



Terms & Conditions

Assembly conditions and installation requirements

1. At the start of the installation work, all of the trades tasks in the firing systems must have been completed. Accordingly, this includes the foundations etc., including any required additional components for the firing systems, and the finished and intact electrical installations. Furthermore, the firing systems must have been cleared of all items, and must have been cleaned.
- 2.a The times for material delivery and assembly must be negotiated in writing either with the supplier's competent employee or with the parent company direct. Normally, the system(s) must be drawn down six weeks before the equipment is delivered and before installation commences, and it must be confirmed that the prerequisites for installation are fulfilled. Imminent deadlines are legally valid only subject to the supplier's written confirmation, unless already negotiated under contract.
- 2.b Changes in deadlines made by the Client may give rise to additional expenses if the supplier is unable to find equivalent work for its employees during the period originally planned for. Any costs thus arising shall be borne by the Client.
- 2.c Should the necessary prerequisites for installation not be in place when the fitters arrive, then allowance must be made for waiting times, additional work or impediments (lack of light, or work unfinished for other reasons), and the supplier may take its workers away at its own discretion. The costs thus arising shall be charged for separately, together with the costs for travelling to and from (the Client's site) and any consequential costs corresponding to clause 2.b below shall be borne by the Client.

Conditions of delivery & payment

1. **General**
 - 1.1 The conditions laid down below – which in all cases shall take priority over any of the Client's terms & conditions – are enshrined between the Contractor and the Client.
2. **Bid; Negotiation of contract**
 - 2.1 The Contractor's bid is non-binding and comprises only the services indicated therein. Illustrations, drawings and any other graphics found in the bid documents are definitive only on an approximate basis unless expressly designated as binding. The same shall apply to any indications of weight, performance and consumption comprised in the bid documents.
 - 2.2 The Contractor retains rights of ownership & copyright over all bid documents, including drawings and plans. These may not be duplicated – nor made accessible to third parties – without the Contractor's consent.
 - 2.3 Written confirmation from the Contractor shall be required as the prerequisite for the validity of subsidiary verbal agreements, any changes or any supplements to the Agreement.
3. **Prices; Payment**
 - 3.1 Unless otherwise agreed, prices are applicable ex-works including loading at works, but exclusive of packing. Packing material is not taken back.
 - 3.2 Prices do not include statutory VAT; this is itemised separately on the invoice, charged at the statutory rate on the date of invoicing.
 - 3.3 Unless otherwise agreed, payment must be made cash without deductions, free to the Contractor's payment centre. Contributions that are charged shall fall due for payment within eight days of the date of invoice. Drafts and checks are accepted only if this has been agreed upon. The negotiation of acceptance represents fulfilment of contract. The Client shall bear the costs of discounting and collection.
 - 3.4 The Client shall hold rights of offset against the Contractor's claims only if the Client's own counterclaims are undisputed or are covered by entered Court judgement. The same shall apply to the exercise of any right of retention on the merits of the Client's financial claims against the Contractor. The Client shall be entitled to exercise a right of retention in pursuance of such claims only to the extent that its counterclaim is based on the same contractual relationship.
 - 3.5 If the Contractor's service is agreed to be provided later than four months after the negotiation of contract, then the Contractor may increase pricing in line with changes in costs arising, and particularly those arising due to changes in wage tariffs and in prices for materials. If the increase comes to more than 5% of the agreed price, then the Client shall be entitled to withdraw from contract.



3.6 If the Client fails to fulfil its payment obligations, if it suspends payments or if a cheque or draft is not honoured, or if the Contractor learns of any substantial deterioration in the Client's finances to such an extent as to jeopardise payment claims, then the entirety of the Client's remaining debt shall fall due for payment, even where drafts not yet payable are in hand.

