

TERMS & CONDITIONS OF BUSINESS

These Terms & Conditions of Business (**Terms**) are attached to a document setting out the scope of the services to be provided by MetroFire Services Pty Ltd ABN 28 085 562 643 (**MetroFire Services**), the basis of charging for those services and any associated goods and other matters. That document also forms part of these Terms.

All goods and services will be provided by MetroFire Services subject to these Terms

1. Quotes, estimates and acceptance

- 1.1 Any quote or estimate provided by MetroFire Services (**Quote**) is subject to these Terms and are valid for 30 days only unless another time is stated in document annexing these Terms.
- 1.2 MetroFire Services may withdraw the Quote at any time prior to an agreement being entered into as provided by clause 1.3.
- 1.3 You may only accept a quote by signing and returning the Quotation Acceptance to MetroFire Services.
- 1.4 These Terms will apply to any purchase order from you to the absolute exclusion of any purported terms or conditions on your purchase order.
- 1.5 MetroFire Services may require payment of a Deposit or payment in full in advance to the provision of goods and/or services. This will be set out in the document annexing these Terms.
- 1.6 The person signing the Quotation Acceptance warrants to MetroFire Services that they are authorised to accept these Terms on behalf of the relevant entity named on the Quote as their lawful agent.

2. Your obligations

- 2.1 You must inform MetroFire Services of any specific site requirements prior to any works or services being performed. These include but are not limited to WH&S matters, security requirements, permits etc
- 2.2 You must inform MetroFire Services of the location of all fire services requiring servicing/testing or inspection.
- 2.3 You must provide MetroFire Services access to all parts of the site and agree that any areas unable to be accessed may not be certified for the purpose of an Annual Fire Safety Statement.
- 2.4 You must act reasonably and take all steps reasonably available to you to protect your own interests, including managing all risks associated with the provision of the services and associated goods, including having goods properly installed and serviced as may be required, properly reading and following any instruction or training manuals, following any reasonable direction MetroFire Services may give and appropriately directing your own invitees, employees, servants and agents in relation to these things.
- 2.5 You agree to inform MetroFire Services promptly of any fact, matter or circumstance which could reasonably affect the services and associated

goods being provided or things that could reasonably be considered to affect the issue a Certificate of Compliance or Annual Fire Safety Statement.

3. Shortage, defects and returns

- 3.1 You must inspect any goods immediately upon delivery or installation.
- 3.2 Details of any goods delivered or installed by or on behalf of MetroFire Services will be conclusive evidence of the goods and their quantity and quality as delivered or installed unless you provide evidence reasonably satisfactory to MetroFire Services proving the contrary within 48 hours of delivery or installation.
- 3.3 You waive any claims regarding any shortages in any goods delivered or their quality unless notice of claimed short delivery/defect is provided to MetroFire Services within those 48 hours.
- 3.4 MetroFire Services is not obliged to accept the return of any goods or to provide refunds for goods however, MetroFire Services may do so on terms satisfactory to MetroFire Services. Due to the nature of the services it provides, MetroFire Services cannot and does not offer refunds on services, even where pre-paid.
- 3.5 Goods may not be returned to MetroFire Services without MetroFire Services' prior written consent and will only be accepted if they are returned in the same condition as supplied and at your expense. They otherwise remain at your risk as set out in clause 7.

4. Delivery/installation and storage

- 4.1 Any dates specified for provision of goods and/or services are approximate only. If no dates are specified, delivery will be within a reasonable time. MetroFire Services may provide the goods or services in batches or in instalments.
- 4.2 If you fail to take delivery/installation of any of goods or services, without prejudice to any other rights MetroFire Services may have, MetroFire Services may store or arrange for the storage of those goods however, delivery is deemed to have taken place at the time or attempted delivery or installation. Any costs or expenses incurred by MetroFire Services in relation to storage, including any insurance, of the goods pending delivery are payable by you.
- 4.3 MetroFire Services will endeavour to keep delivery dates however, where a delivery is delayed for any reason whatsoever, you will not be entitled to cancel, rescind or terminate our arrangements.

