

# COMFORT CLUB SERVICE AGREEMENT TERMS AND CONDITIONS

## 1. DEFINITIONS

1.1 In this Agreement:

**"Agreement"** means the Comfort Club service agreement between the Company and the Customer to which these Conditions are annexed and incorporated, as same may be amended from time to time;  
**"Business Day"** means any day other than a Saturday, Sunday or any other day that is a legal holiday in Vancouver, British Columbia;  
**"Company"** means Gandy Installations Ltd.;  
**"Conditions"** means these terms and conditions which are annexed to and form a part of the Agreement;  
**"Customer"** means the person, company, or other entity identified on the first page of the Agreement who purchases the Services from the Company;  
**"Equipment"** means the HVAC equipment installed by the Company for which the Services are provided;  
**"HVAC"** means heating, ventilation and air conditioning;  
**"Overtime Service"** means provision of the Services outside of the Company's regular business hours or on a day other than a Business Day;  
**"Overtime Service Callout Fee"** means the increased Service Callout Fee charged by the Company to the Customer for sending a service person to attend at the Premises for Overtime Service, which fee is in addition to the cost of parts and labour;  
**"Premises"** means the site address where the Equipment was or is to be installed;  
**"Price"** means the price for the Services, as more particularly described on the first page of the Agreement;  
**"Service Callout Fee"** means the set fee charged by the Company to the Customer for sending a service person to attend at the Premises, which fee is in addition to the cost of parts and labour;  
**"Services"** means the maintenance services purchased by the Customer from the Company for the Equipment, as determined by the service plan elected by the Customer and more particularly described under the heading "Plan Details" on the first page of the Agreement;  
**"Start Date"** means the date upon which the Company commences providing the Services, as more particularly set out on the first page of the Agreement; and  
**"Term"** means the period commencing on the Start Date and ending upon the termination of the Agreement, during which the Services will be provided.

1.2 The headings in this Agreement are for convenience only and will not affect its interpretation.

## 2. SERVICES AND PRICING

2.1 The Company will attend at the Premises and provide the Services during the Term for the Price, in accordance with the terms and subject to the conditions of the Agreement.

2.2 The Company reserves the right to change the Price of the Services or any other service or product offered by the Company at any time without notice to the Customer, at the Company's sole and unfettered discretion. Notwithstanding the foregoing, in the event the Price is increased, the Company will use reasonable efforts to inform the Customer of such increase in advance of invoicing unless such increase reflects an increase in cost to the Company for reasons beyond the Company's control.

2.3 Unless otherwise set out in the Agreement, the Price for the Services shall not include the price of parts required to repair, service or replace the Equipment. The Customer shall be responsible for such additional costs.

2.4 All Overtime Service will be charged at the overtime hourly rate set by the Company. If free labour is included in the Customer's purchased Services, the Customer will be charged the difference between the Company's hourly rate for the Services and the hourly overtime rate for the Services.

2.5 The Company will charge a Service Callout Fee to the Customer upon sending a service person to the Premises. The Company will charge an Overtime Service Callout Fee to the Customer upon sending a service person to the Premises for Overtime Service. One Service Callout Fee per piece of Equipment per year will be waived for gold and platinum members of the Comfort Club. The Service Callout Fee cannot be waived for Overtime Service calls. If a gold or platinum member of the Comfort Club requires Overtime Service, the Company may charge the Customer the difference between the Service Callout Fee and the Overtime Service Callout Fee.

2.6 Any furnace over 20 years in age does not qualify for free labour. The Customer will pay to the Company for any labour costs incurred in servicing a furnace over 20 years in age.

2.7 The Company will only provide Services with respect to the specific Equipment for which the Services are purchased by the Customer. If the Customer requests Services from the Company with respect to equipment other than the Equipment for which the Services were purchased, the Company reserves the right to charge the Customer for any labour and parts included in performing such services separately and independently of this Agreement.

2.8 Unless otherwise agreed by the Company, the Customer will make payment to the Company no later than 30 days after the date an invoice is issued by the Company.

2.9 If the Customer fails to make any payment due to the Company by the date such payment is due, then without prejudice to any other right or remedy available to the Company, the Company will be entitled to:

- terminate the Agreement or suspend any further Services to the Customer; and
- charge the Customer interest (both before and after any judgment) on the amount unpaid at a rate per annum of 5% above the prime lending rate of the Company's bank.

2.10 The Customer will pay all amounts due to the Company at the time they are due without any deduction, whether by set off, counterclaim or otherwise.

## 3. SCHEDULING AND SITE VISITS

3.1 The Company will attend at the Premises to provide the Services at such times as are mutually agreed to by the Company and the Customer.

3.2 Any appointment scheduled by the Company shall be subject to change depending on the availability of the parts and labour required to perform the requested Services. If due to operational difficulties the Company is unable to attend at the Premises on the day scheduled by the Company, the Company reserves the right to reschedule the appointment to the earliest possible opportunity without liability to the Customer.

