

# General Terms & Conditions

## Boar Group (Fire Boar Pty Ltd / Training Boar / Air Boar Pty Ltd / Approach Learning Pty Ltd)

### 1. Definitions

#### 1.0 In these Terms:

**Acquirer** has the meaning set out in clause 6.5(a).

**Agreement** means the agreement between Boar Group and the Customer for the provision of Products and/or Services comprising:

- a. the Purchase Order;
- b. these Terms; and
- c. any Quotation.

**Associates** means an individual, group, or enterprise with shared responsibility for delivery of the contract terms.

**Boar Group** means Fire Boar Pty Ltd (including Training Boar and/or Smoke Alarm Boar) (ACN: 132 208 836) or Air Boar Pty Ltd (ACN: 660 058 042) or any other Related Bodies Corporate (as the case may be).

**Customer** means the customer (or any person acting on behalf of and with the authority of the customer) as described on any Purchase Order or Quotation, including their successors, or permitted assigns.

**Dispute** means a dispute between the parties which has arisen in connection with the subject matter or interpretation of the Agreement, including a dispute concerning a claim in tort, under statute, or on any other basis in law or equity available under the law governing the Agreement.

**Dispute Notice** has the meaning set out in clause 16.1.

**Force Majeure Event** means an event of force majeure as defined at law, and includes but is not limited to:

- a. causes beyond Boar Group's reasonable control resulting in it being unable to obtain necessary labour, materials components, or manufacturing facilities;
- b. acts of God excluding lightening, but including though not limited to bushfire, earthquakes, floods, tsunamis, or cyclones;
- c. acts of the Customer, or of a civil authority including, but not limited to priorities, strikes, industrial action, disputes or other labour disturbances;
- d. acts of a military authority domestic and/or abroad, including curfews, war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, act of terrorism, rebellion, riot, revolution, insurrection, martial law or confiscation by order of any Government Agency;
- e. ionising radiations or contamination by radioactivity from nuclear fuel or nuclear waste resulting from the combustion of nuclear fuel;
- f. epidemic, pandemic, or quarantine by order of any authority or any other event that is a public health risk as defined by the International Health Regulations published by the World Health Organization;
- g. a state of disaster or state of emergency is declared, an evacuation order (or equivalent) is issued by an authority, or any other act of or declaration by the government made in respect of the events described in (a), (b), or (c) above; or
- h. any other event or circumstance which is:
  - i. is beyond the control of Boar Group
  - ii. prevents the performance of Boar Group's obligations under the Agreement; and
  - iii. cannot be reasonably foreseen, prevented, overcome, or remedied by the exercise by Boar Group of a reasonable standard of care and diligence.
  - iv. unforeseen shortages or delays in material supply, including products, transport, or car shortages delays in transport or car shortages required for WUC (Work Under Contracts) which continues for a period of 20 business days or more;

To the extent it:

- i. was not caused by an act or omission of the affected party or any of its Associates;
- ii. was beyond the reasonable control of the affected party and its Associates; and
- iii. could not have been avoided or overcome by the affected party or any of its Associates taking reasonable precautions or steps;

**Intellectual Property** means any intellectual or industrial property whether protected by statute, at common law or in equity, including any trademark, patent, invention, copyright, or design right (whether registrable or not), in any design, specification, process, technique, software, know how, trade secret, technical information, financial information, business method and confidential information.

**Loss** means any loss (including but not limited to direct loss, indirect loss, consequential loss, loss of anticipated profits or loss of business opportunity or both loss of anticipated profits and loss of business), liability, damage (including but not limited to any damages or compensation or any damage to reputation and damage to property), cost or expense (including legal costs on a full indemnity basis) of whatever kind and however it arises.

**Mandatory Warranty** has the meaning set out in clause 11.7.

**Materials** has the meaning set out in clause 14.1.

**PPSA** means the Personal Property Securities Act 2009 (Cth) or the Personal Property Securities Act 1999 (NZ) (as may be amended or replaced from time to time). Any reference to any specific part or section of the Personal Property Securities Act 2009 (Cth) shall be taken to refer to the equivalent part or section of the Personal Property Securities Act 1999 (NZ).

**Price** means the price payable for the Services or Products, or Services and Products in accordance with clause 4.1.

**Products** means equipment, goods, materials, parts, or products described in a Purchase Order or Quotation.

**Purchase Order** means any purchase order, work order, work authorisation or any other form of communication by the Customer requesting for the supply of Services or Products, or Services and Products by Boar Group (whether oral or written).

**Quotation** means any quotation provided by Boar Group to the Customer in respect of a Purchase Order.

**Register** has the meaning set out in clause 9.1.

**Related Bodies Corporate** is as defined in Section 9 of the Corporations Act 2001 (Cth) or has the same meaning as "related company" as defined in Section 2 of the Companies Act 1993 (NZ) (as may be amended or replaced from time to time), as applicable.

**Services** means all services as described in a Purchase Order or Quotation (as the case may be).

**Terms** means these Standard Terms and Conditions of Sale as amended from time to time.

**Warranty** has the meaning set out in clause 11.1.

**Warranty Period** means:

- a. in the case of the Products, the manufacturer's warranty of the Products unless otherwise agreed in writing between Boar Group and the Customer as set out in the Quotation; or
- b. in the case of the Services, the period of twelve (12) months from the date of completion of the Services.

## Agreement

**2.1** These Terms apply to and form part of the Agreement between Boar Group and the Customer relating to the supply and/or installation, and/or sale, and/or maintenance of products and services (as described in a quotation) and includes all relevant schedules, forms, specifications, and other referenced materials.

**2.2** Acceptance by Boar Group to provide the Products and/or Services, described or referred to in any Purchase Order issued by the Customer constitutes the formation of the Agreement and is expressly subject to and conditional upon these Terms. This Agreement applies whether or not it is signed below as long as the Customer has had an opportunity to view it.

**2.3** Any Purchase Order for, or any statement of intent to purchase any Products or Services, or any direction to proceed with any work, procurement, delivery, or shipment of such Products and/or Services, shall constitute acceptance of these Terms by the Customer and a representation that the Customer is solvent.

