



TERMS AND CONDITIONS OF SUPPLY AND INSTALLATION

1. **Definitions and Interpretation**

In this document, unless the context otherwise requires:

"Agreement" means these Terms, any quotation, any terms of credit, and any other written documents recording or relating to the provisions of the goods by the seller to the buyer.

"Buyer" means the corporation, association, firm, partnership, trust or individual purchasing the seller's goods pursuant to these terms, together with their successors and permitted assigns.

"Date for payment" means the 20th of the month following delivery to the first carrier.

"Goods" means the products and services supplied by the seller.

"Installation Contract" means the document that outlines the details surrounding the installation of fire or related systems between the Seller and the Buyer.

"On Demand" means upon demand being made by notice in writing signed by the person entitled to make the demand, or any agent of such person, served upon the buyer either personally or by posting the same in a duly registered letter addressed to the buyer at its last known address in New Zealand.

"Products" means the materials and parts supplied to the buyer by the seller.

"Seller" means Fire Security Services Limited, its successors and assigns and where the context permits includes agents, authorised signatories, directors, managers and other persons who hold themselves out to have authority to bind the seller.

"Services" means the advice, specialist labour and expertise supplied to the buyer by the seller.

"Terms" means the Terms and Conditions of Supply set out in this document.
2. **Terms and Conditions of Supply and Installation**
 - 2.1 The seller will supply goods to the buyer subject to the terms set out in the agreement. In the event of any conflict between these terms and the provisions of any quotation or order, the seller will determine in its absolute discretion which document prevails.
 - 2.2 The terms will prevail despite any verbal indication to the contrary given by any person acting or purporting to act on the seller's behalf.
 - 2.3 No variation to the terms (including representations or understandings conflicting with the terms) will be valid unless confirmed in writing by an authorised representative of the seller.
 - 2.4 The seller may amend these terms in writing at any time by providing written notice of the amended terms to the buyer. Following notice of the amended terms, if the buyer forwards further orders to the seller or accepts a further quotation from the seller, the further supply of goods will be deemed to be based on the amended terms and the buyer acknowledges that it will have contracted on those amended terms.
 - 2.5 The seller's receipt of an order from the buyer will be deemed acceptance of these terms.
 - 2.6 The buyer may not assign all or any of its rights or obligations under this agreement without the seller's prior written consent.
3. **Quotation**
 - 3.1 The seller will submit any quotation for supply of goods on the basis of the rates and charges for products and services in effect at the date of quotation.
 - 3.2 Prices quoted do not include GST unless otherwise expressly stated.
 - 3.3 Any quote for goods shall be binding on the seller provided that the buyer accepts the seller's quotation within 30 days of the date of the quotation, but the seller may, by giving notice to the buyer at any time up to 7 days before delivery, increase the price of the products to reflect any increase in the cost of those products to the seller after the date of acceptance due to factors beyond the reasonable control of the seller (including, without limitation, insurance, foreign exchange fluctuations, taxes and duties and the cost of labour, materials and other manufacturing costs). The buyer may cancel this agreement within 7 days of any such notice from the seller.
 - 3.4 Where a quotation is based on the latest terms of supply available to the seller from a specific supplier the seller reserves the right to pass on to the buyer any extra costs the seller incurs as a result of:
 - (a) Changes in that supplier's terms of supply; or
 - (b) The seller arranging supply from an alternative supplier.
- 3.5 Prices quoted exclude any delivery or storage costs and where the seller agrees to arrange for the products to be delivered to the buyer, the buyer shall be responsible for the costs of loading, carriage and unloading.
- 3.6 Where the seller issues special quoted prices on the seller's standard quote form, the conditions stated on the quotation document shall take precedence over related standard terms set out in this document.
- 3.7 All Installation Contracts shall be covered by the *Construction Contracts Act 2002*
4. **Acceptance of Goods**
 - 4.1 Unless otherwise agreed in writing or specifically prescribed by an applicable specification or standard, all goods are sold subject to:
 - (a) Manufacturers' normal tolerances, variations and limitations in respect of dimension, mass, straightness, composition, mechanical properties, surface and internal conditions, chemical composition and quality; and
 - (b) Diversions from such tolerances, variations and limitations consistent with practical testing and inspection methods; and
 - (c) The seller's normal packaging practice.
 - 4.2 The buyer shall take delivery of the products tendered notwithstanding that the quantity delivered shall be either greater or less than the quantity purchased provided that:
 - (a) Such discrepancy in quantity shall not exceed 10%, and
 - (b) The price shall be adjusted pro rata to the discrepancy.
5. **Place of Delivery of Products — Carrier as Buyer's Agent**
 - 5.1 Where the seller arranges carriage of the goods to the buyer's address, the costs of carriage and reasonable insurance shall be reimbursed by the buyer without any set off or other withholding whatever and shall be due on the date for payment of the price. The carrier shall be deemed to be the buyer's agent.
 - 5.2 Products are sold on the basis that the place of delivery is the seller's premises. Delivery to the buyer's nominated carrier or to a carrier appointed by the seller (at the request of the buyer) shall be deemed delivery to the buyer.
6. **Inspection and Returns**
 - 6.1 The buyer agrees to inspect the products and verify acceptance in writing within 7 days of delivery of the goods.
 - 6.2 If no notice rejecting the products has been communicated to the seller within 7 days of delivery, the buyer is deemed to have accepted the products.
 - 6.3 Where the buyer provides a notice of rejection to the seller, the buyer must return the products to the seller for inspection (at the buyer's cost) and if the seller accepts that the products are defective, the seller shall (at the seller's option), either
 - (a) Issue a credit note for the products and transport costs; or
 - (b) Repair or replace products agreed to be faulty and reimburse transport costs.
 - 6.4 Where goods are found not to be defective the seller will return them to the buyer at the buyer's cost.
7. **Payment**
 - 7.1 Payment is due on the 20th of the month following delivery to the buyer except where:
 - (a) Another method of payment has been agreed at the time of this agreement; or
 - (b) Where goods are supplied direct from overseas to the buyer in which case payment is due on receipt of the seller's invoice, or bill of lading, or other negotiable instrument, whichever is presented first.
 - 7.2 The seller may deliver the goods by separate instalments. The seller reserves the right to treat each separate delivery as a separate contract for the purposes of payment.
 - 7.3 Where the buyer fails to pay for any one or more of the instalments of the goods on the due date the seller will be entitled (at the sole option of the seller):
 - (a) Without notice to suspend further deliveries of the goods

- pending payment by the buyer; and/or
(b) To treat this agreement as repudiated by the buyer.
- 7.4 Where the buyer makes payment to the seller in any form other than cash, payment shall not be deemed to be made until that form of payment has been honoured.
- 7.5 The buyer acknowledges that if it does not pay for the goods by the date on which payment is due, it is deemed to have defaulted on its obligations under the agreement from that date.
- 7.6 Where, at any time, the buyer owes the seller amounts under two or more invoices, the seller may apply a payment made by the buyer to those invoices in any order and to any amounts as the seller thinks fit and in the seller's sole discretion (despite any direction to the contrary and whether before or after any default by the buyer).
- 7.7 The security interest provided for by these terms and created by this agreement also secures the amount owing under each contract and this agreement shall be construed accordingly.
- 7.8 The seller shall be entitled at any time to assign to any other person (being a related company of the seller as defined by section 2 (3) *Companies Act 1993*) all or any part of the debt owing to the seller and notwithstanding any rule of common law or equity to the contrary or the appointment of a liquidator receiver and/or manager over the seller or the assets thereof, the assignee shall be entitled to claim full rights of set-off or counterclaim against the buyer, its charge holders or successors, in respect of the debt or part thereof so assigned.
8. **Passing of Risk**
- 8.1 The goods remain at the seller's risk until the earlier of:
(a) Delivery to the buyer; or
(b) When title passes to the buyer.
- 8.2 Where delivery and/or passing of title has been delayed through the fault of one party the goods are at the risk of the party at fault as regards any loss which might not have occurred but for such fault.
9. **Default of Payment**
- 9.1 The buyer acknowledges that its relationship with the seller is that of seller and buyer for cash, and that this clause 9 has effect only when the buyer defaults on its obligation to pay for the goods.
- 9.2 The buyer agrees to pay interest on all sums outstanding at 2.5% per month compounding from the date of default until payment is made in full.
- 9.3 The buyer agrees to indemnify the seller, upon demand from the seller, for all costs and expenses (including legal fees) incurred by the seller as a result of the buyer defaulting under this agreement.
- 9.4 All payments by the buyer shall be applied first in the reduction of interest and costs due pursuant to clause 9.2 and 9.3 and the balance shall then be applied in reduction of amounts due under clause 7.
- 9.5 Without prejudice to such other rights as the seller may have, the buyer agrees to grant to the seller such security as the seller may from time to time request so as to secure to the seller all sums due to it. Such security may be by way of a mortgage of land or directors' personal guarantees or a debenture charge over the assets of the buyer and shall be prepared at the buyer's expense by the seller's solicitors and shall contain all usual provisions. Should the buyer default granting of any such security in a form satisfactory to the seller then the seller is hereby irrevocably appointed the buyer's attorney in the buyer's name and on its behalf to enter into, execute and sign all deeds, instruments, acts and things whatsoever which may be necessary to complete such further security.
10. **Ownership of Goods**
- 10.1 Ownership in the products remains vested in the seller until the buyer has paid in full for all goods the seller supplies to the buyer, together with all interest and monies due.
- 10.2 Until payment is made in full in terms of Clause 10.1:
(a) All goods supplied remain the sole and absolute property of the seller;
(b) The buyer will hold the goods in trust for the seller as bailee of the seller;
(c) The buyer will store the goods on the buyer's premises in such a manner as to make them readily identifiable as belonging to the seller and shall display such identification as may from time to time be requested by the seller;
(d) If the goods are sold by the buyer then all proceeds of sale shall be the property of the seller and shall be retained in a separate account by the buyer in trust for the seller and shall not be intermingled with any other monies
- or paid into any overdrawn bank account and shall at all times be kept identifiable as monies held in trust for the seller;
- (e) If before it becomes the owner of the goods the buyer makes new objects from the goods or incorporates them into or with other goods those other or new goods shall be held on trust for the seller;
- (f) The buyer will on demand assign to the seller all proceeds of sale of the goods by the buyer and will upon request disclose to the seller full details of the sale and the proceeds;
- (g) Where the seller has reasonable cause to believe any one or more of the events listed in clause 11.1 has occurred or is likely to occur, the seller may repossess any or all of the products supplied and for such purpose may at any time of day or night enter by force if necessary upon any premises where such goods are reasonably thought to be stored.
- 10.3 The buyer shall reimburse the seller for all liabilities and expenses (including legal expenses) incurred by it in enforcing or attempting to enforce any rights it has under this Clause 10.
11. **Cancellation**
- 11.1 The total purchase price shall immediately become payable and the seller shall have the right to cancel this contract (without prejudice to any other of its rights) immediately upon the occurrence of any of the following events:
(a) The buyer ceases or threatens not to carry on the business;
(b) The buyer commits an act of bankruptcy or makes or enters into any arrangement or composition with its creditors;
(c) The buyer is unable to pay its debts (including contingent liabilities) as they fall due;
(d) The buyer, being a company, enters into liquidation whether compulsorily or voluntarily, or becomes subject to the appointment of a receiver;
(e) The buyer being a firm of partners, the firm is dissolved;
(f) Any distress or execution is levied on the buyer; or
(g) The buyer breaches any other terms contained in this agreement.
12. **Queries/Disputes**
- 12.1 The buyer must raise any job or account enquiries with the seller prior to the due date for payment. The seller will not consider enquiries raised after this period.
13. **Security Interest**
- 13.1 This agreement a security interest in favour of the seller in the products which are the subject of the agreement. Such security interest secures the payment by the buyer to the seller of all amounts the buyer may owe the seller from time to time and at any time, including future advances.
- 13.2 The buyer authorises the seller to take possession of the products if the seller from time to time deems it necessary to do so to perfect or re-perfect the seller's security interest in the products. For the purposes of this clause, possession includes but is not limited to the meaning ascribed to it in s 18 *Personal Property Securities Act 1999* ("PPSA").
- 13.3 The buyer agrees that it will not do any thing or allow any act to be done which would have the effect of allowing the creation of a lien over any or all of the products that are the subject of the seller's security interest.
- 13.4 The buyer agrees to indemnify the seller, upon demand from the seller, for all costs and expenses (including legal fees) incurred by the seller and in complying with any demand made under s 162 PPSA
- 13.5 On the request of the seller, the buyer shall promptly do all things necessary and provide all information required by the seller to enable the seller to perfect and maintain any security interest the buyer has granted to the seller (including registration of a financing statement over the products or the proceeds thereof).
- 13.6 The buyer will promptly notify the seller of any changes to the personal or company details supplied on the credit application form which forms part of this agreement. Where the buyer, being a company, proposes to change its name, it will notify the seller accordingly within 5 days of the change taking effect.
- 13.7 The buyer will, within 5 days of receiving a written request from the seller, supply the seller with copies of all security interests registered over the buyer's personal property. The buyer authorises the seller, as its duly appointed agent, to request information from any secured

