

Terms of Service

1. SERVICE AGREEMENT

These Terms of Service, together with:

- a) each Quotation provided to You by Us, whether signed or not;
- b) any special conditions specific to the type of Equipment You have serviced;

set out the terms of the service agreement (the "Service Agreement") between You and Us. Any terms contained in any document supplied by You, including any terms in Your purchase order, will not form part of the Service Agreement.

2. DEFINITIONS

When We refer to the following terms in this document:

"Account Customer" means a person or entity that has an approved and current commercial trading account with Alliance Safety Equipment Pty Ltd.

"ACL" means the Australian Consumer Law which is contained in Schedule 2 of the Competition and Consumer Act 2010 (Cth).

"Cash Customer" means a person or entity who is required to pay the invoice by an approved cash payment method.

"Charges" means the Service Charge or any other charge specified in the Quotation or these Terms and Conditions.

"Claims" means any claims, demands, writs, summonses, actions, suits, proceedings, judgments, orders, decrees, damages, costs, losses and expenses of any nature whatsoever.

"Consumer" means a consumer as that term is defined in the ACL.

"Consumer Contract" has the same meaning as in the ACL.

"Consumer Guarantees" means the guarantees relating to the supply of goods and services contained in the ACL.

"Credit Application" means any application for a Commercial Credit Account completed by You.

"Credit Account" means any billing arrangement We have extended to You upon Our approval of the Credit Application.

"Environmental Laws" means any statute, regulations or other laws made or issued by a regulatory body or government regulating or otherwise relating to the environment including without limitation the use or protection of the environment.

"Equipment" means any equipment delivered to Us by You under the Service Agreement, including any associated or attached tools, accessories and parts.

"New Replacement Cost" means the cost to replace the Equipment with a new item of the same equipment, or if the same equipment is not available, then the cost to replace the Equipment with a new item of equipment of the same quality, function and capacity.

"Non Excludable Provision" has the meaning set out in clause 9.3.

"Quotation" means a quotation given by Us to You detailing the Equipment, service charges, labour costs and replacement parts costs, subject at all times to these Terms and Conditions.

"Regulatory Authority" means any public authority or government agency responsible for regulating the performance of electrical works.

"Related Body Corporate" has the same meaning as in the Corporations Act 2001.

"Relevant Documents" means:

- a) the Credit Application; and
- b) any Guarantee, Indemnity & Charge which guarantees all monies owing by You to Us.

"Repair Deadline" means the expected completion date for repairs.

"Service Charge" or "Service Charges" means the rates and charges payable by You for the Service of the Equipment.

"Small Business Contract" has the same meaning as in the ACL (as amended).

"Transport Movement" means the period of time during a delivery in which Equipment is being transported by road, air or sea.

"We/Us/Our" means Alliance Safety Equipment Pty Ltd (ABN 55 977 478 216) any Related Body Corporate of Alliance Safety Equipment Pty Ltd and their successors and assigns.

"You/Your" refers to the person, firm, organisation, partnership, corporation, trust or other entity receiving Services from Us. The reference to "You/Your" includes any of your employees, agents and contractors.

3. OUR SERVICE COMMITMENT TO YOU

Where we are authorised to do so, we agree to service Your Equipment and will:

- a) provide Services between 8:30 AEST until 4:30pm AEST on a day (not being a Saturday, Sunday or public holiday). Any Services provided outside Normal Working Hours may incur additional charges;
- b) provide the Services with due care, skill and diligence;
- c) use reasonable endeavours to repair or service the Equipment by the Repair Deadline, being 10 Business Days of the Equipment arriving at Alliance Safety Equipment, 49 Charters Towers Road, Hyde Park QLD 4812 (subject to the availability of parts);
- d) notify the customer promptly if the Equipment cannot be repaired or serviced by the Repair Deadline and specify a revised Repair Deadline.

4. SERVICE AND MAINTENANCE

4.1 We will provide You with a quotation for service or repair of the Equipment which will specify any labour charges, parts, material, replacement Equipment, environmental, waste disposal or other charges which apply.

4.2 Either party may give notice to the other party that they believe the Equipment is defective or not capable of repair and is not performing adequately in a manner which such Equipment is usually used or supplied, specifying in reasonable detail the matters or circumstances giving rise to that claim.