**2.4** The Customer acknowledges and accepts that any variation, waiver, or cancellation of the Agreement are not accepted by Boar Group and shall not be effective or binding on Boar Group unless expressly agreed to by Boar Group's authorised representative in writing. In addition, failure by Boar Group to enforce any clause of this Agreement will not be construed as a waiver of Boar Group's rights under this Agreement.

**2.5** None of Boar Group's agents or representatives other than an authorised officer or director of Boar Group are authorised to make any representations, statements, conditions, or agreements. The Customer acknowledges that Boar Group is not bound by any such unauthorised actions.

### 3. Specification

**3.1** The Products and/or Services, shall be supplied by Boar Group in a timely manner and in accordance with the Agreement, including any specifications set out in the Purchase Order. Where the Purchase Order does not contain any specifications, or where the specifications are ambiguous or unclear, the specifications set out in the Quotation shall apply.

### 4. Price

**4.1** The Customer must pay the Price to Boar Group for the Products and/or Services, requested by the Customer in a Purchase Order:

- a. at the then current prevailing rates of Boar Group for the Products and/or Services; or
- b. at Boar Group's absolute discretion, the amount specified in any Quotation.

**4.2** Any increase in the cost of the supply of the Products or the delivery of the Services between the date of the Purchase Order and the date of supply of the Products or delivery of the Services shall be borne by the Customer.

**4.3** Boar Group may change the Price by providing reasonable written notice to the Customer.

**4.4** Any Price quoted by Boar Group is based on the costs of labour, materials, and statutory obligations applicable at the date of the Quotation and unless otherwise agreed in writing, a Quotation provided by Boar Group may be accepted up to 30 days from the quotation date, after which Boar Group reserves the right to amend or withdraw it.

**4.5** Any variations to the Products and/or Services required by the Customer must be in writing and will be priced in accordance with Boar Group's standard price lists and shall include an amount for any design, management, overheads and profit.

**4.6** Boar Group shall be entitled to charge its reasonable additional costs and fees for all delays caused as a result of Boar Group obeying any instructions given by the Customer or the Customer not fulfilling the Customer's obligations under the Agreement.

**4.7** Unless otherwise stated in writing all Quotations are based on the below conditions:

- a. Work being carried out during "Normal Working Hours" being 7.00am to 4.00pm Monday to Friday except for Public Holidays and subject to alteration by Boar Group;
- b. Work based on having continuous, uninterrupted, and unhindered access to the required people, equipment, facilities, and areas where the work is to be carried out. Should works not be completed due to client request or unforeseen circumstances such as access denial, or delays on site to commence or complete work, additional charges will be incurred by the client and charged at the contracted hourly rate per technician. E.g. 4 Technicians x 2 hours each x \$130.00 per hour = \$1040.00 ex GST
- c. Work excludes additional costs associated with working on, around, or removal of hazardous materials (including asbestos, synthetic mineral fibres etc. or excavation works, and should Boar Group agree to carry out such work at the request of the Customer then Boar Group shall not be liable for any damage arising.

**4.8** All additional costs arising from 4.7 and any alteration to the specifications required by the Customer including any interruption or delays by the Customer, its employees, agents, or other trades during the course of work performed, or the extra costs of compliance with Environmental or Health & Safety policies may result in additional charges including the reasonable costs of delay.

**4.9** If it becomes necessary to pay any additional site allowances, other than a State or Federal award or amounts in excess of any current workplace agreement applicable to the type of work being performed, these costs will be added to the Boar Group fee.

**4.10** Emergency service callouts will be charged in accordance with Boar Group standard fees for such services, or at the rates agreed in the Service Contract.

## 5. GST and other Taxes

**5.1** The Price is exclusive of GST. The Customer must pay Boar Group an additional amount for any GST payable in respect of any taxable supply made under or in connection with the Agreement, provided Boar Group provides the Customer with a tax invoice in respect of that taxable supply.

**5.2** If there is an adjustment event in relation to the taxable supply:

- Boar Group must refund to the Customer the amount by which the GST paid by the Customer pursuant to clause 5.1 exceeds the adjusted GST on the taxable supply; or
- the Customer must pay to Boar Group the amount by which the adjusted GST on the supply exceeds the amount of GST paid pursuant to clause 5.1.

**5.3** Any other taxes (excluding income taxes) duties, fees, charges, or assessments of any nature levied by any government authority in connection with the Agreement shall be paid directly by the Customer to the governmental authority concerned. If Boar Group is required by law or otherwise to pay such a levy or such fines (or both levy and fines), penalties or assessments in the first instance, or as a result of the Customer's failure to comply with any applicable laws or regulations governing the payment of such imposition by the Customer, the amount of any payments so made by Boar Group shall be reimbursed by the Customer upon submission of Boar Group's invoices.

## 6. Property and Risk

**6.1** All risk and liability for the Products will transfer to the Customer on delivery of the Products to the Customer or any third party who is acting on behalf of the Customer.

**6.2** Boar Group shall remain the sole and absolute owner of the Products until the Price for the Products has been received in full by Boar Group.

**6.3** Subject to the provisions of the PPSA, Boar Group shall be entitled, in addition to the rights conferred by clause 6.4(b), to retake possession of all Products in the possession of the Customer which have been supplied by Boar Group sufficient, at a minimum, to clear any outstanding indebtedness by the Customer to Boar Group under the terms of the Agreement. The Customer:

- agrees that Boar Group shall not be required to distinguish between the Products which has been paid for and the Products which has not been paid for; and
- consents to Boar Group entering the relevant premises for the purpose of retaking possession of the relevant Products.

**6.4** Subject to the provisions of the PPSA, until Boar Group has received payment in full of the Price for all Products supplied by Boar Group:

- the Customer shall be bailee of the Products for Boar Group;
- the Customer grants Boar Group an irrevocable licence to enter the Customer's premises and retrieve the Products; and
- the Customer shall not sell or dispose of any of the Products or any interest in the Products without the prior written consent of Boar Group.



