

YOUR ATTENTION IS DRAWN TO CLAUSE 11 – LIMITATION OF LIABILITY

1. Interpretation

a) In these conditions:

“Business Hours” 9:00am to 5:00pm on a Working Day.

“Buyer” the purchaser of the Services .

“Call Out” means the call out terms as stated in the Proposal and/or the Confirmation and clause 5.

“Commencement Date” means the date that the Services start to be performed or the date as set out in the Confirmation, whichever shall be sooner.

“Company” means Fire Bright Solutions Limited of Dane Mill Business Centre, Broadhurst Lane, Congleton, Cheshire, CW12 1LA, England.

“Conditions” means these standard terms and conditions of sale and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Company.

“Confirmation” means the Company’s written confirmation of the Contract

“Contract” means the contract between the Company and the Buyer for the provision of Services which is subject to the Conditions.

“Equipment” means the equipment specified in the Proposal or Confirmation.

“Excluded Services” means those services listed at clause 5.

“Order” means the Buyer’s Order for the supply of the Services, which may take the form of an order form, the Buyer’s written acceptance of the Company’s quotation or an oral request for the purchase of Services, as the case may be.

“Proposal” means the proposal prepared by the Company and submitted to the Buyer.

“Services” means the periodic inspection and testing of the Equipment to be provided by the Company to the Buyer as identified in the Proposal and/or the Confirmation.

“Service Charge” means the charges payable for the Services as set out in the Proposal and/ or the Confirmation.

“Site” means the site(s) at which the Services will be performed.

“Working Day” means a day (other than a Saturday, a Sunday, Christmas Day, Good Friday or a public holiday in England and Wales) when the banks in London are open for business.

b) Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

2. Basis of The Contract

a) The Buyer agrees and acknowledges that it is entering into the Contract as a business not as a consumer and that any person entering into the Contract on behalf of the Buyer has the authority to do so.

b) The Contract shall consist of these Conditions, where provided, the Confirmation and any Proposal. In the event of any conflict or inconsistency ;

i) The Confirmation shall take precedence over the Proposal and the Conditions.

ii) The Proposal shall take precedence over the Conditions.

c) The Company shall provide the Services subject to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions that the Buyer may seek to impose, or which are implied by trade, custom, practice or course of dealing.

d) Any quotation or Proposal for the Services given by the Company shall not constitute an offer. The Buyer acknowledges that any discussions with the Company (whether over the phone, email, face to face or otherwise) are on the basis of these Conditions. When the Buyer indicates that he wishes to purchase the Services this is an offer subject to these Conditions. The Contract is entered into when the Company confirms acceptance by either sending a Confirmation or commencing the provision of the Services, which ever shall be sooner.

e) No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Company.

f) The Buyer acknowledges that it has not relied upon any statement, promise, representation, assurance or warranty made or given by the Company which is not set out in the Contract. Any advice or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents as to the Services which is not confirmed in writing by the Company is followed or acted upon entirely at the Buyer’s own risk, and accordingly the Company shall not be liable for any such advice or recommendation. No such advice or recommendation will be confirmed in writing unless so requested by the Buyer.

g) The Company shall only provide the Services under this Contract in respect of the Equipment.

h) Any typographical or clerical omission in any sales literature, quotation, price list, acceptance of offer, invoice or other documentation or information issued by the Company shall be subject to correction without any liability on the part of the Company.

i) The person who enters into the Contract on behalf of the Buyer warrants that they have the appropriate and necessary authority to do so and acknowledges that they are entering the Buyer into a binding contract with the Company subject to these Conditions.

