

PART A – PERFORMANCE OF THE SERVICES

1. AFT shall perform the Services with due care, skill and diligence and in accordance with the applicable Australian Standards.
2. AFT shall communicate with the Client by and through AFT Representative, who shall have authority to bind AFT in respect of all matters arising out of or in connection with the Agreement.
3. Unless otherwise agreed in writing, AFT may rely on and treat the Documentation and the directions provided by the Client as accurate and correct.
4. AFT shall notify the Client if and to the extent AFT becomes aware that any information provided by the Client contains an ambiguity, error, omission, discrepancy, insufficiency or inconsistency or is otherwise inefficient to enable AFT to perform the Services.
5. If AFT becomes aware of any matter that will change the scope, character, quality, sequence or timing of the Services, then AFT shall promptly notify the Client of that matter.
6. If the Services are protracted by any cause beyond AFT control:
 - a. AFT will promptly notify the Client of the cause and, where possible, the anticipated extent of the delay;
 - b. The parties must meet to negotiate in good faith and agree a change to the Fee;
 - c. At that meeting, the parties must agree on a revised program;
 - d. If parties do not agree to a change to the Fee and a revised program, AFT may terminate the agreement effective immediately by giving the Client a notice.
7. If the Services are suspended for any reason by the Client or AFT:
 - a. AFT is entitled to payment of all Fees and Disbursements due under this agreement up to the date the Services are suspended.
8. AFT will provide what it considers to be industry-standard designs (based on the economy of construction and its experience with similar projects) unless instructed otherwise. Such instructions may involve a variation of our scope of work and additional fees. Calculations will be produced to satisfy our internal QA systems but will not be issued to third parties for review unless agreed otherwise.
9. Changes that require redesign and/or change in the scope of the Services may attract additional charges and we will advise you of these costs. Where the Client requests additional services from AFT that are not included in the original scope of services forming this Agreement, AFT is not obliged to proceed with such additional work until a revised agreement or fee variation is in place. This includes (but is not limited to) abortive work that arises due to fast-tracking the project prior to approvals or other design inputs being inadequately defined (e.g. commencing design development prior to development approval, commencement of detailed design prior to tenancy briefing, document issue prior to full co-ordination of all disciplines etc.). Should you require us to stop work for any reason we will invoice you for the work (or part thereof) completed to the date we cease work.

PART B – CLIENT RESPONSIBILITY

10. The Client shall promptly provide AFT with all relevant Documentation and instructions necessary and other information to enable AFT to provide the Services.
11. Unless otherwise agreed, the Client shall promptly obtain all access, approvals, authorities, licenses, inductions and permits necessary to enable AFT to provide the Services
12. The Client shall communicate with AFT by and through the Client's Representative, who shall have the authority to bind the Client in respect of all matters arising out of or in connection with the Agreement.
13. If the Client becomes aware of any matter that will change the scope, character, quality, sequence or timing of the Services, then the Client shall promptly notify AFT of that matter.
14. The Client shall cooperate with AFT and shall not interfere with or obstruct the performance of the Services
15. The Client shall ensure that adequate public liability and contract works insurances are obtained and maintained for the course of the Project. The policies shall name AFT as an insured and shall contain a waiver of subrogation co-insured
16. Overall co-ordination of the Project will be undertaken by the Client Representative.
17. All consultants' drawings in respect of the Project will be made available to AFT in AutoCAD or Revit-compatible electronic format.
18. The Client agrees to notify AFT of any details of the Project that the Client requires AFT to keep confidential.

PART C – PAYMENT TO AFT FOR THE SERVICES

19. In exchange for delivering the Services, the Client must pay to AFT the Fee.
20. Unless agreed otherwise in writing, AFT shall issue progress claims at monthly intervals and the Client shall pay each claim in full within 30 days of the date of the claim by direct credit, or by any other method as agreed to between the Client and AFT.
21. The Client shall pay all costs and expenses (including, without limitation, legal costs on an indemnity basis) incurred by AFT in pursuing any overdue payments.
22. The Client shall pay AFT the Fee and, unless stated otherwise, the Reimbursable Expenses, which will be charged at cost plus 20%, and may be invoiced by AFT as incurred.
23. AFT reserves the right to charge interest on overdue accounts on the daily overdue balance at the rate of 15% per annum.
24. AFT is entitled to suspend the provision of Services if any payment is overdue.
25. The Client must either pay to or reimburse AFT Disbursements:
 - a. Disbursements are subject to an additional 20% fee to cover AFT administration costs.
26. The Client agrees to pay AFT the Fee described in the Fee Proposal.