- 6.5** If Boar Group consents in writing to the sale or disposal or if any sale or disposal is made in breach of clause 6.4 and notwithstanding such breach:
- the customer shall inform any person to whom it proposes to sell or dispose of the Products or any interest in the Products (Acquirer) of Boar Group's interest in the Products;
  - the Customer shall ensure that the terms of the sale or disposal of the Products to the Acquirer includes a term which is substantially the same as this clause 6;
  - notwithstanding that the payment of the Price for the Products would not otherwise have been due by the Customer, the Customer shall be obliged to pay the Price for the Products to Boar Group as soon as it receives payment from the Acquirer;
  - the Customer shall hold all its rights against the Acquirer in trust for Boar Group and, to the extent necessary to discharge all debts owing to Boar Group in respect of the supply of the Products only, any proceeds the Customer receives;
  - the Customer agrees that Boar Group shall be entitled to trace all and any proceeds arising from any sale or disposal of the Products until full payment of the Price for the Products has been received by Boar Group;
  - the Customer agrees that Boar Group shall be entitled to trace all and any proceeds arising from any sale or disposal of the Products until the Customer pays the full price to Boar Group for all other parts or equipment supplied by Boar Group; and
  - the Customer shall, at Boar Group's request, assign its claims against the Acquirer and agrees irrevocably to appoint Boar Group and each of its officers as its attorney to give effect to and complete that assignment.

## 7. Delivery

- 7.1** Any dates for delivery of the Products or Services advised by Boar Group are approximate and are based upon the Customer providing prompt access to any area or equipment requiring Boar Group's Products and/or Services and prompt receipt of all the necessary information in respect of the Products and/or Services required.
- Boar Group accepts no liability whatsoever for any loss or damage suffered by the Customer as a consequence of any delay or failure to deliver the works.
  - If due to circumstances beyond the control of Boar Group the Agreement is extended beyond the original completion dates, then Boar Group is entitled to an adjustment of the contract sum in accordance with the formula (Amount payable per week of delay = the contract sum (including prime cost items) / original contract period in weeks x 15%).
- 7.2** All delivery costs for the Products and/or Services shall be in addition to the Price unless expressly stated otherwise by Boar Group.
- 7.3** Unless otherwise agreed, all shipments are 'Ex Works' (EXW) (as defined in INCOTERMS 2010 published by the International Chamber of Commerce as revised from time to time) at Boar Group's premises.
- 7.4** Boar Group shall not be liable for any delay in delivery of Products and/or Services caused by a Force Majeure Event.
- 7.5** In the event of a delay under clause 7.4, the date of delivery or performance shall be extended for a period equal to the time lost by reason of the Force Majeure Event.
- 7.6** Unless otherwise agreed, Boar Group may perform any of its contractual obligations through subcontractors.
- 7.7** The Customer undertakes to:
- maintain all other items or equipment, which may affect the testing, maintenance, or operation of the Products;
  - provide access to any area or equipment requiring the Products and/or Services;
  - provide all assistance as Boar Group may reasonably require for the delivery of the Products or performance of the Services, or both, as the case may be; and
  - comply with all operating and maintenance instructions in relation to the Products.
- 7.8** The Customer shall be deemed to have accepted the delivery of the Products, the Services, or the Products and Services (as the case may be), at the site or location specified by the Customer.

## 8. Payment

- 8.1** Unless otherwise specified by Boar Group in writing, payment of the Price is to be made by the Customer no later than thirty (30) days from the date of a tax invoice for the Products or Services or both (where applicable) without set-off, deduction or discount of any kind.
- 8.2** The Customer acknowledges that the granting of credit is at the absolute discretion of Boar Group, and that Boar Group may, at its sole discretion, require the Customer to pay the full fee or a percentage of the fee upfront or in advance.
- 8.3** Time for payment for the Products or Services, or Products and Services, is of the essence. In the event an invoice is overdue, Boar Group may suspend the provision of Products or Services, or Products and Services, until payment is made without incurring any liability to the Customer.
- 8.4** Payment of the Price and any other payment must be made in cleared funds by cash, cheque, bank transfer, credit card, direct debit, or by any other method as agreed between the Customer and Boar Group.
- 8.4.1 Payment by credit card will incur a 2.5% surcharge.
- 8.5** In the event of bankruptcy or insolvency of the Customer or in the event any proceeding is brought against the Customer, voluntarily or involuntarily, under any bankruptcy or insolvency laws, Boar Group shall be entitled to cancel any Purchase Order outstanding at any time during the period allowed for filing claims against the Customer and shall receive reimbursement for its reasonable and proper cancellation charges.
- 8.6** Boar Group (in its absolute discretion and at its option) may retain possession of any products or equipment repaired, modified, inspected, maintained, or serviced under this Agreement until the Price is paid in full. If the Price is not paid within ninety (90) days from the date of the relevant tax invoice, Boar Group may provide the Customer with written notice by registered mail to the Customer's last known address. After seven (7) days from the date of the written notice, Boar Group may sell the products or equipment at public or private sale and apply the net proceeds to the outstanding Price.
- 8.7** Interest on overdue invoices owed by the Customer accrues from the date when payment becomes due, until the date of payment, at the rate specified in regulation 36.7 of the Uniform Civil Procedure Rules 2005 (NSW) or rule 11.27 of the High Court Rules 2016 (NZ), as applicable.
- 8.8** The Customer indemnifies Boar Group from and against all Loss incurred by Boar Group in pursuing any sums owed by the Customer to Boar Group.
- 8.9** Boar Group shall have the right to charge interest on the outstanding amount at the rate prescribed by the Uniform Civil Procedure Rules 2005, as well as require payment in advance prior to delivery of further goods or provision of further services or cease supply of further goods or services and terminate the Agreement. The Customer shall also be liable for any legal costs or agent's costs and disbursements associated with collecting outstanding payments on an indemnity basis.
- 8.10** Payment of the fees is a fundamental term of this Agreement and to the maximum extent permitted by law, Boar Group will have no liability to the Customer for acts or omissions or work required to be undertaken by Boar Group if the circumstance or event which would otherwise give rise to liability occurs at a time when the Customer is in breach of payment obligations to Boar Group.
- 8.11** Title to and ownership of the products shall pass to the Customer upon final payment of the fees specified in this Agreement, despite delivery of the goods. Therefore, for the avoidance of doubt, the goods remain the sole and absolute property of Boar Group as full legal and equitable owner until such time as the Customer has paid Boar Group the full purchase price together with the full price of any other goods the subject of any other contract with Boar Group. Risk in the goods shall pass to the Customer upon delivery.
- 8.12** The Customer acknowledges that they receive possession of and holds goods delivered by Boar Group solely as bailee for Boar Group until such time as the full price thereof is paid to Boar Group together with the full price of any other goods then the subject of any other contract with Boar Group.

