



# Terms & Conditions

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 **Fireward**  
Automatic Fire Suppression

14 Baynes Place, Chelmsford, Essex, CM1 2QX



## 5. QUALITY OF EQUIPMENT

- 5.1 Fireward warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Equipment shall:
- conform in all material respects with their description and any applicable Equipment Specification.
  - be free from material defects in design, material and workmanship;
  - be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
  - be fit for any purpose held out by Fireward.
- 5.2 Subject to clause 5.3, if:
- the Customer gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Equipment do not comply with the warranty set out in clause 5.1;
  - Fireward is given a reasonable opportunity of examining such Equipment; and
  - the Customer (if asked to do so by Fireward) allows Fireward access to collect the Equipment at the Customer's Cost; Fireward shall, at its option, repair or replace the defective Equipment, or refund the price of the defective Equipment in full.
- 5.3 Fireward shall not be liable for the Equipment' failure to comply with the warranty in clause 5.1 if:
- the Customer makes any further use of such Equipment after giving a notice in accordance with clause 5.2;
  - the defect arises because the Customer failed to follow Fireward's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment or (if there are none) good trade practice;
  - the defect arises as a result of Fireward following any drawing, design or Equipment Specification supplied by the Customer or its employees, servants or agents;
  - the Customer alters or repairs such Equipment without the written consent of Fireward;
  - the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
  - the equipment differ from Equipment Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.4 Except as provided in this clause 5, Fireward shall have no liability to the Customer in respect of the Equipment' failure to comply with the warranty set out in clause 5.1.
- 5.5 The terms of these Conditions shall apply to any repaired or replacement Equipment supplied by Fireward under clause 5.2.

## 6. TITLE AND RISK

- 6.1 The risk in the Equipment shall pass to the Customer on completion of delivery.
- 6.2 Title to the Equipment shall not pass to the Customer until the earlier of:
- Fireward receives payment in full (in cash or cleared funds) for the Equipment and any other Equipment that Fireward has supplied to the Customer in respect of which payment has become due, in which case title to the Equipment shall pass at the time of payment of all such sums; and
  - the Customer resells the Equipment, in which case title to the Equipment shall pass to the Customer at the time specified in clause 6.4.
- 6.3 Until title to the Equipment has passed to the Customer, the Customer shall:
- store the Equipment separately from all other Equipment held by the Customer so that they remain readily identifiable as Fireward's property;
  - not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;
  - maintain the Equipment in satisfactory condition and keep them insured against all risks for their full price on Fireward's behalf from the date of delivery;
  - notify Fireward immediately if it becomes subject to any of the events listed in clause 13.2(b) to clause 13.2(m); and
  - give Fireward such information relating to the Equipment as Fireward may require from time to time.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Equipment in the ordinary course of its business (but not otherwise) before Fireward receives payment for the Equipment. However, if the Customer resells the Equipment before that time:
- it does so as principal and not as Fireward's agent; and
  - title to the Equipment shall pass from Fireward to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 If before title to the Equipment passes to the Customer the Customer becomes subject to any of the events listed in clause 13.2(b) to clause 13.2(m), then, without limiting any other right or remedy Fireward may have:
- the Customer's right to resell Equipment or use them in the ordinary course of its business ceases immediately; and
  - Fireward may at any time:
    - require the Customer to deliver up all Equipment in its possession which have not been resold, or irrevocably incorporated into another product; and
    - if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Equipment are stored in order to recover them.

## 7. SUPPLY OF SERVICES

- 7.1 The Customer may, at its own discretion, contract with Fireward for service of the Equipment. Fireward shall provide the Services to the Customer in accordance with the Service Specification in all material respects. If no Service Specification is agreed, this clause 7 shall not apply.
- 7.2 Fireward shall use all reasonable endeavours to meet any performance dates for the Services specified in the Service Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 Fireward 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 Fireward shall notify the Customer in any such event.
- 7.4 Fireward warrants to the Customer that the Services will be provided using reasonable care and skill.

## 8. CUSTOMER'S OBLIGATIONS

- 8.1 Failure to comply with the Customer's obligations set out in this Clause 8 shall be deemed to be a material and repudiatory breach of the Contract.
- 8.2 The Customer must:
- ensure that the terms of the Order, and (if submitted by the Customer) the Equipment Specification are complete and accurate;
  - co-operate with Fireward in all matters relating to the Services;
  - provide Fireward, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Fireward to provide the Services;
  - provide Fireward with such information and materials as Fireward may reasonably require to supply the Services, and ensure that such information is accurate in all material respects; failure to provide accurate information may result in termination of the contract in accordance with the terms set out herein.
  - prepare the Customer's premises for the supply of the Services;
  - 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;
  - ensure that all employees, servants or agents of the Customer using or otherwise involved with the equipment howsoever arising whilst in the care and control of the Customer are full trained to do so at all times and, without prejudice to and in addition to the foregoing, are competent in doing so.
  - keep and maintain all of Fireward Materials at the Customer's premises in safe custody at its own risk, maintain Fireward Materials in good condition until returned to Fireward, and not dispose of or use Fireward Materials other than in accordance with Fireward's written instructions or authorisation; and
  - to keep protected machinery fit for purpose, to follow all servicing and maintenance guidelines for the order to include but not limited to daily checks and servicing according to Fireward's instructions. It remains the responsibility of the Customer at all times to arrange for and make available all Equipment for servicing as set out in the operations manual and/or the Specification.
  - to follow all guidelines of the equipment manufacturers to ensure but not limited to the machinery being clean of grease, flammable liquids.
  - At all times comply with Fireward's operations manual.
- 8.3 If Fireward's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- Fireward shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Fireward's performance of any of its obligations;

- (b) Fireward shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Fireward's failure or delay to perform any of its obligations as set out in this clause 8.3; and
- (c) the Customer shall reimburse Fireward on written demand for any costs or losses sustained or incurred by Fireward arising directly or indirectly from the Customer Default.