5. Price, payment and interest

- 5.1 Prices stated on any Quote are valid for the period in which the Quote is valid. If you require any changes to the scope of work or which affect the cost of providing the goods or services, the price may increase accordingly, in which case a revised quotation will be re-issued for your acceptance.
- 5.2 Pricing is based on services being performed or goods installed between the hours of 7:00am and 3:30pm on weekdays, excluding public holidays. Where goods and/or services are to be provided

outside of these times, afterhours rates will be charged as an additional expense.

- 5.3 Where a price is an estimate only, you will agree to pay the amount claimed by MetroFire Services on provision of goods and/or services for the actual work done and materials supplied including a margin.
- 5.4 Where you have requested MetroFire Services to provide a Quote or estimate for the provision of goods and/or services or to provide goods and/or services which requires MetroFire Services to (or to arrange to) disassemble any property belonging to you or to access areas that may or will involve damage to your property, then you agree that regardless of whether the relevant estimate or Quote is accepted, the relevant property will not be reassembled or repaired.
- 5.5 Unless otherwise agreed in writing, all amounts and prices payable are exclusive of any taxes, duties or levies (such as GST) and the relevant tax, duty or levy will be charged to you and is to be paid by you and all tax invoices must be paid in full strictly within 21 calendar days.
- 5.6 If any tax invoice MetroFire Services may issue to you is not paid in full without setoff or deduction by its due date, MetroFire Services may charge you interest on the unpaid amount at the rate of 8% per annum and may withhold the provision of certification for any site, without liability

6. Service standards

- 6.1 The services provided by MetroFire Services are based on a subjective visual inspection and functional assessment by MetroFire Services' employees, contractors, servants or agents of reasonably accessible areas of the Site only as at the time of such inspection only (and does not include concealed areas, latent defects and the like). No warranty as to the continuing state of the Site is provided by MetroFire Services.
- 6.2 You agree that MetroFire Services cannot issue a Certificate of Compliance or Annual Fire Safety Statement until the Site complies with relevant standards and that if after initial inspection, remediation works are considered warranted, you will promptly carry out such remediation works to allow a subsequent inspection.
- 6.3 MetroFire Services will provide details of any remediation works required and will provide a Quote in relation to any required remediation works. This will be an additional expense.
- 6.4 To avoid doubt, unless expressly stated, MetroFire Services does not paint any surface as part of its services however, all rubbish generated from its provision of the goods and/or services will be removed from the Site.
- 6.5 A Certificate of Compliance or Annual Fire Safety Statement will only be issued where required and upon completion of the relevant works (including any remediation works undertaken by MetroFire Services) and payment of all amounts due in full.
- 6.6 You agree that any report or certification provided is based on Australian Standard 1851.12 and is for the

purpose of fire safety standards only. It is not a *Building Council of Australia* or *National Construction Code* report or a certificate of compliance with any Act, regulation, ordinance or by-law.

- 6.7 The services may exclude certain matters or items specifically.

7. Risk, title and insurance

- 7.1 Risk of damage to or loss of the goods passes to you immediately upon delivery/installation.
- 7.2 You must, at your cost, arrange appropriate insurances to cover all risks associated with damage to or loss of the goods.
- 7.3 Any goods of yours in MetroFire Services' possession, custody or control for whatever purpose remain at your risk as regards loss and damage and you agree to effect and maintain appropriate insurances against such loss and damage.
- 7.4 All costs and disbursements incurred by MetroFire Services in recovering payment or in protecting or enforcing its rights under this document, including without limitation any legal costs and disbursements are payable by you on the indemnity basis.

8. Termination

- 8.1 Either party may terminate the agreement constituted by these Terms without cause on 6 months written notice.
- 8.2 Either party may terminate the agreement constituted by these Terms immediately by notice in writing to other if the other fails to observe any term of these Terms and fails to rectify this breach to that party's reasonable satisfaction within 7 days of the notice of breach. Termination will be without prejudice to the accrued rights of the parties up to the time of such termination.