- 8.13** Until such time as the Customer becomes the owner of the goods, they will;
- store them on the premises separately;
  - ensure that the goods are kept in good and serviceable condition;
  - secure the goods from risk, damage and theft; and
  - keep the goods fully insured against such risks that are usual or common to insure against in a business of a similar nature to that of the Customer.
- 8.14** Until the goods are paid for in full, Boar Group authorises the Customer to sell the goods as its agent, however, the Customer shall not represent to any third parties that it is acting in any way for Boar Group. Boar Group will not be bound by any contracts with third parties to which the Customer is a party. Records shall be kept by the customer of any goods owned by Boar Group. The proceeds of any sale of the goods shall be paid into a separate account and held in trust for Boar Group. The Customer shall account to Boar Group from this fund for the full price of the goods. If the Customer is entitled to a period of credit, but if prior to the expiration of the period of credit the goods are sold, and the proceeds of sale received the Customer shall account forthwith to Boar Group for the price of the goods.
- 8.15** Should the Customer die, stop payment or call a meeting of its creditors or become insolvent or subject to the bankruptcy laws or being a company calls a meeting for the purpose of or to go into liquidation or has a winding-up petition presented against it or has a receiver or administrator appointed, Boar Group may at its option notwithstanding its waiver of such default or failure and without prejudice to its other rights under this Agreement suspend or cancel this Agreement or require payment in cash before or on delivery or tender of goods or documents notwithstanding terms of payment previously specified or may repossess and take over the goods and dispose of the same in its own interest without prejudice to any claim it may have for damages for any loss resulting from such resale.
- 8.16** In the event that the Customer uses the goods/product in some manufacturing or construction process of its own or some third party, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as relates to the goods/product in trust for Boar Group. Such part shall be deemed to equal in dollar terms to the amount owing by the Customer to Boar Group at the time of the receipt of such proceeds.
- 8.17** If the Customer does not pay for any goods on the due date, then Boar Group is hereby irrevocably authorised by the Customer to enter the Customer's premises or any premises under the control of the Customer as agent of the Customer and use reasonable force to take possession of the goods without liability for the tort of trespass, negligence, or payment of any compensation to the Customer whatsoever. On retaking possession of the goods Boar Group may elect to refund to the Customer any part payment that may have been made and to credit the Customer's account with the value of the goods less any charge for recovery of the goods, or to resell the goods.
- 8.18** Boar Group shall have the right to adjust the fees periodically in respect of an increase/fall in the cost of its services.
- 8.19** Boar Group reserves the right to issue progress invoices of materials and/or labour expended on work in progress and to place into bond materials which cannot be accepted for delivery on site and invoice the full value thereof.
- 8.20** Where any supply of products or services is or becomes subject to GST, an amount equal to GST paid or payable for that supply will be added.

## 9. Security

- 9.1** The Customer consents to Boar Group creating and maintaining a registration on the Personal Property Securities Register (Register) in any required form, in relation to any security interest contemplated or created by the Agreement, including a security interest as defined in the PPSA.
- 9.2** The Customer agrees to sign any necessary documents and provide all reasonable assistance and information to facilitate the registration and maintenance of a security interest on the Register if required by Boar Group. Boar Group reserves the right to register a financing statement or financing change statement in respect of any security interest and the Customer waives the right to receive notice of a verification statement in relation to any registration of a security interest on the Register, by way of clause 9.1 or 9.2, in respect of any Products supplied.
- 9.3** The Customer undertakes to do any and all acts that are reasonably required by Boar Group so as to:
- allow Boar Group to create and maintain a perfected security interest (including a purchase money security interest) pursuant to the PPSA in respect of the Products supplied and any and all proceeds of the Products (where applicable);
  - allow Boar Group to register a financing statement or financing change statement;
  - ensure that Boar Group maintains its secured position under the PPSA;
  - not register a financing statement or financing change statement without Boar Group's prior written consent; and/or
  - not register or commit to the register of a financial statement or financing change statement in respect of the Products, in favour of a third party, without Boar Group's prior written consent.
- 9.4** Boar Group and the Customer agree that no information (as defined in Section 275(1) of the PPSA) will be provided to an interested person or person requested by an interested person. This clause 9.4 may be waived by providing prior written notice to Boar Group authorising the disclosure of the above information to a specified party.
- 9.5** In the event that the Agreement is subject to Chapter 4 of the PPSA:
- Boar Group and Customer agree that pursuant to Section 115(1) of the PPSA, the Customer waives Sections 95, 96, 118, 121(4), 125, 130, 132(3)(d), 134, 135, 142 and 143 of the PPSA; and
  - Boar Group and Customer agree that pursuant to Section 115(7) of the PPSA, Sections 127, 129(2), 129(3), 130(1), 132, 134(2), 135, 136(3), 136(4), 136(5) and 137 of the PPSA do not apply to the Agreement.
- 9.6** The Agreement (including clauses 6 and 7 of these Terms) is a security agreement for the purposes of the PPSA. For the avoidance of any doubt, collateral, for the purposes of Section 20(2) of the PPSA includes, but is not limited to, the Products (as described in the Agreement) or other products provided by Boar Group to the Customer at any subsequent time.
- 9.7** Boar Group may apply amounts received in connection with the sale of the Products to satisfy obligations secured by security interests contemplated or constituted by the Agreement, at Boar Group's absolute discretion.
- 9.8** The Customer hereby charges with payment of any indebtedness to Boar Group all beneficial interest (freehold and leasehold) in land and personal property held now or in the future by the Customer. The Customer agrees that if demand is made by Boar Group the Customer receiving such a demand will immediately execute a mortgage or other instrument of security, or consent to a caveat, as required. In the event that the Customer fails to do so within a reasonable time of being so requested, the Customer hereby irrevocably and by way of security, appoints any credit manager or solicitor engaged by Boar Group to be its true and lawful attorney to execute and register such instruments. Notwithstanding any other provision in this clause and in addition thereto Boar Group may lodge a caveat noting the interest given by this charge on the title of any property of the Customer whenever it so wishes.



## 10. Insurance

- 10.1** Boar Group shall have in effect for the duration of the Agreement the following insurances:
- those which Boar Group is required to hold by law; and
  - public liability insurance.
- 10.2** Boar Group will provide evidence of the insurances set out in clause 10.1 upon written request by the Customer.

