

February 2018

## TERMS OF TRADE

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### Definitions

Unless the context otherwise requires:

**Act** means the Privacy Act 1988 (Cth) and the regulations thereunder.

**Business Day** means any day except a Saturday, Sunday or public holiday in the location where the Goods and/or Services are to be provided or performed.

**Claims** means all claims, demands, suits, proceedings, actions, litigation, judgments, liabilities, losses, damages, costs and expenses of whatever description and includes all legal costs and disbursements on a full indemnity basis.

**Client** means the client specified in the Scope of Works.

**Contract** means the Terms and the relevant Scope of Works (together they comprise the 'Contract').

**Event of Default** means in respect of the relevant party:

- a) a default in the performance of its obligations; or
- b) an Insolvency Event occurring.

**Fire Safe ANZ** means Fire Safe Australia & New Zealand Pty Ltd ACN 102 841 609 its successors and assigns.

**Goods** means the equipment and/or materials referred to in the Scope of Works.

**GST** means the goods and services tax payable pursuant to the GST Act.

**GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and the regulations thereunder.

**Insolvency Event** means any of the following in respect of the relevant party:

- a) a receiver, receiver and manager, liquidator, provisional liquidator, controller or any form of external administrator being appointed to or over it or in respect of any of its assets;
- b) entering into a scheme, arrangement, agreement or compromise with its creditors;
- c) calling a meeting of creditors or becoming bankrupt or insolvent or having a winding-up or bankruptcy petition presented against it;
- d) an application or order being made to a court or a resolution being passed for its winding-up; or
- e) anything analogous or having a substantially similar effect to any of the events specified above under the laws of any applicable jurisdiction.

**PPS** means the Personal Property Securities Act 2009 (Cth) and the regulations thereunder.

**Scope of Works** means the relevant scope of works prepared by Fire Safe ANZ for the Client.

**Services** means the services referred to in the Scope of Works.

**Terms** means these terms of trade (subject to any variation).

### Interpretation

Unless the context otherwise requires:

- a) headings, boldings and underlines are for convenience only and do not affect the interpretation of a Contract;
- b) words importing the singular include the plural and vice versa;
- c) a 'person' includes a company, partnership, joint venture, association, trust, corporation and vice-versa;



- d) reference to any statute or regulation includes all statutes and regulations varying, consolidating or replacing them and also includes all regulations, proclamations, ordinances and by-laws issued after that statute;
- e) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of a Contract or any part of it;
- f) the words “includes”, “including”, “for example” or “such as” or similar expressions are not words of limitation;
- g) all references to “\$” or “dollars” are to the lawful currency of Australia;
- h) a covenant, an agreement or acknowledgment on the part of, or in favour of, two or more persons, binds them or ensures to their benefit jointly and severally; and
- i) where the day on which a thing is to be done is not a Business Day, it may be done on the next Business Day.

**Client Obligations**

The Client must promptly provide all access to premises, instructions, information and documentation reasonably requested by Fire Safe ANZ relating to the performance or provision of the Goods and/or Services.

**Change of Tenant, Manager or Owner**

If the Client no longer owns, uses, occupies or manages (such as a strata manager) the location at which Goods are provided and/or Services performed then:

- a) Fire Safe ANZ may (but is not obliged to) continue to provide some or all of the Goods and/or perform Services at that location until the relevant location is excised or the Contract is terminated;
- b) Fire Safe ANZ may:
  - (i) excise that location from the relevant Contract; or
  - (ii) if there are no locations other than the one to be excised, terminate the relevant Contract by giving written notice to the Client;
- c) the Client may:
  - (i) excise that location from the relevant Contract; or
  - (ii) if there are no locations other than the one to be excised, terminate the relevant Contract by giving at least 30 days prior written notice to Fire Safe ANZ; and
- d) the Client remains liable to pay Fire Safe ANZ for all Goods and Services provided or performed in respect of the relevant location up to and including the date of excise or termination.

**Keys**

If a key is needed to access an area, the Client must ensure it only provides Fire Safe ANZ with a duplicate key for that area and not any master key nor any key that also accesses other areas.

