

ABC Fire & Security Ltd – Terms and Conditions (Commercial) -
The Client's attention is particularly drawn to the provisions of clause 10.

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 13.7.

Contract: the contract between the Supplier and the Client for the supply of Goods and/or Services in accordance with these Conditions.

Client: the person or firm who purchases the Goods and/or Services from the Supplier.

Design: any drawings or designs issued by the Supplier in connection with the Goods and Services.

Force Majeure Event: has the meaning given to it in clause 12.1.

Goods: the goods (or any part of them) set out in the Quotation.

Goods Specification: the specification for the Goods set out in the Quotation.

Insolvency Event means (a) any distress, execution or other process levied upon any of the assets of the relevant party; (b) the relevant party suspends, or threatens to suspend, payment of its debts or is, or is deemed, unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986; (c) the relevant party convenes a meeting of its creditors or a proposal is made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal is made for a composition, scheme or arrangement with (or assignment for the benefit of) its creditors or a trustee, receiver, administrative receiver or a similar officer is appointed in respect of all or a part of the business or assets of the relevant party or a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the relevant party or for the making of an administration order; or (d) a party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; (e) any event occurs, or proceeding is taken, with respect to the relevant party in any jurisdiction in which that party is incorporated, resides or carries on business that has an effect equivalent or similar to any of the events mentioned in (a) to (c) above.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and

protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world

Order: the Client's acceptance of the Supplier's quotation or the Client's purchase order form.

Quotation: the quotation given by the Supplier to the Client setting out the proposed Goods and or Services, the price thereof, specifications and other terms.

Services: the services, to be supplied by the Supplier to the Client as set out in the Service Specification.

Service Specification: the design, description or specification for the Services set out in the Quotation.

Specifications: the Goods Specification and the Services Specification

Supplier: ABC Fire & Security Limited registered in England and Wales with company number 03681788 whose registered office address is c/o Muras Baker Jones, Regent House, Bath Avenue, Wolverhampton WV1 4EG

Supplier Materials: has the meaning set out in clause 7.1(g).

A reference to **writing** or **written** includes e-mails.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Client to purchase Goods and/or Services in accordance with these Conditions and acceptance of the Goods Specification and the Services Specification.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for the period stated thereon.

2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. GOODS

3.1 The Goods are described in the Quotation and the Supplier reserves the right to amend the Goods Specification or the Services Specification if required by any applicable statutory or regulatory requirements.

4. QUALITY OF GOODS

4.1 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Goods shall conform in material respects with the Goods Specification and be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

4.2 Subject to clause 4.3, if the Client gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 4.1 and the Supplier is given a reasonable opportunity of examining such Goods; the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

4.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 4.1 if:

(a) the defect arises because the Client failed to follow the Supplier's or the manufacturer's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade or industry practice;

(b) the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Client;

(c) the Client alters or repairs such Goods without the written consent of the Supplier;

(d) the defect arises as a result of fair wear and tear, wilful damage, negligence, abnormal working conditions or acoustic performance of the building in which Goods were fitted or Services supplied;

(e) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

4.4 Except as provided in this clause 4, the Supplier shall have no liability to the Client in respect of the Goods' failure to comply with the warranty set out in Condition 4.1. and the terms of these

Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 4.2.

5. TITLE AND RISK

5.1 The risk in the Goods shall pass to the Client on completion of installation.

5.2 Title to the Goods shall not pass to the Client until the Supplier receives payment in full (in cash or cleared funds).

5.3 If before title to the Goods passes to the Client the Client becomes subject to an Insolvency Event then, without limiting any other right or remedy the Supplier may have the Supplier may at any time require the Client to deliver up all Goods in its possession and if the Client fails to do so promptly, enter any premises of the Client or of any third party where the Goods are stored in order to recover them.

6. SUPPLY OF SERVICES

6.1 The Supplier shall provide the Services to the Client in all material respects in accordance with the Service Specification and any Design.

6.2 The Specifications and the Design are all compiled by the Supplier subject to it having first received all necessary, relevant and material information from the Client including without limitation information regarding the Client's requirements and its premises where the Goods and Services shall be supplied, details of any ceiling voids or false ceilings at such premises.

6.3 The Client is responsible for approving the Specifications and the Design and for obtaining all necessary third party approvals including without limitation the following: Fire Officer, Licensing Public and Local Authority approvals.

6.4 All and any Designs and Specifications issued by the Supplier shall be deemed approved by the Client without reservation if the Client does not advise the Supplier otherwise in writing before placing an Order or in respect of any Design or Specification issued after the Commencement Date, within 14 days of the date of receipt by the Client.

6.5 The Supplier shall use all reasonable endeavours to meet any performance dates for installing the Goods and providing the Services specified in the Quotation or as otherwise agreed between the Supplier and Client in writing, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

6.6 The Supplier shall not be liable to the Client or incur responsibility for penalties, damages or losses (including loss of profits and indirect or consequential losses) of the Client howsoever arising in consequence of any failure to meet any performance dates set out in the Quotation or as otherwise agreed in writing or as agreed in writing for any additional Goods or Services requested by the Client.

