

Terms of trade

These Terms of Trade shall apply to all supplies of Goods and Services made or provided by Argus to the Customer.

1. Definitions

1.1 In these Terms of Trade unless the context otherwise requires:

Argus means either or both of Argus Fire Systems Service Limited and Bensen Servicing Limited.

Confidential Information means:

- a) all information relating directly or indirectly to the Business of either party or any Related Company of the party or to the suppliers or customers of either party;
- b) all information that otherwise relates to the business affairs of the other party;
- c) any information disclosed by one party to the other on the express basis that such information is confidential;
- d) any information which might reasonably be expected to be confidential in nature including pricing and other technical information and data provided by Argus to the Customer.

Contract means the contract for supply of Services and/or Goods and construction of Works between Argus and the Customer incorporating the terms and conditions and any special terms set out in an Estimate and these Terms of Trade.

Customer means the purchaser and/or owner named below.

Default Rate means the interest rate charged by Argus' bank on unarranged commercial overdrafts plus a margin of 5% per annum calculated on a daily basis.

Defects Liability Period means the period for notification of defects by the Customer to Argus starting on the date of Practical Completion and ending on the date specified in the Contract or if no end date is specified then the end date shall be the date of Practical Completion.

Estimate means a description of Goods and Services which Argus is willing to supply to the Customer at an estimated Price (including in a response to a tender) which is subject to review and adjustment as provided in these Term of Trade.

FENZ means Fire and Emergency New Zealand.

Force Majeure Event means any unforeseen event or circumstance beyond the reasonable control of the party affected by the event, including (without limitation) any:

- Earthquake, storm, landslide, fire, flood, and acts of God;
- Strike, lockout or other industrial disturbance by or amongst employees of a person other than the affected party which is national in its scope and effects;
- Act of public enemy, or declared or undeclared war or threat of war;
- Terrorist act, blockade, revolution, riot, insurrection, civil commotion or public demonstration (other than one caused by the affected party);
- Pandemic or epidemic; or
- Governmental restraint, legislation or regulation.

Goods means any product, equipment, material, consumable or other good supplied by Argus to the Customer.

Practical Completion means when Argus notifies the Customer that in the Services have been performed and the Goods delivered save for any minor defects which do not materially affect the Customer's use and enjoyment of the Goods or the benefit of the Services.

Price means the price payable by the Customer for Goods and Services.

Prime Cost Sum(s) means an allowance for a particular item of Goods that has not been selected by the Customer and the cost of that item has not been determined at the time of providing an Estimate to the Customer.

Provisional Sum(s) means an allowance for an item of work that cannot be accurately priced by Argus at the time of providing an Estimate to the Customer.

Related Company has the meaning given to that term in the Companies Act 1993.

Services means any systems, know how, advice, use of software or other Proprietary material or advisory functions provided by Argus to the Customer.

Site means the Customer's building or premises or other place where Argus delivering Goods or performing Services or completing Works pursuant to the Contract.

Terms of Trade means these terms of trade and any variations or additions to these terms of trade notified to the Customer from time to time.

Working Day has the meaning given to that term in the Property Law Act 2007.

Works means the works which Argus designs or constructs pursuant to a Contract as par to of the Services and incorporating or using Goods.

2. Estimates

2.1 Where Argus provides an Estimate to a Customer:

- a) the Estimate will remain open for acceptance by that Customer for 20 Working days from the date of the Estimate;
- b) Argus will be entitled to increase the Price on account of any increase in Argus' costs for the Goods or Services or construction of Works which occurs between the date of the Estimate and the date of Practical Completion;
- c) the description of Goods and Services and Works and the Price in an Estimate is based on the proposals, plans, designs specifications and other information provided to Argus by the Customer;
- d) the Price in an Estimate is based on Services being performed, Goods delivered, or Works constructed on a Working Day between the hours of 8am and 5pm. Argus will be entitled to charge the Customer for all additional costs, expense and charges incurred by Argus where Services are performed, or Goods delivered or Works Constructed other than on a Working Day between the hours of 8am and 5pm. The Customer will pay such additional costs to Argus in addition to the Price.