	party relating to any security interest to which the buyer is a debtor.		otherwise to compensate the buyer for any loss, injury or damage arising directly or indirectly from:
13.8	The buyer waives its right to receive a copy of a verification statement as defined in s 135 PPSA in respect of any financing statement relating to the security interest granted to the seller by the buyer.		(a) Any act, omission, default or delay by the seller, its agents or employees in respect of the provision, installation, servicing or use of the goods;
13.9	In addition to any other right, power or remedy of the seller expressed or implied in this agreement, at any time after the buyer has defaulted in its obligations, the seller may in writing appoint any person or persons as receiver of all or any of the collateral and the receiver shall have the power set out in the <i>Receiverships Act</i> 1993.		(b) Any failure by the seller to supply the goods;
13.10	The parties contract out of ss 114(1)(a), 117(1)(c), 133 and 134 of the PPSA.	21.5	(c) Any failure of the goods whether such loss, injury or damage is the direct or indirect result of negligence or otherwise.
13.11	The parties contract out of buyer's rights set out in ss 116, 119, 120(2), 121, 125, 129, 131 and 132 of the PPSA.	21.6	Except as expressly provided in these terms all express or implied conditions, statements or warranties, whether statutory or otherwise, are expressly excluded.
13.12	The seller's interest in the products continues if the products are processed, included or dealt with in any way causing them to become accessions, processed or co-mingled goods (as provided for in the PPSA). The security interest in the original products will continue in the whole in which they are included and the buyer agrees that it will not grant to any other person a security interest in either the products or in the whole.	21.7	The buyer indemnifies the seller against all liabilities the seller may incur as a result of supplying or agreeing to supply goods to the buyer other than those liabilities arising under clause 23.1.
14.	Trustee Liability	21.8	The buyer indemnifies the seller against any liability to a third party who has acquired the goods from the buyer for business purposes where the buyer has failed to contract out of the provisions of the <i>Consumer Guarantees Act</i> 1993.
14.1	Where the buyer is a trust, each trustee of the trust warrants that:	22.	No clause in these terms shall be construed as limiting any other clause, but shall be construed as extending the widest limitation of liability in favour of the seller as defined in these terms.
	(a) They have the power to enter into an agreement with the seller, and do so for the benefit of and for the purposes of the trust; and	22.1	Privacy Act 1993 — Authorisation
	(b) Unless otherwise agreed in writing between the parties, they enter this agreement both in their personal capacity and as a trustee of the trust; and	22.1	The buyer authorises and directs the seller to seek and obtain from and supply any information concerning the credit or business standing of the buyer to any other person whether trader, merchant, firm, organisation, company, or any agency or source whatever including any credit agency or association or the like and directs any such person to supply or receive and record such information to and from the seller.
	(c) The trustees' liability shall not be limited to the assets of trust unless the trustee is an independent trustee (being a trustee who has no right to or interest in any of the assets of the trust either directly or indirectly other than in the trustee's capacity as trustee of that trust).	22.2	The buyer acknowledges that personal information collected or held by the seller is provided and may be held, used and disclosed to:
14.2	The limitation of liability for independent trustees set out in clause 14.1 shall not affect the liability of any independent trustee who personally guarantees the buyer's obligations under this agreement.		(a) Administer and enforce the seller's rights under its contract with the buyer;
