

GENERAL TERMS OF TRADE



These General Terms of Trade together with any Proposal will form the agreement between Kaizon Fire Protection Limited (**Kaizon Fire Protection**) and the Client in relation to, and governing, the supply of Goods and/or Services by Kaizon Fire Protection to the Client (**Agreement**). Instructing Kaizon Fire Protection to supply the Goods and/or Services constitutes the Client's acceptance of the relevant Proposal and these General Terms of Trade. Any verbal agreement, trade arrangement or course of dealing between Kaizon Fire Protection and the Client at variance with this Agreement will have no effect unless provided in writing and agreed to in writing by Kaizon Fire Protection.

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** In this Agreement, unless the context otherwise requires:

Agreement means these General Terms of Trade together with the particulars set out in any Proposal;

Business Day means a day on which registered banks are open for business in Auckland, New Zealand, excluding Saturdays, Sundays and public holidays;

Client means the individual, company or other entity specified in the Proposal or otherwise receiving Goods and/or Services from Kaizon Fire Protection;

Confidential Information means any information and other material (including trade secrets and any Intellectual Property):

- (a) of a confidential or proprietary nature which the disclosing party makes available to the receiving party including anything that the receiving party derives from this information and material;
- (b) relating to the terms of this Agreement;
- (c) relating to the business affairs of either party;
- (d) disclosed by a party to another on the express basis that such information is confidential; or
- (e) which might reasonably be expected by a party to be confidential in nature,

provided that where information relates exclusively to one party, nothing in this Agreement will require that party to maintain confidentiality in respect of that information;

Deposit means the deposit amount (if any) specified in the relevant Proposal, or otherwise agreed by Kaizon Fire Protection in writing.

Event of Default occurs if the Client:

- (a) becomes, or is deemed to be, insolvent or bankrupt;
- (b) makes an assignment for the benefit of, or enters into or makes any arrangement or composition with, its creditors (other than Kaizon Fire Protection);
- (c) goes into receivership or has a receiver, administrator, trustee or manager (including a statutory manager) appointed in respect of the Client and/or all or any of the Client's property;
- (d) passes a resolution, or any proceeding is commenced, for the Client's winding up or liquidation (other than for the purposes of a solvent reconstruction); or
- (e) has:
 - (i) breached a provision of this Agreement that is incapable of remedy; or
 - (ii) failed to remedy any breach of this Agreement that is capable of remedy within 10 Business Days of notice of that breach having been given stating the nature of the breach and requiring remedy;

Force Majeure Event means any event or circumstance (whether arising from natural causes, human agency or otherwise) that is beyond the reasonable control of Kaizon Fire Protection, including strikes, lockouts or other labour disputes, epidemic, pandemic or

quarantine restrictions, riot, civil commotion, fire, flood, drought, loss or delay at sea, breakdown or war (whether declared or not);

Goods means the Goods to be supplied to the Client by Kaizon Fire Protection, as set out in the relevant Proposal or otherwise agreed by Kaizon Fire Protection in writing;

Guarantor means the person(s) (if any) named in the relevant Proposal as a guarantor of the Client's obligations under the Agreement.

Intellectual Property means all statutory, common law and proprietary rights and interests, including patents, designs, trademarks, copyright works, layout designs, know-how and other information, whether registered or unregistered (including applications for such rights) as may exist anywhere in the world at any time;

Price means the amount payable by the Client to Kaizon Fire Protection in respect of the Goods and/or Services provided by Kaizon Fire Protection from time to time, being Kaizon Fire Protection' applicable rates and/or prices at the relevant time as set out in the relevant Proposal or otherwise advised to the Client in writing by Kaizon Fire Protection; and

Property means the Client's property that is specified on the relevant Proposal (or otherwise advised by the Client to Kaizon Fire Protection in writing) to be the delivery address, on which the Services are to be provided and/or the Goods are to be supplied.

Proposal means the proposal document(s) provided to the Client by Kaizon Fire Protection in respect of the Goods and/or Services alongside these General Terms of Trade.

Services means the Services to be provided to the Client by Kaizon Fire Protection, as set out in the relevant Proposal or otherwise agreed by Kaizon Fire Protection in writing.