Fire Bright Solutions Ltd

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Company Registration No: 4333484

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3. Term and Termination

- a) This Contract shall commence on the Commencement Date, and shall continue for the period set out in the Proposal or the Confirmation (the "Fixed Term") and shall continue thereafter for successive periods of 12 months (Renewal Term) unless terminated in accordance with these Conditions.
- b) The Company and the Buyer shall each have the right to terminate the Contract in respect of the Services without reason upon (3) months' prior written notice, such notice to expire at the earliest at the end of the Fixed Term or the current Renewal Term.
- c) Without prejudice to any other provisions in these Conditions, the Company has the right to terminate the Contract with immediate effect by giving written notice to the Buyer in the following circumstances:
 - i. a material breach by the Buyer; or
 - ii. the Buyer being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or any application for administration or receivership or similar proceedings being made in respect of the Customer; or
 - iii. (being a company) 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 Buyer; or
 - iv. (being a company) 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 Buyer; or
 - v. (being a company) the holder of a qualifying floating charge over the Buyer's assets has become entitled to appoint or has appointed an administrative receiver; or
 - vi. a person becomes entitled to appoint a receiver over the Buyer's assets or a receiver is appointed over the Buyer's assets; or
 - vii. (being an individual) the Buyer is the subject of a bankruptcy order, dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or
 - viii. the Buyer's financial position deteriorating to such an extent that in the Company's opinion the Buyer's capability to adequately fulfil its obligations under the Agreement are placed in jeopardy; or
 - ix. the Buyer failing to make a payment due under the Contract on the due date for payment; or
 - x. the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- d) If this Clause applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any Services under the Contract without any liability to the Buyer, and if any Services have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- e) If the Contract is terminated during the Fixed Term for any reason an administration fee of £50 fee will be invoiced upon termination and payable in accordance with clause 9.

4. The Services

- a) The Services will be provided by the Company, its agents or sub-contractors during Business Hours (unless otherwise agreed by the Company or stated in the Proposal).
- b) The Company will use reasonable endeavours to meet any dates specified for the Service visits. For the avoidance of doubt, any dates agreed are not guaranteed by the Company. Time for performance of the Services shall not be of the essence of the Contract.
- c) The Company shall provide the Services with reasonable care and skill but otherwise all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Contract.
- d) The Company has use of step ladders up to a maximum height of 3 metres in order to carry out the Services. Any additional high-level access equipment that maybe required for the provision of Services will be provided by the Buyer at the Buyer's own expense.
- e) If, at any time, the Buyer requires Services in addition to those included in the Proposal or the Confirmation the Buyer may at any time request the provision of additional services, subject to payment of the then applicable specified fee (or a pro-rata amount of such fee).
- f) All Service visits not required must be cancelled before the engineer attends. The Company shall charge a reasonable fee for wasted time for:
 - i. Service visits which are no longer required but are not cancelled within a reasonable time before the service engineer attends; or
 - ii. Service visits attended where no access is gained either into the Sites or to the Equipment.

5. Call Outs

- a) The Buyer has the option to use the Company for Call outs as per the terms stated in the Proposal or the Confirmation. Call Out charges will apply.
- b) The Company will use reasonable endeavours to meet any specified response or fix times for any Call Outs. For the avoidance of doubt, any response or fix times are not guaranteed by the Company. Time for performance of the Call Outs shall not be of the essence of the Contract.
- c) The Company shall provide the Call Out services with reasonable care and skill but otherwise all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Contract.

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- d) The Company reserves the right, by giving notice in writing to the Buyer at any time before attending a Call Out to increase the list price of the Call Outs to reflect any increase in the cost to the Company due to any change in the Call Outs which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions.

6. Excluded Services

- a) The provision of the Services and Call Outs will not cover:
- Provision for civil works, cutting away, making good, re-decoration, builders work or moving material or equipment to gain access;
 - Working around or near asbestos type surfaces. If asbestos is found during the Service visits or Call Outs it will be the Buyer's responsibility to make the area safe for the Company to proceed. The Company reserves the right to charge the Buyer additional costs for Works carried out adjacent to asbestos.

