



## Fortfire Terms and Conditions

### 1. Definitions

**Agreement** means the agreement between the Customer and Fortfire, which is constituted by:

- (a) these terms and conditions; and
- (b) the Customer Credit Application;
- (c) any quote or proposal submitted by Fortfire pertaining to works that shall be considered attached hereto.
- (d) any contract under which Fortfire is engaged to provide work, services or materials.

**Commencement Date** means the date specified in the Customer Details Schedule.

**Customer** means the person or persons or entity named as Customer in the Customer Details Schedule or Customer Credit Application.

**Equipment** means the equipment described in the Customer Details Schedule or Fortfire Proposal or Quote as well as each or any replacement or substitute thereof and all parts and components thereof.

**Fees** means the fees specified in the Fortfire Proposal or Quote.

**Initial Term** means the period specified in the Fortfire Proposal or Quote commencing from the Commencement Date.

**Premises** means those premises described as the Service Address or Site Address in the Fortfire Proposal or Quote, being the location of the Equipment.

**Services** means the inspection and testing of the Equipment, or Scope of Works, the details of which are specified in the Fortfire Proposal or Quote.

**Term** means the Initial Term together with any extension unless earlier terminated in accordance with this Agreement.

**Fortfire** means Fortfire Pty Limited ACN 152 787 034 trading as Fortfire.

### 2. Services

Fortfire agrees to provide the Services in respect of the Equipment to the Customer throughout the Term on the terms set out in this Agreement.

### 3. Payment

The customer shall pay to Fortfire the fees as stipulated in each invoice issued by Fortfire on or before the due date and as agreed in the Customer Credit Application.

- (a) The Customer shall pay to Fortfire the Fees for the Services throughout the Term in accordance with the Fortfire Proposal or Quote provided that for every 12 month period during the Term and after the expiration of the Initial Term the Fees may be increased by Fortfire:
  - (i) in accordance with changes in the Consumer Price Index (All Groups) applicable to the capital city of the state or Territory in which the Premises are located measured from the Commencement Date; and
  - (ii) to reflect any increase in existing, or additional, taxes, costs or expenses incurred as a result of, but not limited to, any statutory changes, directions or requirements governing the services provided.
- (b) The Customer shall pay all taxes, charges and fees imposed by any carrier or government or regulatory body which are properly payable in connection with the provision of the Services, and shall pay all goods and services tax levied on the goods and services provided under this Agreement
- (c) Where any agreement, Purchase Order or contract is terminated or withdrawn, or the work is taken out of our hands for any reason, Fortfire retains the right to deliver a claim for payment for work, expenses incurred and materials supplied or procured up to the date of termination or where the work is taken out of our hands.

### 4. Term

- (a) Subject to clause 4(b), this Agreement will continue for the Initial Term.
- (b) Unless either party gives to the other at least 30 days' notice of its wish for this Agreement to terminate upon the expiration of the Initial Term, this Agreement will be automatically renewed for a successive term or terms, with the period of each renewed term being the same as the Initial Term. Either party may terminate this Agreement during any renewed term by giving to the other not less than 30 days written notice of termination.

### 5. Customer obligations

The Customer shall:

- (a) maintain all other items, which may affect the testing of the Equipment including but not limited to test drains, essential power supplies and emergency generator power supplies;
- (b) provide such other assistance or permit such other access as Fortfire may reasonably require for the proper provision of the Services;
- (c) comply with all operating and maintenance instructions in relation to the Equipment; and
- (d) notify Fortfire immediately in the event of any deterioration, loss or damage to the Equipment.

### 6. Liability and indemnities

- (a) Fortfire's total liability under the Agreement shall not exceed the total dollar amount of the Fees paid to Fortfire by the Customer pursuant to this Agreement.
- (b) To the extent permitted by law and except as otherwise provided herein Fortfire shall not be liable to the Customer:
  - (i) whether under common law, equity or statute and whether directly or indirectly except to supply the Services again or the cost of having the Services supplied again and, without limitation, has no liability whatsoever for any incidental, consequential or indirect loss or damage including loss of profits or loss of use except to the extent that such loss or damage is caused by the wilful misconduct, fraud or negligence of Fortfire;
  - (ii) for personal injury or property loss arising from provision of the Services except for injury or loss caused directly by Fortfire's wilful misconduct or fraud; or
  - (iii) for any delay or failure to provide the services due to acts or omissions of the Customer and/or any third party; natural disaster; industrial dispute; inability

to obtain materials or services or any other cause beyond Fortfire's reasonable control.

