

## Terms of Maintenance of Equipment

### 1. Interpretation

1.1. The definitions and rules of interpretation in this Clause apply in these Terms.

<b>ACPO</b>	Association of Chief Police Officers;
<b>Additional Charge</b>	a charge in addition to the Service Charge made pursuant to Clauses 5.5, 5.6, 5.10, 5.12, 6.2 and 7.2 at CFS's standard rates based on current cost information;
<b>BAFE</b>	British Approvals for Fire Equipment;
<b>Basic Service</b>	the inspection, repair and maintenance service to be provided pursuant to Clause 5;
<b>British Standards</b>	the standards set by the British Standards Institution;
<b>CFS</b>	Contract Fire Systems Limited of CFS Business Park, Coleshill Road, Sutton Coldfield, West Midlands, B75 7FS (company registration number 01915681), and where the context so permits its employees, representatives, agents and sub-contractors;
<b>Commencement Date</b>	the date of acceptance by CFS of the Customer's Purchase Order pursuant to Clause 2.5 or the date of the Contract;
<b>Contract</b>	any contract between CFS and the Customer for the inspection, repair and maintenance of the System;
<b>Customer</b>	the person, firm or company who purchases the Services from CFS;
<b>Emergency Call-Out Service</b>	any unscheduled attendance by CFS at the Premises at the request of the Customer, Fire Service, Police or other authority;
<b>Initial Period</b>	the initial period for which the Services are to be provided as agreed by the Parties being a minimum of 3 years from the Commencement Date;
<b>NSI</b>	National Security Inspectorate;
<b>Normal Working Hours</b>	between the hours of 9.00am to 5.00pm, Monday to Friday, excluding Bank or Public Holidays;
<b>Parties</b>	CFS and the Customer;
<b>Premises</b>	the place at which the System is installed;
<b>Purchase Order</b>	the written order (on CFS's standard form) from the Customer offering to purchase the Services from CFS;
<b>Remote Signalling Equipment</b>	All equipment associated with monitored systems including Redcare and Dualcom;
<b>Service</b>	the Basic Service and the Emergency Call-Out Service;
<b>Service Charge</b>	a financial charge for the Basic Service;
<b>System</b>	all or any part of systems, products, services or goods including but not limited to a fire security, intruder alarm, fire alarm, sprinkler system, portable fire extinguishers, closed circuit television, access control system, security fencing, controls,

audible devices, signalling equipment, relays, detectors, power supplies, wiring, and circuits situated on the Premises and in respect of which Services are provided; and

**Terms** these terms of trading

- 1.2. A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3. Words in the singular include the plural and in the plural include the singular.
- 1.4. A reference to one gender includes a reference to the other gender.
- 1.5. Clause headings are for convenience only and do not affect the interpretation of these Terms.
- 1.6. A reference to a Clause is to a clause of these Terms.

## **2. Application of Terms**

- 2.1. Subject to any variation under Clause 2.2, the Contract shall be on these Terms to the exclusion of all other terms (including any terms which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2. Any variation to these Terms shall have no effect unless expressly agreed in writing and signed by a director of CFS.
- 2.3. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of CFS which is not set out in the Contract.
- 2.4. Any quotation shall be valid for a period of thirty days only from its date, provided that CFS has not previously withdrawn it in writing. All quotations are based on CFS's current costs information at that date.
- 2.5. Any quotation given by CFS for the supply of Services is given on the basis that no Contract shall come into existence until CFS has received a Purchase Order from the Customer (which shall be deemed to be an offer by the Customer to purchase the Services subject to these Terms) and CFS has accepted the Purchase Order by way of written acknowledgement to the Customer or (if earlier) the provision of Services has commenced.
- 2.6. No Purchase Order which has been accepted by CFS in accordance with Clause 2.5 may be cancelled by the Customer except with the agreement in writing of a director of CFS and on the terms that the Customer shall indemnify CFS in full against all loss (including loss of profit), costs, damages, charges and expenses incurred by CFS as a result of cancellation.

## **3. Duration**

- 3.1. The Contract shall come into force on the Commencement Date.
- 3.2. Subject to Clause 4, the Contract shall continue in force for the Initial Period and thereafter until terminated by either Party giving to the other at any time not less than three months prior written notice of termination expiring at the end of the Initial Period or on any subsequent anniversary of the Commencement Date.

## **4. Termination**

- 4.1. Either Party may terminate the Contract by written notice to the other Party if:
  - 4.1.1. the other Party commits any continuing and material breach of the Contract and, in the case of such a breach which is capable of remedy, fails to remedy the same within

thirty days of receipt of a written notice giving full particulars of the breach and requiring it to be remedied;

