

GENERAL TERMS AND CONDITIONS – JP McHALE PEST MANAGEMENT, LLC

1 APPLICATION OF THESE CONDITIONS

- 1.1. These General Terms and Conditions – JP McHale Pest Management, LLC (these “Conditions”) are incorporated into all contracts for pest control or other services made by JP McHale Pest Management, LLC or its applicable subsidiary (collectively, “JPMPM, LLC”).
- 1.2. In the event of any inconsistency between Customer’s contract(s) with JPMPM, LLC and these Conditions, the terms and conditions of these Conditions will control.
- 1.3. Certain capitalized terms are defined in §15.

2 INSPECTION AND PREPARATORY PEST CONTROL

- 2.1. Prior to the commencement of any services to be provided under the Agreement, JPMPM, LLC may, at its option, inspect the Object in order to make a risk assessment.
- 2.2. Based on the results of the inspection mentioned above in section 2.1, JPMPM, LLC may carry out preparatory Pest Control on the terms and conditions mutually agreed upon by the Parties. If the Customer does not agree to the preparatory Pest Control which JPMPM, LLC determines are necessary to provide the services, JPMPM, LLC may, at its option, cancel the Agreement with no further obligation to Customer.

3. CONTRACT PERIOD AND RENEWAL

- 3.1. Unless explicitly stated otherwise in the Agreement, the “Contract Period” is One (1) year from the effective date of the Agreement.
- 3.2. If either Party does not wish to renew the Agreement, this Party must notify the other Party no later than three (3) months prior to the end of the Contract Period or any renewal period. If such notice is not given, the Agreement is automatically renewed and extended for an additional one (1) year from the end of the initial Contract Period or any renewal period.

4 COMMENCEMENT OF THE AGREEMENT

- 4.1. The Agreement will enter into force on the date the first annual fee is paid in accordance with section 5.1 below.

5 FEES AND CHARGES

- 5.1. The Customer undertakes to pay an annual fee as set out in the Agreement. The annual fee shall be paid annually in advance, with the first annual fee due prior to commencement of any services (including preparatory Pest Control in accordance with Section 2 above), unless explicitly stated otherwise in the Agreement.
- 5.2. JPMPM, LLC may increase the annual fee with respect to any future year. If JPMPM, LLC increases any annual fee by more than the Permitted Increase, JPMPM, LLC shall notify Customer of any increase of the annual fee no later than three (3) months prior to date on which the next annual fee is due. In the case of such an increase by more than the Permitted Increase, the Customer may, at its option, terminate the Agreement (effective on the day prior to the next annual fee payment date) by delivering a written request for termination to JPMPM, LLC. Such termination request must be delivered to JPMPM, LLC not later than thirty (30) days after the Customer's receipt of JPMPM, LLC's notification of increase. Such termination will not relieve Customer of its obligations to pay any amounts due to JPMPM, LLC with respect to any period prior to the termination date.
- 5.3. JPMPM, LLC reserves the right to, in addition to the annual fee, charge the Customer for JPMPM, LLC's performance of additional services (such as expedited service, technical service and troubleshooting), in each case as such additional services are mutually agreed by Customer and JPMPM, LLC.
- 5.4. In the event of a late payment a penalty interest in arrears will apply at LIBOR plus 3% (not to exceed the maximum interest rate allowable by applicable law and regulation).

6 CHANGES TO THE AGREEMENT

- 6.1. JPMPM, LLC may from time to time modify the terms of the Agreement, including these Conditions. Any such change will not be effective against Customer unless JPMPM, LLC notifies Customer in writing of such potential changes no later than three (3) months prior to the proposed effective date of the change.
- 6.2. Notwithstanding the foregoing, with respect to any change to the Agreement reasonably required in order to comply with applicable law and regulation or reasonably necessary in order to provide the services, JPMPM, LLC shall give notice to Customer as soon as practicable under the circumstances, which notice must specify the effective date of the proposed change.
- 6.3. If the Customer does not accept the changes, the Customer may, at its option, terminate the Agreement by delivering a written request for termination to JPMPM, LLC not later than ten (10) days after the Customer's receipt of JPMPM, LLC's notification of the changes. In the event of such termination, JPMPM, LLC shall reimburse the Customer for any unused portion of the most recent prepaid annual fee (based on a 365-day year and actual number of days elapsed).