## 11. Warranty

- 11.1** Subject to clause 11.2, Boar Group warrants to the Customer that:
- the Services to be performed under the Agreement will be performed with reasonable care and skill in accordance with any specifications; and
  - the Products to be provided under the Agreement will be free from material defects and will be of the kind and quality stipulated in the Agreement (Warranty).
- 11.2** The Warranty does not apply:
- where the defect is caused by the Customer; or
  - where maintenance is not carried out as required; or
  - where the Customer or other party did not comply with all operating and maintenance instructions in relation to the Products; or
  - where any Products or equipment has been repaired or otherwise tampered with by any person other than a person authorised by Boar Group to make repairs; or
  - in cases of normal wear and tear.
  - damage resulting from vandalism, fire, water damage, power surge or other circumstance outside of Boar Group control or that of the manufacturer.
- 11.3** The Warranty shall apply only to defects appearing within the Warranty Period.
- After the Warranty Period the Customer is deemed to have accepted the Products and/or Services.
  - Unless otherwise required by the relevant legislation, products supplied by Boar Group to the Customer under this Agreement are covered by a twelve (12) month warranty, which shall commence from the date of completion for the installation of products, or for products sold on a supply only or supply and commission basis upon delivery of the products to the Customer ("Warranty Period").
  - During the Warranty Period, any products that prove to be defective will be repaired or replaced by Boar Group at its option.
  - The Customer shall inspect all products upon delivery and within 5 business days of delivery, give written notice to Boar Group if any of the products are not in accordance with the Customer's order.
  - Boar Group will accept products returned for credit where Boar Group has incorrectly supplied a product, or the product has been damaged in transit by Boar Group carrier.
  - Products may not be returned for credit without obtaining prior written authorisation from Boar Group.
  - Products returned for credit, except under **11.3 f.** above, shall be subject to a 15% or \$20.00 (whichever is greater) restocking fee and except where products are returned under **11.3 f.** above, all freight charges for goods returned for credit shall be prepaid by the Customer unless otherwise approved by Boar Group in writing.
- 11.4** If Boar Group breaches the Warranty, provided the Customer has given Boar Group written notice of such breach within the Warranty Period, Boar Group's liability is limited to the remedies under clause **11.7**, provided that any Products to be returned must be returned at the Customer's cost.
- 11.5** The liability of Boar Group for any Loss incurred by the Customer as a result of the Warranty breach (whether the claim is based on contract or negligence) will not in any case exceed the cost of correcting defects in the Products or Services. The foregoing shall constitute the exclusive remedy of the Customer and the exclusive liability of Boar Group.
- 11.6** Any condition, term, guarantee or warranty which would otherwise be implied in the Agreement is hereby excluded to the full extent permitted by law.

**11.7** Where legislation implies in the Agreement any condition, term, guarantee or warranty (Mandatory Warranty), and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such Mandatory Warranty, the Mandatory Warranty is deemed to be included in the Agreement and the liability of Boar Group for any breach of such Mandatory Warranty is limited, at the absolute discretion of Boar Group, to one or more of the following:

- a. if the breach relates to the Products:
  - i. the replacement of the Products or the supply of equivalent Products;
  - ii. the repair of such Products;
  - iii. the payment of the cost of replacing the Products or of acquiring equivalent Products; or
  - iv. the payment of the cost of having the Products repaired; and
- b. if the breach relates to the Services:
  - i. the supplying of the Services again; or
  - ii. the payment of the cost of having the Services supplied again.

**11.8** The provisions of this clause 11 shall survive termination of the Agreement for any reason.

## 12. Limitation of Liability

**12.1** Boar Group's liability under any claim by the Customer in respect of this Agreement or matters associated with this Agreement is limited to the portion of the Price allocable to the Products or Services, or Products and Services, which give rise to that claim, including negligence for any Loss or damages arising out of, connected with, or resulting from this Agreement, or from the performance or breach thereof, or from the delivery, installation, technical direction of installation, operation or use of any equipment, material or components covered by or furnished under this Agreement.

**12.2** Boar Group is not liable for any:

- a. loss of profits or revenue, loss of use of the equipment or any associated equipment, facilities, or services downtime costs;
- b. special, consequential, or indirect loss or damages; or
- c. for any claims by third parties against the Customer for such loss or damages.

**12.3** Boar Group does not give any warranty with respect to (without limitation):

- a. breaches of the Warranty not reported to Boar Group within the Warranty Period;
- b. failures or damage in respect of the Services due to misapplication, abuse, improper installation or abnormal conditions of temperature, dirt, or corrosive matter;
- c. failure in respect of the Services due to operation (either intentional or otherwise) above rated capacities or in an otherwise improper manner;
- d. Products which have been in any way tampered with or altered by anyone other than an authorised representative of Boar Group;
- e. Products damaged in shipment or otherwise without fault of Boar Group; or
- f. expenses incurred by the Customer in an attempt to repair or rework any alleged defective Products.

**12.4** The Customer agrees to indemnify Boar Group from and against:

- a. any Loss arising from the injury or death of any person caused by an act, omission, or negligence or otherwise of the Customer, the Customer's employees, servants, and agents whilst Boar Group supplies the Products and/or performs the Services; and
- b. any Loss caused to Boar Group, whether such Loss was caused by the act, default, or negligence on the part of Boar Group or otherwise.

**12.5** The Customer shall assume all risks and liabilities for and in respect of the provision of the Products or Services or both (where applicable), and for injuries to or death of persons and damage to property howsoever arising and the Customer indemnifies Boar Group from and against:

- a. the loss of or damage to any Products or parts thereof for which payment of the Price has not yet been made in full, whether by fire, theft, accident, seizure, confiscation or otherwise whilst in the Customer's custody, possession or control; and
- b. all other Loss howsoever arising incurred as a result of or in connection with the provision of the Products or Services or both (where applicable).

**12.6** Boar Group will, at all times, maintain current Public Liability, Professional Indemnity and Workers Compensation insurances with the appropriate coverage for the works being undertaken.

- a. Where deemed necessary and explicitly requested by the Customer, Boar Group will contact its Insurer to have the Customer listed as an interested party on the policy and/or Certificate of Currency.