7. The Equipment

- a) The Buyer will make the Equipment available and provide a safe working environment to enable the Company's engineers to provide the Services. Where access to Equipment is restricted or prohibited by the Buyer (e.g. in cases where testing of the fire system sounders is not permitted) the Buyer acknowledges and accepts that the Company accepts no liability whatsoever in respect of the failure of such Equipment in accordance with clause 9.
- b) The Buyer will ensure that the Equipment is operated in accordance with the manufacturer's instructions and that routine maintenance procedures are carried out. Failure by the Buyer to comply with this clause will be treated as a material breach of the Contract giving the Company the right to, if it elects, treat such failure as a material breach and serve notice of termination with immediate effect in accordance with clause 3(c)(i), and/or charge the Buyer its reasonable costs, losses and expenses arising as a result of the Buyer's failure.
- c) Either before or during the first Service visit, the Company will notify the Buyer of items of Equipment that are substandard. Such items of Equipment should be replaced or brought up to an acceptable standard within 3 months of the Company notifying the Buyer. Failure to do so will be viewed as a material breach of the Contract giving the Company the right to, if it elects, serve notice of termination with immediate effect in accordance with clause 3(c)(i) and/or charge the Buyer its reasonable costs, losses and expenses arising as a result of the Buyer's failure.
- d) Removal of Equipment from its original installation must be notified to the Company and a re-commissioning visit by the Company booked. The re-commissioning call will be chargeable at the cost prevailing at the time of the call and the Company will advise the Buyer of such cost. Failure to request a re-commissioning visit will be viewed as a material breach of the Contract giving the Company the right to, if it elects, serve notice of termination with immediate effect in accordance with clause 3(c)(i), and/or charge the Buyer its reasonable costs, losses and expenses arising as a result of the Buyer's failure.

8. Service Charge

- a) The price of the Services shall be as stated in the Proposal or the Confirmation, or where not so stated as set out in the Company's quoted price list.
- b) The Company reserves the right, by giving notice in writing to the Buyer at any time before carrying out the Services to increase the list price of the Services to reflect any increase in the cost to the Company due to any change in the Services which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions.
- c) Where the Term of the Contract exceeds 12 months the Company may increase the price annually by reference to any official index measuring change in the cost of goods and services as selected by the Company ("Relevant Index") for the twelve (12) months preceding the date, save that the annual rate of increase shall never be less than 2% irrespective of the Relevant Index. Such increases shall be added annually and compounded thereafter.
- d) Unless otherwise specified in writing, prices do not include VAT or any other duty or tax payable by the Buyer.

8a. Payment (in cases where Contract is longer than 45 days and classified as a "Construction Contract" as defined in the Housing Grants, Construction and Regeneration Act 1996)

- a) Upon the last Working Day of each calendar month, the Company shall submit to the Buyer an interim application (the "Interim Application") stating the total amount which the Company considers to be due to it together with all such supporting documents, vouchers, receipts and other information as required to check the same.
- b) The due date for payment shall be the [tenth] Working Day following receipt by the Buyer of an Interim Application (the "Due Date"). The final date for payment of each Interim Application (the "Final Date for Payment") shall be the date occurring [twenty] ([20]) Working Days after the Due Date for payment of the relevant Interim Application or [fifteen] ([15]) Working Days after receipt of the invoice referred to in clause 8a.c), whichever is the later.
- c) Not later than the date occurring [five] ([5]) Working Days after the Due Date for payment of an Interim Application, the Buyer shall issue to the Company a notice specifying the amount (if any) that the Buyer considers to be or to have been due at the Due Date for payment in respect of the Interim Application and the basis on which that amount is calculated (a "Payment Notice"). Such amount shall be calculated as the total of the value of the part of the services properly executed up to the end of the preceding month less the sum of the amounts previously paid by the Buyer

