

**International Fire Consultants Ltd** (part of Kiwa UK Group)

Standard Terms and Conditions

May 2022



**Partner  
for  
Progress**

Confidence in Fire Safety  
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## Standard Terms and Conditions

This Agreement sets out the terms upon which Consultant shall provide services to existing clients of the Company and to any new clients introduced and or transferred to the Company during the consultancy period ("the Services").

### 1. Interpretation

#### 1.1. In these conditions:

**"Client"** means the person, firm or company who accepts a quotation of the Company for the provision of the Services or whose order for the Services is accepted by the Company.

**"Company"** means International Fire Consultants Limited and its subsidiaries (registered in England and Wales under Company number 02194010).

**"Conditions"** means the standard terms and conditions of business set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Client and the Company.

**"Contract"** means the contract for the provision of the Services comprising the Fee Proposal and these Conditions.

**"Fee Proposal"** means the Company's Fee Proposal (whether written or oral) which shall be subject to the Conditions save to the extent of any inconsistencies which will be resolved in favour of the terms of the Fee Proposal.

**"Sample"** means any material, item, product, or compound supplied by the Client to the Company in order that it can fulfil its obligations under the Contract.

**"Intellectual Property Rights"** means, but is not limited to, all patents, registered and unregistered designs, copyrights, design rights, registered and unregistered trademarks, know-how and all other forms of intellectual property wherever in the world enforceable.

**"Confidential Information"** means all information which a party may have or acquired before or after the date of the Contract which relates to a party's business, products, developments, trade secrets, know-how or other matters connected with the Services and information concerning a party's relationships with actual or potential clients, customers or suppliers and all other information designated as confidential or which ought reasonably to be considered confidential.

**"Losses"** means all losses, liabilities, claims, costs, expenses, damages, actions, awards, penalties and/or fines, obligations and also includes all losses, liabilities, costs, and expenses (including legal fees on a full indemnity basis) in relation to or resulting from any demands, claims or proceedings.

**"Price"** means the price stated in the Fee Proposal, or otherwise agreed with the Client together with all other sums due pursuant to the Conditions.

**"Output Material"** means data, drawings, plans, reports, documents, test results and other information prepared by the Company in relation to the Services.

**"Services"** means the provision of consultancy, assessment, testing, results, survey, training, inspection, advice and/or other services which the Company undertakes to perform or provide for the Client under the Contract.

“Writing” includes letter, electronic mail, facsimile transmission, and comparable means of communication.

- 1.2. Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted, or extended at the relevant time.
- 1.3. The headings in these Conditions are for convenience only and shall not affect their interpretation.

## 2. Basis Of The Sale

- 2.1. The Fee Proposal constitutes an offer by the Company to provide the Services subject to the Conditions. The Company shall provide the Services and the Client shall pay for the same in accordance with any written Fee Proposal or tender of the Company which is accepted by the Client, or any written order of the Client, which is accepted by the Company, subject in either Case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions.
- 2.2. The Company warrant that in the performance of services and any additional services instructed, that we have exercised and will continue to exercise all reasonable skill and care to be expected for the Services.
- 2.3. The Fee Proposal and the Conditions shall prevail over any terms or conditions contained or referred to in any correspondence, order, documentation submitted by the Client or elsewhere. Further, no condition, statement or representation contained in any advertisement, website or brochure or in any trade or promotional circular or other literature, nor the terms or conditions of any trade association or other body, or which would or might but for this sub-paragraph be implied or incorporated by custom or trade, usage, negotiations, course of dealing or otherwise shall be deemed to be incorporated in the Contract and all of the same are hereby expressly excluded from the Contract.
- 2.4. No Variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Client and the Company.
- 2.5. The Company’s employees or agents are not authorised to make any representations concerning the Services unless confirmed by the Company in Writing. In entering into the Contract, the Client acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed.
- 2.6. Any typographical, clerical, or other error or omission in any sales literature, Fee Proposal, price list, acceptance or offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.
- 2.7. If any aspect or element of the Services is, or is likely to be, the subject of or relevant to legal proceedings, this fact must be notified to the Company by the Client in writing when requesting a Fee Proposal. If that fact is not disclosed to the Company at that stage, the Company may not, in its absolute discretion, be prepared to provide expert testimony.