### 13. Customer's Indemnity

**13.1** Where the Customer requires Boar Group to carry out testing of any of the systems, technology or equipment, the Customer will:

- a. hold Boar Group harmless in respect of any damage caused to such systems, technology, or equipment as a result of, or arising out of, such testing; and
- b. indemnify Boar Group against all claims, demands, losses, damages, costs, and expenses for which Boar Group becomes liable or incurs as a result of, or in relation to, any damage caused by, or arising out of, such testing.
- c. Advise Boar Group of the existence of any sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibreoptic cables, oil pumping mains, and or any other services that may be on site and shall confirm the location of such services to Boar Group and technician before work commences. In the absence of such notice Boar Group accepts no liability for any loss or damage to such services or any consequence thereof and the Customer agrees to indemnify Boar Group against any claim whatsoever for any loss or liability under this clause.
- d. provide adequate facilities at the premises at no cost to Boar Group, including parking, power, lifting equipment, scaffolding, scissor lifts, and rubbish removal skips;
- e. Ensure that the premises must, at all times, be a safe working environment and (without limitation) will not contain asbestos or similar hazards;
- f. Indemnify Boar Group against any claims for the failure of fire alarm monitoring equipment, telecommunication carrier lines, power supply, costs relating to fire brigade charges, or relocation of equipment.

**13.2** Boar Group shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, Boar Group accepts no responsibility for any loss, damage, or costs however resulting from these inaccurate plans, specifications or other information.

### 14. Materials Supplied by the Customer & Design (Intellectual Property)

**14.1** The Customer shall provide to Boar Group any patterns, designs, specifications, drawings, samples, technical information, or any other information required by Boar Group or specified in the Agreement (whether in electronic format or otherwise) or which the Customer has agreed in writing to provide to enable Boar Group to supply the Products or Services, or Products and Services (as the case may be) (Materials).

**14.2** Boar Group retains all rights, title and interest in any intellectual property including any design(s), documentation, diagrams or plans existing or arising during the course of the work under this Agreement. All Materials and Intellectual Property supplied by the Customer at the commencement of this Agreement remains the property of the Customer but the Customer grants Boar Group a perpetual, irrevocable, royalty free, non-exclusive licence to use, reproduce and modify the Customer's intellectual property. The Customer indemnifies Boar Group for any threatened or actual claim of intellectual property infringement arising out of Boar Group use of the Customer's intellectual property.

**14.3** Boar Group will not use the Materials for any purpose other than to the extent required to supply the Products or Services, or Products and Services, to the Customer.

## 15. Dispute Resolution

- 15.1** If a Dispute arises, either party may give the other party written notice of the Dispute identifying and providing details of the Dispute (Dispute Notice) by email or by registered post.
- 15.2** Within seven (7) days of receipt of a Dispute Notice, representatives of the parties having authority to bind the parties shall confer to seek to resolve the Dispute. In the event of any doubt, the representatives who have the authority to bind the party shall be the Chief Executive Officers (or equivalent) of the parties. All aspects of such conference(s) shall be subject to "without prejudice" privilege.
- 15.3** Neither party may commence any court proceedings prior to complying with clauses **15.1**, and **15.2**.
- 15.4** Notwithstanding the existence of a Dispute, each party must continue to perform its obligations under this Agreement.

## 16. Suspension, Termination, and Cancellation

- 16.1** Following a Force Majeure Event if either party gives notice, the party's non-financial obligations under this Contract are suspended to the extent that the Force Majeure Event prevents or delays their performance.
- 16.2** As soon as reasonably possible after a Force Majeure Event ceases to prevent or delay a party's performance of obligations suspended under clause 16.1, the party must notify the other party in writing and resume performance of those obligations.
- the nature and extent of the Force Majeure Event.
  - the effect the party reasonably expects the Force Majeure Event will have on its obligations under this Contract.
  - Any extension of time to the date for practical completion, as agreed upon between parties.
- 16.3** Each party must take reasonable steps to mitigate or overcome the effects that a Force Majeure Event has on its obligations under this Contract.
- 16.4** Either party may terminate this Contract by giving fifteen (15) business days' notice to the other party if:
- the performance of all or a substantial part of a party's non-financial obligations under this Contract is or will be prevented or delayed by a Force Majeure Event for a continuous period of 80 business days or more.
  - the other party commits any material or persistent breach of its obligations under this Agreement (which in the case of a breach capable of remedy shall not have been remedied within 14 days of receipt by the party in breach of a notice identifying the breach and requiring its remedy) or if a party becomes insolvent, bankrupt or enters into a scheme or arrangement with creditors.
- 16.5** Termination under clause **16.5** must be affected by written notice to the other party. Upon termination pursuant to clause **16.5**, the terms of clause **16** will apply as if the Contract had been frustrated on the date of the termination;
- 16.6** Boar Group may suspend or terminate the Agreement immediately:
- upon giving written notice to the Customer in the event that the Customer is in default of a material term of the Agreement and fails to remedy such default within fourteen (14) days of notice from Boar Group to do so, if such default is capable of remedy;
  - the Customer has failed to pay an invoice by its due date; or
  - if the Customer or any of its Related Bodies Corporate becomes insolvent, is made bankrupt, is placed into external administration or liquidation, or has a receiver or other controller appointed over its assets or experiences any similar action in respect of its financial standing.
- 16.7** Termination of the Agreement pursuant to this clause 16 shall be without prejudice to the rights of either party accruing prior to termination.
- 16.8** In relation to the provision of maintenance services:
- If the Customer wishes to terminate the Agreement prior to the expiry of the Contract Term, the Customer will be required to pay the remaining payments owing up to the end of the Contract



Term. (The Contract Term is defined as the initial term specified on the face of this Agreement then any successive 12-month period).

- b. If Boar Group wishes to terminate this Agreement prior to the expiry of the Contract Term in whole or in part at its convenience upon the provision of fourteen (14) days' notice in writing to the Customer.

