

# Extreme Fire Solutions

## Routine Inspection & Test | Terms & Conditions

Version 2.3 November 2023

### 1. TERM

Agreements will commence on the Commencement Date set out within the Agreement Particulars and will remain in force for the designated Term.

To fulfil our duty of care, unless either party terminates the agreement by provision of not less than 3 months written notice, it shall automatically be renewed at the expiration of any original or additional period for a further term equal to the Term stipulated and will continue on an ongoing basis, and not expire until such a time that notification by way of 3 months written notice is provided by either party.

### 2. THE SERVICES

#### 2.1. Performance

Extreme must provide the Services:

- in accordance with the provisions of the Agreement.
- from the Commencement Date as denoted within the Agreement Particulars, and pursuant to Clause 1 above, unless the Agreement is terminated earlier.
- with due skill and care, using that standard of skill, diligence, prudence and foresight that would reasonably be expected from a prudent, skilled and experienced provider of services which are similar to the Services in Australia.
- as efficiently as possible in accordance with best industry practice applicable to the provision and maintenance of Fire Systems; and
- in accordance with any manufacturers' recommendations and all Legislative Requirements affecting or relevant to the Services.

#### 2.2. Approvals and Licences

Prior to commencing any part of the Services that requires an approval or licence, Extreme must obtain such approval or licence and ensure that the approval or licence remains current during the Term.

#### 2.3. Service Standards

The Client acknowledges and agrees that Extreme has control over and responsibility for the manner, method, labour and materials used by it in the provision of the Services.

Except in case of emergency, Extreme must not provide any Services at a time which might generate any dust, dirt or noise or disturb, disrupt or inconvenience any tenant in, or visitor to, the Property without the prior written consent of the Client.

#### 2.4. Equipment and Materials

Extreme must, at its own cost, supply all equipment and materials required to provide the Services, and Extreme must ensure such equipment and materials will be suitable for its purpose and in good working order.

If the Client provides any equipment for use by Extreme, Extreme must:

- only use the equipment for the provision of the Services;
- notify the Client as soon as possible if the equipment is not in good order and condition;
- ensure that Extreme's Personnel are given the appropriate training, in the use of the equipment;
- undertake a regular risk assessment in relation to the use of the equipment; and
- design, establish, maintain, implement and enforce a safe system of work in relation to the use of the equipment.

#### 2.5. Extreme's Guarantee

The Client acknowledges and agrees that:

- Extreme's guarantee is limited solely to the workmanship provided by Extreme and that all goods and materials supplied as part of the Services are covered solely by the relevant manufacturer's guarantee and/or warranty; and
- Extreme's liability to the Client is limited to re-performing any part of the Services found to be faulty or defective; and
- The Client is not entitled to any other remedy including without limitation, damages for consequential or indirect loss, however such loss may arise.

#### 2.6. After Hours Services

- Extreme agrees that after hours service technicians will be available to the Client for the duration of the Agreement.
- Extreme must provide the Client with a telephone number at which Extreme or Extreme's technicians can be contacted twenty-four hours a day, seven days a week;
- Immediately upon notification from the Client of a complaint, breakdown or failure of any item covered by the Services or part thereof, Extreme must take all action necessary to assess and where appropriate, subject to this subclause 2.8(d), rectify the complaint, breakdown or failure;
- If Extreme determines that the cause of the fault is of a minor nature, Extreme must as soon as practicable (in view of the urgency of the failure) report the fault, the cause of the fault and the steps necessary to rectify it to the Client;
- If Extreme determines that the cause of the fault is of a major nature, Extreme must provide the Client with a written report setting out details of the steps and Extreme proposes to take to rectify the fault the relevant times for each of those steps;
- On receipt of any report provided under this clause the Client may make any direction necessary to rectify the fault or failure and Extreme must comply with that direction within the time agreed;

#### 2.7. Service Reports

- Upon completion of the Services and prior to leaving the Property, Extreme must complete and submit to the Client a service report detailing the Services performed (including those by all of its Personnel and any Subcontractors), the status of the Services and any additional or unfinished Services;
- As a minimum, service reports must include the following:
  - date of the Services;
  - time of arrival at the Property by Extreme's Personnel;
  - time that Services were completed and time of departure from the Property;
  - description of Services completed;
  - signature and printed name, or seal, as appropriate, of Extreme's Personnel who completed the Services.
- All completed service reports must be signed by the Client.
- Extreme must maintain and provide on request by the Client all records maintained in respect of the Services.