## 3. Orders And Specifications

- 3.1. No order submitted by the Client shall be deemed to be accepted by the Company unless and until confirmed in Writing by the Company’s authorised representative.
- 3.2. The Client shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Client and for giving the Company any necessary information relating to the Services within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
- 3.3. The Company reserves the right to make any changes in the specification of the Services which are required to conform with any safety or other statutory requirements at any time during the term of the Contract.
- 3.4. No order which has been accepted by the Company may be cancelled by the Client except with the agreement in Writing of the Company and on condition that the Client shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), professional fees, damages, charges and expenses incurred by the Company as the result of cancellation.

#### **4. Assignments And Sub-Contracting**

- 4.1. The Company will perform the Services using its own staff. However, the Company reserves its right to sub-contract the whole or part of the work and the Company is not obliged to inform the Client of the same.
- 4.2. The Contract is personal to the Client which may not assign, delegate, licence, hold on trust or sub-contract all or any of its rights or obligations under the Contract without the Company's prior written consent.

#### **5. Price Of Services**

- 5.1. The price of the Services shall be the Company's quoted Price. All prices quoted are valid for 60 days only from the date of the Fee Proposal or until earlier acceptance by the Client, after which time they may be altered by the Company without giving notice to the Client.
- 5.2. The Company reserves the right by giving notice to the Client at any time before commencement of or during the Services, to increase the Price of the Services to reflect any increase in the cost to the Company which is due to any delay caused by any instructions of the Client or failure of the Client to give the Company adequate information or instructions.
- 5.3. The Client agrees to pay reasonable travel and subsistence expenses incurred by the Company unless the Fee Proposal confirms that these expenses are included in the Price.
- 5.4. Value Added Tax ('VAT') will be added to all charges at the rate applicable at the tax point at the time of invoice. Where the Client is registered for VAT within the European Union but outside the United Kingdom the work will be zero-rated provided the Company has been notified of the Client's VAT registration number. If the Client is not registered or the Company has not been so notified, VAT at the rate applicable at the tax point shall become payable.
- 5.5. The Company is not responsible in determining whether the provision of Services to the Client is liable to VAT and if no VAT is levied on the Company's invoice(s) the Client indemnifies and will continue to indemnify the Company against any such charge requested by the UK VAT authorities or UK Inland Revenue.

#### **6. Obligations Of Client**

- 6.1. The Client shall provide with each Sample (if applicable) a unique purchase order or unique reference or unique authorisation with sufficient detail to allow the Company to identify each Sample and relate it to a specific Fee Proposal and Service and the Company shall be entitled in good faith to rely upon such purchase order or reference provided to carry out the Service.
- 6.2. Except where clause 17 applies, the Client may reproduce or replicate any Output Material in the form provided by the Company but shall not, without the written consent of the Company, reproduce or replicate any Output Material which has been modified from the form provided by the Company.
- 6.3. The Client shall be bound to inform the Company in writing prior to the Company carrying out any Service on a Sample that is of a dangerous or unstable nature and provide instruction on the safe handling of the Sample. For example, a dangerous or unstable Sample will include but is not limited to radioactive materials, biologically active or hazardous substances, reducing or oxidising agents, volatile organic compounds, materials considered to be toxic, harmful, corrosive, irritant, explosive, flammable, carcinogenic or reproductive hazards or materials that are dangerous to the environment.
- 6.4. The Client shall indemnify the Company from and against all Losses suffered by the Company, including, without prejudice to the generality of the foregoing, all damage to the Company's property and all claims in respect of injury to or deaths of any of the Company's employees, subcontractors or agents or of any third party, directly or indirectly arising from or in connection with the failure of the Client to inform the Company of the dangerous or unstable nature of a Sample and/or to provide adequate instruction on the safe handling of the Sample. Where the Client informs the Company that a Sample is of a dangerous or unstable nature, the Company may, in its absolute discretion, elect not to carry out the Service and to terminate the Contract whereupon the provisions of Condition 16.2 will apply, save that the Company shall have no liability for its termination of the Contract.