**16.9** In relation to any work order, purchase order, contract, or agreement apart from the provision of maintenance services:

- a. If the Customer wishes to terminate the Agreement prior to its commencement or prior to the completion of the Term, then the Customer shall pay to Boar Group on demand a sum equivalent to all Boar Group's costs, fees and expenses incurred up to the date of such purported cancellation including any damages payable to Boar Group subcontractors or suppliers together with a reasonable proportion of Boar Group loss of anticipated profits, as well as a reasonable administration fee.
- b. In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Boar Group as a direct result of the cancellation (including, but not limited to, and loss of profits).
- c. Cancellation of orders for Goods made to the Customer's specifications, or for non-stock list items, will definitely not be accepted once production has commenced, or an order has been placed.
- d. Boar Group may cancel any Agreement to which these terms and conditions apply or cancel the delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such a notice Boar Group shall repay the Customer any money paid by the Customer for the Goods. Boar Group shall not be liable for any loss or damage whatsoever arising from such cancellation.

## 17. Assignment and Subcontracting

- 17.1** Boar Group may assign, transfer, or novate its rights and/or obligations under the Agreement or subcontract the performance of the Services and/or the supply of the Products to a third party without the Customer's prior written consent.
- 17.2** The Customer must not assign, transfer, or novate its rights and/or obligations under the Agreement without Boar Group's prior written consent.

## 18. General Clauses

- 18.1** Boar Group shall have no liability to the Customer in respect of any matter in connection with the Agreement unless the claim together with full particulars thereof is lodged with Boar Group within fourteen (14) days of the occurrence of the event(s) or circumstance(s) on which the claim is based.
- 18.2** If any provision or part of any provision of the Agreement is unenforceable, the parties agree that such unenforceability shall not affect any other part of such provision or any other provision of the Agreement.
- 18.3** Boar Group may alter, amend, revise, or change any terms of the Agreement with reasonable notice given to the Customer of any such alteration, amendment, revision, or change. If the Customer proceeds to accept the supply of the Products or Services, or Products and Services, from Boar Group, the Customer shall have accepted such alteration, amendment, revision or change in the terms of the Agreement. The Agreement (as amended from time to time) shall apply to all Products or Services, or Products and Services, supplied by Boar Group to the Customer and shall comprise the entire agreement between the parties notwithstanding any other terms and conditions which may be supplied by the Customer.
- 18.4** Any waiver by the Customer of strict compliance with any provision of the Agreement shall not be effective unless in writing and signed by an authorised officer of the Customer.
- 18.5** Where the delivery of Products or the supply of Services takes place in Australia, this Agreement shall be governed by and construed in accordance with the laws in force in New South Wales, Australia and the parties submit to the exclusive jurisdiction of the courts of New South Wales, Australia. Where the delivery of Products or the supply of Services takes place in New Zealand, this Agreement shall be governed by and constructed in accordance with the laws in force in New Zealand and the parties submit to the exclusive jurisdiction of the courts of New Zealand. In the event of any doubt as to the governing law

or applicable jurisdiction, the laws of New South Wales, Australia and the courts of New South Wales shall apply.

- 18.6** No provision of the Agreement shall be construed adversely against one party solely on the basis that that party was responsible for the drafting of that provision.

## 19. Discipline-Specific Clauses

### 20.1 Fire Protection Equipment including Installation, Repairs, Replacement, or Maintenance Services

- a. The customer acknowledges that the contract for the fire systems inspection & testing will be invoiced quarterly (3 months) in advance which is payable within 30 days of the issued date.
- b. Only one visit has been allowed for inspecting each of the nominated services. Any additional site visits due to access not being made available will be charged onto the client as per scheduled hourly rates. Any access delays will be charged to the client at an hourly rate per technician. E.g. 4 Technicians x 2 hours each x \$130.00 per hour = \$1040.00 ex GST.
- c. No allowance has been made in this quotation to comply with FM Global inspection, testing and maintenance requirements, unless explicitly stated.
- d. No allowance has been made in this quotation for boom or scissor lifts if and when required, unless explicitly stated.
- e. No allowance has been made in this quotation for consumables such as but not limited to fuel required to run the Fire Pump Sets for regular tests or upon false activation.
- f. QFES call out charges due to false alarms and activations will not be the responsibility of Boar Group unless directly at fault from works conducted by Boar Group.
- g. No allowance has been made in this quotation for the testing of tenancy fire equipment, unless explicitly stated.
- h. This contract will increase annually in accordance with CPI.
- i. All works performed during business hours Monday to Friday 7.00am to 4.00pm unless otherwise stated in this proposal. Should works be conducted outside these hours, additional charges will be incurred by the client.
- j. Boar Group will endeavour to meet the proposed estimated time frame to conduct works. However, the Customer acknowledges this is an estimate only and not a deadline.
- k. No allowance has been made for onsite induction or permit to work requirements, unless otherwise stated.
- l. We have allowed for reasonable continuity to perform work. Should works not be completed due to client request or unforeseen circumstances such as access denial, or delays on site to commence or complete work, additional charges will be incurred by the client and charged at the contracted hourly rate per technician. E.g. 4 Technicians x 2 hours each x \$130.00 per hour = \$1040.00 ex GST.
- m. A minimum site service fee will apply if client agreed scheduled works are altered once Boar Group staff have been assigned the task.
- n. Additional charges will be incurred if any site-specific requirements such as access restrictions, isolations/de-isolations and safety standards have not been advised in writing/email prior to proposal acceptance.
- o. Warranties on parts supplied by Boar Group are subject to manufacturer's terms and conditions. Warranty will be void if the client and or representative conducts unauthorized alteration to the goods supplied.
- p. All risk for loss or damage to goods supplied shall pass to the client at the time of supply/installation.
- q. Boar Group reserves the right to request an upfront deposit prior to work commencement and submit ongoing progress claims during works conducted. In this instance the payment terms is a 50% deposit prior to the commencement of the job and followed by 25% payment after 30 days and the final payment in full 14 days after completion and commissioning of the job.
- r. If the Buyer defaults in payment of any amount, the Buyer irrevocably gives to the Company a right in addition to and without limitation of any other right the Company may have to enter, using reasonable force if necessary and without notice, any premises where the equipment is kept by the Buyer and to take possession of the same and thereafter deal with the equipment as its own.
- s. In the event that payment to Boar Group falls overdue, Boar Group may suspend the supply of goods or services.
- t. Any change that affects the trading address, legal entity, structure of management or control of the client's business will be notified to Boar Group, in writing, within seven (7) days of the change becoming effective.
- u. Maintenance proposals (e.g. defect liability period or servicing as per AS1851) do not include parts/consumables or additional labor when necessary.
- v. The statements made by the Company in relation to characteristics and potential applications of the goods are made in good faith to assist the Buyer, but, except where the Trade Practices Act, 1974, and similar

state laws impose liability upon the Company, the Company shall not be liable for the consequence of such statements.