#### 2.8. Recommendations

- If during the course of performing the Services, Extreme discovers equipment or any other item which in its view requires repair or replacement, subject to this subclause 2.8(d), Extreme must prepare and

submit to the Client a written report recommending any action necessary to place the equipment in good working order.

- The report shall include a quotation for any repair works required.
- If the failure of the equipment or other item may cause damage to property or injury to any person, subject to this subclause 2.8(d), Extreme must immediately make the equipment or other item safe and provide a report to the Client.
- If Item 16 of the Agreement Particulars indicates that the Client requires Extreme to replace equipment or other items where Extreme considers such replacement is necessary, Extreme will replace equipment and items up to the value set out in Item 16 of the Agreement Particulars and the cost of such replacement items will be payable by the Client in addition to the Services Fee.

#### 2.9. Defects

If a defect appears in any part of the Services within 12 months after that part of the Services have been completed, the Client may notify Extreme in writing of the existence of the defect. On receipt of that notice, Extreme must within 14 days, or in the case of urgent work in the time set out in the notice, subject to Clause 2.5, remedy the defect at no cost to the Client.

#### 2.10. Services Supplied Before the Date of Agreement

If any action was taken by Extreme regarding the supply of any Services under the Agreement before the date of the Agreement, the terms and conditions of the Agreement shall apply retrospectively.

#### 2.11. Other Terms and Conditions Not Applicable

- The provisions of the Agreement apply to all Services performed by Extreme (and any other services provided by Extreme related to or provided in connection with the Services for which no written agreement is executed by the parties) and override any other documentation exchanged between the parties.
- If there is any inconsistency between any purchase order or other documentation issued by the Client and the Agreement, the provisions of the Agreement prevail to the extent of any inconsistency.

#### 2.12. Non-exclusive arrangement

- The Agreement does not prevent Extreme from entering into arrangements or agreements with third parties for the provision of services equivalent or similar to the Services, subject always to Extreme Fire complying with its obligations under the Agreement, including without limitation, satisfying the Key Performance Indicators.
- The Agreement does not prevent the Client from entering into arrangements or agreements with third parties for the provision of services equivalent or similar to the Services.

### 3. SUBCONTRACTING

#### 3.1. Sub-Contracting prohibited without consent.

Extreme must not sub-contract the whole or any part of the Services without the prior approval in writing from the Client which approval must not be unreasonably withheld.

#### 3.2. Requirements applicable to Sub-contractors

- If approval to sub-contract part of the Services is granted by the Client in accordance with clause 3.1
- all requirements of the Agreement applying to Extreme shall apply to all persons engaged in supplying the Services; and
  - the terms of the sub-contract between Extreme and the Sub-contractor must reflect the terms of the Agreement as far as the terms of the Agreement define the obligations of Extreme to:
    - perform the Services;
    - insure against any liability (and Extreme must provide evidence of such insurance to the Property Manager on request); and
    - indemnify the Client.

#### 3.3. Extreme's obligations

Approval by the Client for Extreme to subcontract will not relieve Extreme from the performance of any obligation under the Agreement.

### 4. QUALIFICATIONS AND CONDUCT OF PERSONNEL

#### 4.1. Qualifications of Extreme's Personnel

Extreme must:

- ensure that Extreme's Personnel are permitted by law to provide the Services;
- ensure that Extreme's Personnel are properly trained as required by the Agreement, properly qualified, competent and, where necessary, licensed. Any costs incurred in obtaining and maintaining these qualifications, training and licences are to be borne by Extreme;
- replace any member of Extreme's Personnel who, for whatever reason, is unable to perform the Services, with a person who is properly qualified and competent; and
- upon request, provide certified copies of all documents reasonably required by the Client to verify that all of Extreme's Personnel are appropriately qualified, accredited and trained to provide the Services.

#### 4.2. Extreme's Personnel to be courteous and helpful

Extreme's Personnel must always be courteous and helpful to persons legitimately visiting or working in the Property.

#### 4.3. Uniform, identification, and logos

The Client may direct Extreme's Personnel to wear a uniform and other identification which may, if required by the Client, include a means of identification determined by the Client and identify Extreme's Personnel with the name of the Property including using a logo.

If the Client permits or requires Extreme to use or reproduce its brandmarks on Extreme's uniforms, Extreme must, and will procure that Extreme's Personnel must adhere to the Client's standards in relation to the use of those brandmarks.

#### 4.4. Conduct of Extreme's Personnel

Extreme agrees that Extreme's Personnel and any approved Subcontractors must not engage in any of the following activities while in or adjacent to the Property:

- eat while on duty except during approved rest breaks and then only in areas approved or directed by the Client;
- smoke or consume alcohol or suffer from the effects of alcohol;
- take any narcotic or other drugs, or suffer from the effects of having taken any narcotic or other drugs, except if prescribed by a registered medical practitioner and the drug does not in any way adversely affect or impair the relevant person in performing the Services;
- swear or otherwise use language which is likely to offend any person working in or visiting the Property;

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- (e) sleep or doze;
- (f) be ill-mannered or discourteous;
- (g) fail to be neat, tidy and clean;

### 5. THE PROPERTY

#### 5.1. Access

- a) The Client must allow Extreme adequate access to the Property during the Term to enable Extreme to carry out the Services.
- b) Extreme shall ensure that Extreme's Personnel comply with all requirements, if any, for the signing in or out of visitors to the Property and any other requirements related to access to the Property notified to Extreme by the Client from time to time.

#### 5.2. Property Remains in Use

- (a) Extreme acknowledges that the Services are to be carried out in or adjacent to parts of the Property which will continue to be occupied and used by tenants, employees of tenants or visitors who must be able to always access the Property conveniently and safely.
- (b) Extreme agrees that, to the extent relevant to the Services, it must take all measures necessary to protect people and property situated on the Property and to minimise or avoid disruption and/or inconvenience to tenants, their employees, visitors, invitees and customers to the Property, including if relevant the impact of noise, dust, odour and other disruption.
- (c) Extreme must use reasonable endeavours to work collaboratively and positively with other contractors and service providers of the Client that may be working at the Property.

#### 5.3. Keys to the Property

- (a) Extreme agrees that any Keys remain at all times the property of the Client and must be returned to the Client upon request by the Client.
- (b) Extreme must comply strictly with any direction of the Client in relation to Keys
- (c) if Extreme or any of Extreme's Personnel loses or otherwise misplaces or damages any Keys, Extreme must pay or reimburse to the Client for any costs or expenses incurred by the Client including the costs of replacement Keys or re-keying of locks and reprogramming of security systems.
- (d) Extreme acknowledges and agrees that it must not duplicate any Keys without the prior written approval of the Client.

## 6. WORK HEALTH AND SAFETY

### 6.1. Compliance and Legislation

In the performance and delivery of the Services and any Additional Services, Extreme and its Personnel must comply with all applicable WHS Legislation and must exercise all necessary or desirable precautions for the safety and protection of occupants and visitors to the Property.

### 6.2. Extreme's Obligations

Extreme must:

- (a) ensure all Personnel are familiar with and comply with all relevant WHS Legislation and laws relating to the Environment;
- (b) ensure that all relevant Personnel participate in the Client's Work Health and Safety induction and complete a Property-specific induction prior to commencement of Services;
- (c) comply with all reasonable requests by the Client with regards to Work Health and Safety and the Environment;
- (d) identify and exercise all necessary precautions and take all practicable steps to ensure the health and safety of all persons on the Property or who may be affected by the Services;

### 6.3. Incidents

- (a) Extreme must promptly notify the Client in writing of any personal injury or property loss or damage to the Property as soon as Extreme becomes aware of any such loss or damage; and
- (b) If Extreme is required by law to report a notifiable incident to a regulator (including a Work Health and Safety and/or Environmental regulator) arising out of the Services, Extreme must immediately notify the incident to the regulator and the Client.

## 7. SERVICES FEE, INVOICING AND PAYMENT

### 7.1. Services Fee

- a) The Services Fee will be paid 6-monthly in advance in equal instalments.
- b) On or after the seventh (7<sup>th</sup>) day of each calendar month Extreme must submit a Tax Invoice for the Services performed during the previous calendar month. The Tax Invoice must be addressed as required in Item 8 of the Agreement Particulars.
- c) Subject to receiving a correctly rendered Tax Invoice and a payment declaration (if requested) and in consideration of Extreme performing its Obligations in accordance with the Agreement, the Client must pay Extreme the Services Fee within 14 days of receipt of the Tax Invoice.
- d) The Services Fee, and consequently the instalments, will be varied:
  - (i) on and from each yearly anniversary of the Commencement Date;
  - (ii) as agreed in respect of any variation in the Services notified in accordance with the Agreement; and
  - (iii) where necessary, the first and last payment will be proportional to the period to which they relate.

### 7.2. Invoicing

Extreme's Tax Invoices must be addressed to the Address for Invoices as contained in Item 8 of the Agreement Particulars and must include the following information:

- (a) the Client's Purchase/Work Order Number, if any, issued for the Services;
- (b) sufficient description of the particular Services for which payment is being claimed;
- (c) the amount payable for each item of the Services (excluding GST);
- (d) the GST amount applicable; and
- (e) the total amount payable (including GST)

Copies of invoices from Subcontractors, including materials and equipment, where appointed by Extreme for the provision of goods and services must be made available on request by the Client.

### 7.3. Payment Declaration

Extreme must throughout the Term:

- (a) pay all wages and entitlements due to Extreme's employees, including payroll tax;
- (b) pay superannuation on behalf of its employees into a complying superannuation fund;
- (c) pay all amounts when due to suppliers of goods and services to Extreme;

- (d) maintain valid workers compensation insurance in respect of the Services claimed and for the duration of the Agreement and, has paid all workers compensation insurance premiums payable in connection with the Agreement; and
- (e) provide evidence of such insurance, or any other workers compensation information, at the request of the Client.

Extreme must provide, with each Tax Invoice, written certification declaring that Extreme has paid all remuneration payments, as outlined above, including but not limited to all wages, employee entitlements and all amounts due to Subcontractors and suppliers of goods and services to Extreme.

### 7.4. Payment

Regular, progress or final payments shall be made by acceptable payment methods, bank transfers or by company/bank cheque or failing which immediately upon receipt of the duly completed job invoice signed by Extreme Fire setting out the labour rates, hours worked, materials supplied, travel, service or other charges, or (where appropriate) a lump sum cost for the Works.

The actual cost to Extreme Fire of any action to recover amounts owing to it from time to time by the Customer shall be paid by the Customer to Extreme Fire. Such costs shall be added to and form part of any amounts recoverable by Extreme Fire.

Extreme Fire has the right to stop work if any progress claims are not paid by the due dates on invoices and will not proceed with any works until a payment has been paid and the funds are cleared in our account.

The due date for payment on or before the 14 days from the date of the invoice. If payments defaults accrue, we will register the default with credit watch once legal proceedings start.

### 7.5. Interest

Extreme Fire always reserves the right to charge the Customer interest on all amounts owing to Extreme Fire pursuant to its Agreement at the rate of 15% per month calculated from the date upon which such sum is due and compounding each month and payable up to the actual date of payment.

Such interest shall form part of the amount recoverable from the Customer by Extreme Fire and the Customer acknowledges by the entry into the Agreement that it is reasonable for Extreme Fire to charge interest pursuant to this clause.

## 8. VARIATION TO SERVICES

### 8.1. Services Fee Adjustment

The Services Fee set out at Item 9 the Agreement Particulars is fixed as provided in for the Term of the Agreement. The Services Fee may only be adjusted by written agreement between the Client and Extreme based on variations to the Services in accordance with the Agreement.

### 8.2. Additional Services

At any time during the Agreement the Client may request Extreme in writing to perform Additional Services or to vary the quantity, quality, or nature of the Services and within seven (7) days of receiving such a request Extreme must provide the Client with a written quotation specifying:

- (a) a lump sum for the Additional Services; and/or
- (b) that the Additional Services or parts of them will be undertaken at Hourly Rates.

Additional Services that include the provision of goods including parts, materials, equipment and or the provision of Services by Subcontractors appointed by and acting on behalf of Extreme and approved by the Client, will be charged at cost plus the margin contained in Item 11 of the Agreement Particulars, unless otherwise agreed in writing by the Client.

Extreme must not commence any Additional Services without prior written approval by the Client.

### 8.3. Omitted Services

The Client may, in its absolute discretion, omit any part, but not the whole, of the Services and have the part omitted performed by others.

## 9. INSURANCE

### 9.1. Public Liability and other Insurance

Extreme must maintain throughout the Term:

- (a) a comprehensive public and products liability insurance policy which at all times covers the liability of Extreme and Extreme's Personnel for an amount not less than the amount stated in Item 17 of the Agreement Particulars per claim in respect of personal injury (including disease or illness) to, or death of, any person whatsoever and in respect of any loss or damage to any property, real or personal, including property owned by the Client or its employees, tenants and their invitees where the injury, death, loss or damage arises out of or is caused or contributed to by the provision of the Services;
- (b) insurance in respect of all claims and liabilities arising, whether at common law or under statute relating to workers compensation or employer's liability, from any accident or injury to any Extreme's Personnel.
- (c) a policy of insurance against any and all liability, loss and damage of any kind whatsoever arising directly from the use, non-use, failure, breakage or any other act, omission or matter arising in respect of plant, equipment, tools, appliances or other property owned, rented or hired by Extreme and used in connection with the Agreement; and
- (d) any other insurance policies reasonably requested by the Client as set out in the Agreement Particulars.

### 9.2. Evidence of Insurance

Extreme must provide the Client with evidence of the terms and currency of insurances identified in Item 17 of the Agreement Particulars prior to commencing the Services and on each anniversary of the Commencement Date or from time to time when requested by the Client.

### 9.3. Notification of claim

Extreme must notify the Client in writing of any claim against the insurances referred to in this clause 16 within 7 calendar days after becoming aware of the claim and provide such information about the claim as the Client may require.

### 9.4. Interest of the Client

Extreme must ensure that the policies of insurance that it is required to take out under the Agreement (other than the policies in clause 16.1(b)) note the Client's interest and note the interest of any other person notified by the Client to Extreme.

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### 10. WARRANTIES

#### 10.1. Service Warranty by Extreme

Extreme warrants to the Client that the Services will be in conformity with the Agreement.

#### 10.2. Other Warranties by Extreme

Extreme warrants that:

- (a) it is entitled to execute, deliver and perform its obligations under the Agreement and all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
- (b) it does not have any conflict of interest in entering into and performing its obligations under the Agreement, and will immediately notify the Client if any conflict arises;
- (c) the manner in which Extreme executes the Agreement is legally binding on Extreme;
- (d) the provision of the Services by Extreme to the Client will not infringe any right of a third party or law; and
- (e) Extreme and Extreme's Personnel:
  - (i) have, and at all times will have, the experience, expertise, skill, knowledge, competence, capacity and other resources necessary to provide the Services and properly discharge Extreme's obligations under the Agreement; and
  - (ii) will exercise the necessary professional skill, care and diligence in providing the Services.

#### 10.3. Reliance on Warranties

Extreme acknowledges that the Client has entered into the Agreement in reliance on the warranties given by Extreme in the Agreement.

The Client acknowledges that Extreme did not have the opportunity to undertake a comprehensive inspection of the plant, equipment and fire protection systems at the Property before entering into the Agreement and warrants that Extreme is entitled to rely upon the accuracy of the written and/or oral information provided by the Client with respect to the Property and the plant, equipment and fire protection systems at the Property.

### 11. CONFIDENTIAL INFORMATION

- (a) Extreme must, and must ensure that each of Extreme's Personnel, whether involved in providing the Services or not, keep confidential any confidential information which Extreme or a member of Extreme's Personnel receive from the Client, relating to the Property or the Client.
- (b) Extreme must take all steps reasonably necessary to ensure that confidential information is disclosed only to such of Extreme's Personnel as require that knowledge in order to carry out their duties in accordance with the Agreement.
- (c) For the purposes of this clause 11 'confidential information' includes, without limitation, the terms and conditions of the Agreement and all information provided under or in connection with the Agreement but excludes any information which has come into the public domain otherwise than as a result of a breach of the Agreement.
- (d) For the avoidance of doubt this clause does not prohibit any disclosure of information required by law or to Extreme's legal or business advisors in the ordinary course of business.
- (e) The obligation of confidentiality under this clause 11 is a continuing obligation and remains in force during the Term and afterwards for a period of two years.

### 12. PRIVACY

Extreme must comply with the Privacy Laws in relation to any Personal Information provided to Extreme by the Client.

### 13. TERMINATION OF AGREEMENT BY THE CLIENT

#### 13.1. Notice of default prior to termination

If:

- (a) Extreme fails, neglects or refuses to comply with its obligations under the Agreement in any material manner and after notice in writing from the Client specifying the default, fails to take all reasonable steps to remedy the default within 30 days of the date of receipt of the notice: or
  - (b) an Insolvency Event occurs in relation to Extreme,
- the Client may, immediately upon giving notice in writing to Extreme, and without prejudice to any of its rights or remedies, terminate the Agreement.

#### 13.2. Payment if Agreement terminated

If the Agreement is terminated pursuant to this Clause 13 Extreme shall be entitled to payment for the Services provided to the date of termination.

#### 13.3. Delivery of documents and materials

If the Client terminates the Agreement in accordance with this clause 13 then, within 7 days of the date of termination of the Agreement, Extreme must deliver to the Client all confidential information, documents, and materials and any of the Client's equipment in Extreme's possession or control including, without limitation, Keys, codes and other security devices relating to the Agreement and the Property. All client access to the Extreme Client Portal documentation will be revoked 24 hours after the termination of the agreement.

### 14. TERMINATION OF AGREEMENT BY EXTREME

If the Client fails to make payment or provide access in accordance with the Agreement, Extreme may notify the Client in writing specifying the breach and if the Client has not remedied the breach within 30 calendar days, Extreme may immediately terminate the Agreement by written notice to the Client.

### 15. DISPUTE RESOLUTION

#### 15.1. Negotiation

If there is a dispute between the parties relating to or arising out of the Agreement, then within 7 calendar days of a party notifying the other party of a dispute, senior representatives from each party must meet and use all reasonable endeavours acting in good faith to resolve the dispute by joint discussions.

#### 15.2. Mediation

If the dispute between the parties relating to or arising out of the Agreement is not resolved within 21 calendar days of notification of the dispute under clause 15.1 the parties may agree to submit the dispute to mediation, administered by the Resolution Institute.

#### 15.3. Arbitration

If the dispute between the parties relating to or arising out of the Agreement is not settled by mediation under clause 15.2 (or if no agreement is reached to refer the dispute to mediation within 7 calendar days of notification of the dispute under clause 15.1), either party may by written notice to the other refer the dispute to arbitration to be conducted in accordance with the Resolution Institute Arbitration Rules.

The arbitrator will be agreed between the parties from a panel suggested by the President of the Resolution Institute or failing agreement, an arbitrator will be appointed by the President of the Resolution Institute.

The arbitrator will not be the same person as the mediator. Any mediation or arbitration meetings and proceedings must be held in Sydney.

#### 15.4. Court proceedings

A party may not commence Court proceedings in relation to a dispute relating to or arising out of the Agreement until it has exhausted the procedures in this clause 15 unless the party seeks appropriate injunctive or other interlocutory relief to preserve property or rights or to avoid losses that are not compensable in damages.

### 16. NOTICES

Any notice or other document required or authorised to be given or served upon a party pursuant to the Agreement, shall be in writing and may be signed for the party giving it by the party's authorised officer.

A document given or served in accordance with this clause 16 is deemed to have been received:

- (a) in the case of a document given or served by post on the fourth (or seventh, if posted to or from a place outside Australia) Business Day following the day of posting;
- (b) in the case of a document given or served by hand, at the time of delivery;
- (c) in the case of a document given or served by facsimile at the time it is sent provided a transmission report indicating successful transmission is received by the sender; and
- (d) in the case of a document served electronically by email, at the time it is sent provided there is no automated return email from the intended recipient indicating that the delivery was unsuccessful or incomplete.

If delivery or receipt is on a day which is not a Business Day or is after 5.00 pm on a Business Day at the place of delivery or receipt, it is regarded as given at 9.00 am on the next Business Day.

### 17. GOODS AND SERVICES TAX

#### 17.1. Definitions

In this clause 17

- (a) **GST** means a tax, any related additional tax, interest, penalty, fine or other charge imposed by or under a GST Act;
- (b) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* and/or any other Act relating to the imposition or administration of a goods and services tax; and
- (c) Terms defined in the GST Act have the same meaning in this clause unless provided otherwise.

#### 17.2. GST Exclusive

Any consideration specified as payable by one party to the other party under the Agreement is expressed as exclusive of GST unless expressly stated otherwise.

#### 17.3. GST Amounts

In addition to any consideration provided by one party to the other party in respect of a taxable supply under the Agreement, the party liable to provide the consideration must pay at the same time to the other party a sum equivalent to the amount of GST payable on the taxable supply to which that consideration relates.

#### 17.4. Adjustments

If a taxable supply made under the Agreement is varied or an adjustment event otherwise occurs in relation to a supply made under the Agreement, in addition to the amount of consideration required to be refunded or paid in addition, the amount of GST paid or payable in respect of the variation or adjustment must be refunded or paid in addition by the relevant party as the case requires.

#### 17.5. Tax Invoice

A party's right to payment under this clause 17 is subject to a tax invoice or adjustment note as the case may be and which complies with the GST Act being delivered to the party liable to pay for that taxable supply. Payment can be withheld until a tax invoice or adjustment note, as necessary, is provided.

#### 17.6. Reimbursements

If one of the parties to the Agreement is entitled to be reimbursed or indemnified for an expense, liability or outgoing incurred in connection with the Agreement, then the amount of the reimbursement or indemnity will be net of any input tax credit entitlement in relation to that expense, liability or outgoing.

#### 17.7. Other Supplies

For the avoidance of doubt this clause 17 applies to consideration for taxable supplies relating to the breach, termination of, and indemnities arising from the Agreement.

#### 17.8. Survival

This clause 17 will not merge upon completion and will continue to apply after expiration or termination of the Agreement.

### 18. GOODS SUPPLIED BY EXTREME

#### 18.1. Retention of Title

The Client agrees that property and title in the goods and materials ("goods") supplied by Extreme as part of the Services shall not pass to the Client unless and until the Client has paid in full for the goods.

Until payment in full has been made to Extreme, the Client will hold the goods in fiduciary capacity for Extreme and agrees to hold the goods in such manner that they can be identified as the property of Extreme and shall not mix the goods with other similar goods.

The Client agrees that while property and title in the goods remains with Extreme, Extreme has the right, with or without prior notice to the Client, to enter upon any premises occupied by the Client (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Client) to inspect the goods and to repossess the goods which may be in the Client's possession, custody or control when payment is overdue.

The Client agrees that where the goods have been retaken into the possession of Extreme, Extreme has the absolute right to sell or deal with the goods, including if relevant where the goods display or bear the name or trademark of the Client.

#### 18.2. Risk and Insurance

The risk in any goods delivered will, unless otherwise agreed in writing, pass to the Client upon delivery.

The Client must take out and maintain all policies of insurance with a reputable insurer which a prudent businessperson in the position of the Client would reasonably maintain including, without limitation, product and public liability insurance policies which give coverage against all usual risks for the value of the goods.

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### 19. PPSA

#### 19.1. PPSA definitions

For the purposes of this clause 19:

- (a) **PMSI** means a Purchase Money Security Interest; and
- (b) **PPSA** means the *Personal Property Securities Act 2009* (Cth); and
- (c) **PPSR** means the Personal Property Securities Register; and
- (d) words and phrases used in this clause 19 that have defined meanings in the PPSA have the same meaning as in the PPSA unless the context otherwise indicates.

#### 19.2. Purchase Money Security Interest

- (a) The Client acknowledges and agrees that, until Extreme has received payment in full from the Client for the goods, Extreme's interest in the goods is a PMSI for the purposes of the PPSA.
- (b) Extreme's PMSI is effective and attaches to the goods immediately upon the Client taking delivery of the goods.
- (c) Extreme may take all necessary steps to perfect, record, register, amend or remove the registration of the PMSI on the PPSR.
- (d) The Client must, at its own cost, do anything which Extreme considers reasonably necessary to:
  - (i) ensure that Extreme's PMSI in the goods attaches to the goods and is enforceable, perfected and otherwise effective under the PPSA;
  - (ii) enable Extreme to exercise or enforce any of its rights in relation to its PMSI; and
  - (iii) enable Extreme to prepare, register or renew a financing statement or these terms on the PPSR.
- (e) The Client must not create any security interest in the goods, or any property which constitutes personal property under the PPS and becomes an accession to the goods, without the prior written consent of Extreme.
- (f) To the extent permitted under the PPSA, Extreme need not give any notice, including without limitation, notice of the receipt of verification statement, to the Client under the PPSA.
- (g) Neither Extreme nor the Client shall disclose information of the kind mentioned in section 275(1) of the PPS and the Client will not authorise, and will ensure that no other party authorises, the disclosure of such information.

### 20. MISCELLANEOUS

#### 20.1. Relationship of parties

Extreme performs the Services as an independent contractor and is not and must not be taken to be in a partnership, joint venture or employment relationship with the Client. Nothing in the Agreement shall be taken as constituting Extreme or Extreme's Personnel as representatives of the Client.

#### 20.2. Extreme's Proposal

Unless otherwise agreed in writing, Extreme's proposal identified at Item 9 of the Agreement Particulars is incorporated into and forms part of the Agreement.

#### 20.3. Severance

If the whole or part of a provision of the Agreement is void or voidable by either party or unenforceable or illegal, the whole or that part (as the case requires) of that provision shall be severed and the remainder of the Agreement shall have full force and effect provided such severance does not amount to re-writing the Agreement or altering the nature of the Agreement and that such severance is not contrary to public policy.

#### 20.4. Amendment

The Agreement may not be amended, modified or supplemented except by a written instrument duly executed by or on behalf of each of the parties.

#### 20.5. Waiver

- (a) Any waiver of any provision or condition of the Agreement must be in writing and executed by the party granting the waiver. Any such waiver is effective only to the extent expressly set out in writing.
- (b) A waiver by a party of a breach by the other party of any express or implied term of the Agreement shall not operate as a waiver of another or continuing breach of the same or of any other express or implied Term of the Agreement.
- (c) A failure to exercise, a delay in exercising, or a partial exercise of, a right created under or arising from a breach of the Agreement does not result in a waiver of that right.

#### 20.6. Entire agreement

The Agreement constitutes the entire agreement between Extreme and the Client and supersedes and cancels all previous offers, negotiations or agreements related to the Routine Inspection and Testing.