1.2 **General interpretation:** In this Agreement, unless the context requires otherwise:

- (a) **Including:** means including, without limitation to the generality or specificity of the surrounding words; and
- (b) **Statutes and regulations:** reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations.

2. DELIVERY OF GOODS

2.1 **Delivery:** Unless otherwise agreed in writing, Kaizon Fire Protection will make available and/or deliver the Goods to the Client at the Property and by the delivery date(s) specified in the relevant Proposal or otherwise as agreed by Kaizon Fire Protection in writing. Kaizon Fire Protection may deliver the Goods by instalments and delivery may be effected by one or more shipments.

2.2 **Delivery dates:** Notwithstanding clause 2.1 and to the maximum extent permitted by law, the Client acknowledges that:

- (a) unless otherwise agreed in writing, any delivery date specified is approximate only and time is not of the essence; and
- (b) under no circumstances will Kaizon Fire Protection be liable for any costs incurred by the Client as a result of any delay in delivery (whether caused by factors beyond Kaizon Fire Protection' control or otherwise).

2.3 **Delay or refusal to accept delivery:** Without prejudice to any other rights or remedies Kaizon Fire Protection may have, if the Client

refuses to collect, accept or unduly delays delivery of the Goods (or any part) upon or after the date that it first becomes available for collection and/or delivery, the Client will pay to Kaizon Fire Protection all additional costs incurred by Kaizon Fire Protection as a result of such refusal or delay including (without limitation) any storage charges and insurance costs. Delay or default in delivery does not entitle the Client to cancel any order for Goods.

2.4 **Compliance with laws:** The Client will be responsible for and will ensure that the use, sale, installation and/or operation of the Goods, as well as the delivery of the Goods to the Property, complies with all applicable laws, statutes, ordinances and codes. For clarity, Kaizon Fire Protection will not be responsible for ensuring compliance with such laws or for any misuse of the Goods, contravention of such laws by the Client or any other person, or for any damage, loss, personal injury, harm or death caused or contributed to by the use of the Goods

2.5 **Costs:** Unless otherwise agreed in writing, all freight costs together with any required insurance relating to the delivery of the Goods will be payable by the Client and are in addition to the Price.

3. SERVICES

3.1 **Service standards:** In carrying out the Services, Kaizon Fire Protection will:

- (a) ensure that it has (or has the use of) all necessary facilities, equipment, personnel, Intellectual Property and/or any other thing reasonably necessary to perform its obligations under this Agreement; and
- (b) use due skill and care when undertaking the Services, which includes taking all reasonable care of any property owned by the Client.

3.2 **Client duties:** The Client will:

- (a) promptly respond to all requests made by Kaizon Fire Protection for instruction and information relating to the provision of the Services, and promptly do all things reasonably necessary to enable Kaizon Fire Protection to fully and effectively provide the Services;
- (b) grant Kaizon Fire Protection and all persons authorised by Kaizon Fire Protection the right to enter the Client's premises at all reasonable times for the purpose of carrying out the Services; and
- (c) otherwise perform its obligations and liabilities under this Agreement in a timely manner, efficiently and diligently.

3.3 **Personnel:** During the term of this Agreement and for a period of two years following expiry or termination of this Agreement, the Client will not, without the prior written consent of Kaizon Fire Protection, directly solicit or offer employment to:

- (a) employees of, or individuals contracting to, Kaizon Fire Protection; or
- (b) a person who has been an employee of, or individual contracting to, Kaizon Fire Protection within six months after that person leaves the employment of, or ceases its contract with Kaizon Fire Protection.

4. PRICE AND PAYMENT

4.1 **Deposit:** Unless otherwise agreed by Kaizon Fire Protection (at its sole discretion), any applicable Deposit is payable by the Client to Kaizon Fire Protection in full upon signing of this Agreement. The Client acknowledges and agrees that the Deposit is non-refundable except as otherwise agreed by Kaizon Fire Protection (at its sole discretion) and will be applied as part payment of the Price.

4.2 **Price:** The Client will pay the balance of the Price to Kaizon Fire Protection in full and without setoff, counterclaim or deduction on or before the relevant payment date (as set out in clause 4.4).

