

Fire Protection Testing and Survey Agreement Terms and Conditions

1. Definitions

Additional Services means any:

- (a) Additional Essential Services specified in the Customer Details Schedule;
- (b) tests performed by Wormald in relation to Hand Operated Fire Fighting Equipment not included in the Equipment; and
- (c) other services, other than the Services, which may be performed by Wormald during the Term of this Agreement. Additional Services Fees means the fees charged by Wormald during the Term in respect of any Additional Services performed by Wormald.

Agreement means the agreement between the Customer and Wormald, which is constituted by:

- (a) these terms and conditions;
- (b) the Customer Details Schedule;
- (c) the System Specifications specified in Annexure A, that are attached hereto; and
- (d) the Equipment details contained in Annexure B.

Commencement Date means the date specified in the Customer Details Schedule.

Customer means the person or persons named as Customer in the Customer Details Schedule.

Equipment means the system and/or equipment described in the "Inspection and Testing of System/Equipment " section of the Customer Details Schedule (including Annexure B) as well as each or any replacement or substitute thereof and all parts and components thereof.

Fees means the fees specified in the "Inspection and Testing of System/Equipment " section of the Customer Details Schedule. Initial Term means the period specified as such in the Customer Details Schedule commencing from the Commencement Date. Premises means those premises described as the Service Address in the Customer Details Schedule, being the location of the Equipment.

Services means the inspection and testing of the Equipment, the details of which are specified in the "Inspection and Testing of System/Equipment" section of the Customer Details Schedule and Annexure B.

Term means the Initial Term together with any extension unless earlier terminated in accordance with this Agreement.

Wormald means Tyco New Zealand Limited trading as Wormald.

2. Services

Wormald agrees to provide the Services in respect of the Equipment and any Additional Services to the Customer throughout the Term on the terms set out in this Agreement.

3. Payment

(a) The Customer shall pay to Wormald the Fees for the Services throughout the Term in accordance with the Customer Details Schedule provided that the cost to Wormald of supplying the Services be increased by any circumstances of any kind whatsoever beyond the control of Wormald, including without limitation, to increases in the cost of fuel, labour and equipment, any increase in existing, or additional, taxes, costs or expenses incurred as a result of, but not limited to, any statutory changes, directions or requirements governing the Services, increased production cost of manufacturers or suppliers/subcontractors, variations in rates of exchange, devaluation of any relevant currency or increase in relevant rates of freight or insurance. Wormald shall notify the Customer of such increase and the Customer shall bear such increase.

(b) The Customer acknowledges that the Additional Services Fees are chargeable on a time and materials basis based on Wormald's usual rates (which may vary from time to time).

(c) The Customer shall pay all taxes, charges and fees imposed by any carrier or government or regulatory body which are properly payable in connection with the provision of the Services and Additional Services and shall pay all goods and services tax levied on the goods and services provided under this Agreement.

4. Term

(a) Subject to clause 4(b), this Agreement will continue for the Initial Term.

(b) Unless either party gives to the other written notice of no less than 30 days but no more than 60 days prior to the end of the Initial Term of its wish for this Agreement to terminate upon the expiration of the Initial Term, this Agreement will be automatically renewed for a successive term or terms, with the period of each renewed term being the same as the Initial Term.

(c) Either party may terminate this Agreement during any renewed term by giving to the other not less than 30 days but no more than 60 days written notice of termination, prior to the end of the renewed term.

(d) This Agreement may not be altered, cancelled, suspended, repudiated or terminated by the Customer during the Initial Term for any reason whatsoever without the written consent of Wormald. If the Customer alters, cancels, suspends, repudiates or terminates this Agreement during the Initial Term for any reason whatsoever, the Customer shall forfeit any amounts paid by the Customer to Wormald and the Customer shall indemnify Wormald against any loss, damage and expense incurred by Wormald including but not limited to the cost of items purchased to perform the Services, all labor and engineering costs incurred by Wormald in the execution or part execution of the Services, compensation payable to any supplier and loss of profit.

5. Customer obligations

The Customer shall:

(a) maintain all other items which may affect the testing of the Equipment, including but not limited to sprinkler system test drains, essential power supplies to fire alarm and evacuation system, emergency generator power supplies and any equipment relevant to the Additional Services;

(b) provide such other assistance or permit such other access as Wormald may reasonably require for the proper provision of the Services and any Additional Services;

(c) comply with all operating and maintenance instructions in relation to the Equipment and any other equipment relevant to the Additional Services; and

(d) notify Wormald immediately in the event of any deterioration, loss or damage to the Equipment or any other equipment relevant to the Additional Services.

6. Liability and indemnities

(a) Subject to clause 6(b) and to the extent permitted by law, Wormald's total liability for breach of this Agreement or any injury, loss, damage or expense arising out of or in connection with this Agreement or Wormald's performance of its obligations hereunder or otherwise, whether that liability arises under contract, any indemnity, tort (including negligence), by statute or otherwise shall not exceed the total dollar amount of the Fees paid to Wormald by the Customer in the first 12 months of the Term.

(b) Wormald's liability shall be limited (at Wormald's option) to one of the following:

- (i) the replacement of the goods or the supply of equivalent goods;
- (ii) the repair of the goods;
- (iii) the supplying of the services again; or
- (iv) the payment of the cost of having the services supplied again.

(c) Notwithstanding any other provision to the contrary, so far as the law permits, Wormald shall not be liable under this Agreement in contract, under any indemnity, tort (including negligence), by statute or otherwise for loss or damage (whether direct or indirect) of profits, revenues, use, production, contracts, corruption or destruction of data or for any indirect, special or consequential loss or damage whatsoever.

(d) To the extent permitted by law and except as otherwise provided herein Wormald shall not be liable to the Customer for any delay or failure to provide the Services or any Additional Services due to acts or omissions of the Customer and/or any third party; natural disaster; power failure; any communications failure; industrial dispute; inability to obtain materials or services or any other cause beyond Wormald's reasonable control.

(e) The Customer shall be liable to pay Wormald for loss, damage, cost or expense suffered or incurred by Wormald arising out of:

- (i) any information provided by the Customer to Wormald including the information contained in the Customer Details Schedule being incorrect or misleading; or
- (ii) any default by the Customer under this Agreement.

except to the extent that such default or loss or damage is caused by the wilful misconduct or fraud of Wormald.

(f) If for any reason Wormald is prevented from performing any part of the Services or Additional Services through lack of access to where the Equipment is located or any other cause beyond Wormald's reasonable control, the Customer must compensate Wormald for any out-of-pocket expenses incurred and Wormald shall not be under any liability to the Customer by reason of its inability to perform those services.

(g) Inspections for the systems SS15/2, SS15/3 and SS15/5 will be undertaken by Wormald to the best of its ability based on the information and access provided by the Customer. Wormald's inspection of such systems is limited to the scope of works as listed and agreed in this Agreement and the information provided to Wormald. The areas inspected will be listed on Wormald's inspection sheet. Where passive fire protection features have been previously installed by a third party in the Premises, the Customer warrants, that Produce Statements have been accepted for such installations. Without limiting the foregoing, Wormald accepts no responsibility or liability in connection with:

- (i) areas of any part of the Premises that are unable to be inspected due to a general lack of access (including but not limited to, wall cavities, spaces behind fixed ceilings, high areas requiring special access equipment, confined spaces, locked areas or other areas out of bounds to the Wormald inspector); or
- (ii) areas and features of any part of the Premises that were not advised to Wormald as having passive fire protection features.

7. Insurance

Wormald will take out Public Liability insurance to the value specified in the Customer Details Schedule and will provide evidence of such insurance upon request by the Customer.

8. Warranties

To the extent permitted by law and except as otherwise provided herein, all conditions, warranties and representations are expressly negated and excluded.

9. Termination

(a) This Agreement may be terminated by Wormald at any time during the Term upon giving the Customer 60 day's prior written notice.