9. Release and indemnity

- 9.1 Any advice, recommendation, information, assistance or service given by MetroFire Services in relation to goods or their use or application or in relation to the services is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty as to accuracy, appropriateness or reliability (other than its requirement to be able to provide any Certificate of Compliance or Annual Fire Safety Statement) and MetroFire Services does not accept any liability or responsibility for any loss, cost damage, liability or expense suffered from reliance on such advice, recommendation, information, assistance or service. You agree to rely on your own judgment in making decisions concerning these Terms and MetroFire Services' goods and/or services and their fitness for your use.
- 9.2 You have no right of action against MetroFire Services and you release and indemnify MetroFire Services from any loss, cost, damage, liability or expense, including indirect, consequential and special losses (including loss of use, enjoyment, reputation, income or profit), and against all actions, suits, claims and demands against MetroFire

Services in relation to the goods and/or services including any failure to deliver or delay in delivery of any goods or services or part thereof.

- 9.3 If the goods are not for personal or domestic use (and not covered by the *Australian Consumer Law*) then to the maximum extent possible, you hereby release and indemnify MetroFire Services and agree to forever keep MetroFire Services indemnified from any loss, cost, damage, liability, or expense, including indirect, consequential and special losses (including loss of use, enjoyment, income or profit), that MetroFire Services may incur in relation to you or any third party, where the loss, cost, damage, liability or expense is caused by or contributed to by MetroFire Services, the goods or services provided, any defect of fault in workmanship or design or their use or for any other reason whatsoever. You acknowledge and agree that no such loss, cost, damage, liability or expense is reasonably foreseeable other than those stated/limited in clause 11.

10. Warranties

- 10.1 Any warranty or condition which would otherwise be implied in any agreement between us or in these Terms (including, but not limited to, merchantability, suitability or fitness for purpose, quality, design, assembly, installation, operation or otherwise of the goods or services) is expressly denied and is excluded to the maximum extent permitted by law.
- 10.2 Our goods come with guarantees that cannot be excluded under the *Australian Consumer Law*. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

11. Limitation of liability

To the maximum extent permitted by law and notwithstanding clauses 9 and 10, MetroFire Services' liability to you in respect of any loss, cost, damage, liability or expense is limited (even where caused or contributed to by MetroFire Services' negligence or breach of any term, condition or warranty in relation to these Terms) is limited in MetroFire Services' absolute discretion to:

- (a) repairing the goods;
- (b) replacing the goods or supplying equivalent goods;
- (c) refunding the purchase price paid;
- (d) payment of the costs of repairing, replacing or acquiring equivalent goods;
- (e) resupplying the services or equivalent services; or
- (f) payment of the costs of resupplying the services or equivalent services.

12. Force majeure

Each of us will be released from our respective obligations in respect of any accepted Quote (except your obligations as to payment and indemnity) in the event of national emergency, war,

prohibitive governmental regulations or where any other cause beyond the reasonable control of either of us, including but not limited to strike, riot, lockout, trade disputes, rebellions, fire, acts of God, shortages of raw materials, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems for a period of 7 days or more renders provision of the goods or services the subject of an accepted Quote impossible.

13. Entire agreement

These Terms (including any document annexing them) contains the entire agreement as between the parties in relation to its subject matter and any industry practices or implied terms are expressly negated. Any previous representations or communications between the parties and any negotiations as to the goods and/or services (including any contrary terms of any previous dealings) are merged in and superseded by these Terms and are of no force or effect. These Terms may only be varied or replaced by a document in writing duly executed by the parties.

14. No waiver

A failure by MetroFire Services to enforce a right, make an election or exercise a discretion promptly or at all will not operate as a waiver or postponement of any right, power or remedy which it may have pursuant to this document. A single or partial exercise or waiver by MetroFire Services of a right relating to this document will not prevent any other exercise of that right or the exercise of any other right.

15. Independent advice

You acknowledge that you have obtained or have had adequate opportunity to obtain independent legal advice as to the meaning and effect of these Terms before they were accepted by you.

16. Delegation/assignment

MetroFire Services may delegate or sub-contract the performance of any obligation or assign the benefit of the agreement constituted by these Terms in its absolute discretion. You may not however assign such benefits or obligations without MetroFire Services' consent, which may be withheld.

17. Severance

If a provision in these Terms is void, illegal or unenforceable, it must be varied to give effect to the intention of these Terms or severed without affecting the enforceability of the other provisions.

18. Governing law and jurisdiction

These Terms and the transactions contemplated by them are governed by the law of New South Wales, Australia and the parties irrevocably submit to the jurisdiction of the courts of New South Wales, Australia and all courts called to hear appeals from them in respect of them.