7 JPMPM, LLC'S OBLIGATIONS

- 7.1. JPMPM, LLC will perform Pest Control at the Object. The method of Pest Control will be determined by JPMPM, LLC on a case-by-case basis with attention to human welfare, environmental aspects and such other factors as JPMPM, LLC determines to be appropriate. In the event that the Agreement includes Pest Control of Movables, and Pest Control must be performed at another location than at the Object, the Customer shall be responsible for all reasonable and documented costs incurred by JPMPM, LLC for transporting Movables.
- 7.2. JPMPM, LLC shall use commercially reasonable efforts to mitigate any risks related to the working environment at the Object.
- 7.3. JPMPM, LLC will provide documentation regarding inspections, proposals for measures, reading protocols, etc. related to the Agreement. The Customer may use such documentation in the course of the Customer's business. The documentation is provided for the Customer's reliance only and JPMPM, LLC provides the documentation on the condition that no third party is entitled to rely on the content of the documentation.
- 7.4. Other than mounting and dismounting of JPMPM, LLC's Equipment, JPMPM, LLC will not be responsible for construction or alteration of any Buildings in connection with providing the services unless explicitly agreed upon in the Agreement.
- 7.5. JPMPM, LLC's obligations do not include professional food handling unless explicitly agreed upon in the Agreement.
- 7.6. JPMPM, LLC's obligations do not include Pest Control of Movables and/or Goods unless explicitly agreed upon in the Agreement, and in any event subject to the provisions in section 7.1.
- 7.7. JPMPM, LLC will perform the services during the normal operational hours of JPMPM, LLC unless explicitly agreed otherwise in the Agreement.

8 THE CUSTOMER'S OBLIGATIONS

- 8.1. The Customer shall:
 - 8.1.1. grant JPMPM, LLC access to the Object in accordance with JPMPM, LLC's instructions;
 - 8.1.2. provide any equipment reasonably requested by JPMPM, LLC for access to the Object. This includes, but is not limited to, ladders and skylifts;
 - 8.1.3. perform any preparations, prior to Pest Control, in accordance with JPMPM, LLC's instructions. This includes, but is not limited to, construction or alteration of Buildings as requested by JPMPM, LLC's in connection with the services;