- 4.1.2.any encumbrancer takes possession or a receiver is appointed over any of the property or assets of the other Party;
  - 4.1.3.the other Party makes any voluntary arrangement with its creditor or becomes subject to an administrative order;
  - 4.1.4.the other Party goes into liquidation (except for the purposes of an amalgamation, reconstruction or other reorganisation and in such manner that the company resulting from the reorganisation effectively agrees to be bound by or to abide the obligations imposed on the other under these Terms);
  - 4.1.5.the other Party being an individual is made bankrupt; or
  - 4.1.6.the other Party ceases, or threatens to cease, to carry on business.
- 4.2. For the purposes of Clause 4.1.1, a breach shall be considered capable of remedy if the Party in breach can comply with the Term in all respects other than as to the time of performance (provided that time shall not be of the essence).
- 4.3. CFS may terminate the Contract if:
- 4.3.1.any sum payable under the Contract is not paid on the due date;
  - 4.3.2.the Customer permits any person to repair, replace or otherwise interfere with the System; or
  - 4.3.3.the Customer fails to follow any recommendations CFS makes for repairing faulty or old parts of the System, or for repairs to the Premises which CFS consider necessary for the System to work properly, or to prevent unnecessary damage to the System.
- 4.4. The right to terminate the Contract under this Clause 4 shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.
- 4.5. On the termination of the Contract for any reason, subject as otherwise provided in these Terms and to any other rights or obligations which have occurred prior to termination, neither Party shall have any further obligation to the other under the Contract.
- 4.6. CFS may charge an administration fee to cover the cost of terminating the Contract and/or passing over information about the System to a third party.
- 4.7. If CFS terminates the Contract under this Clause the Company will continue to be liable to pay the Service Charge for the following 12 months.

## **5. Basic Service**

- 5.1. For the duration of the Contract (provided that the Customer has paid the Service Charge in full pursuant to Clause 11.1), CFS will provide the Customer with the Basic Service in relation to the System. The Basic Service shall be undertaken in accordance with British Standards, NSI and BAFE codes of practice, where applicable.
- 5.2. CFS will inspect the System at such intervals as CFS may reasonably determine to be necessary in order to keep the System in good working order, which in any event shall be at least once in each year of the term of the Contract.
- 5.3. The Service shall be carried out by one of CFS's suitably qualified and duly authorised representatives attending at the Premises during Normal Working Hours.

- 5.4. If the Customer does not have an asset register which includes the System, CFS is entitled to carry out a survey to obtain this information and charge the Customer such sum as is reasonable in the circumstances.
- 5.5. If CFS's representative discovers a defect or malfunction in any part of the System, CFS's representative will attempt to repair or replace that part of the System as necessary at the Premises during Normal Working Hours for which an Additional Charge will be made.
- 5.6. If CFS's representative is unable to repair or replace any defect or malfunctioning part of the System pursuant to Clause 5.5, CFS will:
  - 5.6.1. provide a *notice of defects report* which will include an estimate of the Additional Charges to complete the repair or replacement; and
  - 5.6.2. make arrangements with the Customer for a further visit to be made to the Premises during Normal Working Hours for the repair or replacement of the defective or malfunctioning part of the System.
- 5.7. Notwithstanding the generality of this Clause 5, CFS reserves the right to remove any part of the System and replace it with another part complying with British Standards, in which case the replacement part provided shall, for the purposes of the Contract, take the place of the part of the System so removed.
- 5.8. In the event of the System not being in good working order, the Customer must immediately give written notice (by fax and post or email) to CFS. CFS shall use its reasonable endeavours to repair the System in accordance with the timescale specified by it or if no timescale is specified, as soon as reasonably practicable.
- 5.9. If the Customer reports a defect or malfunction of any part of the System outside Normal Working Hours, the report shall be deemed to be made at the beginning of the next working day of CFS.
- 5.10. CFS reserves the right to raise an Additional Charge for the Customer for any visits made at any time other than the normal service visits referred to in Clause 5.2.
- 5.11. The Customer shall allow CFS full and unrestricted access to the Premises and the Systems and devices during Normal Working Hours for the duration of the Contract for the purposes of providing the Services.
- 5.12. If for any reason the Customer is unable to provide access pursuant to Clause 5.11, CFS reserves the right to raise an Additional Charge for the Customer for the inspection and servicing of the System outside of Normal Working Hours.

## **6. Spare Parts and Replacements**

- 6.1. CFS shall use reasonable endeavours to supply spare parts and replacement components required to maintain the System in good working order.
- 6.2. CFS will make an inventory of critical spares and provide a *crash box* to include these spares for which there shall be an Additional Charge.
- 6.3. All spare parts and replacement components supplied by CFS shall become part of the System.

## **7. Emergency Call-Out Service**

- 7.1. For the duration of the Contract (providing that the Customer has paid the Service Charge in full pursuant to Clause 11.1), CFS will provide the Customer with the Emergency Call-Out Service in relation to the System.

- 7.2. Subject to Clause 8, if the Customer requires the System to be reset by CFS, or, for whatever reason, attendance at the Premises by CFS is required following the activation of the System, the Customer shall pay an Additional Charge.
- 7.3. Unrestricted access for the Emergency Call-Out Service is required on arrival of CFS at the Premises. The Customer agrees to pay an Additional Charge where unrestricted access to the Premises is not available.