- e) Unless expressly stated in an Estimate, the cost of any additional work required by any local body or authority under any statute, regulation or by-law to any part of the building, appliances, fixtures or fittings is excluded from the Price in the Estimate and will be charged as follows:
 - i) where additional works are undertaken by Argus, it will be charged by Argus at its standard rates;
 - ii) where additional work is undertaken by Argus's contractors and consultants (including builders), it will be charged at the rates charged by those contractors and consultants.

3. Provisional Sums and Prime Cost Sums

- 3.1 Provisional Sums are included in the Estimate where the nature and/or extent of Services or Works has not been finalised at the time the Estimate is prepared. Prime Cost Sums are included in the Estimate where the particular Goods have not been selected by the Customer and the cost of those Goods has not been determined.
- 3.2 When nature and extent of Services or Works for which a Provisional Sum has been included in the Estimate, or the particular Goods selected for which a Prime Cost Sum has been included, as the case may be, is determined by Argus, the actual price shall be substituted for the Provisional Sum or the Prime Cost Sum, and the Price adjusted accordingly.

4. Formation of Contract

- 4.1 On the acceptance of the Estimate the Customer will be bound by the terms contained in the Estimate and these terms of Trade shall form the basis of the contract between Argus and that Customer. Prices quoted are based on cost of labour, materials, customs duty, sales tax, transport charges, marine insurance rates, GST and of conforming to statutory obligations ruling as at the date of the Estimate.

5. Variations

- 5.1 Argus shall be entitled a variation of the Contract to amend the nature and scope of Services, Goods or Works and correspondingly increase the Price due to additional costs and expenses incurred by Argus as a result of:
 - a) any physical site condition which could not be reasonably foreseen by Argus when providing the Estimate, including but not limited to, any unusual ground conditions or obstruction that is encountered.

- b) the Customer:
 - i) making any alteration or addition to the building, equipment, appliances, fitting or fixtures where Services or Works are being performed or Goods delivered or installed after the Argus has undertaken a survey or inspection of same for the purpose of preparing the Estimate; or
 - ii) making any alteration made to plans or information on which the Estimate was based, or
- c) failure of the Customer to provide access to the Site or possession of the Site as necessary to enable Argus to deliver Goods, perform Services or complete Works;
- d) any delay or disruption to Argus' completion or Services or Works or delivery of Goods caused by an act or omission of the Customer.
- e) any application, inspection and connection fees expenses or costs charged by a local authority for water or waste water connections;
- f) the Customer failing to comply with its obligations in respect of health and safety under clause 19.

6. Exchange Rate Fluctuations

- 6.1 If at any time prior to supply to the Customer the price of any Goods supplied by Argus is subject to change on account of a change in the currency exchange rate between the currency in which the Goods are purchased and the New Zealand Dollar, the Price will be grossed up by an amount representing the increased cost to Argus on account of the exchange rate fluctuation, such the Argus shall not suffer any loss as a result of a change in the currency exchange rate.

7. Invoicing and Payment

- 7.1 Argus may invoice the Customer at such regular intervals as Argus shall determine for Services performed or Goods supplied or Works completed up to the invoice date. The Customer shall pay the invoice without deduction or setoff within 20 days of the date of the invoice.

8. Construction Contracts Act 2002

- 8.1 Where the Contract includes Works which are "Construction Works" as defined in the Construction Contracts Act 2002, and provides for any "retention money" to be held by the Customer, the Customer shall hold the retention money in trust in accordance with the Construction Contracts Act 2002, and subject to any express provision in the Contract shall release 50% of such retention money immediately following Practical

Completion and the balance at the end of the Defects Liability Period as agreed between the parties.

9. Force Majeure

- 9.1 Neither party will be liable to the other for any delays or failure to perform its obligations under this Contract, provided that each party has taken all reasonable steps to minimise any loss, damage or delay resulting from a Force Majeure Event.
- 9.2 If a Force Majeure Event affects either party, the affected party must immediately inform the other party of the circumstances and request the other's approval (such approval not to be unreasonably withheld or delayed) to extend the time for the performance of the party's obligations under this Contract by a period of up to the same duration as the Force Majeure Event.

10. Facilities

- 10.1 The Customer shall provide at the Site at its sole cost for uninterrupted use by Argus:
- a) sufficient safe storage for materials of Argus and working space requisite for the safe and efficient performance of the Services or completion of the Works.
 - b) lighting, water, electricity, and other facilities as may reasonably be required by Argus, including but not limited to, the use of goods and passenger lifts, hoists and builders scaffolding.

11. Customer's Warranties

- 11.1 The Customer warrants that:
- a) all plans, specifications and other information provided to Argus are complete and accurate including the uses and occupancy of buildings and structures, hazards classifications, and storage heights within buildings and other structures at the Site;
 - b) that the structure of the premises or equipment at the Site are safe, sound and suitable for the performance of Argus' obligations under the Contract.

12. Drawings

- 12.1 Where Argus creates manuals, plans, drawings or specifications it will supply one electronic copy to the Customer. Additional copies will be supplied at Argus standard rates which will be payable by the Customer.

13. Monitoring fees

13.1 Where applicable Argus will prepare and lodge documentation for alarm monitoring connections. Any fees which form part of a direct contract between the Customer and any monitoring organisations will be payable by the Customer.

14. Consents

14.1 The Customer shall execute all consents, licences, approvals, permissions or authorities as may be necessary or desirable for Argus to deliver the Goods, perform the Services or complete the Works at the Site. The consents, licences, approvals, permissions or authorities may include, but are not limited to, obtaining the approval and agreement in writing of the owner of the Site or any building or structure on the Site, any Mortgagee, tenant, licensee, occupier or other person, firm or corporation, as may be required to enable Argus to perform its obligations under the Contract.

15. Insurance

15.1 Argus will take out and maintain prudent policies and levels of insurance cover as follows:

- a) material damage during the period of the construction of Works; and
- b) public liability cover.

15.2 Notwithstanding clause 15.1 the Customer shall take out and maintain appropriate policies of insurance with adequate levels of cover for its insurable risks in relation to the Goods, Services and Works.

16. Entire Contract

16.1 This contract is made only on the terms and conditions stated herein and such terms and conditions shall prevail over any inconsistent conditions otherwise stated or implied.

17. Amendments to Contract

17.1 Except as expressly provided in these Terms of Trade no amendment to the Contract shall be binding on Argus unless it is in writing and signed by both Argus and the Customer.

18. Producer Statements or Compliance Certificates

18.1 Argus shall not be required to sign or provide or endorse or approve any Producer Statement or Compliance Certificate where:

- a) the system or installation on which Services are being performed or Works constructed is not designed or approved by Argus as complying with building code requirements;
- b) or the Customer is in default of any provision of the Contract including non-payment of monies payable to Argus.

19. Health and Safety

- 19.1 The Customer shall, and shall ensure that any Owner of the Site or any tenant, occupier or licensee of the Site or part of it:
- a) complies with their respective duties, obligations and responsibilities under the Health and Safety at Work Act 2015 (HSWA);
 - b) cooperates fully with Argus to enable Argus to fulfil its duties, obligations and responsibilities under the HSWA;
 - c) maintains a safe and healthy workplace at all times;
 - d) notifies Argus of any hazards.

20. Confidentiality

- 20.1 Argus' Confidential Information:
- a) is the property of Argus (and its related companies, contractors and agents as the case may require);
 - b) shall be kept strictly confidential and shall not be photocopied or reproduced in any way without the express prior written consent of Argus; and
 - c) shall not be disclosed either directly or indirectly to any third party without the prior consent of Argus, including to any competitor of Argus.
- 20.2 Where, with Argus's express prior written consent, the Confidential Information is disclosed to a third party for a purpose connected with the Contract, it will be a condition prior to disclosure the Customer obtains the agreement of the third party accept and be bound by the obligation of confidentiality contained in this clause.

21. Privacy Act 2020

- 21.1 Subject to the provisions of the Privacy Act 2020, the Customer authorises any person, agency or company to provide Argus with such information as Argus may require at any time in order for Argus to undertake enquiries concerning the creditworthiness of the Customer and any other aspect of the Contract. The Customer authorises Argus

to provide any third party with details of an application for a credit report and/or any information contained in a credit report supplied to Argus.