**Scope of Works and Acceptance**

A Scope of Works issued by Fire Safe ANZ:

- a) can be amended or withdrawn at any time by Fire Safe ANZ prior to acceptance; and
- b) is accepted by the Client signing the Scope of Works and returning it to Fire Safe ANZ or by otherwise indicating its acceptance verbally, in writing or electronically to Fire Safe ANZ.

If, however, the Client accepts a Scope of Works after the timeframe for acceptance specified in the Scope of Works or, if no timeframe is specified, after 30 days from the date of the Scope of Works, then such acceptance is only binding on Fire Safe ANZ if Fire Safe ANZ commences to provide any Goods and/or Services the subject of the relevant Scope of Works.

**Fire Safe ANZ Service Policy**

Unless otherwise agreed in writing:

- a) Fire Safe ANZ is only obliged to provide Goods or perform Services after 6am or before 6pm on the relevant day – if Fire Safe ANZ agree to provide Goods or performs Services before 6am or after 6pm on the relevant day, the Client must pay the additional fees charged by Fire Safe ANZ at the relevant time for such 'out of hours' service;
- b) if Fire Safe ANZ are on-site ready to perform its obligations but are made to wait (eg, because the Client contact is late or does not arrive), the Client must pay the additional fees charged by Fire Safe ANZ at the relevant time for such 'waiting' – if the waiting period exceeds 15 minutes, Fire Safe ANZ may delay performing that obligation until it can next reasonably accommodate it – in addition, the Client is liable to pay any call-out fee charged by Fire Safe ANZ at the relevant time for returning to the site;
- c) the Client must organise suitable parking on-site for the employees/contractors of Fire Safe ANZ to provide the Goods and/or perform the Services – if the Client cannot meet this requirement the Client must pay the parking fees incurred by Fire Safe ANZ;
- d) the Client must pay all site induction fees and third party processing fees charged by online bureaux (such as Rapid Induct) incurred by Fire Safe ANZ relating to the provision of the Goods or performance of the Services;
- e) inspection and testing does not include repairs, replacements, on-going maintenance or parts - if Fire Safe ANZ agree to provide same, the Client must pay the costs charged by Fire Safe ANZ;
- f) if Fire Safe ANZ detects a hazard at the location where the Goods and/or Services are to be provided or performed:

- (i) the Client is responsible for promptly and safely remediating or isolating the hazard so that the Goods and/or Services can be safely provided or performed;
  - (ii) Fire Safe ANZ may suspend its obligations until such hazard has been safely remediated or isolated;
  - (iii) Fire Safe ANZ may, but is not obliged to, take such action as is considered necessary by Fire Safe ANZ to remediate or isolate the hazard including removing equipment from service, placing a “do not use” notice on equipment, removing the plug or cable from faulty equipment, and/or disposing of the equipment;
- g) any figures given by Fire Safe ANZ for performance, measurements, power, capabilities, capacities or any other particulars relating to the Goods and/or Services are guides only and Fire Safe ANZ, to the fullest extent permitted by law, is not liable for any Claims suffered by the Client relating to any inaccuracy or incompleteness in that regard.

#### **Delivery and Performance**

Although Fire Safe ANZ will use reasonable endeavours to provide the Goods and perform the Services by the due date, this time is not of the essence.

If no due dates are specified then Fire Safe ANZ may determine the dates when the Goods and/or Services are to be provided or performed.

To the fullest extent permitted by law, Fire Safe ANZ is not liable for any Claims suffered by the Client arising out of any failure by Fire Safe ANZ to provide the Goods or perform the Services on or by the due date or within a reasonable time.

#### **Extensions of Time**

In addition to any other rights, if the provision of the Goods and/or performance of the Services are prevented, delayed or hindered for any reason beyond Fire Safe ANZ's reasonable control then, at Fire Safe ANZ's option, Fire Safe ANZ may extend the due date, excise the part of the Contract which is so impacted or terminate the Contract.

The Client is not entitled to excise the part of the Contract which is so impacted or terminate the Contract for the resultant delay.