## **8. Remote Signalling Equipment**

- 8.1. When Remote Signalling Equipment is connected, to comply with ACPO policy and British Standards and any applicable European standards, the System in the event of activation shall be reset by CFS or by controlled reset through CFS's alarm receiving station.
- 8.2. CFS may make a charge to cover any increased cost to them of providing or changing the telecommunication services relating to the monitoring of the System or any increased cost imposed by the Police, Fire Authority or other authority or by a telecommunication agency, or any other organisation.

## **9. The System**

- 9.1. The Customer shall not remove the System from the Premises and shall not allow any person other than CFS's representations to inspect, service, repair, replace or remove the System.
- 9.2. The Customer shall insure that the System is operated in accordance with its instructions and is kept free from damage.

## **10. Price**

- 10.1. The Service Charge for the System shall be the price set out in CFS's quotation or acknowledgement (whichever is the latter) and shall be exclusive of any value added tax.
- 10.2. The Service Charge is based upon CFS's current costs information at the date of the Contract.
- 10.3. CFS reserves the right to increase the Service Charge on each subsequent anniversary of the Contract by such sum as is reasonable in all the circumstances.

## **11. Payment**

- 11.1. In consideration of CFS providing the Service, the Customer shall pay the Service Charge annually in advance, and on each subsequent anniversary for the duration of the Contract.
- 11.2. If any sum due under the Contract is not paid by the Customer within twenty-eight days of becoming due then:
  - 11.2.1. the Customer shall pay interest to CFS on the amount outstanding in accordance with the provisions of The Late Payment Commercial Debts (Interest) Act 1998; and
  - 11.2.2. CFS may suspend the provision of the Services.
- 11.3. Payment can be made by cheque (but not post-dated), credit card, BACS or direct debit.
- 11.4. Time for payment of the Service Charge shall be of the essence of the Contract.
- 11.5. No payment due to CFS under the Contract shall be deemed to have been paid until CFS has received clear funds.
- 11.6. In circumstances where the provision of the Service is suspended for any reason the Service Charge will remain payable.

11.7. A credit limit may be agreed with the Customer which will be based upon an initial credit score produced by a reputable credit scoring agency. CFS will continue to monitor the credit limit and reserves the right to amend the level of credit offered to the Customer based upon, but not limited to: credit alerts sent by a credit scoring agency, poor payment history with CFS, adverse publicity in the public domain regarding the financial stability of the Customer or the reduction of credit rating by a credit scoring agency. If the credit limit is reduced, CFS will allow four weeks for the level of credit to be reduced to the new level set by CFS, but thereafter, any sum owed in excess of the new level of credit will be due and payable immediately.

## **12. Quality**

12.1. CFS warrants to the Customer that the Service will be provided using reasonable care and skill, and as far as is reasonably possible, in accordance with Clause 5 and 7 and any parts supplied shall be of satisfactory quality.

12.2. Where CFS supplies as part of the System any goods supplied by a third party, CFS does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to the Customer the benefit of any warranty, guarantee or indemnity given by the person supplying the goods to CFS.

## **13. Limitation of Liability**

13.1. Subject to Clause 12, the following provisions set out the entire financial liability of CFS (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

13.1.1. any breach of these Terms;

13.1.2. any use made by the Customer of the System; and

13.1.3. any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

13.2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

13.3. Nothing in these Terms excludes or limits the liability of CFS:

13.3.1. for death or personal injury caused by CFS's negligence; or

13.3.2. for any matter which it would be illegal for CFS to exclude or attempt to exclude its liability; or

13.3.3. for fraud or fraudulent misrepresentation.

13.4. Subject to Clause 13.2 and Clause 13.3:

13.4.1. CFS's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Service Charge for the current year; and

13.4.2. CFS shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

13.5. CFS will not be liable for any:

13.5.1. loss or damage caused by the failure of any third party telecommunication link; or

13.5.2. any manned security in the event of a failure of the System.

13.6. It is the Customer's responsibility to comply with the provisions of the Data Protection Act 1988 in relation to amongst other things any CCTV installed by CFS.

#### **14. Assignment**

14.1. CFS may assign the Contract or any part of it to any person, firm or company.

14.2. The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of CFS.

#### **15. Force Majeure**

If CFS is prevented from or delayed in the carrying out of its obligations under the Contract due to circumstances beyond the reasonable control of CFS including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either Party's workforce), default on the part of any sub-contractor, restraints or delays affecting carriers or the inability or delay in obtaining supplies of adequate or suitable materials, then CFS's obligations under the Contract shall be suspended for as long as the circumstances continue and CFS shall not be responsible for any loss caused to the Customer.

#### **16. General**

16.1. Each right or remedy of CFS under the Contract is without prejudice to any other right or remedy of CFS whether under the Contract or not.

16.2. If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract shall continue in full force and effect.

16.3. A waiver by either Party of a breach of these Terms shall not be considered as a waiver of any subsequent breach.

16.4. Any notice to be given from one Party to another may be delivered by hand or sent by first class post to the principal place of business of the other Party and any such notice shall take effect at the time of delivery in the case of a delivery by hand or the opening of business on the first business day after despatch in the case of a notice sent by first class post.

16.5. A person who is not a Party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to benefit from or enforce any provision of it.