

Terms and Conditions

Please pay particular attention to clause 7 (Limiting our liability), clause 6.9, clause 8.4.4 and clause 8.5.

Agreed terms

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1.1 Definitions

Business day – a day other than a Saturday, Sunday or public holiday in Ireland, when banks in Dublin are open for business.

Charges – the charges you will pay us for providing the **services**, as set out in clause 6 over the page or in a **proposal**, or which we tell you about.

Conditions – these terms and conditions.

Contract – the contract between you and us for providing the **services** in line with these **conditions**.

Control – in relation to a company, the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or appoint someone else to direct the general management of the company. In relation to a partnership or limited liability partnership, control means the right to a share of more than half the assets, or of more than half the income of the partnership.

Fire equipment – the fire extinguishers, fire alarms, emergency lighting, dry risers, fire hydrants, suppression systems and any associated equipment listed in a **proposal**, or that we provide **maintenance** services to.

Initial term – the length of the **contract** as shown in a **proposal** or, if no length is shown in a **proposal**, a period of one year from the date when the **services** are first carried out.

Maintenance – the inspection and testing of your **fire equipment**.

Premises – your premises as shown in a **proposal** or at which we provide the **services**.

Proposal – any description or specification of new or extra **services** we provide in writing to you (including any service agreement).

Services – the services we will provide under this **contract**, as set out in a **proposal** (if this applies).

Standard – the industry standard which applies to **maintenance** of the **fire equipment**.

VAT – value added tax charged under the Value Added Tax Act 1972,2010.

Visit – a visit to the **premises** to carry out the **services**.

Working hours – 8.00am to 5.00pm on **business days**.

1.2

1.2.1 If we refer to an act of the Oireachtas or piece of legislation, it includes any amendments to it and any legislation linked to it.

1.2.2 When we refer to writing or written, this includes email.

1.2.3 In this **contract**: 'we', 'us' or 'our' means Apex Fire Limited, (447217) of Moynehall, Cavan, Ireland H12 F9T0 and 'you' or 'your' means the customer named in a **proposal** or the person or firm who buys **services** from us.

2. Start of the contract and how long it lasts

The **contract** will begin on the date when it has been signed by both you and us, or when we begin providing the **services**, and will continue for the **initial term**, unless we or you end it in line with clause 8. At the end of the **initial term**, this **contract** will automatically extend for 12 months (**extended term**). At the end of each **extended term**, it will extend again for another 12 months. Either you or we may give written notice to the other (no later than six months before the end of the **initial term** or the relevant **extended term**) to end this **contract** at the end of the **initial term** or the relevant **extended term**, as the case may be.

3. Services

3.1 We will supply the **services** to you in line with any **proposal** in all material respects.

3.2 We will do all we reasonably can to meet any specified performance dates shown in any **proposal**, but any dates will be estimates only and time will not be an essential part of performing the **services** (for example we will not have materially broken the **contract** by failing to keep to any specific performance dates).

3.3 We can change any **proposal** if necessary, to keep to any laws or regulatory requirements which apply if the change will not have a significant effect on the nature or quality of the **services**. We will let you know if we do this.

3.4 We will carry out the first **visit** on or around the date shown over the page or in a **proposal**, or any other date we tell you. At this visit we will inspect the **fire equipment** to make sure it keeps to the **standard** and is not obsolete. If we decide that the **fire equipment** is not in line with any information provided by you in a **proposal**, or needs alterations, modifications or upgrades, we will give you a proposal and quotation to carry out the work needed so we can maintain the **fire equipment** for the length of the **initial term**. If you do not agree to the work being carried out, we will have the option to end the **contract** immediately and charge you a fee for our first visit (in line with our standard rates as amended from time to time). This means we will not have to carry out any further **visits** until the necessary work has been carried out.



3.5 We are not required to carry out **maintenance** and repairs, refills, or provide replacement parts to any extra fire equipment not shown in a **proposal** (unless you say otherwise) or if we are unable to access this equipment. If we do carry out work on any extra equipment, we will charge you for any work we carry out at our standard rates, which we may amend from time to time.

3.6 If you ask for any **visits** which are not included in a **proposal**, we will charge you at our standard rates for any extra work we carry out during the **visits**.