4.3 The parties agree to use best endeavours to consult and agree on an outcome in respect of the Equipment, the subject of the Equipment being defective, within 7 Business Days (which outcome may, without limitation, include repair or replacement of that Equipment).

5. OTHER CHARGES

In addition to the Service Charges, You agree to pay:

- a) for any consumables, fuel or trade materials We supply to You;
- b) if You require Us to deliver, collect or install the Equipment, the cost of delivery, collection or installation, as detailed in the Quotation. Such charge may include a waiting fee (charged at cost) in addition to the delivery and collection fee if the nominated time for delivery or collection of the Equipment is delayed by You;
- c) any stamp duty or GST arising out of this Service Agreement;
- d) any other applicable levies, fines, penalties and any other government charges arising out of the Service of Your Equipment;
- e) an environmental charge in relation to any item of Equipment as detailed in the Quotation;
- f) if You require operational guidance or training on the use of the Equipment and Our staff are available to provide this, the cost for the provision of these services at rates agreed with Us; and
- g) if You require urgent service work or repairs, an urgent administration fee.
- h) Freight charges related to the service of Your Equipment. Any reference to freight charges contained in the quotation is an estimate. We are not responsible for any difference that may occur between freight estimates contained in a Quotation and actual freight charges applicable at the time of shipment, and You shall incur and be responsible for all costs associated therewith.

6. DEBIT AUTHORITY FOR CASH CUSTOMERS

Cash Customers are required to provide a Credit Card Authority and You hereby authorise Alliance Safety Equipment to debit all fees and charges payable under the Service Agreement to Your card, whether owing now or in the future.

7. PAYMENTS FOR ACCOUNT CUSTOMERS

- a) We will issue an invoice to You at the completion of the Service work.
- b) You must pay all Service Charges and other fees, charges and costs that become due and payable under this Service Agreement by the due date on the Invoice.
- c) If You do not pay the invoice in full by the payment due date, We may charge, in addition to any other costs recoverable under this Service Agreement:
 - a) Interest, calculated monthly, on the total outstanding balance. The interest rate used to calculate the interest payable for the month is the 90-day Bank Bill Swap Rate published on the first business day of that month plus 2%; and
 - b) any costs and expenses (including any commission payable to any commercial or mercantile agents and legal costs) incurred by Us in recovering any unpaid amounts under this Service Agreement.

8. YOUR OBLIGATIONS TO US

8.1 Upon Your request, you will allow Us to enter Your premises and Service and/or repair Equipment during Our normal working

hours. If We cannot Service or repair the Equipment during normal working hours, then additional charges may apply.

- 8.2 Whenever You are moving the Equipment, You must ensure the safe loading, securing and transporting of all Equipment in accordance with all laws and manufacturer's guidelines. You (or any contractor You engage) must observe any safety directions advised by Us and/or the manufacturer of the Equipment to ensure its safe loading and handling.
- 8.3 You must use best endeavours to ensure that the Equipment is not contaminated with any hazardous substances. You must advise Us of any risks of hazardous substance contamination to the Equipment as soon as they become apparent. Where equipment may have been subjected to contamination, You must effectively decontaminate the Equipment, as well as provide Us with written details on the contamination processes applied. If, in Our opinion acting reasonably, the Equipment is not capable of being decontaminated, We have the right to refuse Service of the Equipment.

9. INDEMNITIES AND EXCLUSION OF LIABILITIES

- 9.1 Except as expressly provided to the contrary in this Service Agreement, all guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to this Service Agreement or its subject matter are excluded to the maximum extent permitted by law.
- 9.2 Nothing in this Service Agreement excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the Consumer Guarantees.
- 9.3 Where We are not able to exclude a guarantee, term, condition, warranty, undertaking, inducement or representation imposed by legislation in relation to this Service Agreement, ('Non-Excludable'), and We are able to limit Your remedy for a breach of the Non-Excludable Provision, then Our liability for breach of the Non-Excludable Provision is limited to (at Our election):
 - a) In the case of Goods:
 - i) the replacement of Goods or the supply of equivalent Goods;
 - ii) the repair of the Goods;
 - iii) the payment of the cost of replacing the Goods or of acquiring the equivalent Goods; or
 - iv) the payment of having the Goods repaired.
 - b) In the case of service, the supplying of the services, or the payment of the cost of having the service supplied again.
- 9.4 Subject to Our obligations under the Non-Excludable Provisions and to the maximum extent permitted by law, Our maximum aggregate liability for all claims under or relating to this Service Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, is limited to an amount equal to the fees paid by You under this Service Agreement.
- 9.5 We will not be liable to You for any consequential, indirect or special loss or damage, loss of actual or anticipated profits or revenue, loss of business, business interruption, wastes costs You have incurred, amounts that You are liable to Your customers for any loss suffered by third parties under or relating to this Service Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity,

under statute, under an indemnity, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.

