We reserve the right to cancel the contract between us if: (i) we have insufficient stock to deliver the Services you have ordered; (ii) we do not deliver to your area; or (iii) one or more of the Services you ordered was listed at an incorrect price due to a typographical error or an error or change in the pricing information.

18.3 The Landlord will assume responsibility for all Service while stored or located on the Work Location or customer site.

18.4 In the event of cancellation, James Frew reserves the right to retrieve all property belonging to James Frew.

18.5 Ethical Clause -James Frew will not tolerate duplicity, deceit or pretence regards the parties using the Service, or in any way abusing the Service, reserving the right to terminate services as a result of such behaviour.

18.6 James Frew has the right to terminate services if the Landlord consistently damages or intentionally or unintentionally damages Service or any other aspect of the Work over a sustained period.

18.7 To cancel your Order, please contact James Frew at 83 New Street, Stevenston KA20 3HD, or by emailing [gassure@jamesfrew.com](mailto:gassure@jamesfrew.com), giving details of the Services ordered.

18.8 In the event that the Landlord cancels the Agreement or any portion thereof, James Frew shall be entitled to charge the Landlord up to the full Contract Price for Work as identified in the Order, including any additional expenses incurred by James Frew, at the sole discretion of James Frew.

18.9 Other than what is set out in 18.7 and 18.8, above no cancellation is offered by James Frew.

18.10 The Landlord is also subject to additional delivery costs if the delivery date is amended after the Services have been loaded.

18.11 Without prejudice to any other rights to which they may be entitled, the Company or the Landlord may terminate this Agreement by written notice if the other party commits any material breach of any of the terms of the Agreement and the breach remains un-remedied after thirty days of the defaulting party being notified by the other party of the breach and of the other party's intention to terminate unless the breach is remedied. Such notice must be provided in

writing to the other party.

## 19. FORCE MAJEURE

19.1 James Frew shall not be liable to you or be deemed to be in breach of the Agreement by reason of delay in performing, or any failure to perform, any of our obligations in relation to the Services, if the delay or failure was beyond our reasonable control. Without prejudice to the

19.2 generality of the foregoing, the following shall be regarded as causes beyond our reasonable control:

19.3 war or threat of war, sabotage, pandemic flu or virus, insurrection, civil disturbance or requisition; acts, restrictions, regulations, bye-laws, prohibitions or measures or any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; pandemic flu, strikes, lock-outs or other industrial actions, compliance deadlines, power cuts or trade disputes (whether involving our employees or of a third-party); or difficulties in obtaining the System, labour, fuel, parts or machinery.

19.4. James Frew shall not be liable to you with regard to any technical problems, external circumstances preventing suppliers delivering against deadlines or preventing delivery of third-party services against agreed commitments.

## 20. RETENTION OF TITLE

20.1 Although the Service may have been delivered and risk in the Service may have passed to the Landlord, title and ownership in the Service shall remain with James Frew and shall pass to the Landlord only when James Frew has received in cash or cleared funds the (i) full price for the Service, (ii) full value of the hired Service (iii) any applicable VAT and (iv) payment of any other sums then due by the Landlord to James Frew under the contract or under any other contract, agreement or arrangement between them whereby James Frew will supply Service or services to the Landlord.

20.2 Until title and ownership in the Service does pass to the Landlord then the Landlord shall:

20.2.1 hold the Service on a fiduciary basis for James Frew;

20.2.2 store or keep the Service separate from its own Service and the Service of third parties; and/or

20.2.3 clearly mark or identify the Service as being the property of James Frew; and/or

20.2.4 not destroy, deface, or obscure any identifying mark or packaging on or relating to the Service; and/or

20.2.5 ensure that the Service are kept safe, secure, and maintained in satisfactory condition; and/or

20.2.6 keep the Service insured against loss or damage on James Frew's behalf and against all normal and usual commercial risks in the full replacement value thereof all to the reasonable satisfaction of James Frew and the Landlord hereby undertakes to hold any proceeds of such insurance and all rights to obtain payments under such insurance in trust for James Frew. On request, the Landlord shall produce the policy of insurance to James Frew.

20.3 For as long as title in the Service has not passed to the Landlord, James Frew, its employees, or agents may at any time re-take possession of the Service in such way as it thinks fit, including entering any premises of the Landlord where the Service are to remove them.

20.4 The Landlord may not re-sell the Service except with James Frew's written permission and upon such terms and conditions as James Frew shall deem applicable.