## 7. Terms Of Payment

- 7.1. Subject to any special terms agreed in Writing between the Client and the Company, for example interim or stage payments and where the provisions of clause 17 apply, the Company shall be entitled to invoice the Client for the total price of the Services under the Contract at any time after commencement of the same.
- 7.2. The Company shall also be entitled to invoice the Client for any part of the fee on account and during the project, where deemed necessary.
- 7.3. The Client shall pay the price of the Services inclusive of VAT where applicable (but without any other deduction) within 30 days of the date of the Company's invoice in the currency defined in the Fee Proposal. Receipts for payment will be issued only upon request.
- 7.4. Time of payment is of the essence to the Contract. If the Client fails to make any payment on the due date, then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
  - 7.4.1. cancel the Contract or suspend any further provision of the Services to the Client with immediate effect. Any such period of suspension shall be disregarded for the purpose of contractual time limits previously agreed for the completion of the Services,
  - 7.4.2. charge the Client interest (both before and after any judgement) on the amount unpaid, at the rate of 4% per annum above (Barclays Bank Plc) base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest), and
  - 7.4.3. charge the Client the costs of recovery of any outstanding amount including legal costs and disbursements and charge any Bank charges incurred on representing cheques or requesting special clearance thereof.

## 8. Force Majeure

- 8.1. The Company shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Services, if the delay or failure was due to any cause beyond the Company's reasonable control, including but not limited to acts of God, strikes, lock outs or other labour disputes (whether or not relating to either party's workforce), accidents, war, national emergency, acts of terrorism protects, riot, civil commotion, fire explosion, flood, epidemic, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties of equipment or services.

## 9. Accuracy

- 9.1. Any Services provided by the Company comprising but not limited to advice data, results and conclusions are based on information supplied by the Client and evidence known at the time to the Company. The Client shall supply all necessary information, data, drawings, and items necessary to the timescale required by the Company and shall arrange, at the Client's expense and risk, for the conveyance of all Samples.
- 9.2. All Output Material provided, conclusions reached, or recommendations made by the Company rely on scientific and engineering concepts disciplines and procedures used or adopted by the Company and the Company does not warrant that the same will necessarily be achieved by other parties, or that such conclusions or recommendations will necessarily be valid in circumstances other than those of which the Company has direct experience. Any Services provided are believed to be accurate and reliable subject to the limitations of normal experimental uncertainties.
- 9.3. The Company is not obliged after the carrying out of any Services to inform the Client of any subsequent changes to industry procedures, policies and/or Statutory Requirements which may come into force from time to time.

- 9.4. If any changes to industry procedures, policies and/or Statutory Requirements are introduced after Services have been provided to the Client the Company will not be liable for these changes or any effect they have on the previous Services provided to the Client.

## **10. Confidentiality And Intellectual Property**

- 10.1. The property and any copyright, design rights or other Intellectual Property Rights in any Output Material shall, unless otherwise agreed in Writing between the Client and the Company, belong to the Company and except where the provisions of clause 17 apply, the Client shall be entitled to use the Output Material for the purposes of utilising the Services by way of an exclusive licence, subject to payment in full of all sums payable under this Contract.
- 10.2. Any information provided by the Client which is so designated by the Client and any Output Material shall be kept confidential by the Company and all Output Material or other information provided by the Company which is so designated by the Company shall be kept confidential by the Client: but the foregoing shall not apply to any documents or other materials, data or other information which either party is required to disclose by law or by statutory requirements or which are public knowledge at the time when they are so provided by either party, and shall cease to apply if at any future time they become public knowledge through no fault of the other party.
- 10.3. The Output Material is prepared exclusively for the Client for the purposes of the Contract and may not be used by any third party without the written consent of the Company. The Company is not liable for any Output Material so used and the Client shall indemnify the Company against all liability and loss, damages and expenses of any kind whatsoever awarded against or incurred by the Company in connection with any claims by third parties in connection with such use of the Output Material.
- 10.4. The Client shall not by any act or omission do or authorise any third party to do anything which would or might invalidate or be inconsistent with any Intellectual Property Rights, design rights or copyright of the Company in the Output Material.
- 10.5. The Client shall promptly notify the Company in Writing of any actual or suspected infringement of the Company's Intellectual Property Rights, design rights or copyright in the Output Material which comes to the Client's notice.
- 10.6. While the Company is not aware, to the best of its knowledge, that any Output Material is in infringement of any design rights, copyright, or other Intellectual Property Rights of any third party, it does not give any particular warranty in this respect.

## **11. Warranty And Limitation Of Liability**

- 11.1. Except as expressly provided in this Contract and so far as is permitted by statute all warranties, conditions, guarantees or representations, express or implied, statutory or otherwise are hereby excluded and the Company shall not be liable for any loss, damage, expense or injury of any kind whatsoever, consequential or otherwise, arising out of or due to or caused by any defects or deficiencies of any sort in the Services, (including any delay in providing or failure to provide the Services) whether such defects or deficiencies are caused by the negligence of the Company or its employees or agents or otherwise.
- 11.2. The Services are provided to and for the benefit of the Client exclusively and all collateral warranties are hereby excluded. The Company shall not be liable to any third party who seeks to use the Services without the Company's express written permission for any loss, damage, expense or injury of any kind whatsoever, consequential or otherwise, arising out of or due to or caused by any defects or deficiencies of any sort in the Services whether such defects or deficiencies are caused by the negligence of the Company or its employees or agents or otherwise.
- 11.3. The Company shall have no liability to the Client for any loss, damage, costs, expenses, or other claims for compensation arising from any instructions supplied by the Client which are incomplete, incorrect, inaccurate, or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Client.
- 11.4. No liability is accepted by the Company for loss or damage howsoever caused to any Samples submitted for examination by the Client. Following examination of the Samples the remainder will only be returned to the Client upon written request. Unless the Company receives notice in Writing to the contrary the

Company shall be entitled to dispose of all Samples within 6 months of the completion of the Contract. All costs relating to the return or disposal of Samples shall be charged to the Client.

- 11.5. Nothing in this Contract shall limit or exclude the Company's liability for death or personal injury resulting from the negligence of the Company or that of its employees or agents.
- 11.6. Except as required under 11.5, the entire liability of the Company under or in connection with the Contract shall not exceed twice the Price for the provision of the Services under the Contract.
- 11.7. The Client shall indemnify and keep the Company indemnified against all costs, expenses, damages, or other losses of any kind whatsoever incurred or suffered by the Company as a result of any claims made against the Company due to the infringement of any regulation, enactment, or legislation by the Client.
- 11.8. The Client is under a duty to mitigate any losses howsoever caused.
- 11.9. The Client acknowledges and agrees that the limitation of liability contained in this clause is:
  - 11.9.1. fair and reasonable,
  - 11.9.2. reflected in the level of charges and of insurance cover carried by the Company,
  - 11.9.3. just and equitable having regard to the extent of the responsibility of the Company for any loss or damage suffered, on the basis that all other consultants, contractors, and any subcontractors who have a liability shall be deemed to have provided contractual undertakings to the Client on terms no less onerous than those contained in this Contract

## 12. Publicity

- 12.1. The Company's name shall not be used in connection with the Contract for purposes of publicity promotion or advertising without the prior written approval of The Company.

## 13. Non-Solicitation Of Staff

- 13.1. The Client shall not solicit or entice away or seek to entice away from the Company to work for its business, whether as principal, agent, partner, director, employee or consultant, any person who is or was employed or engaged by the Company in providing the Services at any time during the term of the Contract or for 6 months thereafter.
- 13.2. Should the Client be in breach of clause 13.1 above, then it shall pay to the Company a sum to cover the Company's reasonable losses in this matter.

## 14. Data Protection Act

- 14.1. The Parties both warrant that they will comply with the provisions of the applicable UK, EU and any other data protection laws including the General Data Protection Regulation (Regulation EU 2016/679) ("GDPR"), and any other applicable data protection laws ("Data Protection Law"), applicable to the Engagement. The Parties acknowledge and agree that where a Party processes Personal Data under or in connection with this Agreement, it alone determines the purposes and means of such processing as a Data Controller (as defined in GDPR).

## 15. Dispute Resolution And Applicable Law

- 15.1. Any dispute or difference arising out of or in connection with this Contract may be referred, at the option of either party, to adjudication. The person who is to act as the adjudicator shall be agreed between the Client and the Company.
- 15.2. Notwithstanding clause 15.1 above the Company can refer any disputes relating to its Intellectual Property Rights, design rights, copyright, and late payment of monies due under the Contract, to the Courts without having recourse to the adjudication process.
- 15.3. The Contract shall in all respects be subject to and construed in accordance with English Law and the Client submits to the exclusive jurisdiction of the English Courts.

## 16. Events Of Default, Termination, Repossession And Suspension

- 16.1. The Consultant may terminate its employment under this Contract at any time by giving 7 working days' notice in writing to the Client. On termination in accordance with this clause, the Client shall pay the Company:
- a. Any amount properly due for payment under the Contract at the date of termination, and
  - b. A fair and reasonable proportion of the next instalment of the Fee (where relevant), together with any expenses and disbursements commensurate with the Services properly performed at the date of termination.
- 16.2. The Company shall notify the Client forthwith in writing if:
- 16.2.1. the Client fails to pay any sums when due or otherwise materially breaches any of the terms of the Contract or any other terms agreed with the Company, or
  - 16.2.2. the Client is, or for statutory purposes is deemed to be or appears to be unable to pay its debts as they become due, or the value of its assets is less than the amount of its liabilities (including contingent and prospective liabilities) or the Client otherwise becomes insolvent, suspends payment, or threatens to do so or ceases to trade, or
  - 16.2.3. the Client makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or
  - 16.2.4. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Client, or
  - 16.2.5. the Client ceases, or threatens to cease, to carry on business, or
  - 16.2.6. where the Client is an individual or partnership, he or any partner dies, or
  - 16.2.7. outside England and Wales anything corresponding to any of the above occurs, or
  - 16.2.8. the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Client.
- 16.3. In all the above cases the Company may (at its discretion, and without prejudice to its other rights hereunder or otherwise) at any time by notice to the Client do any one or more of the following:
- 16.3.1. Terminate its employment under the Contract and other any other contract(s) with the Client with immediate effect,
  - 16.3.2. declare immediately due, payable, and interest-bearing under clause 7.3.2. any amounts owed by the Client to the Company under any contract,
  - 16.3.3. suspend the provision of any Services to the Client.
- 16.4. The implementation by the Company of any of the provisions set out in clause 16.3 does not prejudice or affect any right of action or remedy which has accrued or shall accrue to the Company thereafter.

## 17. Specific Terms For The Provision Of Training

- 17.1. The conditions of this clause 17 are applicable to all Fee Proposals for any kind of training whatsoever provided by the Company as part of the Services and shall prevail where there are any conditions within the Contract that are inconsistent with any of the provisions of this clause 17.
- 17.2. The total price of the Services in respect of any Fee Proposal to provide training as part of the Services will be invoiced by the Company and must be paid by the Client prior to any training taking place. The Company



reserves the right to cancel any pre-arranged training on the basis that the total price of the Services has not been paid.

- 17.3. Any Output Materials provided and/or used during the course of any training remains the property of the Company and the Client is specifically prohibited from reproducing any Output Material provided to it as part of those Services.
- 17.4. Where applicable the Company will issue appropriate accreditation to the Client and/or its staff evidencing their attendance at a training event. The Company will endeavour to provide the Client with any specific requirements related to accreditation (where relevant or applicable) prior to the training commencing however the issuance of any accreditation to the Client and/or any individual is at the absolute discretion of the Company and the Company makes no guarantee whatsoever that the Client's and/or any individual's attendance will result in the issuance of any accreditation.
- 17.5. The Company has no liability whatsoever or howsoever arising in respect of the Client's interpretation of any of the information provided as part of any training.

## **18. General**

- 18.1. Any notice required or permitted to be given by either party to the other under these Conditions shall be served by recorded delivery only addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 18.2. No waiver by the Company of any breach of the Contract by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision. A waiver, whether it is a waiver of a breach of the Contract or a waiver of the Company's rights under the Contract, will only be effective if it is confirmed in Writing by the Company. The Company's employees or agents are not authorised to make any waivers, of any kind, unless confirmed by the Company in Writing.
- 18.3. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder or the provision in question shall not be affected thereby.
- 18.4. The parties acknowledge that, except as specifically provided in this Contract it is not their intention that any third party shall be entitled to enforce any term of this Contract which may confer a benefit on that third party, whether any such entitlement would, but for this provision, arise under the Contracts (Rights of Third Parties) Act 1999 or otherwise.