4. Delivery time; Delay in delivery

- 4.1 Binding delivery times and deadlines must be negotiated expressly and in writing. Statements including terms such as "approx", „around“ etc do not designate binding deadlines, but merely indicate the prospective delivery date. The expiry of the delivery period is counted only subject to the prerequisite that the Client has fulfilled its contractual obligations, and in particular that it has made any negotiated downpayments and that it has furnished such documents and forms of approval as it is required to provide. A further prerequisite is that the Client should fulfil the assembly conditions and prerequisites for installation. In the event of any such impediment upon delivery, the delivery time shall be extended by the period of the impediment plus a reasonable allowance for reorganisation. Any involved delivery deadline shall be set back accordingly.
- 4.2 Should the Contractor be prevented from the prompt fulfilment of its service obligation due to unforeseeable impediments which were unavoidable even with every reasonable precaution taken, then the delivery period shall be reasonably extended. The Client must be promptly notified of the delay in delivery, and of the reasons for the delay. Should the situation of impediment last for longer than three months, then either party shall be entitled to withdraw from contract.
- 4.3 If the delay in delivery arising as the Contractor's fault is attributable to negligent breach of contract, then it shall be liable only for compensation of the foreseeable loss typically arising, and such liability shall be restricted to a maximum of 15% of the value of the overall supply that – due to the delay – could not be used by the appropriate time or for the appropriate purpose. This does not affect the Contractor's liability arising in line with statutory provisions to the extent that the delay in delivery arises from gross or wilful negligence in breach of contract, and the same applies to culpability attaching to representatives or agents. Nor does it affect liability arising according to statutory provisions, to the extent that the underlying agreement is a fixed transaction or if the Client is entitled – due to delay in delivery arising as the Contractor's fault – to determine that it no longer has any interest in continued fulfilment of contract.

5. Transfer of risk

- 5.1 Risk shall transfer at latest on the date of dispatch to the Client of the components for delivery, even if part-deliveries are made or if the Contractor has also agreed to cover further services such as the costs of dispatch, installation or assembly. If desired by the Client, the consignment shall be insured by the Contractor – at the Client's expense – against theft, breakage, damage in transit, fire and water damage and any other insurable risks.
- 5.2 Should dispatch be delayed as the result of circumstances outside of the Contractor's control, then risk shall revert to the Client from the date of readiness for dispatch and notification of the same.

6. Guarantee

- 6.1 Should the delivery or the performance of the works be deficient, then the Contractor shall – at its own discretion – provide a satisfactory replacement or shall provide rectification. The Client must provide the time and conditions required to achieve rectification or replacement supply; otherwise the Contractor shall be exempt of the obligation to comply. Should there be delay (beyond a reasonable timeframe) in the rectification or in the replacement supply for reasons attributable to the Contractor, or should the attempt at rectification or replacement supply fail, then the Client may – at its own discretion – require reduction in payment or – if a building service is not covered by guarantee – reversal of the Agreement.
- 6.2 The Client's right to enter guarantee claims shall expire after two years. The guarantee period shall commence upon delivery (installation by Client) or upon commissioning/acceptance, or upon the decline to accept the contractual service for no legally valid reason.
- 6.3 We are liable for any faults in our supply, including the absence of assured characteristics. However, if our operating and servicing instructions are not followed, or if the items for supply are altered by the installation of foreign components, then all guarantee shall lapse if such alteration was a part of the cause for the loss. Guarantee is also excluded in the case of natural wear & tear and in the case of losses caused by ambient humidity, overheating or deficient set-up, unsuitable or inexpert utilisation; deficient assembly or commissioning on the part of the Client or on the part of third parties appointed by the Client; normal wear; deficient or negligent treatment; chemical, electrochemical or electrical influences and firing. The above-mentioned grounds for exclusion of guarantee shall not apply to the extent that they are the fault of the Contractor. The Client shall be responsible for expertly conducting servicing & maintenance tasks at regular intervals as required for the product being the subject of contract. To the extent that the Contractor provides servicing instructions, they must be adhered to. The Client must use suitable, expert personnel for operation & servicing. The Contractor provides no guarantee in the event that any defects are attributable to circumstances which would not have arisen if regular and correct servicing had been performed by expert personnel.
- 6.4 Should the Client directly or via third parties perform any modifications or repairs on the product being the subject of contract inexpertly or without the Contractor's prior approval, then no guarantee claims shall be entertained for any defects arising as a result of such actions.



6.5 Liability for compensation is excluded to the extent that such claims arise from negligent actions in breach of contract on the part of the Contractor, on the part of its representatives or on the part of its agents; to that extent, in particular, the Client shall not be liable for any damage not suffered by the product being the subject of contract. This does not affect liability arising under statutory provisions to the extent that the Client enters compensation claims arising from gross or wilful negligence, including gross/wilful negligence on the part of the Contractor's representatives or agents. Nor does it affect liability arising under statutory provisions to the extent that the Client enters compensation claims arising from gross or wilful negligence, including gross/wilful negligence on the part of the Contractor's representatives or agents. Furthermore, it does not affect liability for compensation on the grounds of non-fulfilment to the extent that the product being the subject of contract is deficient in an assured characteristic. The Contractor's liability for compensation is also excluded for loss of profit and other financial losses suffered by the Client and attributable to faults or shutdown in plant which would not have arisen had it been regularly and correctly serviced by expert personnel. This liability restriction shall not apply to the extent that the damage or loss arose due to gross or wilful negligence on the part of the Contractor, on the part of its representatives or on the part of its agents.