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- to the Company under the Order. It is immaterial that the amount referred to in the Payment Notice may be zero. The Company shall, immediately upon receipt of a Payment Notice, give to the Buyer an invoice valid for VAT purposes for the amount stated as due from the Buyer in the Payment Notice.
- d) Subject to clause 8a.f) below and unless the Buyer has served a notice under clause 8a.e) below, the Buyer shall pay to the Company the amount stated as due in each Payment Notice or if the Buyer has not issued a Payment Notice, under clause 8a.c) above, the amount set out in the Interim Application), (in this clause 8a, the “Notified Sum”) on or before the Final Date for Payment.
- e) Not less than two Working Days before the Final Date for Payment (in this clause 5, the “Prescribed Period”), the Buyer may give the Company notice that it intends to pay less than the Notified Sum (in this clause 8a, a “Pay Less Notice”). Any Pay Less Notice shall specify:
- The sum that the payer considers to be due on the date the notice is served; and
 - The basis on which that sum is calculated.
- f) Notwithstanding clauses 8a.d) and 8a.e), if the Buyer becomes insolvent after the Prescribed Period under this Order, the Company shall not be required to pay any of its Subcontractors who are performing works under this Order unless the Company has received payment in respect thereof from the Buyer.
- g) In the event of the late payment of any part of the Contract Sum by the Buyer to the Company or of any other amount from time to time payable by any party to another party under this Order, interest shall be payable on any amount thereof improperly withheld or delayed at a rate of [five] per cent ([5]%) per annum in excess of the rate set from time to time by the Bank of England’s Monetary Policy Committee (or any successor, calculated from the Final Date for Payment of such amount (or, if there is no final date for payment thereof, from the final date on which such amount ought otherwise to have been paid) until the date when payment is made. Both parties agree that payment of such interest will constitute a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.
- h) Any retentions made by the Buyer shall, be released to the Company in the first payment that the Buyer makes to the Company after the later of the expiry of the Rectification Period and the rectification of all defects, shrinkages and other faults in the Works which the Buyer instructs the Company to make good.
- i) Title to any goods and materials intended for the Works shall only vest in the Buyer upon the Buyer making payment to the Company in respect of such goods and materials.

8b. Payment (where the Contract is for 45 days or less and/or is not classified as a “Construction Contract”)

- a) Invoices for the Service Charge will be raised on completion of each Service visit and payable in full and cleared funds net monthly from the date of invoice (unless otherwise agreed in writing by the Company), to the bank account nominated in writing by the Company. An administration fee may be charged if the Buyer does not make all payments by direct debit. Time of payment is of the essence.
- b) The Buyer shall make all payments on the date due without any setoff, counterclaim, deduction or withholding and, without limiting its other rights or remedies, if the Buyer fails to do so the Company may:
- suspend provision of the Services;
 - require the Buyer to pay interest on the overdue amount at the rate of 5% per annum above the base lending rate of the Bank of England (such rate accruing on a daily basis from the due date until the date of actual payment of the overdue amount); and/or
 - treat the failure to pay as a material breach and terminate the Contract as set out in clause 3(c)(i).

9. Further Terms of Payment

- a) Subject to approval by an authorised representative of the Company of the Buyer’s current credit rating, the Company may extend credit to the Buyer such that payment of the price shall be due and payable within 30 days net monthly of the date of invoice unless otherwise agreed in writing by an Authorised representative of the Company. The Company reserves the right to withdraw any credit facility previously made available to the Buyer at any time and to require payment of all sums due in accordance with the provisions of Clause 6(b) below. Whenever credit is made available to the Buyer in accordance with this Clause 9a any payments received from the Buyer shall be appropriated to the oldest debt due from the Buyer to the Company.
- b) When credit has not been approved in accordance with Clause 9a above payment of the price shall be due and payable on or before Delivery unless otherwise agreed in writing by an authorised representative of the Company and time of payment of the price shall be of the essence of the Contract.
- c) If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
- cancel the Contract or suspend any further deliveries to the Buyer;
 - (appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Buyer); and
 - charge interest to the Buyer at the rate of 2% per month above the base rate from time to time of Lloyds TSB Bank plc on the unpaid balance (such interest to accrue on a day to day basis from the due date for payment until receipt by the Company of the full amount whether before or after any judgement); and
 - the Buyer shall indemnify the Company against all costs and expenses (including any legal costs and expenses on a full indemnity basis) incurred or sustained by the Company in recovering sums due or in exercising its rights pursuant to Clause 9.

