

**IN THIS AGREEMENT "the Supplier"** means **Castle and Company**, a trading name of **Associated Cold Stores & Transport Limited**, a company incorporated and registered in England and Wales with company number 553154, whose registered office is at Linton Park, Linton, Maidstone, Kent ME17 4AB, and **"the Customer"** means that individual, business or company who contracts with the Supplier for the installation and or servicing of fire and safety equipment at the Customer's premises or other services as set out in the Specification ("**the Services**").

**1. IN THESE CONDITIONS**

**Contract:** means the Customer's purchase order and the Supplier's acceptance of it, or the Customer's acceptance of a quotation for Services by the Supplier under condition 2.1, together with the details set out in the Specification and these terms and conditions;

**Customer's Equipment:** means any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Services.

**Supplier's Equipment:** means any equipment, including tools, systems, cabling or facilities, provided by the Supplier or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Customer.

**Specification;** the details of the Services to be provided, the commencement date and duration of services, details of the Customer's premises, the price and payment terms and any other Contract details set out in the attached specification, or the Supplier's quotation. In the event of conflict between these terms and conditions and the Specification, the Specification shall prevail.

**VAT:** value added tax chargeable under English law for the time being and any similar additional tax

**2. APPLICATION OF CONDITIONS**

2.1 The Customer's purchase order, or the Customer's acceptance of a quotation for Services by the Supplier, constitutes an offer by the Customer to purchase the Services on these Conditions. No offer placed by the Customer shall be accepted by the Supplier other than:

- (a) by a written acknowledgement issued and executed by the Supplier; or
- (b) (if earlier) by the Supplier starting to provide the Services,

when a contract for the supply and purchase of the Services on these Conditions will be established. The Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order, confirmation of order or acceptance of quotation or specification or other document supplied by the Customer or implied by law, trade custom or practice or course of dealing shall not govern the Contract.

2.2 Quotations are given by the Supplier on the basis that no Contract shall come into existence except in accordance with condition 1. Any quotation is valid for a period of 30 days from its date, provided that the Supplier has not previously withdrawn it.

2.3 The Services supplied under the Contract shall be provided by the Supplier to the Customer in accordance with the Specification or from the date of acceptance by the Supplier of the Customer's offer in accordance with condition 2.1.

**3. SUPPLIER'S OBLIGATIONS**

3.1 The Supplier shall use reasonable endeavours to provide the Services in accordance in all material respects with the Specification.

3.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 The Supplier shall use reasonable endeavours to observe all health and safety rules and regulations, and any other reasonable security requirements that apply at the Customer's premises and that have been communicated to it in writing, provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.

**4. CUSTOMER'S OBLIGATIONS**

4.1 The Customer shall:

- (a) co-operate with the Supplier in all matters relating to the Services;
- (b) provide the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Customer's premises, office accommodation, data and other facilities as required by the Supplier;
- (c) provide to the Supplier, in a timely manner, such information as the Supplier may require in order to perform the Services and ensure that it is accurate in all material respects;
- (d) be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services;
- (e) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises;
- (f) ensure that all Customer's Equipment is in good working order and suitable for the purposes for which it is used and conforms to all relevant United Kingdom standards or requirements;
- (g) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of the Supplier's Equipment, and the use of the Customer's Equipment in relation to the Supplier's Equipment, in all cases before the date on which the Services are to start;
- (h) keep and maintain the Supplier's Equipment in good condition, and shall not dispose of or use the Supplier's Equipment other than in accordance with the Supplier's written instructions or authorisation.

- 4.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.
- 4.3 The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Supplier confirming such costs, charges and losses to the Customer in writing.
- 5. CHARGES AND PAYMENT**
- 5.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the charges as set out in the Specification, without any deduction or set off whatsoever. The Specification shall specify whether Services are provided on a time and materials basis, a fixed price basis or a combination of both.
- 5.2 Where Services are provided on a time and materials basis:
- (a) the charges payable for the Services shall be calculated in accordance with the Supplier's standard daily fee rates, as set out in the Specification and as amended by notice in writing by the Supplier from time to time;
  - (b) the Supplier's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day, worked between 8.00 am and 5.00 pm on weekdays (excluding public, bank and statutory holidays);
  - (c) the Supplier shall be entitled to charge an overtime rate of:
    - (i) 150% of the daily fee rate on any time worked between 5.00 pm and 12.00 pm on weekdays;
    - (ii) 200% of the daily fee rate on any time worked between 12.00 pm and 8.00 am on weekdays;
    - (iii) 150% of the daily rate on any time worked between 12.00 pm and 12.00 am on Saturdays;
    - (iv) 200% of the daily rate on any time worked between 12.00 am and 12.00 pm on Saturdays;
    - (v) 200% of the daily rate on any time worked on Sundays or public holidays calculated on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in condition 5.2 (b);
  - (d) all charges quoted to the Customer shall be exclusive of VAT, which the Supplier shall add to its invoices at the appropriate rate;
  - (e) the Supplier shall ensure that every individual whom it engages on the Services completes time sheets recording time spent on the Services, and the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice referred to in condition 5.2(f); and
  - (f) the Supplier shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this condition 5.2.
- 5.3 Where Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Specification. The total price shall be paid to the Supplier in instalments, as set out in the Specification. On completion of the Services, the Supplier shall invoice the Customer for the charges that are then payable, together with expenses, the costs of materials and VAT, where appropriate, calculated as provided in condition 5.4.
- 5.4 Any fixed price and daily rate set out in the Specification excludes:
- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Supplier for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Supplier; and
  - (b) VAT, which the Supplier shall add to its invoices at the appropriate rate.
- 5.5 The Customer shall pay each invoice submitted to it by the Supplier, in full and in cleared funds, within 30 days of date of invoice to a bank account nominated in writing by the Supplier.
- 5.6 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may:
- (a) charge interest on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of the Bank of England accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Customer shall pay the interest immediately on demand. The Supplier may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
  - (b) suspend all Services until payment has been made in full.
- 5.7 Time for payment shall be of the essence of the Contract.
- 5.8 All sums payable to the Supplier under the Contract shall become due immediately on its termination, despite any other provision. This condition 5.8 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 5.9 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