4. Supplying the services

4.1 We will supply the **services** to you in line with the **contract**.

4.2 In supplying the **services**, we will:

4.2.1 do what we reasonably can to perform the **services** with reasonable care and skill and to the **standard**;

4.2.2 do what we reasonably can to follow all reasonable health and safety rules and regulations and security requirements that apply at the **premises** (which you have told us about) as long as we will not be liable under the **contract** if, as a result of doing this, we are breaking any of our responsibilities under the **contract**;

4.2.3 only provide the **services** during **working hours**;

4.2.4 after each **visit** where we carry out **maintenance**, give you a certificate to show that we have inspected the **fire equipment** and supplied any refills, spare parts or other necessary equipment.

5. Your responsibilities

5.1 You must do the following.

5.1.1 Co-operate with us in all matters relating to the **services**.

5.1.2 Make sure that any information you give us for a **proposal** is complete and accurate.

5.1.3 Give us, our agents, subcontractors, consultants and employees access to the **premises**, and all information and other facilities we or they may need.

5.1.4 Give us, in a reasonable time, any information we may need, and make sure that it is accurate and complete in all material respects.

5.1.5 Tell us about all health-and-safety and security requirements that apply at the **premises**.

5.1.6 If we do not provide the **services** or carry out the **visits** on the dates shown in a **proposal**, you will give us the opportunity to do so by giving us 30 days' written notice.

5.1.7 Tell us about any changes which might affect the **fire equipment**, including (but not limited to) extensions to the **premises**, changes to the fabric of the **premises** or changes to its layout.

5.1.8 Give us (at your cost) all access equipment that we might need (for example, scaffolding and ladders) and make sure that the equipment is safe to use.

5.1.9 Keep to and not break any relevant health-and-safety laws and regulations, including those relating to electrical safety.

5.1.10 Use and maintain the **fire equipment** in line with any instructions we give you. If we have not installed the **fire equipment**, you must make sure that you use and maintain the **fire equipment** in line with any instructions given to you when it was installed.

5.1.11 **Fire equipment** is there to reduce the risk if there is a fire, but it is not a guarantee against all such risk and losses. You must make sure that suitable insurance is in place to insure you against any losses you might suffer as a result of any **fire equipment** being faulty.

5.1.12 While we are maintaining the **fire equipment**, it may not be fully operational. By law, you must make sure that you make other suitable arrangements to make sure you have effective protection in place if there is a fire.

5.1.13 Keep to and not break any extra responsibilities set out in any **proposal**.

5.2 If we are prevented from or delayed in carrying out our responsibilities under the **contract** by any act, or failure to act, by you, your agents, subcontractors, consultants or employees, we will:

5.2.1 not be legally responsible for any costs, charges or losses you suffer that arise directly or indirectly from the prevention or delay;

5.2.2 be entitled to payment of the **charges** despite any prevention or delay; and

5.2.3 be entitled to recover any extra costs, charges or losses we suffer that arise directly or indirectly from the prevention or delay.

5.3 You must raise any order number or other administrative reference that you need to process any work or payment. To avoid all doubt, you must make all payments in line with clause 6 below.

5.4 All **fire equipment** will be your responsibility from the time that we deliver it to your premises.

5.5 You will only own the **fire equipment** when we have received payment for it in full.

5.6 Until the fire equipment has passed to you in line with clause 5.5, you must:

5.6.1 make sure that the **fire equipment** is readily identifiable as our property;

5.6.2 not remove, deface or obscure any identifying mark or packaging on or relating to the **fire equipment**; and

5.6.3 tell us if any of the events listed in clause 8.1 applies.

5.7 Before the **fire equipment** passes to you in line with clause 5.5, if any of the events listed in clause 8.1 applies, without limiting any other right or remedy we may have, we may:

5.7.1 require you to deliver the **fire equipment** to us (at your cost); and

5.7.2 if you fail to do so promptly, enter your **premises** (or any premises belonging to anyone else where the **fire equipment** is stored) to recover it.

6. Charges and payment

6.1 We will provide the **services** and you will pay us the **charges** in line with this clause 6.

6.2 We will send you invoices for the **charges** (plus **VAT** if this applies) as soon as it is practical to do so. You must pay the **charges** within 30 days of the date of each invoice in line with this clause, unless we agree otherwise in writing.

6.3 We will not include the following in the **charges** and we will charge for them separately:

6.3.1 equipment or replacement parts which are no longer manufactured or readily available;

6.3.2 equipment that is outside the manufacturer's recommended operational life;

6.3.3 radio-equipment batteries and assemblies;

6.3.4 wiring and cable infrastructure;

6.3.5 spare parts needed as a result of neglect, tampering with or misusing the **fire equipment** or letting off a fire extinguisher for an improper purpose; or

6.3.6 any charges where we try to **visit** but you will not give us access to the **premises** or carry out the **services**.

6.4 We will be entitled to change the **charges** at the end of the **initial term** and any **extended term**. We will also be entitled to change the **charges** at any time if we have to pay extra costs as a result of any change to the law which affects how we perform the **services**, and which comes into force after the date of this **contract**.

6.5 We will send you invoices for any extra charges (plus **VAT** if this applies).

6.6 You must pay each invoice due, within 30 days of the date of the invoice. We would prefer you to pay the



invoice by making a payment to our bank account, but we also accept cheques and card payments.

6.7 If you fail to make any payment due to us under the **contract** by the due date for payment, without affecting any of the action we can take under clause 8 (Ending the **contract**), the following will apply.

6.7.1 You will pay interest on the overdue amount from the due date until you pay the amount you owe, whether before or after a court judgment. Interest under this clause will be added each day at 8% a year above the European Central Bank rate (but will be 8% a year for any period when that bank rate is below 0%).

6.7.2 We may suspend all **services** until you have paid us any amounts due under the **contract** (and any other contracts we may have in place with you from time to time) in full.

6.8 You must pay us all amounts due under the **contract** without taking off, or off-setting against, any amount we may owe you (other than any tax which may be required by law).

6.9 If you break the **contract**, we may have to pay professional fees in taking action against you. As a result, you must indemnify us against all reasonable legal costs and all other reasonable professional costs and expenses we have to pay arising out of or in connection with you breaking the **contract**.

7. Limiting our liability

7.1 Nothing in the **contract** will limit or exclude our liability for:

7.1.1 death or personal injury caused by our negligence, or the negligence of our staff, agents or subcontractors;

7.1.2 fraud or fraudulent misrepresentation;

7.1.3 breaking the terms implied by section 2 of the Supply of Goods and Services Act 1980 (ownership and quiet possession); or

7.1.4 any other liability which we cannot limit or exclude by law.

7.2 Depending on what we say in clause 7.1, we will not be legally responsible to you in any way (including negligence), for breaking a statutory duty, or otherwise, arising under or in connection with the **contract** for:

7.2.1 loss of profits;

7.2.2 loss of sales or business;

7.2.3 loss of agreements or contracts;

7.2.4 loss of expected savings;

7.2.5 loss of use or corruption of software, data or information;

7.2.6 loss of or damage to goodwill; or

7.2.7 any indirect loss.

7.3 Depending on what we say in clause 7.1, we will not be liable for more than 110% of the **charges** you have paid under the **contract**.

7.4 As far as we are allowed to do so by law, we will exclude the conditions implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1980 from this **contract**.

8. Ending the contract

8.1 As well as the option for both you and us to end the contract in line with clause 2, without affecting any other right or action available to us, we may end the **contract** immediately by giving you written notice if:

8.1.1 you fail to pay any amount due under the **contract** on the due date for payment;

8.1.2 there is a change of **control** in relation to your business;

8.1.3 you give us incorrect information in a **proposal**;

8.1.4 you refuse to allow us to carry out the work needed to the **fire equipment** as explained in clause 3.4;

8.1.5 we are not satisfied with the result of any credit check on you;

8.1.6 you break any material term of the **contract** and this cannot be put right or (if you can put the situation right) you fail to do so within 14 days of us telling you to do so;

8.1.7 you enter administration or provisional liquidation or make any arrangement with your creditors (other than in relation to a solvent restructuring), are wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), have a receiver appointed over any of your assets or stop carrying on business or, if the step or action is taken in another state or country, in connection with any similar procedure in the relevant state or country;

8.1.8 you suspend, or threaten to suspend, or stop or threaten to stop continuing all or a substantial part of your business; or

8.1.9 your financial position deteriorates to such an extent that we do not believe you can fulfil your responsibilities under the **contract**.

8.2 You may end the **contract** within 14 days of the date of this **contract**, in which case clause 8.4.4 will not apply.

8.3 Depending on what we say in clause 8.5, you may end the **contract** during the **initial term** by giving us six months' written notice.

8.4 When the **contract** ends for whatever reason, the following will apply.

8.4.1 You must immediately pay us all our unpaid invoices and interest and, for **services** supplied but which we haven't yet invoiced you, we may send you an invoice, which you must pay as soon as you receive it.