3.3 The Company's obligation to guarantee an appointment to provide Services within 1 or 2 Business Days of the Customer's request (as determined by the service plan purchased by the Customer) will be limited to circumstances which the Company deems to be emergency situations (e.g. gas leaks, heat shut off, flooding etc.). The Customer acknowledges that any Services provided by the Company in the foregoing circumstances may be purely diagnostic as the Company's ability to perform repairs or maintenance will depend on the availability of the required parts for the affected Equipment.

## 4. TERM AND TERMINATION

4.1 This Agreement will have an initial Term of twelve (12) months from the Start Date. The Term will automatically renew for further twelve (12) month periods unless terminated by either the Customer or the Company in accordance with this Agreement.

4.2 The Customer may terminate this Agreement upon delivery of written notice to the Company no fewer than sixty (60) days prior to the last day of the Term then in effect. In the event the Customer terminates the Agreement, the Customer will be responsible for making all payments owing to the Company under this Agreement for the remainder of the Term.

4.3 The Company may terminate this Agreement immediately upon delivery of written notice to the Customer if the Customer: (a) is in arrears of any payment due under the Agreement; or (b) breaches any term or condition set out in this Agreement and fails to remedy that breach within five (5) days of receiving notice of the breach.

4.4 The Company may terminate this Agreement without cause upon thirty (30) days' written notice to the Customer. In the event the Customer is not in breach of any term or condition of this Agreement at the time the Company delivers notice of termination, the Company will reimburse the Customer for any payments received by the Company with respect to Services that the Company will no longer perform.

4.5 In the event the Company incurs any loss or expense arising from the Customer's breach of a term or condition of this Agreement, the Company reserves the right to recover such loss or expense from the Customer.

4.6 Subject to section 4.2, in the event the Agreement is terminated, the Customer will be responsible for cancelling any further preauthorized or automatic payments to the Company.

## 5. RESPONSIBILITY FOR EQUIPMENT AND SAFETY

5.1 The Customer shall be wholly responsible for:

- maintaining a suitable and safe means of access to and egress from the Equipment at the Premises for the Company's employees and agents, and their tools and equipment;
- any loss or damage caused to the Equipment;
- ensuring that the Equipment is not improperly used or handled;
- effecting adequate insurance coverage for the Equipment for its full replacement value against the risk of loss or damage;
- ensuring the Equipment remains in the location in which it was installed within the Premises; and
- the safety of all persons (including employees and agents of the Company) entering the Premises where the Equipment is located.

5.2 The Customer shall bear all risks arising in connection with the siting and operation of the Equipment.

## 6. LIMITATION OF LIABILITY

6.1 Except in respect of death or personal injury or property damage caused by the negligence or willful misconduct of the Company or any of its employees or agents, neither the Company nor any of its employees or agents shall be liable to the Customer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of this Agreement, for any loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (and whether caused by the negligence of the Company or any of its employees or agents, or otherwise) which arise out of or in connection with the Company's obligations under this Agreement, except as expressly provided in these Conditions.

6.2 The Company shall not be liable to the Customer for any damage caused to the Premises by the Company's employees or agents, or their vehicles, tools or equipment, if such damage results from the Customer's failure to ensure a suitable and safe means of access to and egress from the Equipment.

6.3 Except as otherwise provided in these Conditions, the Company has no obligation, duty or liability to the Customer in contract, tort (including negligence or breach of statutory duty) or otherwise.

6.4 The Company's liability for any breach of the terms of this Agreement or otherwise will be limited to the value of the Services provided to the Customer from the Company in the 12 months prior to the breach of this Agreement.

6.5 The Customer will indemnify and save harmless the Company, and each of its officers, directors, employees and agents (each, an "Indemnified Party"), to the maximum extent permitted by law, from and against all claims, actions, liabilities, damages, losses, awards, judgments, settlements, proceedings, demands and expenses (including legal fees, disbursements, and applicable taxes) of every nature and description brought or recovered against an Indemnified Party, for any reason arising out of or in connection with this Agreement, including, without limiting the generality of the foregoing, any performance or nonperformance of an obligation under this Agreement by the Customer, or any act, omission, or negligence of the Customer that occurs in connection with the Equipment or Services contemplated by this Agreement.

## 7. GENERAL

7.1 None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except by written agreement of the Company and the Customer.

7.2 This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable hereto.

7.3 This Agreement is the entire agreement between the parties with respect to the matters contained herein and supersedes all other prior agreements and discussions between the parties. Any amendments to this Agreement shall only be binding if the amendment is made in writing and signed by the parties.

7.4 If any provision of this Agreement is determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be severed from this Agreement and be ineffective to the extent of such illegality, invalidity or unenforceability and the remaining provisions shall continue in full force and effect.

7.5 The Customer shall not assign its right, title or interest in and to this Agreement without the prior written consent of the Company, which consent may be arbitrarily withheld. The Company may assign this Agreement at any time without the prior written consent of the Customer.

7.6 All monies payable and dollar amounts referred to in this Agreement are in the lawful currency of Canada.