27. The Fee in the Fee Proposal is valid for the duration of the works provided works are commenced within 1 months of acceptance and completed with 12 months of acceptance. AFT reserve the right to review their position in relation to Fees should works not commence within this period. Any variation to the Fee will be notified in writing to the Client.
28. If the Client varies the scope, character, quality, sequence or timing of the Services, then AFT may vary the Fee accordingly.
29. All amounts expressed or determined to be payable under this Agreement are calculated and will be determined exclusive of GST unless otherwise expressly stated that GST is included.

PART D – SCOPE OF LIABILITY

30. AFT has limited liability and do not accept consequential losses. All claims must be made within the first twelve (12) months from date of engagement. Limited liability amount on
 - a. Performance or non- performance of the Services, whether under the law of contract, tort or otherwise, shall be the lesser of \$100,000.00 or the Fee
 - b. Project losses of services, whether under the law of contract, tort or otherwise, shall be the lesser or \$1,000,000.00 or the Fee
31. Consumer warranties are covered for twelve (12) months from date of engagement.
32. AFT shall not be liable to the Client for:
 - a. The acts, omissions or defaults of inadequate brief from the Client or other contractors and/or consultants engaged by the Client (including consultants or contractors engaged by AFT as agent for the Client);
 - b. Any changes, alterations or additions to the Services made by others without the express approval of AFT;
 - c. Any Services that are not performed in accordance with the Agreement, unless AFT is notified in writing of the non-performance within 1 year of the provision of those Services;
 - d. Any loss of use, opportunity or production, loss of interest, earnings or profit, holding or financial costs, business interruption or any indirect or consequential losses;
 - e. Any loss, damage or claim to the extent that such loss, damage or claim was caused or contributed to by the Client or its employees, agents, consultants or contractors;
 - f. Any financial cost to the Client for extra construction costs related to latent site conditions, unforeseen elements or general design improvements or alternative design solutions;
 - g. AFT accepts no liability for any new or pre-existing defects or Building Code and Australian Standards violations related to the current use of the Client's asset;
33. AFT including its employees, agents or sub-consultants are to be discharged from all liability in respect to the Services after the expiration of one (1) year from the date of final invoice. The client shall not be entitled to commence any action or claim whatsoever against AFT (or any employee, agent or sub-consultant of AFT).
34. If, and to the extent that, any of clauses 30, 31 or 32 is void as a result of the Australian Consumer Law, then AFT's liability for a breach of a condition or warranty is limited to the supplying of the relevant Services again or the payment of the cost of having the Services supplied again.

PART E – TERMINATION OF SERVICES / DISPUTES

35. This Agreement may be terminated at any time by mutual agreement in writing by the parties.
36. If either party commits a substantial breach of this Agreement, the other party may give to the party who committed the breach a written notice to show cause. A notice to show cause must state that it is a notice given under this clause, specify the alleged breach with reasonable details, require the party who committed the breach to show cause in writing why the party giving notice should not terminate this Agreement and must specify a date (which must be not less than 10 Business Days after the notice is served) by which the party who committed the breach must show cause.
37. Substantial breaches include suspension of work other than as permitted under this Agreement, failure to proceed with due care, skill and diligence and failure of the Client to pay AFT the Fee or any other amounts under this Agreement.
38. If the recipient of a notice to show cause fails to show reasonable cause why the other party should not terminate this Agreement within the time specified in the notice, the other party may, by further written notice terminate this Agreement.
39. Either party may terminate this Agreement without notice if the other party is subject to an Insolvency Event. This right is in addition to any other rights under this Agreement.
40. If this Agreement is terminated for any reason other than a breach of the Agreement by AFT, the Client must pay to AFT the applicable portion of the Fee for the Services performed prior to the date of termination together with all Reimbursable Expenses incurred by AFT prior to the date of termination which would have been payable had the Agreement not been terminated.
41. If within 28 days of the service of a notice of dispute, the parties cannot resolve the dispute with the subject of that notice, then either party may refer the dispute to the Australian Disputes Centre for determination by expert determination in accordance with the Guidelines for Expert Determination of the Australian Disputes Centre.
42. The costs of any independent person engaged to carry out the expert determination will, subject to any determination by the expert to the contrary, be borne by the parties equally. Each party must pay its own legal expenses in respect of the determination.