9.6 You are liable for and indemnify Us against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Us and any environmental loss, cost, damage or expense) in respect of:

- a) personal injury;
- b) damage to property; or
- c) a claim by a third party.

Your liability under this indemnity is diminished to the extent that Our breach of the Service Agreement or Our negligence causes the liability, claims, damage, loss, costs or expenses.

9.7 Each indemnity in this Service Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Service Agreement. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Service Agreement.

9.8 We will not be liable to You for any acts or omissions of any person supplied by Us where that person is acting under Your direction and control during the Service Period and You indemnify Us against all liability, claims, damage, loss, costs and expenses (including, without limitations, legal fees, costs and disbursements on a full indemnity basis, whether incurred or award against Us and any environmental loss, cost, damage or expense) arising from or incurred in connection with such acts or omissions.

10. TERMINATION OF SERVICE AGREEMENT

10.1 Either party may terminate this Service Agreement immediately by giving notice to the other party, if:

- a) that other party breaches any term of the Service (including for breach of payment terms pursuant to clause 6 and 7) and fails to remedy the breach within 7 days of written notification of the breach; or
- b) that other party becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business, subject to any right You may have under the Corporations Act 2001.

10.2 We may terminate the Service Agreement for any other reason on 24 hours' notice.

10.3 We may terminate the Service Agreement immediately if You or any third party has made a false statement in, or breached any provision of the Relevant Documents.

10.4 These rights of termination are in addition to any other rights either party had under the Service Agreement and does not exclude any right or remedy under law or equity.

11. SECURITY

Except where clause 31 applies:

- a) as security for Your obligations under this Service Agreement, You hereby charge for the due and punctual payment and

performance of those obligations and liabilities, all of Your legal and equitable interest (both present and future) of whatsoever nature held in any and all real property;

12. EQUIPMENT THAT IS COLLECTED OR DELIVERED IN A DAMAGED AND/OR DEFECTIVE CONDITION

If You collect or receive the Equipment and find that it has parts missing, is broken, damaged and/or defective, You must notify Us within 24 hours after You collect or receive the Equipment. If you do not notify Us within this time period, We are entitled to assume that the Equipment You collected or received was in good order and condition.

13. PRIVACY

13.1 We will comply with the Australian Privacy Principles in all dealings with You.

13.2 We may need to collect personal information about You, including but not limited to, Your full name and address, drivers licence details, credit card details, date of birth, and credit or business history. You consent to Us using Your personal information in order to:

- a) fulfill functions associated with the Service of Equipment to You, including but not limited to assessing Your credit worthiness, or exercising Our rights under clause 11;
- b) provide services to You;
- c) enter into contracts with You or third parties, and
- d) to market to You and maintain a client relationship with You.

13.3 You also consent to Us disclosing Your personal information:

- a) to any credit provider or credit reporting agency for the purposes of obtaining information about Your consumer or commercial credit or business history or Your commercial activities or credit worthiness; and
- b) to Our service providers, contractors and affiliated companies from time to time to help improve and market Our services to You.

13.4 You have the right to access the personal information We hold about You.

13.5 Copies of our Privacy Policy, Credit Reporting Policy and Trading Terms and Conditions are available upon request or visit www.alliancesafety.com.au

14. FORCE MAJEURE

Neither party will be responsible for any delays in delivery or installation due to causes beyond their control including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations of governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages of or inability to obtain shipping space or land transportation.

15. SEVERABILITY

If any part of this Service Agreement becomes void or unenforceable for any reason, then that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.

16. GOVERNING LAW

The Service Agreement is governed by the laws of Queensland and each party submits to the non-exclusive jurisdiction of the courts of that State in respect of any proceedings arising in connection with the

Service Agreement. Each party waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

17. ENTIRE AGREEMENT

The covenants and agreements expressed or implied in the Service Agreement comprise the whole of the agreement between the parties and, except as expressly or otherwise provided, supersede all prior agreements and understanding, whether verbal or otherwise, between Us and You in relation to the Service of the Equipment. No additional terms and conditions (including any terms contained in any purchase order supplied by You) apply to the Service of the Equipment unless the Service Agreement is varied in accordance with clause 27.