To the fullest extent permitted by law, Fire Safe ANZ is not liable for any Claims suffered by the Client for the resultant delay, excise or termination.

#### **Payments**

Fire Safe ANZ can render invoices at any time after Goods and/or Services are provided or performed.

Unless otherwise specified in the Scope of Works or invoice:

- a) all payments are due within 30 days from the end of the month in which the invoice is issued or, if it is a claim for interest or under an indemnity, within 30 days of demand; and
- b) all amounts are expressed as being exclusive of GST, thus GST is payable in addition to the relevant amount payable.

Fire Safe ANZ may:

- a) charge interest on late payments at the rate of 10% per annum calculated daily on the amount overdue; and
- b) add all credit card surcharges it incurs to any amounts paid by the Client on credit card and may deduct same from the credit card at the time of payment.

All times for payment are of the essence.

#### **Indemnity**

To the fullest extent permitted by law, the Client indemnifies Fire Safe ANZ against all Claims suffered by Fire Safe ANZ resulting from or arising out of any breach of a Contract by the Client.

#### **Suspension**

In addition to any other rights, if the Client delays or fails to perform its obligations then Fire Safe ANZ:

- a) may suspend its obligations until the delay or failure is rectified;
- b) is entitled to a reasonable extension of time to the dates applicable to its obligations;
- c) may exercise a right of termination after or during a period of suspension; and
- d) to the fullest extent permitted by law, is not liable for any Claims suffered by the Client for the delay or failure by the Client or arising from Fire Safe ANZ exercising or attempting to exercise any of its rights.

#### **Termination – Event of Default**

If an Event of Default occurs and the default:

- a) is not capable of being remedied; or
- b) is capable of being remedied but is not remedied within a reasonable period of time having regard to the nature of the default after written notice requiring it to be remedied is given to the defaulting party by the party not in default;

then the party not in default may immediately terminate the relevant Contract by giving written notice to the other party.

#### **Termination – Fire Safe ANZ**

A Contract can be terminated by Fire Safe ANZ at any time before Goods and/or Services are provided or performed by notice to the Client without, to the fullest extent permitted by law, being liable for any Claims suffered by the Client apart from refunding any monies paid in advance by the Client.

**Effect of Termination or Expiration**

The termination or expiration of a Contract will not affect any provision of the Contract expressed or capable of operating or having effect subsequent to termination or expiration and is without prejudice to any accrued right or remedy of a party in relation to any breach of or default by the other party occurring prior to termination or expiration.

**Risk and Title**

Risk in respect of loss, damage or destruction of any Goods passes to the Client upon installation or delivery (as the case may be).

Despite the passing of risk, Fire Safe ANZ retains full title to the Goods until such time as all payments due by the Client in respect of the Contract under which the Goods are provided are received by Fire Safe ANZ.

**Australian Consumer Law**

If the Client acquires Goods as a 'consumer' within the meaning of that term in the Australian Consumer Law, then the following applies: 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.

**Limitation of Liability**

To the fullest extent permitted by law:

- a) Fire Safe ANZ is not be liable to the Client for any consequential, special, incidental or other indirect loss or damage including loss of profit, loss of opportunity, business, revenue, goodwill or anticipated savings arising out of the performance, non-performance or defective performance of the obligations of Fire Safe ANZ irrespective of whether or not Fire Safe ANZ was made aware of the possibility of such loss;
- b) all express and implied warranties, terms and conditions in relation to the obligations of Fire Safe ANZ including those implied by use, trade, custom or otherwise are hereby excluded; and
- c) subject to the foregoing, Fire Safe ANZ total liability to the Client for breach of its obligations to the Client whether under the Contract, in tort (including due to negligence) or otherwise are at the option of Fire Safe ANZ limited to:
  - (i) in respect of Goods, repairing, replacing or resupplying the Goods or paying for the cost of same;
  - (ii) in respect of Services, resupplying the Services or paying for the costs of same; or
  - (iii) repaying the Client the amount paid by the Client to Fire Safe ANZ under the relevant Contract (but not any GST amount claimable by the Client).

For clarity, where the liability of Fire Safe ANZ under any other provision of these Terms is expressed to apply "to the fullest extent permitted by law", then to the extent that such liability cannot be fully excluded, Fire Safe ANZ's maximum liability under such provision is limited as set out in this clause.

**Privacy**

To the fullest extent permitted by law, the Client agrees that:

- a) Fire Safe ANZ may make such enquiries as it sees fit in order to satisfy itself as to the creditworthiness of the Client and to assess any application for commercial credit;
- b) the inquires may include applying to and obtaining from any credit reporting agency a credit report of the Client which may contain personal information, in accordance with the Act, and to obtain a report containing information from a person or business which provides information about the commercial credit worthiness of a person in relation to credit provided by Fire Safe ANZ, in accordance with the Act;
- c) Fire Safe ANZ is authorised in terms of the Act to disclose information of a report received by it and to exchange information with other credit providers for the purpose of notifying other credit providers of a default by the Client, assessing an application for credit by the Client, assessing the creditworthiness of the Client and for any other purpose permitted by the Act;
- d) Fire Safe ANZ may give information about the Client or the Client's business to a credit reporting agency for the purpose of obtaining a credit report and/or to allow the credit reporting agency to create or maintain a credit information file about the Client or the Client's business including details of any default by the Client; and
- e) it consents to Fire Safe ANZ disclosing the Client's information to a credit reporting agency as outlined above.

**Separate Contracts**

Each Contract constitutes a separate and independent agreement. Subject to the provisions of these Terms, any action taken in respect one Contract does not automatically affect any or all other Contracts.

**Authority**

Fire Safe ANZ is entitled to assume that anyone on behalf of the Client who accepts a Scope of Works or performs any acts or omissions on behalf of Fire Safe ANZ is duly appointed and has sufficient power and authority to bind the Client.

### **Variations**

The Client must check the Terms before accepting a Scope of Works as they may have changed from the last time.

If the Client wishes to vary the Contract (which Fire Safe ANZ can accept or reject in its sole discretion), Fire Safe ANZ reserves the right to vary the Contract to take account of such changes and in that case Fire Safe ANZ is entitled to suspend its obligations until the Client approves of the variations in writing.

### **Inconsistency**

If there is any inconsistency between the Terms and the Scope of Works, the terms of the Scope of Works prevail to the extent of the inconsistency.

### **Client Terms**

Any terms or conditions put forward by the Client in respect of a Scope of Works are null and void and of no effect unless accepted by Fire Safe ANZ in writing.

### **Miscellaneous**

In respect of a Contract:

- a) it is governed by and construed in accordance with the laws of the State of New South Wales, Australia;
- b) any legal action or proceedings may be brought in the Courts of the State of New South Wales, Australia and each party accepts, for itself and in respect of its property and assets, generally and unconditionally the jurisdiction of the Courts of that State;
- c) subject to its terms, the Contract confers rights and benefits only upon a person expressed to be a party and not upon any other person;
- d) the Client cannot transfer, sub-contract or assign its rights or obligations under the Contract without the prior consent in writing of Fire Safe ANZ;
- e) Fire Safe ANZ may sub-contract or assign its rights or obligations under the Contract at anytime;
- f) the failure to exercise or delay in exercising a right does not operate as a waiver and the single or partial exercise of a right does not preclude any other or further exercise of that right or any other right;
- g) subject to its terms, the rights of a party conferred by the Contract are cumulative and are not exclusive of any rights provided by law;
- h) each party must execute all documents and perform all acts necessary to give full effect to the Contract;
- i) the Contract expresses and incorporates the entire agreement between the parties in relation to its subject matter and all the terms of that agreement, and supersedes and excludes any prior or collateral negotiation, understanding, communication, agreement, representation or warranty by or between the parties in relation to that subject matter or any term of that agreement;
- j) neither party is, after the Contract has been entered into, entitled, as against the other party to bring any Claims on the basis of any verbal or written communications, representations, inducements, undertakings, agreements or arrangements except expressly as provided by the Contract; and
- k) any provision which is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability, without invalidating the remaining provisions of the Contract or affecting the validity or enforceability of that provision in any other jurisdiction.