Australian Fire Technologies Pty Ltd – Terms of Engagement

PART F – INTELLECTUAL PROPERTY RIGHTS

43. All intellectual property created by AFT before the date of this Agreement remains vested in AFT.
44. All Intellectual Property Rights in all drawings, reports, specifications, bills of quantities, calculations and other documents or materials created by or for AFT in connection with the Services shall remain vested in AFT (AFT Materials).
45. AFT grants to the Client a non-exclusive, non-transferable, royalty-free licence to use, adapt, reproduce and publish any of the AFT Materials for the purposes of completing the Project only:
- No license is granted or implied under this agreement other than the express licence in this clause;
 - The license may be revoked by AFT if any invoice that AFT is entitled to submit under this agreement is overdue. The license will be automatically reinstated when AFT receives all overdue amounts; and
 - The licence is automatically revoked by any event or action by the Client or a third party that changes or attempts to change the Client's ownership or legal interest in the Site in any way, in which case the Client may request AFT's consent to reinstate the licence and AFT's consent must not be unreasonably withheld.
46. The Client warrants that it will not:
- Use the Design on another site;
 - Attempt to assign the licence to use the Design; or
 - Provide or disclose the Design to a third party unless AFT has given the Client prior written consent to do so.
47. The Client grants AFT an irrevocable, royalty-free licence to use and manipulate all Intellectual Property Rights in any information, documents and other particulars which the Client provides to AFT to the extent reasonably necessary for AFT to perform the Services.
48. AFT must be attributed in all information containing a 2- or 3- dimensional representation of the Project, or a part of it, whether the Project is complete or not.

PART G – SPECIALIST ASSISTANCE

49. If AFT considers it appropriate to do so, they may, with or without the Client's prior approval, which shall not be unreasonably withheld, engage another consultant to assist in specialist areas.
50. Unless otherwise specified these costs will be treated as outgoings and they will be charged at cost plus 20%.
51. The Client agrees to indemnify and keep indemnified AFT in respect of any fees, costs, expense and any claim (including all reasonable legal costs and expenses) whatsoever in relation to work performed by the consultant.
52. By appointing a consultant, AFT does not assume a duty of care and gives no warranty, guarantee or representation about the professional capacity, or reliability of the consultant.

PART H – COMMENCEMENT OF AGREEMENT

53. This Agreement shall be deemed effective on and from the date of commencement of services by AFT or the date on which both parties have signed an Agreement, whichever is earlier.

PART I – NOTICES

54. A notice required or permitted to be given by one party to the other under this Agreement must be in writing, signed by the party giving it or their duly appointed solicitor, and is deemed as being duly given if:
- Personally delivered to that party;
 - Sent by pre-paid post, addressed to the other party; or
 - Transmitted by email, to the other party's email address.
55. A notice given to a party in accordance with this clause is deemed to have been duly given and received:
- At the time of delivery;
 - On the second Business Day after the day on which it is posted; and
 - On the day of transmission, where the person giving the notice has received no indication in any form that the notice has not been received, however, if such delivery is later than 5.00pm, or not on a Business Day, at 9.00am on the next Business Day.
56. The address of a party is the address or number set out in the Agreement or another address which that party may from time to time give notice of to the other party.

PART J – CONFIDENTIALITY

57. Each party agrees that it will not use Confidential Information in any way that might prejudice its confidentiality.
58. The Confidential Information does not include information which:
- Is generally available in the public domain otherwise than as a result of a breach of this Agreement; or
 - Was known by the recipient party prior to the disclosing of the information to it.
59. Despite this clause, either party may make such disclosures in relation to this Agreement as is reasonably necessary:
- To its professional advisers upon those persons undertaking to keep confidential any information disclosed; or
 - To comply with any applicable law or the requirement of any regulatory body.

PART K – FORCE MAJEURE

60. AFT is not liable or in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of AFT.
61. If such circumstances continue for a continuous period of more than 60 days, either party may terminate this Agreement by written notice to the other party.