#### 20.7. Counterparts

The Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

#### 20.8. Governing Law

The Agreement takes effect and is governed by and shall be construed in accordance with the laws of the relevant State or Territory where the Property is located.

### 21. DEFINITIONS AND INTERPRETATION

#### 21.1. Definitions

**Additional Services** means services requested by the Client and carried out by Extreme over and above the Services.

**Agreement** means the agreement between Extreme and the Client for the supply of the Routine Inspection and Testing and includes all documents attached to or referenced by the Agreement.

**Asset Register** means the plant, equipment and fire protection systems at the Property as identified in the document referred to at Item 9 of the Agreement Particulars as updated from time to time.

**Business Day** means any day which is not a Saturday, Sunday or gazetted public holiday in the relevant State or Territory where the Property is located.

**Client** means the Client as described in the Agreement.

**Documents** means all originals and copies of all recorded information relating to the Agreement and the Property, whether written, stored electronically or by other means, including reports, manuals, logbooks, drawings, plans, invoices, warranties, guarantees, files and other material (and includes the Agreement).

**Extreme's Personnel** means any or all of Extreme's employees, Sub-contractors (including Sub-contractor's Personnel), agents and representatives involved in the provision of the Services.

**Insolvency Event** means, in relation to a party, when:

- (a) the party suspends payment of its debts generally, is or becomes unable to pay its debts when they are due, or is or becomes unable to pay its debts within the meaning of the *Corporations Act 2001* (Cth);
- (b) the party enters into, or resolves to enter into, any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them; or
- (c) a receiver, receiver and manager, liquidator, provisional liquidator, administrator, trustee or similar official is appointed over any of the assets or undertakings of the party;
- (d) an application or order is made for the winding up or dissolution of the party, or
- (e) a resolution is passed, or any steps are taken to pass a resolution for the winding up or dissolution of the party, except for the purpose of an amalgamation or reconstruction which has the other party's prior consent.

**Key** means any key, security card, security code or similar item relating to the Property.

**Legislative Requirements** means

- (f) Acts, Ordinances, regulations, orders, awards and proclamations of the Commonwealth and the relevant State or Territory State where the Property is located;
- (g) local laws, by laws, orders, ordinances and legal requirements of any relevant authority, including local government;
- (h) approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Services under the Agreement;
- (i) Australian Standards, and the Building Code of Australia both as updated from time to time; and
- (j) fees and charges payable in connection with the foregoing.

**Services Fee** means the amount set out at Item 9 of the Agreement Particulars

**Personal Information** has the meaning given to that Term in the *Privacy Act 1988* (Cth).

**Privacy Laws** means the *Privacy Act 1988* (Cth) and all other applicable laws, rules and regulations which relate to the privacy and protection of Personal Information.

**Property** means the property described in Item 1 of the Agreement Particulars.

**Services** means the services identified in the document referred to in Item 9 of the Agreement Particulars as amended from time to time in accordance with the Agreement.

**Sub-contractor** means a sub-contractor engaged by Extreme in accordance with Clause 3.1 to perform any part of the Services.

**Sub-contractor's Personnel** means, in relation to a Sub-contractor, any of its employees, agents or representatives involved in the provision of the Services.

**Tax Invoice** means an invoice as described in clause 7.2 of the Agreement.

**Term** means the Initial Term plus any optional Term (if applicable) set out in Item 13 & Item 14 of the Agreement Particulars.

**Variation** means an increase, decrease or other change in the Services.

**WHS Legislation** means *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2011* (NSW), as amended from time to time and the corresponding Act and Regulation in the relevant State or Territory State where the Property is located.

#### 21.2. Interpretation

In the Agreement:

- (a) headings are for convenience only and do not affect the interpretation of the Agreement;
- (b) words importing the singular include the plural and vice versa;
- (c) a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure to the Agreement;
- (d) an expression importing a natural person includes any corporation, partnership, joint venture, association, body corporate or any other organisation or legal entity;
- (e) a reference to any legislation includes any subordinate legislation made under it and any amendment to, consolidation or replacement of that legislation;
- (f) a reference to a day is a calendar day;
- (g) a reference to a party to the Agreement includes its administrators, successors and permitted assigns;
- (h) if a party comprises more than one person, the rights and Obligations of that party are joint and several;
- (i) a reference to a right includes a remedy, power, authority, discretion or benefit; and
- (j) no rule of construction applies to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or any part of it.
- (k) if any clause or part of a clause is illegal, unenforceable, or invalid, that clause or part is to be treated as removed from the Agreement, but the rest of the Agreement is not affected