- w. The client shall ensure all health and safety regulations are observed whilst Boar Group staff are on the client's premises.
- x. The conditions of this proposal can be altered by agreement in writing/email by authorized representatives of Boar Group and the client.
- y. Fourteen (14) day's written notice by either party will be required to suspend any scheduled contracted maintenance agreements. Seven (7) days' notice must be given to scheduled reactive projects.
- z. The Company shall not be subject to or incur, and the Buyer releases the Company from, any claim, action or liability for consequential loss or damage to persons or property, including loss of use of the goods, or of profits arising by reason of delays, non-delivery, defective materials or workmanship, negligence, or any act, matter, conduct or thing done, permitted or omitted by the Company.
- aa. It is conditional upon agreement for Boar Group to proceed with any works that the client indemnifies Boar Group against any claim for damage, resulting from faulty or aged pipe work.
- bb. Works by other trades are excluded from this quotation. No allowance has been made unless otherwise noted, for patching or painting of any part of the building. No allowance has been made for costs that may be incurred resulting from the presence of asbestos, synthetic mineral fibres or such similar substances in any form or any associated disputes arising out of asbestos related activity.
- cc. No allowance made for repair of any faulty and/or dangerous electrical wiring or infrastructure found during works conducted by Boar Group. All quotations are submitted under the understanding that all preexisting wiring and infrastructure have been installed in accordance with the relevant standards and are in sound condition.
- dd. Boar Group reserves the right to suspend works if existing client infrastructure is found to be faulty or dangerous. Boar Group has the right to claim for any time or parts consumed, and losses suffered (if applicable) by said event occurring.
- ee. The Buyer shall indemnify the Company from and against all losses, expenses, collection fees, solicitors' fees or liabilities incurred by the Company in relation to the goods or the services.
- ff. All care and attention would be taken throughout the duration of the project by Boar Group tradesmen to keep the workface as clean and tidy as possible and in a safe manner, and Boar Group will not be held responsible for on-site costs such as for site cleaning or any other site-related work or services by, or on behalf of the builder or any other trades or companies
- gg. Site specific induction costs are capped at \$200.00 for any single contract. Additional costs will be charged to the client.
- hh. New South Wales (NSW) Works- Sites who engage Boar Group for service contracts will be provided a completed Annual Condition Report in accordance to legislation. Annual Occupiers Statements will not be signed by Boar Group. Customers are required to engage a Licensed Fire Safety Practitioner (FSP) to sign off on Occupiers Statements and installation work at their own cost.
- ii. Boar Group does not sign off on Occupiers Statements.
- jj. The Customer acknowledges that in the event asbestos, or any other toxic substances are discovered at the Worksite that it is their responsibility to ensure the safe removal of the same. The Customer further agrees to indemnify Boar Group against any costs incurred by Boar Group as a consequence of such discovery. Under no circumstances will Boar Group handles removal of asbestos product.
- kk. The ability to provide certification depends on whether Boar Group's Fire Qualifications have been adhered to, if they have not, certification to a tested system cannot be achieved and will not be provided.
- ll. The Customer acknowledges that it is their responsibility to ensure that all Goods, plant or equipment which Boar Group is requires to install (or to connect any of its goods to) are the correct type, sizing, rating, standards, quality, colour and finish, conform with all relevant Australian Standards and local statutory requirements, and are as specified in the specifications, drawings and plans upon which Boar Group based the quotation on and therefore, the Customer agrees to indemnify Boar Group against any costs incurred by Boar Group in rectifying such errors if required.
- mm. Boar Group is not responsible for the removal of rubbish from or clean-up of building construction site/s. This is the responsibility of the Customer or the Customer's agent.
- nn. It is the Customer's responsibility to ensure they have provided Boar Group with all base line data (as described in AS 1851-2012) related to the customers property/building relating to this agreement. While Boar Group is happy to assist in the recreation of base line data if such data is unavailable all associated costs will be the responsibility of the customer. Boar Group accepts no liability in relation to the supply of services/schedules/completed works etc. if sufficient base line data has not been provided.

## 20.2 Air Conditioning Risk

- a. Whilst the final location of any plant installation is at the discretion of the Customer, a charge will apply as a variation as if the Customer requests the unit to not be located other than as per quotation.
- b. The Customer acknowledges and agrees that Boar Group does not guarantee any noise levels (external or internal) and Boar Group shall not be held liable for any loss, damages, or costs, however resulting from noise levels.
- c. In the event that any of the equipment needs to be relocated due to complaints from neighbours or local authorities, then the Customer shall be responsible for any and all costs involved.
- d. The customer acknowledges and agrees that it is their responsibility to insure any equipment partly or completely installed on site, against theft of damage.
- e. In the event that the electrical wiring is required to be re-positioned or upgraded at the request of any third party contracted by the Customer, or to meet regulatory requirements, then the Customer agrees to notify Boar Group immediately upon any proposed changes. The Customer agrees to indemnify Boar Group against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced accordingly.

## 20.3 Hydrostatic Testing

- a. Before any hydrant mains are turned off, we recommend an authorised person from the company or premises assist with an inspection of the fire service, so a timetable can be implemented for the purpose of minimising the risk in areas which cannot be shut down due to operational and safety to employees on site while working.
- b. Pressure testing of the fire hydrant service pipe work to the required design standard can cause some systems to fail or burst under pressure and we encourage all our customers to take the appropriate action in notifying their insurance company, employees, contractors, on the day of the test. Boar Group accepts no liability whatsoever for system failure caused by the test and any damage caused as a result of the performance of the test, regardless of anything else stated in this agreement and regardless of any act or omission by Boar Group. This quotation does not allow for the repairing of any pipe work or valves which leak while conducting the pressure testing procedure.
- c. Servicing of any underground check valves or isolating valves which may be installed in a pit are excluded from this quotation and will be quoted separately, unless otherwise stated in the quotation.
- d. Servicing of any underground check valves or isolating valves which may be installed in a pit are excluded from this quotation and will be quoted separately, unless otherwise stated in the quotation.