8.4.2 Any condition of the **contract** that is intended to come into or continue in force on or after the end date of the **contract** will stay in full force and effect.

8.4.3 Ending the **contract** will not affect any of our or your rights, remedies or responsibilities that apply up to the date the **contract** ends, including the right to claim damages for breaking the **contract** which existed at or before the date the **contract** ended.

8.4.4 Depending on what we say in clause 2 or clause 8.2, if the **contract** ends before the end of an **initial term** or **extended term**, you will pay all **charges** which would have been due till the end of the **initial term** or **extended term** (as the case may be). You agree that the **contract**, in many cases, involves providing new **fire equipment** and the cost of that equipment is covered by the **charges** over the term of the **contract**. As a result, you acknowledge that this clause is fair and reasonable. This clause will not affect any other right or action we have available to us.

8.5 If you fail to give the necessary notice in line with clause 2 or clause 8.3, without affecting any other rights or action available to us, we can charge you a €100 administration fee.

9. General

9.1 Neither you nor us will have broken the **contract** or be legally responsible for delay in carrying out, or failing to carry out, any of your or our responsibilities if the delay or failure results from events, circumstances or causes beyond your or our reasonable control.

9.2 Transferring the contract and other dealings

9.2.1 You must not transfer, charge, subcontract, declare a trust over, or deal in any other way with, any of your rights and responsibilities under the **contract** without getting our written permission beforehand.

9.2.2 We may at any time transfer, charge, subcontract, declare a trust over, or deal in any other way with any of our rights under the **contract**.

9.3 Confidentiality



9.3.1 You and we agree that at any time during the **contract**, and for five years after the **contract** ends, neither of us will reveal to any person any confidential information concerning the business, customers, clients or suppliers of the other, except as allowed under clause 9.3.

9.3.2 We or you may reveal the other's confidential information:

9.3.2.1 to employees, officers, representatives, subcontractors or advisers who need to know the information for the purposes of carrying out your or our responsibilities under the **contract** (and we and you will make sure that all employees, officers, representatives, subcontractors or advisers keep to this clause 9.3); and

9.3.2.2 as may be required by law, a court or any government or regulatory authority.

9.3.3 Neither you nor we will use the other's confidential information for any purpose other than to carry out the responsibilities under the **contract**.

9.4 Entire agreement

9.4.1 The **contract** is the entire agreement between you and us and replaces all previous agreements, promises, assurances, guarantees, representations and understandings (whether in writing or otherwise).

9.4.2 In entering into the **contract**, you and we will not rely on any statement, representation, assurance or guarantee (whether made innocently or negligently) that is not set out in the **contract**. You and we will have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the **contract**.

9.4.3 These **conditions** apply to the **contract** and to the exclusion of any other terms that you aim to impose, or which are implied by trade, custom, practice or course of dealing.

9.5 We will not make any change to the **contract** unless agreed in writing by you and us.

9.6 Waiver

9.6.1 If we do not enforce any right or remedy under the **contract** or by law that we may have, that right or remedy will only be waived if given in writing. It will not mean that we will waive any other right or remedy we may have if you break or fail to fulfil the **contract** in the future.

9.6.2 If we do not insist immediately that you do anything you are required to do under these terms, or if we delay in taking steps against you for breaking this **contract**, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date. For example, if you miss a payment and we do not chase you but we continue to provide **services**, you will still need to make the payment at a later date.

9.7 Each clause of this **contract** operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining clauses will stay in full force and effect. If any court or relevant authority decides that any provision of the **contract** is unlawful, both you and we will negotiate in good faith to amend the provision so that, as amended, it is lawful and enforceable.

9.8 Notices

9.8.1 Any notice or other communication given in connection with the **contract** will be in writing and will be:

- delivered by hand or by first-class post or other next working day delivery service at your or our registered office (if a company) or main place of business (in any other case); or
- Sent by email.

9.8.2 We will treat a notice or other communication as being received if:

- delivered by hand – when it is signed for, we receive a delivery receipt or at the time the notice is left at the proper address;
- sent by first-class post or other next-working-day delivery service – at 9 am on the second **business day** after posting or at the time recorded by the delivery service; or
- Sent by email – on the next **business day** after it is sent.

9.8.3 This clause will not apply to serving any proceedings or other documents in any legal action

9.9 The **contract** does not give anyone else any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the **contract**.

9.10 The **contract** will be governed by Irish law and any disputes or claim in connection with it will be settled by the courts of Republic of Ireland.