PART L – MISCELLANEOUS

62. This Agreement is governed by the laws of Queensland, and the parties submit to the non-exclusive jurisdiction of the Courts of Queensland.
63. This Agreement may not be varied or amended except in writing signed by the parties.
64. If any provision of this Agreement is or becomes legally ineffective, under common law or legislation, the ineffective provision may be severed from this Agreement which otherwise continues to be valid and operational. The parties will agree on an arrangement having a legal and economic effect which will be as similar as possible to the ineffective provision.
65. This Agreement does not create a relationship of employment, agency or partnership between the parties.
66. Any consent, approval, request, notification or notice given or required under this agreement must be given in writing (which includes email).
67. Variations to this agreement agreed between parties will not be effective unless and until put in writing (which includes email).
68. This agreement applies to all services delivered by AFT before the formal execution of this agreement.
69. If a notice is sent by email after 5.00PM, the email will be deemed to have been delivered at the beginning of the next Business Day.

PART M – DEFINITIONS

70. Agreement means this agreement for the provision of consulting services and includes these Terms and Conditions and the Fee Proposal.
71. Business Day means a day that is not a Saturday, Sunday or public holiday in Brisbane, Queensland.
72. Client means the Client described in the Fee Proposal.
73. Client Representative means the person appointed by the Client from time to time to act as the Client's representative to exercise the Client's functions under this Agreement.
74. Cost of Works is the final cost of all work designed, specified or scheduled by AFT, including all work designed, specified or scheduled by Specialist Consultants coordinated by AFT, including:
- The final adjusted contract price (excluding GST) in accordance with a contract for the project, plus;
 - The equivalent final cost (excluding GST) of work or items supplied by the Client to the contractor (as if provided by the contractor under the contract), plus;
 - The final cost (excluding GST) of any part of the Project provided under a contract other than the Contract.
75. Documentation means all information supplied to AFT by electronic or other means for the purposes of this Agreement.
76. Disbursement means the disbursements payable noted in the Fee Proposal.
77. Fee means the fee payable for the Services pursuant to the Fee Proposal and does not include any additional fee for additional services.
78. Fee Proposal means a submission provided to the Client which outlines, among other things, the Services and the Fee.
79. Insolvency Event means any one or more of the following circumstances:
- Either AFT or the Client informs the other party in writing or creditors generally that it is or may become insolvent, unable to pay its debts when due and payable or financially unable to proceed with this Agreement;
 - Execution is levied against AFT or the Client by a creditor which is not satisfied, set aside or withdrawn within 14 days after execution is so levied;
 - AFT or the Client suspends payment of its debts;
 - The Client, being an individual person or a partnership including an individual person: commits an act of bankruptcy; has a bankruptcy petition presented against him or her or presents his or her own petition; is made bankrupt; makes a proposal for a scheme of arrangement or a composition; has a deed of assignment or deed of arrangement made, or accepts a composition; is required to present a debtor's petition; or has a sequestration order made under Part X of the Bankruptcy Act 1966 (Cth); and
 - AFT or the Client, being a corporation: enters into a deed of company arrangement, scheme of arrangement or composition with creditors; has (voluntarily or otherwise) a receiver, receiver and manager, controller or administrator, liquidator or provisional liquidator appointed to it; has a winding up order made against it or an application for a winding up order against it made to the court and not stayed within 14 days; resolves by special resolution that it be wound up voluntarily or placed under official management; or has any of its property taken possession of by a mortgagee.
80. Intellectual Property Rights includes property and rights in respect of or in connection with trademarks, patents, copyrights, processes know-how, registered designs or other like rights or any right to apply for registration of any of the former.
81. Project means the project carried out by the Client for which the Services form part of.
82. AFT Representative means the person appointed by AFT from time to time to act as AFT's representative to exercise AFT's functions under this Agreement.
83. Reimbursable Expenses means all payments made to third parties which are necessary to enable AFT to carry out the Services.
84. Services means the works to be carried out by AFT for the Client in connection with the Project pursuant to the Fee Proposal.
85. Site means the location identified in the Fee Proposal.
86. The Design is all Services, design concepts, drawings, and documents produced or delivered.

These terms of engagement together with the Fee Proposal constitute the entire agreement between the Client and Australian Fire Technologies Pty Ltd (AFT). If there is any inconsistency between the Fee Proposal and this Agreement, the Fee Proposal overrides the provisions of the Agreement to the extent of the inconsistency.