4.3 **Reimbursable expenses:** In addition to the Price, all expenses actually and properly incurred by Kaizon Fire Protection in connection with the provision of the Goods and/or the Services will be reimbursed by the Client to Kaizon Fire Protection as an additional charge (unless specifically incorporated in the Price).

4.4 **Time for payment:** Subject to clause 4.1 and unless otherwise agreed in writing, amounts due to Kaizon Fire

Protection from the Client (including the Price and any reimbursable expenses) will be paid to Kaizon Fire Protection on or before the 20th day of the month following the month in which an invoice was issued to the Client by Kaizon Fire Protection (or its authorised agent) in respect of such amounts.

4.5 **Taxes:** The Client acknowledges and agrees that all amounts stated in and payable by the Client under this Agreement exclude all national, federal, state or local sales, use, excise, value added or other taxes (including New Zealand GST, if any), customs duties or similar tariffs and fees which may be required to be paid or collected upon the delivery of the Goods and/or the Services. If any tax or levy is payable, the Client will pay such tax or levy and indemnify and hold harmless Kaizon Fire Protection against any claim or demand for the payment of such tax or levy.

4.6 **Default interest:** Interest at a rate of 15% per annum will be payable on any amount that is overdue for payment by the Client to Kaizon Fire Protection under this Agreement, calculated on a daily basis from the day payment is due until the date payment is received by Kaizon Fire Protection in full. Kaizon Fire Protection may claim from the Client all costs and/or expenses incurred by Kaizon Fire Protection in connection with the recovery of any overdue payments owed by the Client.

5. TITLE AND RISK

5.1 **Passing of title:** Title to the Goods remains with Kaizon Fire Protection and does not pass to the Client until the Price together with all other money payable to Kaizon Fire Protection by the Client under this Agreement has been paid to and received by Kaizon Fire Protection in full, and all other obligations due by the Client to Kaizon Fire Protection under this Agreement have been met. While ownership of the Goods remains with Kaizon Fire Protection:

- (a) Kaizon Fire Protection authorises the Client, in the ordinary course of the Client's business, to use the Goods or sell it for full consideration. This authority is revoked immediately if:
 - (i) an Event of Default occurs; or
 - (ii) Kaizon Fire Protection notifies the Client in writing that this authority is revoked;
- (b) The Client must advise Kaizon Fire Protection immediately of any Event of Default or any action by a third party (including any of its creditors) affecting Kaizon Fire Protection's interest in the Goods;
- (c) the proceeds of any sale of the Goods will be received and held by the Client (in whatever form) in trust for both the Client and Kaizon Fire Protection, provided that Kaizon Fire Protection's interest as beneficiary under that trust will be limited to the amounts owing by the Client to Kaizon Fire Protection under this Agreement; and
- (d) Kaizon Fire Protection may bring an action for the Price of the Goods sold even where ownership of the Goods may not have passed to the Client.

5.2 **Risk:** Risk of any loss of, damage or deterioration to the Goods supplied by Kaizon Fire Protection will be borne by the Client from the time that such Goods leave Kaizon Fire Protection's premises unless otherwise agreed by Kaizon Fire Protection.

5.3 **Insurance:** The Client will ensure that the Goods is adequately insured for full replacement value from the time that the Goods leave Kaizon Fire Protection's premises.

5.4 **Damage or destruction:** If the Goods (or parts) are damaged or destroyed prior to title to them passing to the Client, Kaizon Fire Protection will be entitled to receive all insurance proceeds payable in respect of such damage (whether or not the balance of the Price has become payable under this Agreement). The production of this Agreement by Kaizon Fire Protection will be sufficient evidence of Kaizon Fire Protection's right to receive payment of such insurance proceeds without the need for further enquiry by any person dealing with Kaizon Fire Protection.