22. Personal Property Securities Act 1999 (“PPSA”)

- 22.1 The Customer grants to Argus a security interest in the following:
- a) All present and after-acquired goods supplied by Argus to the Customer.
 - b) All present and after-acquired goods supplied by Argus to the Customer described in any:
 - i) Estimate or tender from Argus and the Customer including, without limitation, documentation (electronic or otherwise) supplementary to any contract incorporated in the contract reference or otherwise;
 - ii) Contract between Argus and the Customer including, without limitation, documentation (electronic or otherwise) supplementary to any contract incorporated in the contract by reference or otherwise;
 - c) Purchase order or any other order for goods from the Customer;
 - d) Dispatch order, invoice, and statement or remittance advice from Argus to the Customer.
- 22.2 Argus may, at its sole discretion allocate any payment (or any portion of it) from the Customer to any debt owed by the Customer to Argus in whatever proportions Argus determines. Argus's right to apportion payments between debts owed by the Customer applies irrespective of any document supplied by the Customer indicating payment is for a particular debt referred to in such document.
- 22.3 At the request of Argus, the Customer will promptly execute any documents and do anything else required by Argus to ensure that any security interest created constitutes a perfected security interest over all personal property supplied by Argus until all and any amounts due to Argus have been paid in full. This obligation extends to executing any amendments to any contract with Argus and providing the information required by Argus to complete and register a financing statement.
- 22.4 The Customer will not, without prior written consent of Argus, agree to allow any person (including the Customer) to file a financing statement over any personal property supplied by Argus while the Customer is liable to Argus for any debt. The Customer will notify Argus immediately if the Customer becomes aware of any person taking steps to file a financing charge against any goods supplied to the Customer by Argus.
- 22.5 The parties agree that nothing in sections 114(1) a), 116, 133 and 134 of the PPSA shall apply to these Terms or Trade. The Customer waives its rights as a debtor under section 120(2), 121, 125, 126, 127, 129, 131 and 132

of the PPSA. The Customer waives their right to receive a verification statement confirming registration of a financing statement or a financing change statement relating to a security interest created by this document. The terms “security interest”, “perfected security interest”, “personal property”, “financing statement” and “financing change statement” referred to in the above clauses have the meanings given by the PPSA.

23. Warranty Claims

- 23.1 Except as expressed stated in the Contract, all warranties, descriptions, representations and conditions to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise, whether of a like nature or not and whether express or implied by law, trade, custom or otherwise are, to the extent permitted by law, expressly excluded.
- 23.2 Argus shall not be obliged to consider any warranty claim relating to incomplete or defective Goods, Services or Works unless the claim is made in writing within 10 Working Days of the date of installation or delivery or completion of those Goods, Service or Works. The validity of a warranty claim will be determined by Argus whose decision shall be final.
- 23.3 Argus' liability to the Customer in relation to any valid warranty claim will be limited to replacing any defective Goods or re-performing Services or remediating defective or incomplete Works.
- 23.4 Where the Customer provides information or designs for the Works, then except as expressly stated in an Estimate, Argus gives no warranty or certification that Goods, Services or Works incorporating the Customer's design or information will comply with the Building Code or will provide and achieve adequate and appropriate levels of protection.

24. No Representations

- 24.1 No employee, contractor, agent or representative of Argus is authorised to make any representation or statement, or agree to any term, warranty or condition not expressly set out in the Contract. Argus is not in bound by any such unauthorised statements nor can such statement be implied to create or form a contract or part of a contract with Argus collateral to the Contract.

25. Consumer Guarantees Act

- 25.1 Where the Customer is purchasing the goods for business purposes, the Customer agrees that any guarantees and rights of redress under the Consumer Guarantees Act 1993 do not apply and for the purpose of section 43 of the Consumer Guarantee Act 1993 the parties agree that the provisions of that Act shall not apply to this Agreement.