7. Overall liability

7.1 Liability for compensation further to the framework defined in paragraph 4 and 6 shall be excluded, irrespective of the legal nature of the claim entered. This shall apply in particular to compensation claims arising from debts in place at the stage of negotiation of contract, positive breach of contract or claims entered with criminal intent. It also applies to claims on the grounds of indebtedness in contractual negotiations, on the grounds of infringement of a subsidiary obligation and any other claims, for example those arising from the manufacturer's liability. This liability exclusion does not apply in respect of losses or damage arising due to gross or wilful negligence in breach of contract on the part of the Contractor, on the part of its representatives or on the part of its agents.

7.2 This does not affect compensation claims arising due to lack of possibility or lack of capacity. The same shall apply to the extent that liability is mandatory in pursuance of product liability provisions.

8. Acceptance

8.1 At the Contractor's written request, a site visit must be conducted for purposes of acceptance, the date of which must be within 10 working days following receipt of the request for acceptance. If the Client does not indicate any deadline, or if it prevents the site visit for acceptance by any other means, then the contractual service shall be deemed accepted effective from the 10th working day after receipt of the request for acceptance. The Client must be notified, in the request for acceptance, of the above-mentioned legal effect.

8.2 Should any ancillaries or minor services be missing, then this shall not prevent completion and implementation of the acceptance appointment. This shall not apply to the extent that the functionality of the product being the subject of contract is prevented due to missing or deficient services.

9. Reservation of ownership

9.1 The supplied product remains the Contractor's property pending settlement of payment of all claims together with any expenses & interest arising from the commercial relationship with the Client. Upon the Client's actions in breach of contract, with particular reference to arrears in payment, the Contractor shall be entitled to take back any goods supplied subject to reservation of ownership, and to perform further services only in return for a security payment or advance payment. The Client is obliged to release such goods. The Contractor's withdrawal of goods still subject to reservation of ownership shall not be held to entail withdrawal from contract unless this has been expressly declared in writing by the Contractor. Following the withdrawal of the product being the subject of contract, the Contractor shall be entitled to dispose of it; the proceeds of disposal (minus the costs of disposal) shall be offset against the Client's liability.

9.2 The Client shall be obliged to treat the supplied item carefully, for as long as it is the subject of the Contractor's ownership; in particular, the Client shall be obliged to provide adequate insurance for replacement new, at its own expense, to cover loss/damage by fire, water or theft. The Client must keep the purchased item in a satisfactory condition throughout the period of reservation of ownership, and in particular must also perform the necessary servicing tasks promptly and at its own expense.

9.3 The Client may neither sell, give away, pledge, nor assign the supplied item under security, nor make any other disposal of it. In the event of pledging, distraint or other third-party seizure, the Client must promptly notify the Contractor. The Client shall bear the costs of defence against such third-party seizures.

9.4 Should the value that can be realised for the securities appointed for the Contractor exceed its claims, in all, by more than 20%, then the Contractor shall release the corresponding extent of securities at the Client's request and at its discretion.

10. Compensation for impossibility attributable to Client

10.1 Should the Agreement not be executed, for reasons attributable to the Client, then the Contractor may require compensation of 20% of the agreed price without certified itemisation unless the Client can prove that in a specific instance the Contractor suffered no loss whatsoever or that its loss was less than the lump sum claimed.

10.2 The Contractor shall be entitled specifically to charge the loss suffered rather than the compensation lump sum.



11. Place of fulfilment; Jurisdiction

11.1 The place of fulfilment for all obligations arising under this Agreement shall be the Contractor's head office.

11.2 To the extent that the Client is a businessman, corporation or public legal special fund, then the place of jurisdiction applicable shall be the Contractor's head office. The Contractor shall also be entitled to bring action before a Court which is also competent in pursuance of the provisions of civil process regulations.

12. Applicable law

The legal relationship between the Contractor and the Client shall be governed by Swiss law.