5.5 **Application of insurance proceeds:** Any insurance proceeds received under clause 5.4, will be applied by Kaizon Fire Protection as follows:

- (a) firstly, in payment of the Price of the damaged or destroyed

- Goods (or parts);
- (b) secondly, in payment of any other money payable to Kaizon Fire Protection by the Client whether under this Agreement or not; and
- (c) lastly, any balance will be paid to the Client.
- 5.6 **Returns:** Kaizon Fire Protection will not accept the return or any Goods, except where:
- (a) the Client has, within three days of delivery of the Goods (time being strictly of the essence), notified Kaizon Fire Protection in writing of any alleged defect or damage to the Goods, or error in respect of the quantity or description of Goods delivered; and
- (b) Kaizon Fire Protection are afforded a reasonable opportunity following such notification to inspect the Goods, and confirm such alleged defect, damage or error,
- in which case the Goods may be returned. Nothing in this clause shall impact or vary Kaizon Fire Protection's liability as recorded in clause 12 of this Agreement.
- 5.7 **Cancellation:** Subject to clause 5.6, if the Client terminates, repudiates and/or cancels any order for Goods prior to delivery, then without prejudice to its other rights and remedies, Kaizon Fire Protection may recover from the Client all costs, expenses and loss of profit incurred by Kaizon Fire Protection in respect of its rights and obligations under this Agreement.
6. **HEALTH AND SAFETY**
- 6.1 **Health and safety:** The parties acknowledge and agree that it is both the Client and Kaizon Fire Protection's responsibility to provide a safe workplace for their employees, contractors, agents, officers and/or other persons. To assist Kaizon Fire Protection to comply with its health and safety obligations, the Client:
- (a) warrants that it will comply with its obligations under the Health and Safety in Employment Act 2015 and that it will enable Kaizon Fire Protection to comply with our obligations and associated regulations at all times;
- (b) shall advise Kaizon Fire Protection prior to commencement of the supply of Goods and/or the provision of Services, of any hazards arising at the Property, including those which the Client considers are unrelated to the supply of Goods and/or provision of Services by Kaizon Fire Protection;
- (c) will comply with any directions or instructions given to it by Kaizon Fire Protection in respect of health and safety matters at the Property while Kaizon Fire Protection are supplying the Goods and/or providing the Services; and
- (d) indemnify Kaizon Fire Protection for any loss it incurs due to any breach of the Health and Safety in Employment Act 2015 by the Client or any of the Client's employees, contractors, agents or officers.
7. **PERSONAL PROPERTY SECURITIES ACT 1999**
- 7.1 **Security agreement:** Without limiting anything else in this Agreement, the Client acknowledges that this Agreement constitutes a security agreement for the purposes of the Personal Property Securities Act 1999 (the **PPSA**), which provides for a security interest in Kaizon Fire Protection's favour in respect of any Goods (other than in respect of any Goods paid for in full by the Client) provided by Kaizon Fire Protection to the Client, and all the Client's present and future rights in relation to such Goods including all proceeds of sale of such Goods, to secure the payment by the Client to Kaizon Fire Protection of the Price payable in respect of such Goods.
- 7.2 **Further assurances:** On request by Kaizon Fire Protection, the Client will promptly do all things (including signing any documents) and provide all information necessary to enable Kaizon Fire Protection to perfect and maintain the perfection of any security interest the Client grants to Kaizon Fire Protection (including by registration of a financing statement). The Client will give Kaizon Fire Protection at least 14 days prior written notice if it wishes to change its name. The Client agrees to indemnify Kaizon Fire Protection, upon demand, for all costs and expenses Kaizon Fire Protection incurs in registering, maintaining and changing any financing statement.
- 7.3 **Contract out:** To the maximum extent permitted by law, the Client:
- (a) agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA will apply to this Agreement or the security under this Agreement;
- (b) waives all its rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 and 132 of the PPSA; and
- (c) waives its right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest created by this Agreement.
- 7.4 **Priority:** The Client agrees that the security interest created by this Agreement has the same priority in relation to all amounts owing by the Client to Kaizon Fire Protection in respect of Goods and/or Services supplied from time to time and will continue until Kaizon Fire Protection gives the Client a final release.
8. **CONFIDENTIALITY**
- 8.1 **Confidential Information:** Subject to clauses 8.2 and 8.3, each party (**Recipient**) receiving Confidential Information belonging to the other party will treat, and will ensure that its employees, agents, and contractors treat, such Confidential Information with confidence and will not use or disclose such Confidential Information for any purpose other than as is permitted by, or otherwise required to, comply with this Agreement.
- 8.2 **Permitted disclosure:** Either party may disclose Confidential Information to its employees, agents, contractors and/or professional advisers, to the extent necessary, provided that such persons agree in writing to be bound by the obligations of confidence set out in this clause 8.
- 8.3 **Exceptions:** The provisions of this clause 8 will not apply to information that:
- (a) legally must be disclosed;
- (b) is part of, or legitimately enters, the public domain;
- (c) is in the unrestricted possession of the Recipient prior to disclosure to the Recipient by the disclosing party; or
- (d) is independently developed by the Recipient without reference to the disclosing party's Confidential Information.
- 8.4 **Return of Confidential Information:** Upon termination of this Agreement, the disclosing party may request the destruction or return of any Confidential Information and the Recipient will promptly destroy or return (at the disclosing party's sole discretion) all Confidential Information (whether documents, reports, exhibits and other papers, and whether on paper or in any electronic information storage and retrieval system or in any other storage medium), in the Recipient's possession or control to the disclosing party.
9. **CLIENT INFORMATION**
- 9.1 **Collection:** The Client and Guarantor expressly grant Kaizon Fire Protection the right to contact any credit reporting agency for the purposes of assessing the Client's and Guarantor's creditworthiness. The Client and Guarantor further authorise Kaizon Fire Protection to obtain any personal and/or commercial information from such credit reporting agencies and any other person that Kaizon Fire Protection deems necessary. All information so collected will be held by Kaizon Fire Protection at its registered office or on servers and/or databases that are access controlled by Kaizon Fire Protection unless advised otherwise.
- 9.2 **Use:** The Client and Guarantor acknowledge and agree that the information collected by Kaizon Fire Protection under clause 9.1 may be used by Kaizon Fire Protection and disclosed to any prospective third party financier or other Goods/service provider in relation to the provision of the Goods and/or the Services under this Agreement and otherwise used by Kaizon Fire Protection for its business activities (including, without limitation, for operational, marketing, credit control and accounts management purposes).
10. **INTELLECTUAL PROPERTY**
- 10.1 **Existing and new Intellectual Property:** Subject to clause 10.3, the parties agree to the following ownership arrangements for