(b) This Agreement may be terminated by either party immediately if:

- (i) the other party is in breach of any express or implied term of this Agreement and that party has failed to rectify the default within 14 days of receiving written notice from the other party to rectify the default; or
- (ii) in a party's reasonable opinion, the other party commits or is deemed to have committed an act of insolvency.

(c) Without limiting any other rights of Wormald, in the event of termination by Wormald pursuant to clauses 9(b)(i) or (ii), or if the Customer terminates this Agreement at any time during the Term (other than by reason of breach by Wormald), then the Customer shall, without limitation, pay to Wormald upon demand by way of liquidated damages the sum equal to 70% of all Fees that would otherwise be payable pursuant to this Agreement for the remainder of the Initial Term or the renewed term as the case may be. The Customer agrees that the foregoing amount of liquidated damages is a genuine pre-estimate of Wormald's loss and is fair and reasonable compensation to Wormald arising out of the termination without the need for Wormald to prove actual loss.

10. Assignment and sub-contracting

(a) Wormald may assign, novate or sub-contract its rights and/or obligations under this Agreement without the consent of the Customer.

(b) The Customer has no right of assignment without Wormald's consent which consent shall not be unreasonably withheld.

11. Notices

Any notice under this Agreement required to be in writing shall be in writing and may be sent to the address, facsimile or e-mail of the parties as shown in this Agreement or to such other address, facsimile or e-mail as a party may notify in writing to the other party.

12. Special conditions

The special conditions contained or referred to in the Customer Details Schedule (if any) shall form part of this Agreement.

13. Miscellaneous

(a) No waiver by Wormald of any default or breach or the non-acceptance by Wormald of any repudiation of this Agreement by the Customer shall affect the rights of Wormald in respect of any further or continuing default or breach or any subsequent repudiation by the Customer.

(b) This Agreement shall be binding on the heirs, successors and permitted assigns of the party; hereto.

(c) In the event that any provision (or part thereof) contained in this Agreement is rendered void, invalid or unenforceable in any jurisdiction then such provision (or part thereof) shall be severed from this Agreement without affecting the validity of the provision in any other jurisdiction or the remaining provisions in that jurisdiction.

(d) Where there is more than one Customer, then the liability of each shall be joint and several.

(e) In this Agreement the singular includes the plural and vice versa, any gender includes any other gender and a reference to person includes a corporation or any other legal entity and vice versa.

(f) No forbearance, delay or indulgence by a party in enforcing the provisions of this Agreement will prejudice or restrict the rights of that party.

(g) This Agreement constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and contains all of the representations, undertakings, warranties, covenants and agreements of the parties.

(h) This Agreement shall be governed by and construed in accordance with the laws of New Zealand.

(i) Any agreed amendment to this Agreement must be in writing and signed by both parties.

14. Privacy

(a) The Customer acknowledges and agrees that Wormald or any third party who takes or intends to take an assignment of this Agreement (collectively referred to as the "Collector") may collect personal information about the Customer over the Term.

(b) The Customer acknowledges without limitation that the Collector may:

- (i) use the Customer's personal information:
 - (A) to assess any application by the Customer for the Services and the Customer's credit worthiness;
 - (B) to collect Fees that are overdue under this Agreement;
 - (C) to provide the Services to the Customer (including administration and the investigation or resolution of disputes relating to any Services provided to the Customer);
 - (D) to provide information to the Customer about other goods and services which the Collector or its related bodies corporate or any of its partners and associates may offer to the Customer;
 - (E) to send the Customer publications of the Collector; and
 - (F) as otherwise required by law;
- (ii) disclose the Customer's personal information to:
 - (A) other service providers such as subcontractors engaged by the Collector to assist the Collector in providing the Services to the Customer;
 - (B) the Collector's related bodies corporate so that they can provide information to the Customer about goods and services they offer; and
 - (C) governmental bodies such as the police, fire brigades and other providers of emergency services.

(c) The Customer has a right to access most personal information the Collector holds about the Customer, and a fee may apply for access. If the Collector denies access in some circumstances, the Collector will tell the Customer why.