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10. Suspension

- a) If the Buyer fails to pay a sum to the Company in accordance with clause 8a (together with any VAT properly chargeable in respect of that payment) by the final date for payment and the failure continues for 7 days after the Company has given notice to the Buyer, of its intention to suspend performance of its obligations under the Contract and the grounds for such suspension, the Company, without affecting its other rights and remedies, may suspend performance of any or all of those obligations until payment is made in full.
- b) Where the Company exercises its right of suspension under clause 10a, it shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by it as a result of exercising the right.
- c) Applications in respect of any such costs and expenses shall be made to the Buyer and the Company shall with its application or on request, submit such details as are reasonably necessary for ascertaining the amount in question. When ascertained or agreed, the amount shall be included in the next interim certificate

11. Liability

- a) Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss or profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Services, except as expressly provided in these Conditions.
- b) The Company shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of delay in performing, or any failure to perform, any of the Company's obligations in relation to the Services, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:
 - i. Act of God, explosion, flood, tempest, fire or accident;
 - ii. war or threat of war, sabotage, insurrection, civil disturbance or requisition;
 - iii. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - iv. import or export regulations or embargoes;
 - v. strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or a third party);
 - vi. difficulties in obtaining raw materials, labour, fuel, parts or machinery;
 - vii. power failure or breakdown in machinery.
- c) Nothing in these Conditions shall limit or exclude the Company's liability for:
 - i. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); or
 - ii. Fraud or fraudulent misrepresentation; or
 - iii. Breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - iv. Any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.
- d) Subject to clause 11c, the Company shall under no circumstances whatsoever be liable to the Buyer, 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.
- e) the Company's sole liability to the Buyer 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 total sum of the Service Charge actually paid by the Buyer under the Contract during the 12 month period immediately preceding the date of the claim.

12. Force Majeure

- a) Neither party shall be liable for any failure or delay in performing its obligations under the Agreement to the extent that such failure or delay is caused by a Force Majeure Event. A "Force Majeure Event" means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable.

13. General

- a) No waiver by the Company of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- b) The Company may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this Contract.
- c) The Buyer may not assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this Contract without the prior written consent of the Company.

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- d) If any provision of these Conditions is held by a competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected thereby.
- e) A person who is not a party to the Contract shall not have any rights under or in connection with it, nor shall they have any right to enforce its terms.
- f) 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 in writing and signed by the Company.
- g) The Contract shall be governed by the laws of England and any dispute arising out of or in connection with it shall be determined by the exclusive jurisdiction of the English courts.

14. Data Protection

- a) The Company is entitled to make searches about the Buyer at credit reference agencies. The agencies may record details of searches whether or not the Company agrees to enter into the Contract.
- b) The Company may use credit-scoring methods to assess whether or not to enter into the Contract with the Buyer and, in some cases, to verify the Buyer's identity. This information may also be used for debtor tracing, to prevent money laundering, and to help with the Company's credit-risk and fraud protection activities.
- c) If the Company enters into the Contract with the Buyer, the Company may provide on-going details to the credit reference agencies where the Buyer fails to pay on time or defaults under the Contract.
- d) The Supplier will store the Customer's contact details on its customer database which will be shared with other members of the JLA Group and external third parties (such as sub-contractors) acting on the Supplier's behalf as necessary to fulfil the Supplier's obligations under the Contract. For full details please refer to the Company's privacy policy at <http://www.firebrightsolutions.co.uk/privacy.php>.
- e) The Company may also use the Buyer's contact details to contact the Buyer from time to time about products and services within the Company group. The Buyer may withdraw its consent for any personal data to be used for marketing purposes and can amend marketing preferences at any time by contacting info@firebrightsolutions.co.uk. Please see the Suppliers privacy notice at <http://www.firebrightsolutions.co.uk/privacy.php>.

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