Intellectual Property:

- (a) Existing Intellectual Property which is not developed, prepared or paid for under this Agreement but is used for the purposes of this Agreement, including techniques, knowledge, information, practices or code (**Existing IP**), will remain the property of its current owner.
- (b) Any new Intellectual Property, or modifications and additions to Existing IP which is developed by Kaizon Fire Protection (**New Intellectual Property**) will be owned by Kaizon Fire Protection on creation, and Kaizon Fire Protection will be free to use and deal with the same as it sees fit.
- (c) The Client is permitted to use the New Intellectual Property in the course of its consumption of the Services.

10.2 **Licence:** The Client licences to Kaizon Fire Protection the right to use its Existing IP to the extent necessary for the performance of its obligations under this Agreement.

10.3 **Kaizon Fire Protection to own techniques:** Notwithstanding any other provision of this Agreement, the Client acknowledges and agrees that Kaizon Fire Protection will own and be entitled to use either for the Client or any other client, any techniques, knowledge, information, practices or methodologies (**Techniques**) which are disclosed to or developed by Kaizon Fire Protection as a result of completing its obligations under this Agreement, provided that such Techniques do not contain the unique business methodologies or Confidential Information of the Client.

10.4 **Infringements:** The Client will notify Kaizon Fire Protection of any actual or potential infringement of any Intellectual Property right and of any claim by a third party that the use of the Goods or the Client's Intellectual Property infringes the rights of any other person, as soon as that infringement or claim comes to the Client's attention. The Client will do all things that may reasonably be required by Kaizon Fire Protection to assist Kaizon Fire Protection in pursuing or defending any proceedings in relation to any such infringement or claim.

11. WARRANTIES

11.1 **Client warranties:** The Client warrants to Kaizon Fire Protection that it:

- (a) is in trade (as defined in section 2(1) of the Consumer Guarantees Act 1993);
- (b) will use the Goods properly and for its intended purpose, in accordance with this Agreement and any written instructions which may be received from Kaizon Fire Protection from time to time; and
- (c) will ensure that all employees, agents, and contractors that use the Goods are suitably experienced and qualified.