- 6. CONFIDENTIALITY AND THE SUPPLIER'S PROPERTY**
- 6.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier, its employees, agents, consultants or subcontractors and any other confidential information concerning the Supplier's business or its products which the Customer may obtain.
- 6.2 The Customer may disclose such information:
- (a) to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Customer's obligations under the Contract; and
  - (b) as may be required by law, court order or any governmental or regulatory authority.
- 6.3 The Customer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this condition 6.
- 6.4 The Customer shall not use any such information for any purpose other than to perform its obligations under the Contract.
- 6.5 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer (including the Supplier's Equipment) shall, at all times, be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.
- 7. LIMITATION OF LIABILITY**
- 7.1 Notwithstanding anything contained in these terms and conditions, the Supplier's liability to the Customer in connection with the Services, in contract, tort (including negligence or breach of statutory duty) or misrepresentation either prior to or during the provision of the Services shall be limited to the total price payable for the Services.
- 7.2 In no circumstances shall the Supplier be liable, in contract, tort (including negligence or breach of statutory duty) or otherwise for loss of profits, loss of business; depletion or loss of goodwill and/or similar losses; loss of anticipated savings; loss of goods; loss of contract; loss of use; loss of corruption of data or information; any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 7.3 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 7.4 Nothing in these Conditions limits or excludes the liability of the Supplier:
- (a) for death or personal injury resulting from negligence; or
  - (b) for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Supplier; or
  - (c) for any liability incurred by the Customer as a result of any breach by the Supplier of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.
- 8. DATA PROTECTION**
- The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Supplier in connection with the Services.
- 9. TERMINATION**
- 9.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if: (i) there is a breach by the other which is not remedied to the satisfaction of the party giving notice within 30 days of being given notice to remedy or in the case of non-payment within 7 days (ii) the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract (iii) if an interim order is applied for or made, or a voluntary arrangement is approved, or if a petition for bankruptcy order is presented or a bankruptcy order is made against the other, or if a receiver or trustee in bankruptcy is appointed, or a voluntary arrangement is proposed or approved or an administration order is made or a receiver or administrative receiver is appointed over any of the other's assets or undertakings, or a winding up petition is passed or presented (otherwise than for the purposes of solvent reconstruction or amalgamation) or if any circumstances arise which entitle the court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding up petition or make a winding up order or if the other takes or so offers any similar or analogous action on account of debt.
- 9.2 On termination of the Contract for any reason:
- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
  - (b) the Customer shall, within a reasonable time, return all of the Supplier's Equipment. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and
  - (c) the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.
- 9.3 On termination of the Contract (however arising), the following conditions shall survive and continue in full force and effect (a) confidentiality and supplier's property (b) limitation of liability (c) termination and (d) governing law.

- 10. FORCE MAJEURE**  
The Supplier shall have no liability to the Customer under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 11. VARIATION**  
11.1 The Supplier may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. The Supplier may, from time to time change the Services, provided that such changes do not materially affect the nature or quality of the Services and, where practicable, it will give the Customer notice of any change.  
11.2 Subject to condition 11.1, no variation of the Contract or these Conditions shall be valid unless it is in writing and signed by or on behalf of each of the parties.  
11.3 **Waiver**  
FAILURE BY THE SUPPLIER OT EXERCISE OR ENFOCE ANY RIGHT CONFERRED BY THE CONTRACT SHALL NOT BE DEEMED TO BE A WAIVER OF ANY SUCH RIGHT NOR OPERATE SO AS TO BAR THE ENFORCEMENT THEREOF ON ANY LATER OCCASSION.
- 12. SEVERANCE**  
12.1 If any provision of this Contract is held to be void or voidable or unenforceable in whole or in part, the other provisions of this Agreement and the remainder of the affected provisions shall continue to be valid.
- 13. ENTIRE AGREEMENT**  
13.1 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter  
13.2 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract),as provided in the Contract.  
13.3 Nothing in this condition shall limit or exclude any liability for fraud.
- 14. ASSIGNMENT**  
14.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, mortgage, subcontract or deal in any manner with all or any of its rights or obligations under the Contract.  
14.2 The Supplier may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.  
14.3 Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.
- 15. NO PARTNERSHIP OR AGENCY**  
Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 16. RIGHTS OF THIRD PARTIES**  
A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 17. NOTICES**  
17.1 Any notice required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery or by commercial courier to the other party to the registered office of the Supplier or the address set out in the Specification in relation to the Customer, or as otherwise specified by the relevant party by notice in writing to the other party.  
17.2 Any notice shall be deemed to have been duly received if delivered personally, when left at the address in accordance with 17.1 or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.  
17.3 A notice required to be given under the Contract shall not be validly served if sent by e-mail.
- 18. GOVERNING LAW AND JURISDICTION**  
18.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.  
18.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter.