

Terms of Supply and Installation of Equipment

1. Interpretation

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

ACPO	Association of Chief Police Officers;
British Standards	the standards set by the British Standards Institution;
Commissioning Date	the date on which the System first becomes operable on audible alarm (notwithstanding that there may be a delay in connections, signalling or the supply or commissioning of other equipment);
CFS	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;
Contract	any contract between CFS and the Customer for the sale and purchase of the System and its installation;
Customer	the person, firm or company who purchases the System from CFS;
Existing Systems	any system or part of a system already installed at the Premises including (but not limited to) controls, audible devices, signalling equipment, relays, detectors, power supplies, wiring and circuits;
Installation Charge	the price to be paid by the Customer for the supply and installation of the System;
Installation Date	the date quoted by CFS for installation of the System by CFS or such other date as is reasonable in the circumstances;
NSI	National Security Inspectorate;
Normal Working Hours	between the hours of 9.00am to 5.00pm, Monday to Friday, excluding Bank or Public Holidays;
Parties	CFS and the Customer;
Purchase Order	the written order (on CFS's standard form) from the Customer offering to purchase the System from CFS;
Remote Signalling Equipment	All equipment associated with monitored systems including Redcare and Dualcom;
Specification	the specification of the System set out in either CFS's quotation, the Purchase Order or CFS's acknowledgement of order (whichever is the later);
System	all or any part of CFS's 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; and
Terms	these terms of supply and installation of equipment.

- 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. CFS reserve the right to charge for additional items that are not included within a quotation.
- 2.5. Any quotation given by CFS for the supply of the System 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 System subject to these Terms) and CFS has accepted the Purchase Order by way of written acknowledgement to the Customer or (if earlier) the supply and installation of the System.
- 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, charges and expenses incurred by CFS as a result of cancellation.

3. Specification

CFS reserves the right at any time to substitute alternative parts, equipment and/or materials to the System to those in the Specification, provided that they shall comply with the appropriate British Standards.

4. Installation

- 4.1. CFS shall use its reasonable endeavours to install the System by the Installation Date. However the Installation Date is intended to be an estimate and time for installation shall not be made of the essence by notice.
- 4.2. The Customer shall allow CFS full and unrestricted access to the Premises during Normal Working Hours (provided that not less than twenty-four hours' notice has been provided by CFS) prior to and on the Commissioning Date for the purposes of surveying, measuring and installing the System.
- 4.3. If for any reason the Customer is unable to provide access pursuant to Clause 4.2, CFS reserves the right to charge the Customer an additional fee for surveying, measuring and

installing the System outside Normal Working Hours, and any such additional fee shall be based upon CFS's current costs information at that date.

4.4. Notwithstanding Clause 7, if for any reason the Customer fails to allow access to the Premises pursuant to Clause 4.2:

4.4.1. risk in the System shall pass to the Customer; and

4.4.2. CFS may store the System until installation, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.5. CFS shall not be liable for any damage caused to the Premises in installing the System, nor for the costs of re-instatement, repair or re-decorating to the Premises, nor the re-laying of floor coverings.

5. Existing Systems

5.1. CFS may not be able to ascertain whether any cables and wiring which form part of the Existing System and which have been installed within the fabric of the Premises, or buried underground, conform to the relevant standards.

5.2. If requested to do so by CFS, the Customer will use its best efforts to obtain information (including all access codes) about the Existing System from its previous installer and/or maintainer.

5.3. Unless the Customer informs CFS otherwise, CFS assumes that the Existing System, and the wiring and cabling associated with it, already comply with the relevant standards and are in full working order.

5.4. If requested by the Customer, and in CFS's sole opinion it is feasible and sensible so to do, CFS may attempt to incorporate an Existing System into the System, or provide services to an Existing System. CFS will not be responsible for any part of the Existing System which remains on the Premises whether or not it forms part of the System;

5.5. CFS reserves the right to make additional charges to the Customer for:

5.5.1. incorporating an Existing System into any new System;

5.5.2. testing any part of the Existing System prior to its incorporation; or

5.5.3. repairing or replacing any part of the Existing System prior to incorporation which is not in good working order or is unsuitable for incorporation.

6. Commissioning

6.1. Within fourteen days of receipt by CFS of the balance of the Installation Charge pursuant to Clause 10.1, CFS will issue:

6.1.1. a handover certificate and the operation codes to the System;

6.1.2. where appropriate, program into the System the operator security codes; and

6.1.3. where appropriate, supply an NSI certificate.

6.2. Where an Existing System is incorporated into the System, any NSI certificate will only apply to the System and not to the Existing System.

7. Risk/Title

7.1. The System is at the risk of the Customer from the time of installation.

7.2. Ownership of the System shall not pass to the Customer (notwithstanding that CFS shall at all times retain full legal, equitable and beneficial ownership in any Remote Signalling

Equipment) until CFS has received, in accordance with Clause **Error! Reference source not found.**, all sums due to it in respect of the Installation Charge.

- 7.3. Until ownership of the System has passed to the Customer pursuant to Clause 7.2, the Customer shall maintain the System in a satisfactory condition and keep the System insured on CFS's behalf for its full price against all risks to the reasonable satisfaction of CFS. On request the Customer shall produce a copy of the policy of insurance to CFS.
- 7.4. CFS shall be entitled to recover payment for the System notwithstanding that ownership of the System has not passed from CFS.
- 7.5. The Customer grants CFS, its agents and employees, an irrevocable licence at any time to enter the Premises in order to recover the System if payment of the Installation Charge has not been made on its due date.
- 7.6. On termination of the Contract, howsoever caused, CFS's (but not the Customer's) rights contained in this Clause 7 shall remain in effect.

8. Communication Device

- 8.1. Where Remote Signalling Equipment is specified by the Customer, the System will run on audible alarm only for a minimum period of two weeks before connection is made to an alarm receiving station.
- 8.2. 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 a representative of the alarm receiving station.
- 8.3. After the Installation Date, there may be a delay while the telecommunication links between the Premises and the alarm receiving centre are set up and activated and the test period set by the Police, Fire Authority or other authority or by a telecommunication agency or any other organisation is completed to their satisfaction. During this period, the ability to respond to signals received from the System at the alarm receiving centre will be limited.

9. Price

- 9.1. Subject to Clause 9.3, the Installation Charge shall be the price set out in CFS's quotation or acknowledgement (whichever is the later) and shall be exclusive of any value added tax.
- 9.2. The Installation Charge is based on the supply and installation being uninterrupted. Where the installation is carried out in conjunction with a building, rebuilding or other refurbishment programme then the number of visits to the Premises required to complete the installation may increase. CFS reserves the right upon giving written notice to the Customer to charge an additional fee in these circumstances, which shall be based on CFS's current cost information at that date.
- 9.3. If the System is not installed within thirty days of CFS's acknowledgement pursuant to Clause 2.5, CFS reserves the right upon giving written notice to the Customer to increase the Installation Charge.
- 9.4. Any additional costs arising from any alteration to the Specification (whether or not at the request of the Customer) and/or the supply and installation of any optional equipment requested by the Customer shall be based on CFS's current costs information at that date.
- 9.5. CFS reserves the right, by giving written notice to the Customer at any time prior to installation to increase the Installation Charge for any delay caused by the instructions of the Customer or failure by the Customer to give CFS adequate information or instructions.

- 9.6. The Installation Charge covers the supply and installation of the System exclusively. Unless otherwise stated in the Contract, the removal, making good and disposal of any Existing System is excluded from the Installation Charge.
- 9.7. CFS reserves the right, by giving written notice to the Customer at any time to increase the Installation Charge based upon unforeseen costs to CFS. In particular this may relate to but is not limited to fuel and raw material (including copper and lead) costs.

10. Payment

- 10.1. Unless set out otherwise in CFS's quotation or acknowledgement (whichever is the later) the Customer shall pay the Installation Charge in accordance with CFS's invoices, which shall be issued monthly in respect of the proportion of the System installed during the relevant month.
- 10.2. If any sum due under the Contract is not paid by the Customer within seven days of becoming due then 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.
- 10.3. Payment can be made by cheque (but not post-dated), credit card, BACS or direct debit.
- 10.4. Time for payment of the Installation Charge shall be of the essence of the Contract. No payment due to CFS under the Contract shall be deemed to have been paid until CFS has received clear funds.
- 10.5. 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

11. Warranties

- 11.1. CFS warrants that (subject to the other provisions of these Terms) upon delivery, the System shall be of satisfactory quality.
- 11.2. CFS warrants to the Customer that the installation will be carried out using reasonable care and skill.
- 11.3. 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.
- 11.4. Where:
 - 11.4.1. a defect occurs in the System within 12 months of the Commissioning Date; and
 - 11.4.2. the defect is notified to CFS in writing within 28 days of the defect arising; and
 - 11.4.3. CFS (in its absolute discretion) certifies that the defect is not caused by an act or default of the Customer (including, but not limited to, excessive use, neglect, unauthorised interference, or misuse of the System); and

- 11.4.4. CFS (in its absolute discretion) certifies that the System is defective by way of faulty design, workmanship, or materials; and
- 11.4.5. the System shall have been properly maintained by CFS;
CFS shall at its option repair or replace the defective part of the System free of charge.
- 11.5. CFS shall not be liable for a breach of the warranties in Terms 11.1 and 11.2 if:
 - 11.5.1. the defect arises because the Customer failed to follow CFS's oral or written instructions as to the use or maintenance of the System; or
 - 11.5.2. the Customer alters or repairs the System; or
 - 11.5.3. if the Installation Charge (or any on-going maintenance charge) has not been paid by the due date for payment.
- 11.6. If CFS complies with Clause 11.4 it shall have no further liability for a breach of the warranties in Clause 11.1 and Clause 11.2 in respect of the System.
- 11.7. When a claim by the Customer relating to a purported breach of the warranties in Clauses 11.1 and 11.2 is unproven or Clause 11.3 does not apply, the Customer shall be responsible for all costs and expenses of CFS (including, but not limited to, CFS's call-out charge) based upon CFS's current costs information at that date.
- 11.8. CFS shall only discharge its obligations under this Clause 11 during Normal Working Hours.

12. Limitation of Liability

- 12.1. Subject to Clause 4.5 and Clause 11, 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:
 - 12.1.1. any breach of these Terms;
 - 12.1.2. any use made by the Customer of the System; and
 - 12.1.3. any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 12.2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 12.3. Nothing in these Terms excludes or limits the liability of CFS:
 - 12.3.1. for death or personal injury caused by CFS's negligence; or
 - 12.3.2. for any matter which it would be illegal for CFS to exclude or attempt to exclude its liability; or
 - 12.3.3. for fraud or fraudulent misrepresentation.
- 12.4. Subject to Clause 12.2 and Clause 12.3:
 - 12.4.1. 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 Installation Charge; and
 - 12.4.2. 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.

12.5. CFS will not be liable for any:

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

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

12.6. 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.

13. 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.

14. General

14.1. 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.

14.2. 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.

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

14.4. 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.

14.5. 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.