11.2 **Goods warranties excluded:** All warranties, conditions, descriptions or representations about the Goods (for example, but without limitation, about quality, fitness for purpose or safety) are expressly excluded to the maximum extent permitted by law, except for any warranties, conditions, descriptions or representations provided by any third party manufacturer of the Goods or part thereof or otherwise provided by Kaizon Fire Protection in writing.

11.3 **Third party warranties:** Kaizon Fire Protection will pass through to the Client, or if it is unable to do so, will hold for the Client's benefit, all warranties provided by third parties in respect of those parts of the Goods that are manufactured and/or supplied by such third parties but subject to any exclusions, conditions and/or limitations that may apply in respect of such warranties. The specific terms of any applicable third party warranties will be available from Kaizon Fire Protection on request.

11.4 **New Zealand consumer laws:** In particular but without limiting the generality of clause 11.2, the Client acknowledges and agrees that the Goods are being supplied by Kaizon Fire Protection and purchased by the Client in trade and that, pursuant to section 43 of the Consumer Guarantees Act 1993, the provisions of that Act are expressly excluded. All implied terms, conditions and warranties under the Contract and Commercial Law Act 2017 are also expressly excluded to the maximum extent permitted by law.

12. LIABILITY

12.1 **Goods liability:** To the maximum extent permitted by law and subject to clauses 12.2 to 12.4, the liability of Kaizon Fire Protection (whether in contract, equity, tort (including negligence) or otherwise) for any defect in or non-compliance of the Goods (or parts), is limited, at the option of Kaizon Fire Protection, to either replacement or repair of such defective or non-complying items, or damages not exceeding the Price paid by the Client to Kaizon Fire Protection for such defective or non-complying items.

12.2 **Total liability:** To the maximum extent permitted by law and subject to clauses 12.3 to 12.4, the liability of Kaizon Fire Protection (whether in contract, equity, tort (including negligence) or otherwise) arising from any:

- (a) breach of any of Kaizon Fire Protection's obligations under or in connection with this Agreement;
- (b) negligence, misrepresentation or other act or omission on the part of Kaizon Fire Protection, its employees, agents or contractors; or
- (c) other cause whatsoever,

will not exceed the Price paid by the Client to Kaizon Fire Protection under this Agreement.

12.3 **Exclusions:** To the maximum extent permitted by law and notwithstanding any other provision of this Agreement, under no circumstances will the measure of damages against Kaizon Fire Protection for any breach of this Agreement, equity, tort (including negligence), or other action or contravention of any statute, include special, incidental, consequential or indirect loss or any consequential economic damage, loss of or damage to data, lost profits, business, revenue, goodwill, or anticipated savings, nor will Kaizon Fire Protection be liable for:

- (a) any breach to the extent that such breach is attributable to the prior default, negligence, misconduct or breach by the Client or the Client's employees, agents or contractors; or
- (b) damage or loss resulting from:
 - (i) the use or misuse of the Goods by the Client or any other person;
 - (ii) a Force Majeure Event;
 - (iii) the removal by the Client or any other person of any "Kaizon Fire Protection" labels, serial numbers, safety equipment or warning signs;
 - (iv) the implementation by Kaizon Fire Protection or any other person of any designs and/or instructions provided by the Client; or
- (c) personal injury, harm or death caused or contributed to by:
 - (i) the use or misuse of the Goods by the Client or any other person; or
 - (ii) contravention of any laws by the Client or any other person,

whether or not Kaizon Fire Protection was aware, or should have been aware, of the possibility of such loss or damage, personal injury, harm or death.