6.7 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Client in any such event.

6.8 The Supplier warrants to the Client that the Services will be provided using reasonable care and skill and will comply with the British Standards stated on its Quotation as at the date of the Quotation.

7. CLIENT'S OBLIGATIONS AND RESPONSIBILITIES

7.1 The Client shall:

(a) ensure that the terms of the Quotation are complete and accurate;

(b) co-operate with the Supplier in all matters relating to the Goods and Services including without limitation any requirements of the Supplier stated in the Quotation;

(c) provide the Supplier, its employees, agents, consultants and subcontractors, with full and unimpeded access to the Client's premises, and all other facilities and services as are reasonably required by the Supplier to provide the Services and install the Goods on time and in accordance with the Contract;

(d) provide the Supplier with the information and materials are referred to in the Quotation or that the Supplier may reasonably require to supply the Goods and or Services, and ensure that such information is accurate and complete in all material respects;

(e) make any necessary preparations (including those stated in the Quotation) to the Client's premises for the supply of the Services and installation of the Goods;

(f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

(g) keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Client's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;

(h) at the end of the installation of the Goods and after testing of them and the system by the Supplier, the Client shall provide an authorised person on its behalf to sign off completion of the Contract and to confirm that the installation of the Goods and the Services provided are in accordance with the Contract and fit for the Client's purposes;

(i) ensure all drawings supplied by it to the Supplier regarding the premises where

Goods and or Services are to be supplied are complete and accurate and in particular show full details (including measurements) of all voids in ceilings or false ceilings (this is of paramount importance in relation to new build premises where the Supplier cannot inspect the premises prior to the Quotation.

7.2 If the Supplier's performance of any of its obligations in respect of the Goods or Services is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):

(a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services and supply of the Goods until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays the Supplier's performance of any of its obligations;

(b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 7.2; and

(c) the Client shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Client Default.

7.3 The Contract and any Quotation is subject to the following terms:

(a) Scaffolding and or access platforms as necessary will be provided by the Client for the Supplier's use free of charge;

(b) The Client will provide the Supplier, free of charge, use of and access to storage, welfare, toilet and administration facilities on any of its premises where the Supplier provides Goods and or Services;

(c) The Client will provide or procure, free of charge to the Supplier, any builders work or services or goods required in or arising out of or in connection with the Contract including without limitation the cost of making good unless the cost of making good arises as a direct result of the Supplier's negligence.

(d) All containment equipment including without limitation, cable trays, trunking channels and the like required under the Contract will be provided for the Supplier by the Client free of charge

(e) Any additional Goods or Services required by the Client must be requested in writing and shall be charged in addition to the price set out in the Quotation.

8. CHARGES AND PAYMENT

8.1 The price for Goods and Services shall be the price set out in the Quotation. Any additional Goods or Services not

specified in the Quotation and required by the Client shall be supplied subject to these Terms and Conditions and shall be charged to the Client in addition.

8.2 The Supplier reserves the right to increase the price of the Goods and or Services, by giving notice to the Client at any time before or during installation of the Goods and provision of the Services, to reflect any increase to the Supplier that is due to:

(i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

(ii) any request by the Client to change the Design, installation date(s) of the Goods, quantities or types of Goods ordered, or the Goods Specification or the Services Specification; or

(iii) any additional Goods or Services requested by the Client;

(iv) any delay caused by any instructions (or lack of instructions) of the Client in respect of the Goods or Services or failure of the Client to give the Supplier adequate or accurate information, drawings or instructions in respect of the premises where the Goods or Services are to be supplied or failure by the Client to comply fully with all some or any of its obligations in Condition 7;

(v) any additional Goods or Services which are required to achieve any particular standard (legal, regulatory or otherwise) in consequence of any circumstances not made reasonably known to the Supplier before or at the time of issuing any Quotation or agreeing any additional cost in relation to any additional Goods or Services in addition to the Quotation;

(vi) any of those matters referred to in Condition 8.3.

8.3 Final acoustic performance of a building once occupied cannot be guaranteed. Should the sound levels of any Goods be judged by the Supplier or the Client as deficient following audibility tests the Supplier reserves the right to relocate or fit additional sounders and the Client shall be responsible for any additional costs incurred by the Supplier.

8.4 Unless the Supplier requires at its discretion payment prior to installation of the Goods, the Supplier shall invoice the Client on or at any time after completion of the installation of the Goods and the Client shall pay each invoice submitted by the Supplier within 30 days of the date of the invoice in full and in cleared funds to a bank account nominated in writing by the Supplier. Time for payment shall be of the essence of the Contract.

8.5 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax

chargeable from time to time (**VAT**) and the client shall pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

8.6 If the Client fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Client shall pay interest on the overdue amount at the rate of 5% per annum above the base rate of Barclays Bank from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.

8.7 The Client shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by the Supplier to the Client.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.

9.2 The Client acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Client's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Client.

9.3 All Supplier Materials are the exclusive property of the Supplier.

10. LIMITATION OF LIABILITY: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

10.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

(b) fraud or fraudulent misrepresentation;

(c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

(d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or

(e) defective products under the Consumer Protection Act 1987.