## 9. CHARGES AND PAYMENT

- 9.1 The price for Equipment shall be the price set out in the Order or, if no price is quoted, the price set out in Fireward's published price list as at the date of delivery. The price of the Equipment is exclusive of all costs and charges of packaging, insurance, transport of the Equipment, which shall be paid by the Customer when it pays for the Equipment.
- 9.2 The charges for Services shall be on a time and materials basis:
- (a) the charges shall be calculated in accordance with Fireward's standard daily fee rates, as set out in the Service Schedule.
  - (b) Fireward's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;
  - (c) Fireward shall be entitled to charge an overtime rate of time and a half of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.2(b); and
  - (d) Fireward shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Fireward engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Fireward for the performance of the Services, and for the cost of any materials.
- 9.3 Fireward reserves the right to:
- (a) increase its standard daily fee rates for the charges for the Services, provided that such charges cannot be increased more than once in any 12 month period. Fireward will give the Customer written notice of any such increase 1 month before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify Fireward in writing within 7 days of the date of Fireward's notice and Fireward shall have the right without limiting its other rights or remedies to terminate the Contract by giving 4 weeks' written notice to the Customer; and
  - (b) increase the price of the Equipment, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Equipment to Fireward that is due to:
    - (i) any factor beyond the control of Fireward (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
    - (ii) any request by the Customer to change the delivery date(s), quantities or types of Equipment ordered, or the Equipment Specification; or
    - (iii) any delay caused by any instructions of the Customer in respect of the Equipment or failure of the Customer to give Fireward adequate or accurate information or instructions in respect of the Equipment.
- 9.4 In respect of the Specification, Fireward shall invoice the Customer in accordance with the account terms agreed by Fireward on a case by case basis and at the complete discretion of Fireward.
- 9.5 Unless stated otherwise in the Specification, the Customer shall pay each invoice submitted by Fireward:
- (a) within 30 days net of the date of the invoice; and
  - (b) in full and in cleared funds to a bank account nominated in writing by Fireward, and time for payment shall be of the essence of the Contract.
- 9.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Fireward to the Customer, the Customer shall, on receipt of a valid VAT invoice from Fireward, pay to Fireward such additional amounts in respect of VAT as are chargeable on the supply of the Services or Equipment at the same time as payment is due for the supply of the Services or Equipment.
- 9.7 If the Customer fails to make any payment due to Fireward under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (the 1998 Act). The Customer shall pay the interest together with the overdue amount and other amounts falling due under the 1998 Act.
- 9.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. Fireward may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Fireward to the Customer.

## 10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Fireward.
- 10.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on Fireward obtaining a written licence from the relevant licensor on such terms as will entitle Fireward to license such rights to the Customer.
- 10.3 All Fireward Materials are the exclusive property of Fireward.

## 11. CONFIDENTIALITY

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 11 shall survive termination of the Contract.

## 12. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 12.1 Nothing in these Conditions shall limit or exclude Fireward'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.
- 12.2 Subject to clause 12.1:
- (a) Fireward shall under no circumstances whatever 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
  - (b) Fireward'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, shall in no circumstances exceed the value of the Equipment as at the date of the material incident.
  - (c) Fireward shall under no circumstances be liable for any losses arising under or in connection with the Contract where there is established on a balance of probabilities breach of the Customer's obligations under Clause 8 and the Customer shall indemnify Fireward, so far as is permitted by law, for any loss or expense incurred as a result of the Customer's breach of its obligations as aforementioned.
- 12.3 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.
- 12.4 This clause 12 shall survive termination of the Contract.

## 13. TERMINATION

- 13.1 Without limiting its other rights or remedies either party may terminate the Contract by giving the other party not less than 3 months' written notice.
- 13.2 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 suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency

- Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply];
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party];
  - (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
  - (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
  - (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
  - (h) the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2(b) to clause 13.2(i) (inclusive);
  - (k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
  - (l) the other party's financial position deteriorates to such an extent that in Fireward's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
  - (m) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 13.3 Without limiting its other rights or remedies, Fireward may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 13.4 Without limiting its other rights or remedies, Fireward may suspend the supply of Services or all further deliveries of Equipment under the Contract or any other contract between the Customer and Fireward if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 13.2(b) to clause 13.2(m), or Fireward reasonably believes that the Customer is about to become subject to any of them.
- 13.5 On termination of the Contract for any reason:
- (a) the Customer shall immediately pay to Fireward all of Fireward's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, Fireward shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - (b) the Customer shall return all of Fireward Materials and any items set out in the Specification including the Equipment Specification which have not been fully paid for. If the Customer fails to do so, then Fireward may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
  - (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.
- 14. FORCE MAJEURE**
- 14.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of Fireward including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Fireward 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 Fireward or subcontractors.
- 14.2 Fireward shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 14.3 If the Force Majeure Event prevents Fireward from providing any of the Services and/or Equipment for more than 6 weeks, Fireward shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
- 15. GENERAL**
- 15.1 Assignment and other dealings.**
- (a) Fireward 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.
  - (b) The Customer shall not, without the prior written consent of Fireward, 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.
- 15.2 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, fax 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 12.2(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 fax [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
- 15.3 Severance.**
- (a) 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.
  - (b) If [one party gives notice to the other of the possibility that] any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 15.4 **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.
- 15.5 **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.
- 15.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 15.7 **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 Fireward.
- 15.8 **Governing law.** 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.
- 15.9 **Jurisdiction** Each party irrevocably agrees that the law of England and Wales and 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).