18. NO RELIANCE

Subject to clauses 9.1 and 9.3, You acknowledge that neither We nor any person acting on Our behalf have made any representation or other inducement to You to enter into the Service Agreement and You have not entered into the Service Agreement in reliance on any representations or inducements (including in relation to the use of the Equipment) except for those representations contained in this Service Agreement.

19. VARIATION

To the extent that a variation to this Service Agreement is not detrimental to You, from time to time, We may vary this Service Agreement. If We intend to do so, We will give You 28 days' written notice of our varied terms. If You have reasonable grounds to believe the change will be detrimental to Your rights, You may terminate this Service Agreement without penalty within 28 days of receiving Our written notice. Any other variation of the Service Agreement must be agreed in writing by You and Us.

20. NO WAIVER OF RIGHTS

Subject to clause 11, no delay or omission by a party to exercise any right, power or remedy available to that party as a result of a continuing breach or default under the Service Agreement will impair any such right, power or remedy, nor will it be construed to be a waiver of that party's right to take action or make a claim in respect of a continuing breach or default.

21. REVIEW OF YOUR CREDIT APPROVAL

21.1 From time to time We may review any Credit Account We have granted to You without notice.

21.2 We may, at Our discretion, decide to withdraw credit for any reason, including but not limited to if Your circumstances change, You fail to make payments on time or You fail to use the Equipment in accordance with the terms of the Service Agreement.

21.3 If we withdraw credit, You may terminate this Service Agreement immediately by giving Us written notice. However, if You do so You must:

- a) pay amounts that were subject to credit in accordance with the terms on which that credit was provided; and
- b) pay all amounts due to Us under this Service Agreement, including Service charges until the Equipment is returned to Us and is in Our possession.

22. SIGNING THIS SERVICE AGREEMENT

22.1 The person signing or accepting the terms of any document which forms part of the Service Agreement or Relevant Documents for and on behalf of You hereby warrants that he or she has Your authority to enter into the Service Agreement on Your behalf and grant the security interests in connection with it

and is empowered to bind You to the Service Agreement and each security interest granted in connection with it.

22.2 Except where clause 23 applies, the person signing or accepting the terms of this Service Agreement indemnifies Us against all losses, costs and claims incurred by Us arising out of the person so signing this Service Agreement not in fact having such power and/or authority.

23. PROVISIONS OF THIS AGREEMENT EXCLUDED FROM CONSUMER CONTRACTS AND SMALL BUSINESS CONTRACTS

The following provisions will not apply if the Service Agreement is a consumer contract or a small business contract:

- i) Clause 10.2 (Termination on 24 hours' notice);
- ii) Clause 11 (Security);
- iii) Clause 22.1 (Signing this Agreement); and
- iv) Clause 24 (Assignment).

24. ASSIGNMENT

24.1 We may assign this Service Agreement to any third party without Your consent (including a Related Body Corporate).

24.2 Where you are an individual acquiring goods or services wholly or predominantly for personal, domestic or household use or consumptions, then we may assign this Service Agreement to a Related Body Corporate providing that Related Body Corporate has the financial and operational resources to comply with the terms of the Service Agreement. If You have reasonable grounds to believe the assignment will be detrimental to Your rights, You may terminate this Service Agreement without penalty by giving Us 28 days written notice that You wish to terminate the Service Agreement.

25. TELEMETRY DATA

25.1 Notwithstanding the provisions contained in clause 9.4 of this Agreement, We are not liable with respect to Your reliance on any telemetry data in relation to the Equipment ("Data").

- a) You acknowledge that we are not required to retain any Data and such Data may not be available for retrieval after the Service.
- b) We may disclose, from time to time, any Data to a third party who is not party to this Hire Agreement (for example, location and utilisation data with respect to the Equipment) and we are not required to obtain Your prior permission with respect to such disclosure nor will such disclosure constitute a breach of this Agreement by Us.

25.2 You release and indemnify us with respect to all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursement on a full indemnity basis, whether incurred or warded against Us and any environmental loss, costs, damage or expense) incurred in relation to Your use and reliance on any Data, arising with respect to the disclosure of Data to, and use of Data by, a third party (pursuant to clause 25.1b)).