12.4 **Indemnity:** The Client hereby indemnifies and holds harmless Kaizon Fire Protection, its employees, agents and contractors from and against any and all claims or liabilities asserted against any or all of them in connection with the manufacture, sale, delivery, repair or use of any Goods or Services supplied under this Agreement arising in whole or in part, out of or by reason of the:

- (a) failure by the Client or the Client's employees, agents or contractors to follow instructions, warnings or recommendations furnished by Kaizon Fire Protection, its employees, agents or contractors in connection with such Goods or Services;
- (b) failure by the Client or the Client's employees, agents or contractors to comply with any laws applicable to the use of such Goods or Services, including any occupational health and safety requirements and building codes;

- (c) negligence of the Client or the Client's employees, agents or contractors; or
- (d) implementation by Kaizon Fire Protection or any other person of any designs and/or instructions provided by the Client.
- 13. FORCE MAJEURE**
- 13.1 Force Majeure:** Notwithstanding any other provision of this Agreement, non-performance by Kaizon Fire Protection of any of its obligations under this Agreement will be excused, without liability for non-performance, during the time and to the extent that performance is prevented, wholly or substantially, by a Force Majeure Event either affecting Kaizon Fire Protection or affecting the Client to such an extent that Kaizon Fire Protection is unable to perform its relevant obligations. Performance of any obligation affected by a Force Majeure Event will be resumed as soon as reasonably possible after the termination or abatement of the Force Majeure Event.
- 13.2 Notice of Force Majeure Event:** Kaizon Fire Protection will promptly advise the Client in writing, specifying the cause and extent of its inability to perform any of its obligations and the likely duration of such non-performance.
- 14. DISPUTE RESOLUTION**
- 14.1 Negotiation:** If any dispute arises between the parties in connection with the interpretation or application of the provisions of this Agreement, its breach or termination, the validity of any documents provided by either party pursuant to the provisions of this Agreement, or any other matter arising out of or in connection with this Agreement (**Dispute**), then the following will apply:
- (a) either party may, by written notice (**Dispute Notice**), require the other party to meet and attempt to resolve the Dispute;
- (b) the Dispute Notice will state the nature and subject matter of the Dispute and set a time and date (not to be later than five Business Days from the date of the Dispute Notice) for the parties to meet (whether by telephone, videoconference or physical meeting) to attempt to resolve the Dispute; and
- (c) the parties will use all reasonable endeavours to resolve the Dispute.
- 14.2 Referral to mediation:** If the Dispute remains unresolved after the expiry of ten (10) Business Days from the date of the original Dispute Notice (**Negotiation Due Date**), any party may refer the Dispute to the mediation of one mediator. Failing agreement as to an appropriate mediator within three Business Days of the Negotiation Due Date, the mediator will be appointed at the request of any party by the chairperson or any other similar office holder for the time being of the New Zealand chapter of the Resolution Institute, or the nominee of such chairperson or other office holder. The guidelines which will govern the mediation will be set by the parties. Failing agreement within three Business Days after the date of appointment of the mediator, any party may request the mediator to set the guidelines (whether or not in conjunction with that party) which will govern the mediation.
- 14.3 Termination of mediation:** If the Dispute is not resolved within ten (10) Business Days of the date of commencement of the mediation, any party may:
- (a) terminate the mediation by giving written notice to the other party; and
- (b) commence court or other proceedings in respect of the Dispute.
- 14.4 Interim relief:** The provisions of this clause 14 will not preclude either party from obtaining interim relief on an urgent basis from a court of competent jurisdiction.
- 15. DEFAULT AND TERMINATION**
- 15.1 Termination:** Without prejudice to Kaizon Fire Protection's rights or remedies under this Agreement or at law, Kaizon Fire Protection may immediately terminate this Agreement and cease supplying Goods and/or providing Services to the Client:
- (a) by providing written notice to the Client; or
- (b) if an Event of Default occurs.
- 15.2 Remedies:** To the maximum extent permitted by law, if an Event of Default occurs, then:
- (a) payment of any money owing by the Client to Kaizon Fire Protection under this Agreement will immediately become due and payable;
- (b) Kaizon Fire Protection may suspend performance of any or all of its obligations under this Agreement; and
- (c) Kaizon Fire Protection may retain all or part of any deposit paid by the Client to cover its reasonable costs and/or as compensation for the early termination of this Agreement.
- (d) Kaizon Fire Protection may:
- (i) enforce its security interest under this Agreement;
- (ii) appoint a receiver (without the Client's consent) in respect of any Goods and such receiver will be authorised to do anything referred to in this Agreement and otherwise to exercise all rights and powers conferred on a receiver by law; and/or
- (iii) enter any premises where the Goods may be and take possession of and remove such Goods without being responsible for any damage caused and all costs or expenses incurred by Kaizon Fire Protection as a result of any such action will be payable by the Client upon demand. Kaizon Fire Protection and the Client agree that (if applicable) section 109(1) of the PPSA is contracted out of in respect of the particular Goods if, and only for so long as, Kaizon Fire Protection is not the secured party with priority over all other secured parties in respect of such Goods.
- 15.3 Right of resale:** Kaizon Fire Protection may resell any Goods removed under clause 15.2(d)(iii) and apply the proceeds in or towards payment of any monies payable to Kaizon Fire Protection by the Client whether under this Agreement or not.
- 16. GUARANTEE**
- 16.1 Guarantee:** In consideration of Kaizon Fire Protection agreeing to provide Goods and Services to the Client at the Guarantor's request, each Guarantor jointly and severally:
- (a) guarantees the due, punctual and full performance by the Client of its obligations and warranties under this Agreement and at law; and
- (b) indemnifies Kaizon Fire Protection from and against any action, suit, claim demand, cost or expense (including all legal costs and expenses incurred on a solicitor/own client basis) arising directly or indirectly as a result of any act or omission by the Client in breach of any obligation or warranty under this Agreement or any law, or as a result of any act, omission, or negligence committed, by the Client or by any of the Client's employees, agents or contractors.
- 16.2 Principal obligation:** The liability of each Guarantor under this Agreement is a principal obligation of each Guarantor and shall not be relieved or in any way affected in a manner prejudicial to Kaizon Fire Protection by any granting of time, waiver of forbearance to sue by Kaizon Fire Protection. The guarantee provided by each Guarantor is a continuing guarantee and shall remain in full force and effect until Kaizon Fire Protection executes a written release.
- 17. GENERAL**
- 17.1 Assignment:** Neither party may assign or otherwise transfer all or any of its rights and obligations under this Agreement without the prior written approval of the other party.
- 17.2 Change of ownership:** The Client must provide not less than 10 Business Days prior written notice to Kaizon Fire Protection of any proposed change of ownership of the Client, and/or change in any of the Client's other details (including, but not limited to, its name and address).
- 17.3 Entire agreement:** To the maximum extent permitted by law, this Agreement constitutes the entire understanding and agreement of the parties relating to the matters contemplated by this Agreement and supersedes and extinguishes all prior agreements, arrangements, understandings or representations between the

