

Nelson Alarms Security Systems Limited T/A Nelson Alarms Security – Terms & Conditions of Trade

1. **Definitions**
 - 1.1 "Contract" means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
 - 1.2 "Nelson Alarms" means Nelson Alarms Security Systems Limited T/A Nelson Alarms Security, its successors and assigns or any person acting on behalf of and with the authority of Nelson Alarms Security Systems Limited T/A Nelson Alarms Security.
 - 1.3 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Nelson Alarms to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client's executors, administrators, successors and permitted assigns.
 - 1.4 "Goods" means all Goods or Services supplied by Nelson Alarms to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
 - 1.5 "Service Agreement" means a fixed term contract for a designated timeframe for the supply of specific Services as agreed between the Client and Nelson Alarms.
 - 1.6 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
 - 1.7 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**
 - 1.8 "Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between Nelson Alarms and the Client in accordance with clause 6 below.
2. **Acceptance**
 - 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
 - 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
 - 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
 - 2.4 In the event that Nelson Alarms is required to provide the Services urgently, that may require Nelson Alarms' staff to work outside normal business hours (including but not limited to working through lunch breaks, weekends and/or Public Holidays) then Nelson Alarms reserves the right to charge the Client additional labour costs (penalty rates will apply), unless otherwise agreed between Nelson Alarms and the Client.
 - 2.5 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with Nelson Alarms and it has been approved with a credit limit established for the account.
 - 2.6 In the event that the supply of Goods request exceeds the Client's credit limit and/or the account exceeds the payment terms, Nelson Alarms reserves the right to refuse delivery.
 - 2.7 The commencement date shall be the date of the first delivery of the Services under a Service Agreement, or from the date of signing, whichever is the earlier. A Service Agreement shall be for the period ("initial term") as agreed between both parties and shall revert to a monthly roll over basis automatically, thereafter, unless agreed otherwise until terminated by either party by giving at least thirty (30) days required notice as defined in the Service Agreement prior to the expiration date of the initial term or any additional term.
 - 2.8 The Client acknowledges and accepts that the Price stated will remain fixed for an initial period of twelve (12) months from the date of this contract and will then be subject to revision on the basis of the movement in the Consumer Price Index (CPI).
 - 2.9 The Client shall ensure that Nelson Alarms has clear and free access to the Client's premises at all times to enable them to deliver, install or service the Goods/Services. In addition the Client shall provide Nelson Alarms with any access codes, passwords or other information required in order to complete the Services whether delivered at the Client's premises or by remote access.
 - 2.10 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
3. **Authorised Representatives**
 - 3.1 The Client acknowledges that Nelson Alarms shall (for the duration of the Services) liaise directly with one (1) authorised representative, and that once introduced as such to Nelson Alarms, that person shall have the full authority of the Client to order any Services, Goods and/or to request any variation thereto on the Client's behalf. The Client accepts that they will be solely liable to Nelson Alarms for all additional costs incurred by Nelson Alarms (including Nelson Alarms' profit margin) in providing any Services, Goods or variation/s requested thereto by the Client's duly authorised representative.
 - 3.2 **Errors and Omissions**

The Client acknowledges and accepts that Nelson Alarms shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):

 - (a) resulting from an inadvertent mistake made by Nelson Alarms in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Nelson Alarms in respect of the Services.
 - 3.3 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or willful misconduct of Nelson Alarms; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
 - 3.4 **Change in Control**

The Client shall give Nelson Alarms not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address and contact phone or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by Nelson Alarms as a result of the Client's failure to comply with this clause.
 - 3.5 **Price and Payment**

At Nelson Alarms' sole discretion the Price shall be either:

 - (a) as indicated on any invoice provided by Nelson Alarms to the Client; or
 - (b) the Price as at the date of delivery of the Goods according to Nelson Alarms' current price list; or
 - (c) Nelson Alarms' quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
 - 3.6 Nelson Alarms reserves the right to change the Price:
 - (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) if during the course of the Services, the Goods are not or cease to be available from Nelson Alarms' third party suppliers, then Nelson Alarms reserves the right to provide alternative Goods; or
 - (d) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, limitations to accessing the site, obscured site defects which require remedial work (e.g. poor existing wiring, etc.), health hazards and safety considerations (such as the discovery of asbestos), availability of machinery, prerequisite work by any third party not being completed etc.) which are only discovered on commencement of the Services; or
 - (e) in the event of increases to Nelson Alarms in the cost of labour or materials which are beyond Nelson Alarms' control.
 - 3.7 Variations will be charged for on the basis of Nelson Alarms' quotation, and will be detailed in writing, and shown as variations on Nelson Alarms' invoice. The Client shall be required to respond to any variation submitted by Nelson Alarms within ten (10) working days. Failure to do so will entitle Nelson Alarms to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
 - 3.8 At Nelson Alarms' sole discretion a non-refundable deposit may be required.
 - 3.9 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Nelson Alarms, which may be:
 - (a) on delivery of the Goods;
 - (b) by way of instalments/progress payments in accordance with Nelson Alarms' payment schedule;
 - (c) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or 8.6 address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Nelson Alarms.
 - 3.10 At the agreement of both parties, payment of the Price may be subject to retention by the Client of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Client shall hold the Retention Money for the agreed period following completion of the Services during which time all Services are to be completed and/or all defects are to be remedied. Any Retention Money applicable to this Contract are to be dealt with in accordance with section 18 of the Construction Contracts Act 2002.
 - 3.11 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and Nelson Alarms.
 - 3.12 Nelson Alarms may in its discretion allocate any payment received from the Client towards any invoice that Nelson Alarms determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Nelson Alarms may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Nelson Alarms, payment will be deemed to be allocated in such manner as preserves the maximum value of Nelson Alarms' Purchase Money Security Interest (as defined in the PPSA) in the Goods.
4. The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Nelson Alarms nor to withhold payment of any invoice because part of that invoice is in dispute unless the request for payment by Nelson Alarms is a claim made under the Construction Contracts Act 2002.
5. Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Nelson Alarms an amount equal to any GST Nelson Alarms must pay for any supply by Nelson Alarms under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
6. **Delivery of Goods**

Delivery ("Delivery") of the Goods is taken to occur at the time that:
 - (a) the Client or the Client's nominated carrier takes possession of the Goods at Nelson Alarms' address; or
 - (b) Nelson Alarms (or Nelson Alarms' nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.

Where Nelson Alarms has provided software, Nelson Alarms retains ownership of the software, but grants a licence to the Client for use of the software. The Client will use any software supplied by Nelson Alarms strictly in terms of the licence under which it is supplied and shall not modify, change or copy any such software. The Client will use any third-party software supplied by Nelson Alarms, and identified as such, strictly in terms of the licence under which it is supplied.

At Nelson Alarms' sole discretion the cost of delivery is either included in the Price or is in addition to the Price.

Nelson Alarms may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

Any time specified by Nelson Alarms for delivery of the Goods is an estimate only and Nelson Alarms will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that Nelson Alarms is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then Nelson Alarms shall be entitled to charge a reasonable fee for redelivery and/or storage.
7. **Risk**

Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.

If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Nelson Alarms is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Nelson Alarms is sufficient evidence of Nelson Alarms' rights to receive the insurance proceeds without the need for any person dealing with Nelson Alarms to make further enquiries.

If the Client requests Nelson Alarms to leave Goods outside Nelson Alarms' premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.

The Client warrants that the structure of the premises or equipment in or upon which the Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and Nelson Alarms shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation.

The Client acknowledges that in the event asbestos or any other toxic substances are discovered during the installation that it is the Client's responsibility to ensure the safe removal of the same. The Client further agrees to indemnify Nelson Alarms against any costs incurred by Nelson Alarms as a consequence of such discovery. Under no circumstances will Nelson Alarms handle removal of any asbestos product.

Nelson Alarms shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, Nelson Alarms accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

The Client acknowledges that:
 - (a) all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in Nelson Alarms' or manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by Nelson Alarms; and
 - (b) any information or figures provided by Nelson Alarms regarding the performance of the Goods are given in good faith. The information provided is based on industry prescribed estimates of Goods working under optimal operating conditions.

The Client accepts that electronic security systems, smoke, heat and like detectors installed to / at their premises:
 - (a) are for monitoring and detection purposes and should not be seen as a life saving device; and
 - (b) does not guarantee the site will be free from malicious damage or losses caused by attack, break and/or enter.
8. It shall be the Client's responsibility:
 - (a) to ensure the security system equipment is tested and maintained to full operational condition; and
 - (b) for all phone calls emanating from the security system panel; and
 - (c) to ensure all electronically protected areas are free from obstacles which may impair the operation of the system.
9. **Access**

The Client shall ensure that Nelson Alarms has clear and free access to the site at all times to enable them to undertake the Services. Nelson Alarms shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Nelson Alarms.
10. **Underground/Hidden Locations**

Prior to Nelson Alarms commencing any work the Client must advise Nelson Alarms of the precise location of all underground/hidden services on the site and clearly mark the same. The underground/hidden mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.

Whilst Nelson Alarms will take all care to avoid damage to any underground/hidden services the Client agrees to indemnify Nelson Alarms in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 10.1.
11. **Compliance with Laws**

The Client and Nelson Alarms shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any WorkSafe guidelines regarding health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

The Client shall obtain (at the expense of the Client) all licenses, approvals, applications and permits that may be required for the Services.
12. **Title**

Nelson Alarms and the Client agree that ownership of the Goods shall not pass until:
 - (a) the Client has paid Nelson Alarms all amounts owing to Nelson Alarms; and
 - (b) the Client has met all of its other obligations to Nelson Alarms.

Receipt by Nelson Alarms of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
13. It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 12.1:
 - (a) the Client is only a bailee of the Goods and must return the Goods to Nelson Alarms on request;
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Nelson Alarms and must pay to Nelson Alarms the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Nelson Alarms and must pay or deliver the proceeds to Nelson Alarms on demand;
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Nelson Alarms and must sell, dispose of or return the resulting product to Nelson Alarms as it so directs;
 - (e) the Client irrevocably authorises Nelson Alarms to enter any premises where Nelson Alarms believes the Goods are kept and recover possession of the Goods;
 - (f) Nelson Alarms may recover possession of any Goods in transit whether or not delivery has occurred;
 - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Nelson Alarms;
 - (h) Nelson Alarms may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
14. **Personal Property Securities Act 1999 ("PPSA")**

Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
 - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Client to Nelson Alarms for Services – that have previously been supplied and that will be supplied in the future by Nelson Alarms to the Client.

The Client undertakes to:
 - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Nelson Alarms may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Nelson Alarms for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods, and/or collateral (account) in favour of a third party without the prior written consent of Nelson Alarms; and

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- (d) immediately advise Nelson Alarms of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 13.3 Nelson Alarms and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 13.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 13.5 Unless otherwise agreed to in writing by Nelson Alarms, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.6 The Client shall unconditionally ratify any actions taken by Nelson Alarms under clauses 13.1 to 13.5. Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 14. Security and Charge**
- 14.1 In consideration of Nelson Alarms agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Client indemnifies Nelson Alarms from and against all Nelson Alarms' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Nelson Alarms' rights under this clause.
- 14.3 The Client irrevocably appoints Nelson Alarms and each director of Nelson Alarms as the Client's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.
- 15. Defects**
- 15.1 The Client shall inspect the Goods on delivery (or on completion of the Services) and shall within seven (7) days of delivery (time being of the essence) notify Nelson Alarms of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Nelson Alarms an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Nelson Alarms has agreed in writing that the Client is entitled to reject, Nelson Alarms' liability is limited to either (at Nelson Alarms' discretion) replacing the Goods or repairing the Goods.
- 15.2 Any Goods that have been installed but are considered to be defective in any way must be inspected by Nelson Alarms in the first instance in accordance with clause 15.1 before any form of resolution can be met.
- 15.3 Furthermore, any uninstalled Goods that Nelson Alarms has agreed in writing to accept that are defective shall be subject to:
- (a) the Goods being returned at the Client's cost within seven (7) days of the delivery date; and
- (b) Nelson Alarms will not be liable for Goods which have not been stored or used in a proper manner; and
- (c) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 15.4 Nelson Alarms will not accept the return of non-defective Goods for credit.
- 15.5 Subject to clause 15.1, non-stocklist items or Goods made to the Client's specifications are not acceptable for credit or return.
- 16. Warranty**
- 16.1 For Goods not manufactured by Nelson Alarms, the warranty shall be the current warranty provided by the manufacturer of the Goods. Nelson Alarms shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 16.2 In the case of second hand Goods, the Client acknowledges that full opportunity to inspect the same has been provided and accepts the same with all faults and that no warranty is given by Nelson Alarms as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. Nelson Alarms shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 17. Consumer Guarantees Act 1993**
- 17.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by Nelson Alarms to the Client.
- 18. Intellectual Property**
- 18.1 Where Nelson Alarms has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Nelson Alarms. Under no circumstances may such designs, drawings and documents be used without the express written approval of Nelson Alarms.
- 18.2 The Client warrants that all designs, specifications or instructions given to Nelson Alarms will not cause Nelson Alarms to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Nelson Alarms against any action taken by a third party against Nelson Alarms in respect of any such infringement.
- 18.3 The Client agrees that Nelson Alarms may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Nelson Alarms has created for the Client.
- 19. Default and Consequences of Default**
- 19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Nelson Alarms' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes Nelson Alarms any money the Client shall indemnify Nelson Alarms from and against all costs and disbursements incurred by Nelson Alarms in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Nelson Alarms' collection agency costs, and bank dishonour fees).
- 19.3 Further to any other rights or remedies Nelson Alarms may have under this Contract, if a Client has made payment to Nelson Alarms, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Nelson Alarms under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 19.4 Without prejudice to Nelson Alarms' other remedies at law Nelson Alarms shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Nelson Alarms shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Nelson Alarms becomes overdue, or in Nelson Alarms' opinion the Client will be unable to make a payment when it falls due;
- (b) the Client has exceeded any applicable credit limit provided by Nelson Alarms;
- (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 20. Use of Reports and Advice**
- 20.1 Any advice that Nelson Alarms gives to the Client, its employees or agents is for the Client's exclusive use and must be used only for the purpose described.
- 20.2 Unless Nelson Alarms gives the Client prior written consent, the advice:
- (a) must not be used or disclosed for any other purpose, referred to in any document or made available to any other person, except the Client's lawyers or other professional advisor assisting in the Services; and
- (b) may not be relied upon by any other party other than the Client.
- 20.3 Nelson Alarms is not responsible to any other party other than the Client, who is provided with or obtains a copy of Nelson Alarms' advice.
- 20.4 Nelson Alarms' advice may, on occasion, be given to the Client in draft form or orally only on the basis that the Client may not rely on advice in that form. Accordingly, Nelson Alarms shall not be responsible if the Client or any other party relies on the advice or chooses to act, or refrains from acting, on the basis of any draft advice or oral comments or advice.
- 20.5 The Client acknowledges that the signed copy of Nelson Alarms' final advice is the definitive version.
- 20.6 Sometimes circumstances may change after Nelson Alarms has provided their final advice to the Client. If this happens Nelson Alarms will not update any final advice it has provided to the Client under these terms and conditions. If the Client would like Nelson Alarms to update their final advice, they must contact Nelson Alarms and both parties can discuss a suitable term of engagement with the Client.
- 21. Cancellation**
- 21.1 Without prejudice to any other remedies Nelson Alarms may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Nelson Alarms may suspend or terminate the supply of Goods to the Client. Nelson Alarms will not be liable to the Client for any loss or damage the Client suffers because Nelson Alarms has exercised its rights under this clause.