- (b) The Customer shall indemnify and keep indemnified Fortfire against any direct loss, damage, cost or expense that Fortfire may suffer and against all demands, actions, suits and causes of action that may be made against Fortfire arising out of:
  - (i) any information provided by the Customer to Fortfire including the information contained in the Customer Details Schedule being incorrect or misleading; or
  - (ii) any default by the Customer under this Agreement,
 except to the extent that such default or loss or damage is caused by the wilful misconduct or fraud of Fortfire.
- (c) If for any reason Fortfire is prevented from performing any part of the Services through lack of access to where the Equipment is located, the Customer must compensate Fortfire for any out-of-pocket expenses incurred and Fortfire shall not be under any liability to the Customer by reason of its inability to perform those services.

### 7. Insurance

Fortfire will take out Public Liability insurance to the value specified in the the Fortfire Proposal or Quote and will provide evidence of such insurance upon request by the Customer.

### 8. Warranties

To the extent permitted by law and except as otherwise provided herein, all conditions, warranties and representations are expressly negated and excluded.

### 9. Termination

- (a) This Agreement may be terminated by either party immediately if:
  - (i) The other party is in breach of any express or implied term of this Agreement and that party has failed to rectify and default within 14 days of receiving written notice from the other party to rectify the default; or
  - (ii) In a party's reasonable opinion, the other party commits or is deemed to have committed an act of insolvency.
- (b) Without limiting any other rights of Fortfire, in the event of termination by Fortfire pursuant to clauses 9(a)(i) or (ii), or if the Customer terminates this Agreement at any time during the Term (other than by reason of breach by Fortfire), then the Customer shall, without limitation, pay to Fortfire upon demand by way of liquidated damages the sum of all Fees that would otherwise be payable pursuant to this Agreement for the remainder of the Initial Term or the renewed term as the case may be.

### 10. Assignment and sub-contracting

- (a) Fortfire may assign, novate or sub-contract its rights and/or obligations under this Agreement.
- (b) The Customer has no right of assignment without Fortfire's consent which consent shall not be unreasonably withheld.

### 11. Notices

Any notice or other communication under this Agreement shall be in writing addressed to the address of the parties shown in this Agreement or to such other address as any party may notify in writing to the other parties and will be deemed to be duly received by or served to the addressee if in person, when delivered; if by post; seven days from the date of postage; if by facsimile transmission, on dispatch of the transmission as confirmed by a 'confirmation of transmission' printout.

### 12. Special conditions

The special conditions contained or referred to in the Customer Details Schedule (if any) shall form part of this Agreement.

### 13. Miscellaneous

- (a) No waiver by Fortfire of any default or breach or the non-acceptance by Fortfire of any repudiation of this Agreement by the Customer shall affect the rights of Fortfire in respect of any further or continuing default or breach or any subsequent repudiation by the Customer.
- (b) This Agreement shall be binding on the heirs, successors and permitted assigns of the party; hereto.
- (c) In the event that any provision (or part thereof) contained in this Agreement is rendered void, invalid or unenforceable in any jurisdiction then such provision (or part thereof) shall be severed from this Agreement without affecting the validity of the provision in any other jurisdiction or the remaining provisions in that jurisdiction.
- (d) Where there is more than one Customer, then the liability of each shall be joint and several.
- (e) In this Agreement:
  - (i) The singular includes the plural and vice versa;
  - (ii) Any gender includes any other gender; and
  - (iii) A reference to person includes a corporation or any other legal entity and vice versa.
- (f) No forbearance, delay or indulgence by a party in enforcing the provisions of this Agreement will prejudice or restrict the rights of that party.
- (g) This Agreement constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and contains all of the representations, undertakings, warranties, covenants and agreements of the parties.
- (h) This Agreement shall be governed by and construed in accordance with the laws of the State in which the Premises are located.
- (i) Any agreed amendment to this Agreement must be in writing and signed by both parties.