10.2 Subject to Condition 10.1 and any other Conditions which limit or exclude liability:

10.2.1 the Supplier shall not be liable to the Customer whether in contract, tort (including negligence) breach of statutory duty, or otherwise, for any loss of profit or

any indirect or consequential loss arising under or in connection with the Contract; and

10.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence) breach of statutory duty or otherwise (**Relevant Losses**) shall be limited to the extent that any Relevant Losses are recoverable (save for policy excesses) from time to time under its Public Liability Insurance or Product Liability Insurance (whichever shall be relevant). In the event that any of the Relevant Losses are not recoverable under the Supplier's Public Liability or Product Liability Insurance the Supplier's total liability to the Buyer howsoever arising shall in no circumstances exceed the Contract Price.

10.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

10.4 The Supplier shall have no liability to the Client under or in connection with the Contract:

(a) arising from any significant fact or circumstance which existed or could reasonably arise and which may be reasonably likely to have a bearing on the Goods and or Services and which the Client failed to make known to the Supplier before the Contract was formed, including without limitation the acoustic qualities of or any voids or ceiling recesses or false ceilings in any structure or premises in which Goods are to be installed, the siting of machinery, plant, computer equipment, furniture, fittings or the interior qualities or structure of any building;

(b) for any Design or Specification failure or defect arising from the circumstances referred to in Condition 10.4(a).

10.5 This clause 10 shall survive termination of the Contract.

11. TERMINATION

11.1 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:

(a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;

(b) the other party becomes subject to an Insolvency Event.

11.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this Contract on the due date for payment.

11.3 Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or installation of Goods under the Contract or any other contract between the Client and the Supplier if the Client fails to pay any amount due under this Contract on the due date for payment, the Client becomes subject to an Insolvency Event or the Supplier reasonably believes that the Client is about to become subject to any of them.

11.4 On termination of the Contract for any reason:

(a) the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Client immediately on receipt;

(b) the Client shall return all of the Supplier Materials which have not been fully paid for. If the Client fails to do so, then the Supplier may enter the Client's premises and take possession of them.;

(c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

(d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

12. FORCE MAJEURE

12.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

12.2 The Supplier shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

12.3 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than six weeks, the Supplier or the Client shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the other.

13. GENERAL

13.1 Assignment and other dealings.

The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of

its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party. The Client shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

13.2 Notices.

(a) Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier or e-mail.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by or e-mail, one Business Day after transmission.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

13.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

13.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

13.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

13.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Supplier.

13.8 **Governing law & Jurisdiction.** This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

14 Non Disclosure/Confidentiality

14.1 The following definitions will apply in this paragraph 14 – 'Discloser' shall mean the party who discloses Confidential Information of its own to the other party to the Contract. 'Recipient' shall mean the party who receives the disclosure of Confidential Information from the other party to the Contract. 'Confidential Information' shall mean all confidential information which the Discloser or its Representatives discloses, or makes available, to the Recipient before, on or after the date of the Contract. This includes all confidential or proprietary information relating to the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the Discloser and the operations, processes, product information, know-how, technical information, designs, trade secrets or software of the Discloser and any other information that is identified as being of a confidential or proprietary nature but excludes any information referred to in paragraph 14.2. 'Representative(s)' shall mean in relation to each party: (a) its officers and employees that need to know the Confidential Information for the purpose of the Contract; (b) its professional advisers or consultants who are engaged to advise that party in connection with the purpose of the Contract; (c) its contractors and subcontractors engaged by that party in connection with the Contract.

14.2 Information is not Confidential Information if it is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the Recipient or its Representatives in breach of this agreement; (b) it was available to the Recipient on a non-confidential basis prior to disclosure by the Discloser; (c) it was, is, or becomes available to the Recipient on a non-confidential basis from a person who, to the Recipient's knowledge, is not under any confidentiality obligation in respect of

that information; (d) it was lawfully in the possession of the Recipient before the information was disclosed by the Discloser; (e) it is developed by or for the Recipient independently of the information disclosed by the Discloser; or (f) the parties agree in writing that the information is not confidential.

14.3 In return for the Discloser making Confidential Information available to the Recipient, the Recipient undertakes to the Discloser that it shall use its reasonable endeavours to: (a) keep the Confidential Information secret and confidential; (b) not use or exploit the Confidential Information in any way except for the purpose for which it was disclosed; (c) not disclose or make available any Confidential Information in whole or in part to any person, except as expressly permitted by, and in accordance with these terms and conditions; (d) not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the purpose for which it was disclosed. Any such copies, reductions to writing and records shall be the property of the Discloser (e) establish and maintain adequate security measures to safeguard the Confidential Information from unauthorised access or use.

14.4 The Recipient may disclose the Confidential Information to its Representatives on the basis that it: (a) informs those Representatives of the confidential nature of the Confidential Information before it is disclosed; (b) uses its reasonable endeavours to procure that those Representatives comply with the confidentiality obligations in paragraph 14.3 as if they were the Recipient.

15. The Supplier and the Client shall each comply with its obligations under the UK Data Protection Legislation.