

1. **DEFINITIONS**
 - 1.1 “**Confidential Information**” means all information of a confidential nature.
 - 1.2 “**Contract**” means these terms, together with any quotation, order, service agreement or other document nominated by us to be part of this Contract.
 - 1.3 “**Fees**” means the total amount payable by you for the Services as determined in accordance with clause 4.
 - 1.4 “**Force Majeure Event**” means any event or circumstance which is beyond the reasonable control of a party, and includes any infectious disease, fires, strikes, embargoes, explosions, earthquakes, floods, wars, labour disputes, government requirements or directions, acts of God, acts or omissions of suppliers, failures of any telecommunications network or power failures.
 - 1.5 “**Order**” means an order submitted by you to us for the purchase of Services.
 - 1.6 “**Services**” mean all Services supplied by us to you as set out in an Order and includes any goods incidental to such Services.
 - 1.7 “**Supplier**”, “**we**”, “**us**” and “**our**” means Fire Security Services 2016 Limited, its successors and assigns, and any person acting on our behalf.
 - 1.8 “**Term**” means the term of this Contract.
 - 1.9 “**you**” or “**your**” means the person/s to whom we provide Services and including any person acting on your behalf (and your executors, administrators, successors and permitted assigns).
 - 1.10 A reference to any Act, regulation, by-law, industry standard or code includes any amendments to the same.
2. **ACCEPTANCE**
 - 2.1 By submitting an Order or accepting Services, you are deemed to have accepted this Contract. We will treat any person holding him/herself out as your agent, employee, contractor or representative, as authorised by you to submit an Order and/or to request any variation on your behalf.
 - 2.2 A binding contract is deemed to be formed between us and you when we notify acceptance of your Order or otherwise act on your Order.
 - 2.3 In the event of any inconsistency between this Contract and an Order, this Contract will prevail.
3. **TERM**
 - 3.1 We will provide the Services on and from the commencement date set out in an Order and Services will continue for the period specified in the Order (“**Initial Term**”), unless terminated in accordance with this Contract. At the end of the Initial Term, the Services will continue on a month to month basis, until terminated by either party by giving at least thirty (30) days’ written notice.
4. **FEES AND PAYMENT**
 - 4.1 Unless otherwise agreed, the initial Fees for the Services will be specified on your Order. Where no Fees are specified, the Fees will be the current Fees at which such Services are supplied by us at the time of the Order, plus all costs, expenses and disbursements incurred by us. The Fees are exclusive of GST. You will pay all applicable GST in addition to the Fees. We may alter the Fees due to circumstances beyond our control.
 - 4.2 If we provide you with a quote for the Services, the quote will be valid for 30 days from the date the quote was provided to you. However, we reserve the right to alter the quote if circumstances arise beyond our control.
 - 4.3 We may, on an annual basis with effect from 1 April, increase the Fees by giving not less than 30 days prior written notice to you. We may not increase the Fees during any calendar year by more than a percentage equal to the increase (measured as a percentage) in the CPI Index for the immediately preceding year.
 - 4.4 Subject unless otherwise agreed, the Fees for the Services will be invoiced by us and paid by you quarterly in advance. Payment of any other amounts payable under this Contract will be required as otherwise specified on our invoice. The method of payment will be as directed by us.
 - 4.5 You must pay all amounts owing to us without set off or deduction.
 - 4.6 Without prejudice to our other rights and remedies, if you fail to make payment of any amount due to us, we may charge interest on the amount owing at the rate of 10% per annum until payment is received in full. Any expenses and legal costs incurred by us in the enforcement of any rights contained in this Contract will be paid by you.
5. **PROVISION OF THE SERVICES**
 - 5.1 We warrant that we will carry out the Services in accordance with any all applicable laws, standards, regulations and bylaws relating to the Services.
 - 5.2 You must provide us with access to all locations necessary to provide the Services and must notify us of all hazards at such locations and otherwise comply with the Health and Safety at Work Act 2015.
 - 5.3 We will not be liable for any loss or damage to your premises due to the provision of the Services, unless due to our negligence.
 - 5.4 Failure by you to follow any recommended testing schedule will be at your sole risk and we will not be held responsible for any loss, damage or costs incurred by you.
 - 5.5 You acknowledge that annual surveys (where provided as part of the Services), include testing and where necessary cleaning of twenty percent (20%) of smoke detectors and two percent (2%) of heat detectors in accordance with New Zealand Standards (including but not limited to, NZS 4512:2010 (and any amendments thereto). If any device fails within these percentages and further testing and cleaning is required, all associated costs will be on-charged and paid by you.
 - 5.6 You will obtain (at the expense of you) all licenses, permits, certification documents and approvals that may be required for the Services.