parties relating to such matters. The Client acknowledges and agrees that the Goods are being supplied by Kaizon Fire Protection and purchased by the Client in trade and that, pursuant to section 5D of the Fair Trading Act 1986, sections 9, 12(a) and 13 of that Act are expressly excluded.

17.4 **Amendment:** No amendment to this Agreement will be effective unless it is in writing and signed by both parties.

17.5 **Waiver:** No delay, grant of time, release, compromise, forbearance (whether partial or otherwise) or other indulgence by either party in respect of any breach of the other party's obligations under this Agreement is to:

- (a) operate as a waiver or prevent the subsequent enforcement of that obligation; or
- (b) be deemed a delay, grant of time, release, compromise, forbearance (whether partial or otherwise) or other indulgence in respect of, or a waiver of, any subsequent or other breach.

17.6 **Severance:** To the extent permitted by law, any unlawful or voidable provision in this Agreement will be read down so as to be valid and enforceable or, if it cannot be read down, will be severed from this Agreement without affecting the validity, legality or enforceability of the remaining provisions, provided that the

reading down or severing does not materially affect the purpose of or frustrate this Agreement.

17.7 **Independent advice:** The Client warrants it has had the opportunity to obtain independent legal advice about its obligations under this Agreement, and confirms the terms and conditions of this Agreement are fair and reasonable.

17.8 **Counterparts:** This Agreement may be executed in two or more counterparts (including by way of an email exchange of signed and scanned PDF copies) each of which will be deemed an original, but all of which together will constitute one and the same instrument.

17.9 **Governing law:** This Agreement is governed by and will be construed in accordance with the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand.