



TERMS AND CONDITIONS SERVICE, MAINTENANCE & INSTALLTION CONTRACTS

1. Agreement

This "Agreement" means an agreement between Fire Boar – ABN 36718497624 (including Training Boar, and Smoke Alarm Boar) and the Customer relating to the supply and/or installation and/or sale and/or maintenance of products and services (as described in the quotation attached to this agreement) and includes all relevant schedules, forms, specifications and other referenced materials. These terms and conditions supersede any other agreements, or understandings (whether written or oral) and, in particular, any conditions contained in the Customer's order unless Fire Boar has expressly agreed in writing by initialling each such requested Customer's term(s). No variation, waiver, or cancellation of the Agreement will be effective unless signed in writing by each party and any failure by Fire Bar to enforce any clause of this Agreement will not be construed as a waiver of Fire Boar rights under this Agreement. This Agreement applies whether or not it is signed below as long as the Customer has had an opportunity to view it.

2. Quotation Validity

Unless otherwise agreed in writing, a quotation provided by Fire Boar may be accepted up to 30 days from the quotation date, after which Fire Boar reserves the right to amend or withdraw it.

3. Credit Account and Payment by Credit Card

The Customer acknowledges that the granting of credit is at the absolute discretion of Fire Boar. Fire Boar may, at its sole discretion, require you to pay the full fee or a percentage of the fee upfront or in advance.

Payment by credit card will incur a 2.5% surcharge.

4. Site Charges and Assumptions

- a. Unless otherwise agreed in writing, charges for work performed:
 - i. are based on work being carried out during "Normal Working Hours" being 7.30am to 4.30pm Monday to Friday except for Public Holidays and subject to alteration by Fire Boar;
 - ii. are based on having continuous, uninterrupted, and unhindered access to the required people, equipment, facilities, and areas where the work is to be carried out;
 - iii. working with hazardous materials (including asbestos, synthetic mineral fibres etc), or excavation works and, should Fire Boar agree to carry out such work at the request of the Customer then Fire Boar shall not be liable for any damage arising.
- b. All additional costs arising from 4a) and any alteration to the specifications required by the Customer including any interruption or delays by the Customer, its employees, agents, or other trades during the course of work performed, or the extra costs of compliance with EHS policies may result in additional charges including the reasonable costs of delay.
- c. If it becomes necessary to pay any additional site allowances, other than a State or Federal award or amounts in excess of any current workplace agreement applicable to the type of work being performed, these costs will be added to the Fire Boar Feed) Any variations to the services required by the Customer must be in writing and will be priced in accordance with Fire Boar standard price lists and shall include an amount for any design, management, overheads and profit.
- d. Emergency service callouts will be charged in accordance with Fire Boar standard fees for such service.

5. Customer's Responsibilities

The Customer Shall;

- a. Advise Fire Boar of the existence of any concealed pipes, wires and cables for water, gas, electricity, telephone or other services affecting the premises and shall confirm the location of such services to Fire Boar and technician before work commences. In the absence of such notice Fire Boar accepts no liability for any loss or damage to such services or any consequence thereof and the Customer agrees to indemnify Fire Boar against any claim whatsoever for any loss or liability under this clause;
- b. provide adequate facilities at the premises at no cost to Fire Boar, including parking, power, lifting equipment, scaffolding, scissor lifts, and rubbish removal skips;
- c. Ensure that the premises must at all times be a safe working environment and (without limitation) will not contain asbestos or similar hazards;

- d. Indemnify Fire Boar against any claims for the failure of fire alarm monitoring equipment, telecommunication carrier lines, power supply, costs relating to fire brigade charges, or relocation of equipment.

6. Delivery

- a. Fire Boar shall use reasonable endeavours to complete delivery of the works, however, delivery dates or periods quoted are estimates only and are subject to workflow demands and prompt receipt of all information, material, and permits necessary to allow Fire Boar to proceed with the delivery of the works.
- b. Fire Boar accepts no liability whatsoever for any loss or damage suffered by the Customer as a consequence of any delay or failure to deliver the works

7. Base Line Data

It is the Customer's responsibility to ensure they have provided Fire Boar with all base line data (as described in AS 1851-2012) related to the customers property/building relating to this agreement. While Fire Boar is happy to assist in the recreation of base line data if such data is unavailable all associated costs will be the responsibility of the customer. Fire Boar accepts no liability in relation to the supply of services/schedules/completed works etc. if sufficient base line data has not been provided.

8. Warranty

- a. The Products supplied by Fire Boar to the Customer under this Agreement are covered by a 12 month warranty which shall commence from the date of completion of installation of products, or for products sold on a supply only or supply and commission basis upon delivery of the products to the Customer ("Warranty Period").
- b. During the Warranty Period, any products that prove to be defective will be repaired or replaced by Fire Boar at its option.
- c. The warranty provided under this Agreement is dependent upon regular maintenance work being carried out to an Australian Standard or Manufacturer's Recommendations.
- d. The parties agree that when evaluating a claim for defect, due allowance shall be made for fair wear and tear of the product. Should the Customer or any other party attempt to carry out repairs, mal-operate or modify the products in any way during the Warranty Period, Fire Boar shall be relieved of its obligations under the warranty provisions. In addition, the warranty does not cover work required to be done to repair a defect or damage caused by the Customer's negligence, fault, neglect, abuse, incorrect use or as a result of vandalism, fire, water damage, power surge or other circumstance outside of Fire Boar control or that of the manufacturer.
- e. The Customer shall inspect all products upon delivery and within 5 business days of delivery, give written notice to Fire Boar if any of the products are not in accordance with the Customer's order.
- f. Fire Boar will accept products returned for credit where Fire Boar has incorrectly supplied a product, or the product has been damaged in transit by Fire Boar carrier.
- g. Products may not be returned for credit without obtaining prior written authorisation from Fire Boar.
- h. Products returned for credit, except under f) above, shall be subject to a 15% or \$20.00 (whichever is greater) restocking fee and except where products are returned under f) above, all freight charges for goods returned for credit shall be prepaid by the Customer unless otherwise approved by Fire Boar in writing.

9. Dispute Resolution

The parties agree that they will initially use all reasonable endeavours to try and resolve any dispute arising under this Agreement within 10 business days of a party being advised by written notice of such a dispute. In the event that the parties are unable to resolve the dispute within that time frame they must refer the dispute to an executive officer from each party to resolve within a further 10 days. If the dispute is not resolved in accordance with the above, either party may refer the matter to mediation or commence legal proceedings.

10. Fire Boar Liability

- a. Nothing in this Agreement excludes, restricts or modifies the application of the provisions of any statute (including the Trade Practices Act 1974) where to do so would contravene that statute or cause any part of this Agreement to be void.
- b. To the extent permitted by law, Fire Boar aggregate liability under this Agreement, whether in contract, tort (including negligence) or otherwise, will be limited to the value of payments received by Fire Boar from the Customer.
- c. Notwithstanding anything else in this Agreement, Fire Boar will not be liable for:
 - i. any indirect, consequential or special or economic loss, cost, liability, damage or expense howsoever arising;
 - or

- ii. loss of profit, loss of use, loss of income, loss of rental or other benefit, loss of production, loss of actual or potential business opportunity or loss of reputation.
- iii. The Customer acknowledges and agrees that it is reasonable for Fire Boar to limit its liability under this Agreement.

11. Intellectual Property

Fire Boar retains all rights, title and interest in any intellectual property including any design(s), documentation, diagrams or plans existing or arising during the course of the work under this Agreement. All intellectual property supplied by the Customer at the commencement of this Agreement remains the property of the Customer but the Customer grants Fire Boar a perpetual, irrevocable, royalty free, non-exclusive licence to use, reproduce and modify the Customer's intellectual property. The Customer indemnifies Fire Boar for any threatened or actual claim of intellectual property infringement arising out of Fire Boar use of the Customer's intellectual property.

12. Force Majeure

Fire Boar will not be in breach of this Agreement or liable to a party if it fails to perform or delays in performance of an obligation as a result of an event beyond its reasonable control, including but not limited to strikes, industrial disputes, pandemics, fire, flood, acts of God, war, vandalism, sabotage, riot, national emergency, embargoes or restraints, extreme weather or traffic conditions, temporary closure of roads, legislation, regulation, order or other act of government.

13. Liquidated Damages

Liquidated damages will not apply to the works unless specifically agreed to in writing, and then they are to be capped at 5% of the contract sum.

14. Fees and Charges

- a. The Customer agrees to pay Fire Boar the fees specified in this Agreement within 30 days of the date of invoice without set-off, deduction or discount of any kind. Should the Customer delay in making payment, Fire Boar shall have the right to charge interest on the outstanding amount at the rate prescribed by the Uniform Civil Procedure Rules 2005, as well as require payment in advance prior to delivery of further goods or provision of further services, or cease supply of further goods or services and terminate the Agreement. The Customer shall also be liable for any legal costs or agent's costs and disbursements associated with collecting outstanding payments on an indemnity basis.
- b. Payment of the fees is a fundamental term of this Agreement and to the maximum extent permitted by law, Fire Boar will have no liability to the Customer for acts or omissions or work required to be undertaken by Fire Boar if the circumstance or event which would otherwise give rise to liability occurs at a time when the Customer is in breach of payment obligations to Fire Boar.
- c. Title to and ownership of the products shall pass to the Customer upon final payment of the fees specified in this Agreement, despite delivery of the goods. Therefore, for the avoidance of doubt, the goods remain the sole and absolute property of Fire Boar as full legal and equitable owner until such time as the Customer has paid Fire Boar the full purchase price together with the full price of any other goods the subject of any other contract with Fire Boar. Risk in the goods shall pass to the Customer upon delivery.
- d. The Customer acknowledges that he receives possession of and holds goods delivered by Fire Boar solely as bailee for Fire Boar until such time as the full price thereof is paid to Fire Boar together with the full price of any other goods then the subject of any other contract with Fire Boar.
- e. Until such time as the Customer becomes the owner of the goods, they will;
 - i. store them on the premises separately;
 - ii. ensure that the goods are kept in good and serviceable condition;
 - iii. secure the goods from risk, damage and theft; and
 - iv. keep the goods fully insured against such risks that are usual or common to insure against in a business of a similar nature to that of the Customer.
- f. Until the goods are paid for in full, Fire Boar authorises the Customer to sell the goods as its agent, however, the Customer shall not represent to any third parties that it is acting in any way for Fire Boar. Fire Boar will not be bound by any contracts with third parties to which the Customer is a party. Records shall be kept by the customer of any goods owned by Fire Boar. The proceeds of any sale of the goods shall be paid into a separate account and held in trust for Fire Boar. The Customer shall account to Fire Boar from this fund for the full price of the goods. If the Customer is entitled to a period of credit, but if prior to the expiration of the period of credit the goods are sold, and the proceeds of sale received the Customer shall account forthwith to Fire Boar for the price of the goods.

- g. Should the Customer die, stop payment or call a meeting of its creditors or become insolvent or subject to the bankruptcy laws or being a company calls a meeting for the purpose of or to go into liquidation or has a winding-up petition presented against it or has a receiver or administrator appointed, Fire Boar may at its option notwithstanding its waiver of such default or failure and without prejudice to its other rights under this Agreement suspend or cancel this Agreement or require payment in cash before or on delivery or tender of goods or documents notwithstanding terms of payment previously specified or may repossess and take over the goods and dispose of the same in its own interest without prejudice to any claim it may have for damages for any loss resulting from such resale.
- h. In the event that the Customer uses the goods/product in some manufacturing or construction process of its own or some third party, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as relates to the goods/product in trust for Fire Boar. Such part shall be deemed to equal in dollar terms to the amount owing by the Customer to Fire Boar at the time of the receipt of such proceeds.
- i. If the Customer does not pay for any goods on the due date then Fire Boar is hereby irrevocably authorised by the Customer to enter the Customer's premises or any premises under the control of the Customer as agent of the Customer and use reasonable force to take possession of the goods without liability for the tort of trespass, negligence or payment of any compensation to the Customer whatsoever. On retaking possession of the goods Fire Boar may elect to refund to the Customer any part payment that may have been made and to credit the Customer's account with the value of the goods less any charge for recovery of the goods, or to resell the goods.
- j. Fire Boar shall have the right to adjust the fees periodically in respect of an increase/fall in the cost of its services.
- k. Fire Boar reserves the right to issue progress invoices of materials and/or labour expended on work in progress and to place into bond materials which cannot be accepted for delivery on site and invoice the full value thereof.
- l. Where any supply of products or services is or becomes subject to GST, an amount equal to GST paid or payable for that supply will be added.

15. Hydrostatic Testing

- a. Before any hydrant mains are turned off we recommend an authorised person from the company or premises assist with an inspection of the fire service, so a timetable can be implemented for the purpose of minimising the risk in areas which cannot be shut down due to operational and safety to employees on site while working.
- b. Pressure testing of the fire hydrant service pipe work to the required design standard can cause some systems to fail or burst under pressure and we encourage all our customers to take the appropriate action in notifying their insurance company, employees, contractors, on the day of the test. Fire Boar accepts no liability whatsoever for system failure caused by the test and any damage caused as a result of the performance of the test, regardless of anything else stated in this agreement and regardless of any act or omission by Fire Boar. This quotation does not allow for the repairing of any pipe work or valves which leak while conducting the pressure testing procedure.
- c. Servicing of any underground check valves or isolating valves which may be installed in a pit are excluded from this quotation and will be quoted separately, unless otherwise stated in the quotation.
- d. Servicing of any underground check valves or isolating valves which may be installed in a pit are excluded from this quotation and will be quoted separately, unless otherwise stated in the quotation.

16. General Service Agreement/Quotation Summary Of Terms and Conditions

- a. The customer acknowledges that the contract for the fire systems inspection & testing will be invoiced quarterly (3 months) in advance which is payable within 30 days of the issued date.
- b. Only one visit has been allowed for inspecting each of the nominated services. Any additional visits due to access not being made available will be charged onto the client as per scheduled rates.
- c. No allowance has been made in this quotation to comply with FM Global inspection, testing and maintenance requirements unless stated.
- d. No allowance has been made in this quotation for boom or scissor lifts if and when required unless stated.
- e. No allowance has been made in this quotation for consumables such as but not limited to fuel required to run the Fire Pump Sets for regular tests or upon false activation.
- f. QFES call out charges due to false alarms and activations will not be the responsibility of Fire Boar unless directly at fault from works conducted by Fire Boar.
- g. No allowance has been made in this quotation for the testing of tenancy fire equipment unless specifically stated.
- h. This contract will increase annually in accordance with CPI.
- i. Travel charges may occur to attend callouts

- j. All works performed during business hours Monday to Friday 7.30am to 4.30pm unless otherwise stated in this proposal. Should works be conducted outside these hours, additional charges will be incurred by the client.
- k. Fire Boar will endeavor to meet the proposed estimated time frame to conduct works however; client acknowledges this is an estimate only and not a deadline.
- l. No allowance has been made for onsite induction or permit to work requirements unless otherwise stated.
- m. We have allowed for reasonable continuity to perform work. Should works not be completed due to client request or unforeseen circumstances additional charges will be incurred by the client.
- n. A minimum site service fee will apply if client agreed scheduled works are altered once Fire Boar staff have been assigned the task.
- o. Additional charges will be incurred if any site-specific requirements such as access restrictions, isolations/de-isolations and safety standards have not been advised in writing/email prior to proposal acceptance.
- p. Warranties on parts supplied by FIRE BOAR are subject to manufacturer's terms and conditions. Warranty will be void if the client and or representative conducts unauthorized alteration to the goods supplied.
- q. All risk for loss or damage to goods supplied shall pass to the client at the time of supply/installation.
- r. Fire Boar reserves the right to request an upfront deposit prior to work commencement and submit ongoing progress claims during works conducted. In this instance the payment terms is a 50% deposit prior to the commencement of the job and followed by 25% payment after 30 days and the final payment in full 14 days after completion and commissioning of the job.
- s. If the Buyer defaults in payment of any amount, the Buyer irrevocably gives to the Company a right in addition to and without limitation of any other right the Company may have to enter, using reasonable force if necessary and without notice, any premises where the equipment is kept by the Buyer and to take possession of the same and thereafter deal with the equipment as its own.
- t. In the event that payment to FIRE BOAR falls overdue, FIRE BOAR may suspend the supply of goods or services.
- u. Any change that affects the trading address, legal entity, structure of management or control of the client's business will be notified to FIRE BOAR, in writing, within seven (7) days of the change becoming effective.
- v. Maintenance proposals (e.g. defect liability period or servicing as per AS1851) do not include parts/consumables or additional labor when necessary.
- w. The statements made by the Company in relation to characteristics and potential applications of the goods are made in good faith to assist the Buyer, but, except where the Trade Practices Act, 1974, and similar state laws impose liability upon the Company, the Company shall not be liable for the consequence of such statements.
- x. The client shall ensure all health and safety regulations are observed whilst FIRE BOAR staff are on the client's premises.
- y. The conditions of this proposal can be altered by agreement in writing/email by authorized representatives of Fire Boar and the client.
- z. Thirty (14) day's written notice by either party will be required to suspend any scheduled contracted maintenance agreements. Seven (7) days' notice must be given to scheduled reactive projects.
- aa. The Company shall not be subject to or incur, and the Buyer releases the Company from, any claim, action or liability for consequential loss or damage to persons or property, including loss of use of the goods, or of profits arising by reason of delays, non-delivery, defective materials or workmanship, negligence, or any act, matter, conduct or thing done, permitted or omitted by the Company.
- bb. It is conditional upon agreement for FIRE BOAR to proceed with any works that the client indemnifies FIRE BOAR against any claim for damage, resulting from faulty or aged pipe work.
- cc. Works by other trades are excluded from this quotation. No allowance has been made unless otherwise noted, for patching or painting of any part of the building. No allowance has been made for costs that may be incurred resulting from the presence of asbestos, synthetic mineral fibres or such similar substances in any form or any associated disputes arising out of asbestos related activity.
- dd. No allowance made for repair of any faulty and/or dangerous electrical wiring or infrastructure found during works conducted by FIRE BOAR. All quotations are submitted under the understanding that all preexisting wiring and infrastructure have been installed in accordance with the relevant standards and are in sound condition.
- ee. Fire Boar reserves the right to suspend works if existing client infrastructure is found to be faulty or dangerous. FIRE BOAR has the right to claim for any time or parts consumed, and losses suffered (if applicable) by said event occurring.

- ff. The Buyer shall indemnify the Company from and against all losses, expenses, collection fees, solicitors' fees or liabilities incurred by the Company in relation to the goods or the services.
- gg. All care and attention would be taken throughout the duration of the project by Fire Boar tradesmen to keep the workforce as clean and tidy as possible and in a safe manner, and Fire Boar will not be held responsible for on-site costs such as for site cleaning or any other site-related work or services by, or on behalf of the builder or any other trades or companies
- hh. Site specific induction costs are capped at \$200.00 for any single contract. Additional costs will be charged to the client.
- ii. New South Wales (NSW) Works- Sites who engage Fire Boar for service contracts will be provided a completed Annual Condition Report in accordance to legislation. Annual Occupiers Statements will not be signed by Fire Boar. Customers are required to engage a Licensed Fire Safety Practitioner (FSP) to sign off on Occupiers Statements and installation work at their own cost.
- jj. Fire Boar does not sign off on Occupiers Statements.

17. Termination

- a. Either party may terminate this Agreement if the other party commits any material or persistent breach of its obligations under this Agreement (which in the case of a breach capable of remedy shall not have been remedied within 14 days of receipt by the party in breach of a notice identifying the breach and requiring its remedy) or if a party becomes insolvent, bankrupt or enters into a scheme or arrangement with creditors. Termination under this clause must be affected by written notice to the other party.
- b. In the event that this Agreement covers the provision of maintenance services and the Customer wishes to terminate prior to the expiry of the Contract Term, the Customer will be required to pay the remaining payments up to the end of the Contract Term. The Contract Term is defined as the initial term specified on the face of this Agreement then any successive 12-month period).
- c. Fire Boar may terminate this Agreement in whole or in part at its convenience upon the provision of 14 days' notice in writing to the Customer.
- d. If the Customer purports to cancel any order, contract or agreement prior to its commencement or prior to the completion of the Term, then the Customer shall pay to Fire Boar on demand a sum equivalent to all Fire Boar's costs, fees and expenses incurred up to the date of such purported cancellation including any damages payable to Fire Boar sub-contractors or suppliers together with a reasonable proportion of Fire Boar loss of anticipated profits, as well as a reasonable administration fee.

18. Prolongation and Extension of Time Costs

If due to circumstances beyond the control of Fire Boar the Agreement is extended beyond the original completion dates, then Fire Boar is entitled to an adjustment of the contract sum in accordance with the formula -- Amount payable per week of delay = contract sum (including prime cost items) /original contract period in weeks x 15%.

19. Insurances

Fire Boar will at all times maintain current Public Liability, Professional Indemnity and Work Cover Insurances.

20. General

- a. Fire Boar may perform any of its obligations through sub-contractors.
- b. The Customer hereby charges with payment of any indebtedness to Fire Boar all beneficial interest (freehold and leasehold) in land and personal property held now or in the future by the Customer. The Customer agrees that if demand is made by Fire Boar the Customer receiving such a demand will immediately execute a mortgage or other instrument of security, or consent to a caveat, as required, and against the event that the Customer fails to do so within a reasonable time of being so requested, the Customer hereby irrevocably and by way of security, appoints any credit manager or solicitor engaged by Fire Boar to be its true and lawful attorney to execute and register such instruments. Notwithstanding any other provision in this clause and in addition thereto Fire Boar may lodge a caveat noting the interest given by this charge on the title of any property of the Customer whenever it so wishes.
- c. This agreement shall be subject to the laws of the State in which the works or services are performed