 - 5.7 We will use our reasonable endeavours to supply the Services by any delivery date specified. However, we will not be liable for any costs, losses, damages or claims in relation to any failure or delay in supply, and

- you will not be able to terminate this Contract due to any failure or delay in supply.
- 5.8 Where we are providing Form 12A collection services to issue BWOFF, you agree that if your sub-contractors fail to respond or provide Form 12A within 2 emails and 2 phone calls, further associated costs with the 12A collection will be on-charged and paid by you.
- 5.9 You acknowledge that passive annual inspections SS15/3 & SS15/5 (where provided as part of the Services), are a visual inspection of fire and smoke separations that form part of the means of escape as per NZ Building Code requirements. This is not a comprehensive passive fire inspection of all building elements.
- 6. DEFAULT AND CONSEQUENCES OF DEFAULT**
- 6.1 Without prejudice to any other remedies we may have, if at any time you are in breach of any obligation (including those relating to payment) under this Contract we may suspend or terminate the supply of Services to you. We will not be liable to you for any loss or damage you suffer because we have exercised our rights under this clause.
- 6.2 The termination of this Contract for any reason will not affect any rights which accrued before termination or which otherwise relate to or may arise at any future time from any breach prior to termination.
- 7. LIABILITY**
- 7.1 We will not be liable for any default, delay or failure in the performance of any of our obligations imposed by this Contract to the extent due to a Force Majeure Event.
- 7.2 To the extent that our liability is not otherwise limited or excluded, and to the maximum extent permitted by law, our aggregate liability to you whether in tort, contract, at law (including for a misrepresentation), under any indemnity or otherwise for any loss, damage, or injury in relation to the Services is limited to the Fees actually paid by you in the 1 year prior to the relevant claim.
- 7.3 Despite anything else contained in this Contract and to the maximum extent permitted by law:
- (a) we will not be responsible or liable for any acts or omissions of you or any third parties;
 - (b) the parties agree and acknowledge that the Services are supplied and acquired by you in trade within the meaning of the Fair Trading Act 1986, that sections 9, 12A, and 13 of the Fair Trading Act 1986 will not apply to this Contract between us, and that it is fair and reasonable to exclude their application;
 - (c) the parties agree and acknowledge that they are both in trade, and that the Services are supplied or acquired in trade, and that the provisions of the Consumer Guarantees Act 1993 will not apply to this Contract between us, and that it is fair and reasonable to exclude their application;
 - (d) unless the parties agree otherwise in writing, to the fullest extent permissible by law all warranties, conditions or other terms implied by law are excluded; and
 - (e) for the purposes of this clause you
- acknowledge that you had a reasonable opportunity to review this Contract, discuss it with us, and receive advice from your legal advisor, if you wished to do so.
- 7.4 To the maximum extent permitted by law, we will not be liable for any loss or damage of any kind whatsoever arising from the Services by us to you, including direct or consequential loss and loss of profits, whether suffered or incurred by you or another person or entity and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from the Services provided by us to you.
- 7.5 You will indemnify us and our employees, agents and contractors in respect of all claims, costs, expenses, losses, liabilities, damages, proceedings and legal fees of whatsoever kind made against, suffered or incurred arising from any of your acts or omissions, your negligence, your breach of this Contract, or arising out of or incidental to your use of the Services.
- 8. GENERAL**
- 8.1 During the Term and after termination, you must keep and not use or disclose our Confidential Information.
- 8.2 This Contract constitute the sole understanding of the parties and supersedes all prior understandings, written or oral, which will be of no further force or effect.
- 8.3 No alteration or variation of this Contract will be binding on us, unless agreed in writing. To the extent permitted by law, we may alter or change this Contract by notice to you. Any Services provided after such notice will be deemed to constitute acceptance of the new terms.
- 8.4 Every notice given under this Contract will be sufficiently given if delivered personally, posted or successfully transmitted by email to the intended recipient at their last known address or email.
- 8.5 We will not have waived or be deemed to have waived any provision of this Contract unless such waiver is in writing and executed by us.
- 8.6 We will not be liable for any delay or failure in the performance of any of the obligations imposed by this Contract, to the extent that the failure is due to a Force Majeure Event.
- 8.7 If any provision in this Contract is determined to be invalid, void or illegal or unenforceable, the validity existence, legality and enforceability of the remaining provisions will not be affected.
- 8.8 Any dispute or difference arising as to the interpretation of this Contract or as to any matter arising hereunder, will be submitted to, and settled by, either adjudication in accordance with the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996.
- 8.9 We may subcontract, assign or novate all or any of our rights and/or obligations under this Contract without your consent. You may not subcontract, assign or novate your rights or obligations under this Contract without our written approval.
- 9.0 **OPERATING HOURS**
FSS operating hours are 7:30am - 4:30pm, any callouts outside of these hours will be charged an after hours rate.