20.5 The Landlord's right to possession of the Service shall terminate immediately if:

20.5.1 the Landlord (being an individual, or in the case of the Landlord being a partnership or a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000, then any individual partner, individual member or individual designated member) has entered into sequestration, has signed a trust deed for behoof of his creditors or has agreed an arrangement

or composition with his creditors or becomes apparently insolvent, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Landlord or notice of intention to appoint an administrator is given by the Landlord or its directors or by a qualifying floating charge holder (as defined by the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up in respect of the Landlord, or any proceedings are commenced relating to the insolvency or possible insolvency of the Landlord; or

20.5.2 the Landlord suffers or allows any diligence, execution, or distress to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/her obligations under the contract or any other contract between James Frew and the Landlord, or is unable to pay its debts within the meaning of the Insolvency Act 1986 or the Landlord ceases to trade; or

20.5.3 the Landlord encumbers or in any way disrupts any part of the Service.

20.6 The Landlord grants James Frew, its agents, and employees an irrevocable licence at any time to enter any premises where the Service are or may be stored in order to inspect them, or, where the Landlord's right to possession has terminated, to recover them.

20.7 On termination of the contract, howsoever caused, James Frew's rights contained in Clauses 20 shall remain in effect.

## **21. MISCELLANEOUS**

21.1 The Company reserves the right to modify or discontinue, temporarily or permanently, the Services with or without notice to the Landlord and the Company shall not be liable to the Landlord or any third-party for any modification to or discontinuance of these Services save for the return of any prepaid sums in connection with the provision of the Services which are subsequently not provided.

21.2 The equipment/system supplied by us includes a 12-months manufacturer's warranty (excluding wireless thermostats, carbon monoxide detectors and smart thermostats which is not guaranteed) which commences on the day on which the system is delivered to us. We hereby as at the installation date assign the remaining period of the manufacturer's warranty to you and, to the extent that we cannot assign the manufacturer's warranty to you for any particular item, we will hold it in trust for your benefit. Such warranty shall be invalidated if you, the Landlord do not maintain the equipment/system from the date of installation as outlined in the manufacturer's warranty or a third-party (counter to the warranty) tampers with or work on the equipment/system in any way.

21.3 For the avoidance of doubt, we shall not be responsible nor liable for any compatibility issues relating to any equipment/system not supplied by us where we were not consulted in accordance with this Agreement or where we were consulted but our advice was not heeded and acted upon.

21.4 If any term of these Terms is found illegal, invalid, or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining Terms, be deemed omitted from these Terms and shall in no way affect the legality, validity or enforceability of the remaining Terms which shall continue in full force and effect and be binding on the parties to the Contract.

21.5 Any person who is not a party to the Contract shall not have any rights under it.

21.6 All notices must be in writing to James Frew via email on [gassure@jamesfrew.co.uk](mailto:gassure@jamesfrew.co.uk).

## **22. SUPPORT SERVICES**

22.1 Where you have contracted for Support Services (as set out in the Quotation), we will for the duration of this Agreement:

22.1.1 endeavour to achieve a response time of (in line with sector norms) unless otherwise agreed in the Order Confirmation (time not being of the essence); the Support Services will be generally available between 8.00am and 5.00pm, Monday to Friday (excluding public holidays).

22.1.2 the fix time will depend upon the complexity of the Landlord issue; however, we will endeavour to resolve the problem as soon as is necessary (time not being of the essence)

22.1.3 both Out of Hours and On Demand Services will require additional charges and are subject to quotation and availability.

22.2 PROVIDED THAT we shall not be required to provide Support Services or shall (at our sole discretion) be entitled to provide a Support Services only on payment of such additional fee as we may agree with you, where a defect has arisen or maintenance is required as a result of you or a third-party altering, modifying or in any altering the system.

22.3 Where you have not contracted for Support Services from us in relation to Services, we may (subject to availability) provide Support Services on an, Services basis at a standard rate per hour (plus VAT and outlays). Such Support Services will be generally available between 8.00am and 5.00pm, Monday to Friday (excluding public holidays).

22.4 Where the Landlord has contracted for a support plan or subscription Services direct from James Frew (separately from any other third-party maintenance service), as outlined via [www.gassure.com](http://www.gassure.com) as subject to the online terms and conditions.

22.5 Due to the nature of the Services to be provided, no refund is offered by James Frew, except in the case of James Frew providing incorrect services counter to those outlined in the Order Confirmation.

## 23. ENTIRE AGREEMENT

23.1 The parties acknowledge and agree that the Contract supersedes any prior agreement, understanding or arrangement between the parties, whether made orally or in writing and constitute the entire agreement between the Company and the Landlord relating to these Services. Therefore, except as expressly provided, all other conditions and warranties (implied, statutory, or otherwise) are hereby excluded to the fullest extent permitted by law.

## 24. LAW AND JURISDICTION

24.1 The Company and the Landlord shall be obliged to attempt to settle any disputes arising between them including disputes relating to the existence or validity of the Contract through negotiation provided always that either party shall be entitled at all times to exercise any of its other remedies including through taking legal action.

24.2 The Contract shall be governed by and construed in accordance with Scots law and the parties hereby agree to submit to the exclusive jurisdiction of the Scottish courts.

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