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- 8.1.4 carefully follow all instructions given by JPMPM, LLC;
- 8.1.5 ensure that all relevant areas or parts of the Object are accessible for the placement or mounting of equipment by JPMPM, LLC;
- 8.1.6 ensure that proper power supply, in accordance with JPMPM, LLC's instructions, is available if electrical or electronic equipment is being or has been mounted. This may include power supply from the electrical grid or via battery power;
- 8.1.7 be responsible for electricity revisions, and any electricity safety measures required at the Object;
- 8.1.8 notify JPMPM, LLC of any particular conditions related to the Object. This includes, but is not limited to, any sensitive or restricted areas as well as any restrictions related to the access to these areas and/or other parts of the Object. To the extent necessary, the Customer shall provide JPMPM, LLC with any special equipment or similar which is needed to access all or part of the Object;
- 8.1.9 immediately notify JPMPM, LLC if the Customer becomes aware that any of JPMPM, LLC's Equipment, including electronic traps and monitoring devices, signage, or control stations, has been damaged, moved, improperly used, or otherwise harmed or mishandled; and
- 8.1.10 immediately notify JPMPM, LLC if the Customer suspects or becomes aware of any circumstances or events related to the Agreement which may adversely affect any Party's ability to fulfill its obligations under the Agreement.
- 8.2 The Customer shall comply with the applicable working environment legislation with respect to the Object. In addition, the Customer must, regardless of whether this is required by the applicable working environment legislation or not, create a safe working environment for JPMPM, LLC's staff. This includes an obligation for the Customer to provide information and otherwise take any necessary measures, to create a safe working environment for JPMPM, LLC's staff.
- 8.3 The Customer shall be responsible for any restoration of Buildings following the mounting and/or dismounting of JPMPM, LLC's Equipment and/or after Pest Control.
- 9 EQUIPMENT; DATA; INTELLECTUAL PROPERTY RIGHTS**
- 9.1 JPMPM, LLC's Equipment remains the property of JPMPM, LLC unless explicitly agreed otherwise in the Agreement.
- 9.2 The Customer shall be responsible for safeguarding JPMPM, LLC's Equipment. Without limiting the foregoing, the Customer shall reimburse JPMPM, LLC for the cost of any JPMPM, LLC's Equipment which is damaged, lost or destroyed as a result of the Customer's actions or omissions.
- 9.3 JPMPM, LLC is entitled to enter the Object and repossess JPMPM, LLC's Equipment upon the expiration, cancellation or termination of the Agreement.
- 9.4 The Customer, at its own cost, shall be responsible for disposing of the Customers' existing hardware products in a manner which is environmentally friendly and consistent with applicable law and regulation.
- 9.5 Some JPMPM, LLC's Equipment have an integrated system where Data (including information regarding the use and performance of the JPMPM, LLC's Equipment, such as but not limited to equipment failures, observations of equipment performance, measurement data, sensor levels) is stored automatically. Such JPMPM, LLC's Equipment may digitally send, upload, communicate or transmit Data to JPMPM, LLC for use by JPMPM, LLC in accordance with this section 9.5. All Data relating to the Service is owned by JPMPM, LLC. JPMPM, LLC may use Data for any purpose including but not limited to provide and manage the Service, statistical purposes, development of the Service, JPMPM, LLC's Equipment and other JPMPM, LLC products or services, research and marketing. To the extent that personal data of Customer's users is included in the Data, JPMPM, LLC will not share or disclose personally-identifying information of Customer's users except as required to provide the Service and to comply with applicable laws.
- 9.6 All Intellectual Property Rights in, the Service, Data and/or JPMPM, LLC's Equipment is and remains the property of the JPMPM, LLC (and its licensors). If the Customer provides JPMPM, LLC with ideas, comments or suggestions relating to the Service and/or JPMPM, LLC's Equipment all Intellectual Property Rights in that feedback, and anything created as a result of that feedback (including new material, services, methods, enhancements, modifications or derivative works), are owned solely by JPMPM, LLC and JPMPM, LLC may use or disclose the feedback for any purpose. Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from JPMPM, LLC to the Customer.
- 9.7 For the purposes of this Section 9, "Service" means the services to be provided to Customer by JPMPM, LLC under this Agreement.
- 10 LIMITATION ON LIABILITY**
- 10.1 JPMPM, LLC will be liable only for direct damage to property or personal injury caused by the gross negligence of JPMPM, LLC in its performance of services at the Object. Without limiting the foregoing, JPMPM, LLC will not be liable to any person for special, indirect, incidental or consequential damages, including, but not limited to, loss of business, opportunity, revenue, or data.
- 10.2 JPMPM, LLC's liability under the Agreement shall never exceed the replacement value of damaged property. The liability of JPMPM, LLC under the Agreement is under all circumstances, limited fees paid under the Agreement.
- 10.3 JPMPM, LLC will not be liable for any fees, fines, administrative fines, penalties, or any other similar sanctions which may be imposed on the Customer following an inspection or an incident.
- 10.4 JPMPM, LLC will not be liable for any fees incurred by or imposed on the Customer for supervisions or inspections according to any applicable environmental legislation.
- 11 COMPLAINTS AND LIMITATION RULES**
- 11.1 The Customer shall notify JPMPM, LLC in writing of any damages or claims as soon as possible after the Customer has become aware of or should have become aware of (i) the damage, or (ii) the event, negligence or omission causing the damage, in each case in reasonable detail. Any such notice must be delivered to JPMPM, LLC within three (3) months from the earliest of (w) the time the latest service was completed or interrupted, (x) the termination or expiry of the Contract, (y) the date on which the Customer actually became aware of the claim, or (z) the date on which the Customer should have become aware of such damages or claims.
- 11.2 If written notice is not given within the time set forth in section 11.1 the Customer has forfeited its right to claim compensation from JPMPM, LLC.
- 12 FORCE MAJEURE**
- 12.1 If JPMPM, LLC's performance of its obligations under the Agreement is prevented or is rendered unreasonably difficult by circumstances which JPMPM, LLC has no reasonable control over, JPMPM, LLC will not be obligated to perform its obligations for the time which the circumstance in question prevents JPMPM, LLC's performance or renders it unreasonably difficult, nor for a reasonable time thereafter. Such circumstances include, but are not limited to, war, mobilization, insurrection, confiscation, currency restrictions, shortage of means of transport, general scarcity of goods, restrictions on fuel, disturbance on the labour market, disruptions in hardware or software, acts of civil or military authorities, exceptional weather conditions, or any other circumstance beyond the control of JPMPM, LLC.
- 12.2 If a circumstance described in section 12.1 prevents JPMPM, LLC's performance or renders it unreasonably difficult for more than six (6) months, either Party may terminate the Agreement with immediate effect by notifying the other Party in writing.