26. Limitation of Liability

- 26.1 The Customer shall notify Argus in writing detailing the facts or circumstances giving rise to a potential claim against Argus within 10 Working Days of those facts or circumstances coming to the attention of the Customer.
- 26.2 Argus shall have no liability to the Customer:
- a) for any part of the Services, or Works:
 - i) which is not designed or constructed by Argus, or
 - ii) that is part of an existing structure or system unless expressly agreed in writing;
 - b) for a claim that when the details of the facts or circumstance giving rise to the claim have not been notified to Argus in accordance with clause 26.1.
 - c) for any delays that occur in connecting the system to FENZ or a monitoring company however caused.
- 26.3 The liability of Argus whether in tort or contract or otherwise for any loss, damage or injury arising directly from any defect in or non-compliance of the Goods supplied and/or Service performed, or Works constructed, or any other breach of Argus's obligations shall not exceed the lesser of:
- a) the Price;
 - b) the amount invoiced by Argus to the Customer in the previous 12 months;
 - c) the replacement value of the defective or damaged Goods.
- 26.4 Argus shall not be liable for any consequential, indirect or special damages or economic loss of any kind whatsoever.
- 26.5 The Customer indemnifies Argus against any claim by the Customer's servants, agents, customers or other persons in respect of any loss, damage or injury arising from any defect or non-compliance of the Goods and/or Services supplied by Argus.
- 26.6 Argus may, without admitting any liability, choose to rectify damage to the Customer's property occurring during performance of Services or construction of Works caused by any act or omission by Argus' employees. Any such rectification shall be made only if such damage is reported by the Customer to Argus pursuant to clause 26.1.

27. Retention of Title

27.1 All Goods supplied by Argus, and all associated component parts in those Goods shall remain and be the sole and absolute property of Argus until the Price (as adjusted in accordance with these terms of trade) has been paid in full in cleared funds without deduction or setoff. Where any amount due to Argus remains unpaid for a period of more than 20 Working Days, Argus may in its sole discretion with servants, workmen and others, enter upon any Site in which the Goods are located and remove same or any part thereof and perform any act reasonably necessary to facilitate such removal and without liability for any loss or damage occasioned thereby and without prejudice to other rights of Argus under the Contract or otherwise.

28. Customer Default

- 28.1 If payment of an invoice in full in cleared funds without setoff or deduction is not made within 10 Working Days of the date of the relevant invoice, Argus has the right to stop or suspend the supply of Goods, performance of Services or construction of Works at Argus' election. The Customer is liable for all costs, liability or damage suffered or incurred by Argus resulting from such suspension or stoppage. Argus shall be shall not be required to re-commence delivery of Goods, performance of Services or construction of Works until all outstanding amount and any default interest and costs are paid in full. The rights of Argus under this clause are in addition to Argus' rights elsewhere in these terms of trade or otherwise at law.
- 28.2 In the event the Customer fails to make a payment due under this Contract on the due date for payment, Argus shall have the right to charge interest at the Default Rate on any overdue amount from the date the payment was due until payment is made in full.

29. Dispute Resolution

- 29.1 The parties shall meet and discuss in good faith any dispute between them arising out of this Contract.
- 29.2 If the discussions referred to in clause 29.1 fail to resolve the relevant dispute, either party may (by written notice to the other party) require that the dispute be submitted for mediation by a single mediator nominated by the Chair for the time being of LEADR New Zealand Inc. or his or her nominee. In the event of any such submission to mediation the mediation shall be adjudicated in terms of the LEADR New Zealand Inc. Standard Mediation Agreement.

29.3 Neither party may require any arbitration or issue any legal proceedings (other than for urgent interlocutory relief), in respect of any such dispute, unless that party has first taken reasonable steps to comply with clauses 29.1 and 29.2.

30. Guarantee

30.1 In consideration of Argus agreeing to supply the Goods, perform the Services and construct the Works, under the Contract, at the request of the Customer, the undersigned shareholders/directors agree by execution of this Contract to jointly and severally guarantee payment of all monies by and the performance of all obligations of the Customer under this Contract. This Guarantee is irrevocable and in relation to the indebtedness of the Customer to Argus is a principal obligation.

31. Agreement

31.1 I/We agree to these Terms of Trade and any attached Estimate forming the Contract.

For completion by the Customer/Guarantor

Signature (s):

Name: _____

Capacity: _____

(Purchaser/Owner/Director/Shareholder)

Date: _____

Witness Signature: _____

Name: _____

Occupation: _____

Address: _____

Signature(s): _____

Name: _____

Capacity: _____

(Purchaser/Owner/Director/Shareholder)

Date: _____

Witness Signature: _____

Name: _____

Occupation: _____

Address: _____