15.	Governing Law and Jurisdiction		(b) Market goods provided by the seller;
15.1	This Agreement is governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand Courts in respect of all matters relating to this agreement.	22.3	(c) Enable the buyer to communicate with the seller.
16.	Fair Trading Act 1986	22.4	Personal information collected about the buyer will be held by the seller at its office at Anglesea St Hamilton, New Zealand.
16.1	Nothing contained in these terms excludes or restricts any rights or remedies that the buyer may have under the <i>Fair Trading Act</i> 1986.	22.4	The buyer has the right under the <i>Privacy Act</i> 1993 to obtain access to and request correction of any personal information concerning it held by the seller.
17.	Illegal Contracts Act 1970	22.5	For the purposes of the preceding clauses "seller" includes any financier or discounter of the seller's contract or any related company of the seller. The term "related company" has the meaning given it by the <i>Companies Act</i> 1993.
17.1	The illegality, invalidity or unenforceability of any provision in these terms does not affect the validity or enforceability of the remaining provisions of these terms.	23.	Set Off
18.	Local Laws	23.1	If the contract is frustrated, and/or the goods cannot be delivered for any reason, it is expressly agreed that all expenses the seller has incurred in connection with the contract will to be set off against any sum the seller owes the buyer. The buyer must pay the seller any balance of expenses remaining over the amount of the set-off. Such payments must be made within 7 days of demand by the seller.
18.1	The buyer acknowledges it is responsible for ensuring that the goods covered by this agreement comply with its requirements and with the laws, regulations and codes of the relevant local authority.	24.	Force Majeure
19.	Consumer Guarantees Act 1993	24.1	The seller will not be in breach of this agreement if its breach is caused by an act of God, fire, flood, storm, explosion, strike, lockout, work stoppage or other labour hindrance, confiscation or expropriation, sabotage, embargo, prevention from or hindrance in obtaining raw materials, insurrection, revolution, riot, civil commotion, act of war whether declared or not, act of government such as a change in legislation, regulation or order made under a legislative authority, or anything beyond the seller's control.
19.1	All goods are supplied to buyers for business purposes and accordingly the <i>Consumer Guarantees Act</i> 1993 does not apply.	25.	Waiver
20.	Credit Contracts and Consumer Finance Act 2003	25.1	No waiver of any breach of these terms will be deemed a waiver of any other or any subsequent breach. The failure of the seller to enforce any provision of these terms at any time will not be interpreted as a waiver of the provision.
20.1	All goods are supplied to buyers for business purposes and accordingly the <i>Credit Contracts and Consumer Finance Act</i> 2003 does not apply.	26.	Notices
21.	Limitation of Liability	26.1	Notice by one party to the other shall be deemed to have been received and delivered if posted or delivered by hand to the last known address of the recipient whether or not the same is actually received by the recipient.
21.1	The seller limits its liability under these terms or otherwise to:		
	(a) The replacement without charge of any products on the same basis as originally agreed or as set out in Clause 4.1; or		
	(b) At the option of the seller, a refund of the sale price.		
21.2	Where products not manufactured by the seller are defective, the seller will not be liable to pay the buyer any sum greater than the amount the seller receives as compensation for the defect from its supplier.		
21.3	The seller accepts no responsibility for labour, material and other costs incurred in removing defective products and refitting their replacement or for any loss or damage directly or indirectly attributable to any defect in products supplied.		
21.4	Without limiting anything contained elsewhere in these terms, the seller, its agents and employees will not be liable in contract, tort or		