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13 TERMINATION OF THE AGREEMENT

- 13.1 The Customer may terminate the Agreement if JPMPM, LLC
- (i) materially breaches the Agreement and despite the Customer's written request for remedy fails to correct the breach; or
 - (ii) despite the Customer's written request for remedy repeatedly breaches the Agreement in the same manner more than twice in any six (iii) (6) month period. In the event of such immediate termination, JPMPM, LLC shall reimburse the Customer for any unused portion of the most recent prepaid annual fee (based on a 365-day year and actual number of days elapsed).
- 13.2 JPMPM, LLC may terminate the Agreement with immediate effect and/or suspend its performance of the service with immediate effect if
- (i) the Customer has failed to make a payment under the Agreement by the specified deadline;
 - (ii) the Customer has not cooperated with or assisted in JPMPM, LLC's performance of the service as reasonably requested by JPMPM, LLC;
 - (iii) the Customer has not followed JPMPM, LLC's instructions with respect to the services;
 - (iv) the Customer has failed to fulfill its obligations under section 8 above, if the Customer in any other way has failed to fulfill its obligations towards JPMPM, LLC, or if the Customer otherwise has breached the Agreement; or if
 - (v) JPMPM, LLC has particular grounds for termination. Such particular grounds include, but are not limited to, changes in applicable legislation, a substantially increased risk of damages, or a change in the business activities of the Customer, in each case which in JPMPM, LLC's reasonable discretion prevent or materially decrease JPMPM, LLC's ability to perform the services or to receive the benefits (economic or otherwise) of the Agreement. Solely with respect to termination pursuant to Section 13.2(v) above, the Customer will not be liable to JPMPM, LLC for special, indirect, incidental or consequential damages, including, but not limited to, loss of business, opportunity, revenue, or data.

14 PROCESSING OF DATA – CONFIDENTIALITY

- 14.1 *Personal Data* - The Parties are responsible for ensuring that the processing of personal data takes place in accordance with applicable law and regulation.
- 14.2 *Confidentiality* - JPMPM, LLC undertakes not to disclose confidential information which JPMPM, LLC has received from the Customer or which JPMPM, LLC learns as a consequence of the performance of the services under the Agreement to a third party. This obligation only applies to information which the Customer has labelled or identified as being confidential.
- 14.3 The obligation of confidentiality in section 14.2 will not apply to information which was publicly known, information which JPMPM, LLC has developed independently without relation to information received from the Customer, or to information received by JPMPM, LLC from a third party. Moreover, the obligation of secrecy will not prevent disclosure made by JPMPM, LLC which is required by applicable law or regulation or by an order issued by a governmental authority.

15 DEFINITIONS. As used herein:

- 15.1 *Agreement* - "Agreement" means a legally binding contract between JPMPM, LLC and the Customer for the sale and purchase of services ordered by the Customer and accepted by JPMPM, LLC in accordance with these Conditions. The Agreement and these Conditions constitute one and the same document.
- 15.2 *JPMPM, LLC's Equipment* - "JPMPM, LLC's Equipment" means all equipment owned by JPMPM, LLC and mounted by JPMPM, LLC or placed in or adjacent to the Object by JPMPM, LLC.
- 15.3 *Building* - "Building" means buildings at the Object and properties at the Object which belong to the building and includes, for example, fixtures, and other objects which the Building has been fitted with for permanent use. The sewage system is never included in a "Building".
- 15.4 *Customer* - "Customer" means the Party to the Agreement receiving any services from JPMPM, LLC for remuneration in accordance with the Agreement.
- 15.5 *Data* - "Data" means all data (including personal data) that is held, created, generated, stored, used or transferred when using the JPMPM, LLC's Equipment as part of the Service.
- 15.6 *Goods* - "Goods" means raw materials, products being processed, fully- or semi-finished goods, goods acquired for reselling, and any packing materials for the items mentioned above.
- 15.7 *Intellectual Property Rights* - "Intellectual Property Rights" means any and all rights comprising or relating to: (a) patents, patent disclosures and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith; (c) authorship rights, copyrights and copyrightable works (including computer programs) and rights in data and databases; (d) trade secrets, know-how and other confidential information; and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection provided by applicable law in any jurisdiction throughout the world.
- 15.8 *Movables* - "Movables" means personal property and includes, for example, furniture, equipment, machinery, shelves, gondolas, etc. which can be moved from the Object.
- 15.9 *Object* - "Object" means the business premises of the Customer subject to Pest Control as specified in the Agreement.
- 15.10 *Party/Parties* - "Party" and/or "Parties" means JPMPM, LLC or the Customer, or both JPMPM, LLC and the Customer (as is applicable).
- 15.11 *Permitted Increase* - "Permitted Increase" means, with respect to any annual fee, a percentage increase of not more than 8% of the prior year's aggregate annual fee.
- 15.12 *Pest Control* - "Pest Control" means professional measures for pest control through counselling, use of traps or other mechanical Pest Control measures and/or chemical treatment, in accordance with applicable standards and regulations.

16 DISPUTES

- 16.1 This Agreement will be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would result in the application of the laws of any other jurisdiction. ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY MUST BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF NEW YORK IN EACH CASE LOCATED IN THE SOUTHERN DISTRICT OF NEW YORK, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING.
- 16.2 EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 16.1.