- 21.2 Nelson Alarms may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Nelson Alarms shall repay to the Client any money paid by the Client for the Goods. Nelson Alarms shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 21.3 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by Nelson Alarms as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 21.4 If the Client cancels the Service Agreement for which Nelson Alarms is providing its Services then the Client must provide the appropriate notice stated in clause 2.7 and shall be liable to Nelson Alarms for any losses or costs incurred by Nelson Alarms (including, but not limited to, any loss of profits) up to the time of, or as a result of the cancellation, notwithstanding that at Nelson Alarms' sole discretion:
- (a) a minimum cancellation fee of five hundred dollars (\$500.00) may be applicable; or
- (b) if the Client cancels the Maintenance Contract half way through the initial term a cancellation fee of up to fifty percent (50%) of the Price may be applicable; or
- (c) if the Client cancels less than six (6) months from the end of the initial term a cancellation fee of up to one hundred percent (100%) of the Price may be applicable.
- 21.5 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 22. Privacy Policy**
- 22.1 All emails, documents, images or other recorded information held or used by Nelson Alarms is Personal Information as defined and referred to in clause 22.3 and therefore considered confidential. Nelson Alarms acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Nelson Alarms acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by Nelson Alarms that may result in serious harm to the Client, Nelson Alarms will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 22.2 Notwithstanding clause 22.1, privacy limitations will extend to Nelson Alarms in respect of Cookies where transactions for purchases/orders transpire directly from Nelson Alarms' website. Nelson Alarms agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to Nelson Alarms when Nelson Alarms sends an email to the Client, so Nelson Alarms may collect and review that information ("collectively Personal Information").
- In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Nelson Alarms' website.
- 22.3 The Client authorises Nelson Alarms or Nelson Alarms' agent to:
- (a) access, collect, retain and use any information about the Client;
- (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
- (ii) for the purpose of marketing products and services to the Client.
- (b) disclose information about the Client, whether collected by Nelson Alarms from the Client directly or obtained by Nelson Alarms from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 22.4 Where the Client is an individual the authorities under clause 22.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 22.5 The Client shall have the right to request Nelson Alarms for a copy of the Personal Information about the Client retained by Nelson Alarms and the right to request Nelson Alarms to correct any incorrect Personal Information about the Client held by Nelson Alarms.
- 23. Suspension of Works**
- 23.1 Where the Contract is subject to the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
- (a) Nelson Alarms has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client; and
- (i) the payment is not paid in full by the due date for payment in accordance with clause 6.5 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
- (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
- (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to Nelson Alarms by a particular date; and
- (iv) Nelson Alarms has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
- (b) if Nelson Alarms suspends work, it:
- (i) is not in breach of Contract; and
- (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
- (iii) is entitled to an extension of time to complete the Contract; and
- (iv) keeps its rights under the Contract including the right to terminate the Contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
- (c) if Nelson Alarms exercises the right to suspend work, the exercise of that right does not:
- (i) affect any rights that would otherwise have been available to Nelson Alarms under the Contract and Commercial Law Act 2017; or
- (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of Nelson Alarms suspending work under this provision;
- (d) due to any act or omission by the Client, the Client effectively precludes Nelson Alarms from continuing the Services or performing or complying with Nelson Alarms' obligations under this Contract, then without prejudice to Nelson Alarms' other rights and remedies, Nelson Alarms may suspend the Services immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Services is based. All costs and expenses incurred by Nelson Alarms as a result of such suspension and commencement shall be payable by the Client as if they were a variation.
- 23.2 If pursuant to any right conferred by this Contract, Nelson Alarms suspends the Services and the default that led to that suspension continues unremedied subject to clause 21.1 for at least ten (10) working days, Nelson Alarms shall be entitled to terminate the Contract, in accordance with clause 21.
- 24. Service of Notices**
- 24.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this Contract;
- (c) by sending it by registered post to the address of the other party as stated in this Contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.
- 24.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 25. Trusts**
- 25.1 If the Client at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Nelson Alarms may have notice of the Trust, the Client covenants with Nelson Alarms as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
- (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
- (c) the Client will not without consent in writing of Nelson Alarms (Nelson Alarms will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
- (i) the removal, replacement or retirement of the Client as trustee of the Trust;
- (ii) any alteration to or variation of the terms of the Trust;
- (iii) any advancement or distribution of capital of the Trust; or
- (iv) any resettlement of the trust property.
- 26. General**
- 26.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 26.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 26.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Nelson Courts of New Zealand.
- 26.4 Nelson Alarms shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Nelson Alarms of these terms and conditions (alternatively Nelson Alarms' liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 26.5 Nelson Alarms may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 26.6 The Client cannot licence or assign without the written approval of Nelson Alarms.
- 26.7 Nelson Alarms may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Nelson Alarms' sub-contractors without the authority of Nelson Alarms.
- 26.8 The Client agrees that Nelson Alarms may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Nelson Alarms to provide Goods to the Client.
- Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 26.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.