

**SMARTHOUSE
GENERAL TERMS AND CONDITIONS**

PART A –TERMS AND CONDITIONS

1. Agreement

- 1.1 These Terms and Conditions and applicable Services Schedules apply to all of the Services provided by Smarthouse.
- 1.2 The terms and conditions contained in the Services Schedules will be applicable and are required to be read together with this Part A when you or your Agent provides Smarthouse with instructions to provide the particular Service (**General Terms and Conditions**).
- 1.3 By the Agent acting in its capacity as your agent and providing Smarthouse with instructions to perform any of the Services contained in Part B to Part E you agree to be bound by these General Terms and Conditions and the applicable Service Schedules.

- 1.4 Each instruction provided by you or your Agent may be accepted by:
- (a) Smarthouse providing you or your Agent with written acceptance; or
 - (b) Smarthouse's performance of the instruction; or
 - (c) Smarthouse issuing you or your Agent with an invoice in respect of the instruction (whichever occurs first).

Such acceptance will complete a contract between Smarthouse and you on these General Terms and Conditions.

- 1.5 These General Terms and Conditions are to be read in conjunction with any Smarthouse form, letter or invoice provided by Smarthouse to you or your Agent. If there are any inconsistencies between those documents, then these General Terms and Conditions and Services Schedules contained in this document will apply.

2. Price and Payment

- 2.1 The Price:
- (a) shall be as indicated on invoices provided by Smarthouse to you or your Agent in respect of the Services supplied; or
 - (b) shall be Smarthouse's quoted Price that shall be binding upon you or your Agent accepting the quote by continuing to engage Smarthouse for the Services.
- 2.2 You and your Agent acknowledge and agree that the Price is subject to change without Smarthouse providing notice to you or your Agent.
- 2.3 Time for payment for the Services will be within thirty (30) days of the date of the invoice.
- 2.4 You authorise your Agent to make payments for the Services on your behalf.
- 2.5 If an invoice remains unpaid thirty (30) days from the date of the invoice Smarthouse may, in its absolute discretion:
- (a) suspend or terminate the Services;
 - (b) recover all outstanding costs.
- 2.6 Smarthouse reserves the right to impose a minimum invoice value for the Services should circumstances warrant it.

3. Suspension and Termination

- 3.1 You or your Agent will be able to terminate or suspend the Services for a Property by providing Smarthouse with twenty-one (21) days written notice from the date that you intend to do so.
- 3.2 Notwithstanding anything contained in these General Terms and Conditions, Smarthouse may immediately terminate or suspend the Services by providing written notice to you or your Agent in the event that:
- (a) an invoice issued to you or your Agent remains unpaid after the specified due date; or
 - (b) you or your Agent breach any of these General Terms and Conditions; or
 - (c) you or your Agent fail to provide Smarthouse with all necessary information to effectively and efficiently supply the Services or any products or materials, including without limitation notifying Smarthouse of any changes to the information already provided; or
 - (d) any instructions, information, documentation, approvals, or authorisations have not been provided

- (e) to Smarthouse by you or your Agent in accordance with these General Terms and Conditions; or
- (f) Smarthouse is unable to access the Property for whatever reason to perform the Services; or
- (g) you, your tenant or Agent advises Smarthouse that access to the Property is cautioned due to health concerns; or
- (g) Smarthouse or any of its Representatives determine that performing any of the Services to or at the Property is unsafe or could cause harm to the health of Smarthouse or any of its Representatives; or
- (h) you or your Agent have not taken steps in accordance with Smarthouse's professional advice and recommendations to ensure that any plant and equipment located at the Property which has been tested and maintained by Smarthouse is compliant and pursuant to these General Terms and Conditions; or
- (i) the Property is no longer a domestic residential dwelling; or
- (j) the Property begins to be managed by an agent other than your Agent.

- 3.3 If the Services are suspended or terminated for any reason, you agree and acknowledge that:

- (a) any outstanding payments will be immediately due and payable and Smarthouse will be entitled to recover any outstanding payments incurred in respect of the Services;
- (b) Smarthouse and its Officers will not accept any risk or liability regarding compliance with any obligations at Law in relation to any test, installation, repair or ongoing maintenance at the Property that Smarthouse is required to perform as part of the Services; and
- (c) you immediately assume and accept all risks at Law associated with the Services provided by Smarthouse.

4. Customer Warranties

- 4.1 You warrant to Smarthouse that:
- (a) all of the information given to Smarthouse by you or your Agent in connection with these General Terms and Conditions is correct and is not by content or omission misleading;
 - (b) you are the owner of the Property and your Agent is the authorised agent of the Property;
 - (c) you are entitled to request the Services in relation to the Property; and
 - (d) in being bound by these General Terms and Conditions you or your Agent have not relied upon any representation or statement made by Smarthouse or any of its Representatives.
- 4.2 You must indemnify and keep Smarthouse harmless from all costs, claims, damage, fines, expenses and loss suffered by you or your Agent as a result of any breach of the warranties in clause 4.1.

5. Completion of Services

- 5.1 Any period or date for completion of the Services stated by Smarthouse is an estimate only and not a contractual commitment. If Smarthouse cannot complete the Services by an estimated date, it will complete the Services within a reasonable time.

6. Liability

- 6.1 Smarthouse agrees to be liable:
- (a) to perform only the Services which you or your Agent have validly engaged Smarthouse to perform;
 - (b) for any damage which has been caused by negligence of Smarthouse to the Property during performance of the Services;
 - (c) to the extent that you or your Agent have contributed to any loss or damage you are claiming against Smarthouse, Smarthouse's liability is reduced to the extent of your contribution.
- 6.2 Smarthouse will not be liable for:

- (a) any delay caused by you or your Agent which in any way prevents Smarthouse from performing the Services within a reasonable time;
- (b) any indirect or consequential loss suffered by you in connection with Smarthouse providing the Services;
- (c) any indirect or consequential loss suffered by you as a result of your use or reliance upon any information provided by Smarthouse in relation to the Services; and
- (d) any breach by you or your Agent of your obligations under these General Terms and Conditions.
- 7. Insolvency**
- 7.1 Smarthouse may immediately suspend the Services if:
- (a) you are unable to pay your debts as and when they are due;
- (b) you or your Agent become bankrupt;
- (c) you or your Agent 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 (provision or otherwise) or similar person is appointed in respect of you or your Agent or
- (e) proceedings are initiated with a view to obtaining an order for the winding up or similar process of you or your Agent or an order is made or any effective resolution is passed for the winding up of you or your Agent.
- 7.2 If you or your Agent becomes insolvent, you remain liable under these General Terms and Conditions for payment of all liabilities incurred.
- 8. Sub-Contractors of Smarthouse**
- 8.1 In the unlikely event that Smarthouse is required to utilise sub-contractors to assist Smarthouse in providing the Services, you authorise Smarthouse to act as an agent for you and to contract either in its own name or as agent for you with any sub-contractors of Smarthouse on any terms for the performance of all or any part of the Services.
- 8.2 You and your Agent shall be bound without notice to any of Smarthouse's sub-contractor's terms and conditions and shall indemnify Smarthouse and its Officers against any claims arising out of or in connection with such sub-contracting arrangements.
- 9. Force Majeure**
- 9.1 Smarthouse is not liable under these General Terms and Conditions to the extent that it is prevented from acting by events beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, epidemics, pandemics, lockdowns, acts of God, acts or threats of terrorism or war (**Force Majeure Event**). If a Force Majeure Event occurs, Smarthouse may suspend or terminate the Services immediately by providing written notice to you or your Agent.
- 10. Dispute Resolution**
- 10.1 If a dispute arises between Smarthouse and you or your Agent, a party must give written notice to the other that the dispute exists (**Dispute Notice**).
- 10.2 The Dispute Notice must designate a representative with the appropriate authority to negotiate the dispute on behalf of the party giving the notice.
- 10.3 Within 10 days of receipt of the Dispute Notice, the recipient must designate a representative with similar authority. The representatives must promptly discuss the dispute, following whatever investigation each considers appropriate.
- 10.4 If the dispute is not resolved as a result of the discussions, within 20 days of commencement of discussions by the representatives, the parties must agree on a mediation procedure to be followed to attempt to resolve the dispute before litigation or arbitration is commenced by either party.
- 10.5 Nothing in this clause prevents a party from seeking urgent interlocutory relief or other remedies. Despite the existence of a dispute, each party must continue to perform its obligations pursuant to these General Terms and Conditions.
- 11. The Competition and Consumer Act**
- 11.1 Nothing in these General Terms and Conditions is intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
- 11.2 In relation to the supply of Goods and Services, Smarthouse's liability is limited to any or more of the following as determined by Smarthouse:
- (a) supplying the Services again;
- (b) providing for the cost of having the Services supplied again; or
- (c) replacing or repairing the Good.
- 12. Privacy**
- 12.1 Smarthouse will comply with its obligations under the Privacy Act in respect of personal information that it collects, uses, handles and shares in connection with these General Terms and Conditions.
- 13. Corporations**
- 13.1 If you enter into these General Terms and Conditions as a corporation, you warrant that its directors have approved you entering into these terms.
- 14. Trustee capacity**
- 14.1 If you enter into these General Terms and Conditions as trustee of a trust (whether disclosed to Smarthouse or not), you warrant to Smarthouse that:
- (a) you enter into these General Terms and Conditions in both your capacity as trustee and in your personal capacity;
- (b) you have the right to be indemnified out of the trust assets;
- (c) you have the power under the trust deed to enter into these General Terms and Conditions; and
- (d) you will not retire as trustee of the trust or appoint any new or additional trustee without advising Smarthouse.
- 15. Partnership**
- 15.1 If you enter into these General Terms and Conditions as partners:
- (a) you warrant that all of the partners have approved you entering into these terms; and
- (b) you must not alter the partnership (for example, adding or removing partners or altering its partnership agreement) without advising Smarthouse.
- 16. Variation**
- 16.1 You agree that these General Terms and Conditions may be varied, added to, or amended by an authorised officer of Smarthouse at any time and any update, variation or amendment to these General Terms and Conditions by Smarthouse will be displayed on the Smarthouse website.
- 16.2 Any proposed variation to these General Terms and Conditions by you or your Agent must be requested in writing. Smarthouse may refuse any such request without providing reasons either orally or in writing.
- 16.3 Variations requested by you or your Agent to these General Terms and Conditions will only be binding if they are accepted in writing by Smarthouse.
- 17. Continuing Liability**
- 17.1 The termination or suspension of these General Terms and Conditions for any reason shall not release you or your Agent from any liability, obligation or agreement which has already accrued at the time of suspension or termination. Termination or suspension of these General Terms and Conditions for any reason shall not constitute a waiver or release of, or otherwise be deemed to prejudice or adversely affect, any rights, remedies or claims, whether for damages or otherwise, which you may have at law or otherwise, or which may arise out of or in connection with such termination or suspension.
- 18. Severance**
- 18.1 If any provision of these General Terms and Conditions is or becomes illegal, invalid or unenforceable, such provision shall be severed and the remaining provisions shall continue unaffected.

19. Assignment

19.1 Smarthouse may transfer, assign or novate any of its rights or obligations at any time under these General Terms and Conditions.

20. Notices

20.1 Any notice to be given must be addressed to the relevant party at the address last notified by each party to the other in writing.

20.2 Notices may be hand delivered, sent by pre-paid mail, facsimile or email.

20.3 Notices sent:

- (a) by pre-paid mail will be taken to be received on the third Business Day after posting; and
- (b) by facsimile or email will be taken to be received on production of a transmission report from the transmitting machine indicating a successful transmission of the facsimile or email.

21. GST

21.1 You must pay GST on any taxable supply made by Smarthouse to you under these General Terms and Conditions. The payment of GST is in addition to any other consideration payable by you for a taxable supply.

21.2 If as a result of:

- (a) any legislation becoming applicable to the subject matter of these General Terms and Conditions; or
- (b) any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;

Smarthouse becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from you, then you must pay Smarthouse these additional amounts on demand.

22. General

22.1 These General Terms and Conditions are subject to the laws of Victoria and Smarthouse and its Officers take no responsibility for changes in the Law which affect the supply of the Services.

22.2 The use of any of your Agent's own form shall in no way derogate from these General Terms and Conditions, the whole of which shall, notwithstanding anything contained in any such form, constitute terms of the agreement so entered. Any provision in any such form which is contrary to any provision of these General Terms and Conditions shall to the extent of such inconsistency be inapplicable.

23. Definitions and Interpretation

In these General Terms and Conditions:

Agent means your duly appointed agent who has sought the Services from Smarthouse on your behalf.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Melbourne, Victoria.

Competition and Consumer Act means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Goods means any of the goods supplied by Smarthouse in connection with the supply of the Services.

GST is given the same meaning as in the *Goods and Services Tax Act 1999*.

Law means any statute, regulations, instruments and by-laws and all other subordinate legislation or orders made by any authority with jurisdiction over the Service.

Officers means any director, secretary or public officer of Smarthouse.

Price shall mean the cost of the Services as published or notified to your or your Agent by Smarthouse from time to time subject to clause 2 of these Terms and Conditions.

Privacy Act means the *Privacy Act 1988* (Cth).

Property includes both a rental property and an owner-occupied property that is subject to receive a Service or Services from Smarthouse as instructed by you or your Agent.

Representatives means any Officer, agent, sub-contractor or employee of Smarthouse.

Services shall mean all services supplied by Smarthouse to the Property and includes the specific services outlined in Part B – Part E of these General Terms and Conditions respectively (as relevant) (and where the context so permits shall include any supply of Goods).

Service Schedules means the schedules included at Part B to Part E of these General Terms and Conditions.

Smarthouse means any one of Smarthouse Fire Solutions Pty Ltd (ACN 108 951 444), Electrical Safety Checks Pty Ltd (ACN 639 265 339) or Smarthouse Plumbing Solutions Pty Ltd (ACN 167 870 500) which provides the relevant Service.

You or you means the owner of the Property

**PART B – SMOKE ALARM SAFETY
SERVICE SCHEDULE**

Wired Smoke Alarm means a smoke alarm or detector that is 240v mains powered and is hard wired to the mains.
Wireless Smoke Alarm means a smoke alarm or detector that is detachable, portable or battery powered.

1. Application

1.1 This Part B together with Part A (General Terms and Conditions) applies if you or your Agent provides Smarthouse with instructions to provide Smoke Alarm safety services at the Property (**Service**).

2. Smoke Alarm Safety Service

2.1 If Smarthouse has been engaged by you or your Agent to provide the Service, Smarthouse will (subject to you or your Agent's fulfillment of your obligations under these General Terms and Conditions) ensure that the Service will be conducted annually at the Property until terminated in writing by Smarthouse or you or your Agent.

2.2 The Service may, subject to agreement between Smarthouse and you or your Agent, include (but is not limited to):

- (a) maintaining a photo database of all Smoke Alarms including time, date and location of all Smoke Alarms at the Property;
- (b) conducting a maintenance check on each Smoke Alarm which includes cleaning, smoke test and button tests, checking status relative to each Smoke Alarm's expiry period;
- (c) replacing the battery in each Smoke Alarm at the Property;
- (d) assessing position and functionality of each Smoke Alarm and identification of any installed Smoke Alarm that is in excess to regulatory requirements (**Above Regulations**);
- (e) replacing or rectifying faulty or expired Smoke Alarms (expressly excluding Above Regulations Smoke Alarms and FIP Linked Smoke Alarms);
- (f) arranging, where required, a qualified electrician to attend the Property to install or replace a Wired Smoke Alarm.

3. Call Out Fee

3.1 Smarthouse agrees to provide no call out fees for twelve (12) months following each Service provided by Smarthouse to the Property.

3.2 Notwithstanding clause 3.1, Smarthouse will be entitled to charge to you a call out fee where Smarthouse is aware or becomes aware that the call out is in respect of Above Regulations Smoke Alarms and FIP Linked Smoke Alarms.

3.3 In the event that these General Terms and Conditions are terminated for whatever reason by Smarthouse, you or your Agent, clause 3.1 will cease to apply immediately.

4. Relocation and replacement

4.1 You allow Smarthouse to remove and relocate already installed Smoke Alarms if deemed necessary by Smarthouse (acting reasonably) and acknowledge that any such removal or relocation may cause damage to the Property.

4.2 Smarthouse agrees to use its best endeavours to ensure that unreasonable damage is not made to the Property however you acknowledge and agree that depending on matters that are outside of Smarthouse's control in order to allow Smarthouse to perform its obligations and the Service, some damage (including but not limited to plaster damage or paint discolouration) may occur.

4.3 You agree that you will not hold Smarthouse liable for any costs associated with the repair of any damage at the Property caused by Smarthouse resulting from any repair required in accordance with this clause 4.

5. Definitions

5.1 In this Part B:

FIP Linked Smoke Alarm means a smoke alarm or detector that is linked to a security system or fire indication panel.

Law means any statute, regulations, instruments and by-laws and all other subordinate legislation or orders made by any authority with jurisdiction over the Service.

Smoke Alarm means collectively, any of the following:

- (a) Wireless Smoke Alarm;
- (b) Wired Smoke Alarm; and
- (c) FIP Linked Smoke Alarm.

**PART C – GAS SAFETY AND CARBON MONOXIDE
SERVICE SCHEDULE**

1. Application

- 1.1 This Part C together with Part A (General Terms and Conditions) applies if you or your Agent provide Smarthouse with instructions to provide Gas Safety and Carbon Monoxide services to the necessary Gas Appliance at the Property (**Service**).

2. Scheduled Gas Service

- 2.1 If Smarthouse has been engaged by you or your Agent to provide the Service (subject to you or your Agent's fulfillment of your obligations under these General Terms and Conditions) Smarthouse will ensure that the Service will be conducted at least once every two (2) years at the Property by a licensed or registered plumber until the Service is terminated in writing by Smarthouse or you or your Agent.
- 2.2 The Service may, subject to agreement between Smarthouse and you or your Agent, include (but is not limited to):
- (a) pressure retention test of the main gas line into the Property (test of gas tightness);
 - (b) gas and carbon monoxide check in respect of all Gas Appliances;
 - (c) a service, maintenance check and where applicable a safety spillage check (carbon monoxide analyser and negative pressure test).
- 2.3 You acknowledge and agree that if Smarthouse determines that the Gas Appliance or gas fitting line is unsafe or non-compliant, the Gas Appliance or the gas fitting line will be decommissioned until a replacement is made or remedial work is carried out.

3. Call Out Fee

- 3.1 Smarthouse agrees to provide no call out fees for 12 months following each Service provided by Smarthouse to the Property if the call out is as a result of the Service.
- 3.2 Notwithstanding clause 3.1, Smarthouse will be entitled to charge to you a call out fee where recurring faults occur with a Gas Appliance, a Gas Appliance has a faulty component or any recommended rectification by Smarthouse in relation to the Gas Appliance fault is not followed by you.
- 3.3 In the event that these General Terms and Conditions are terminated for whatever reason by Smarthouse, you or your Agent, clause 3.1 will cease to apply immediately.

4. Definitions

In this Part C:

Gas Appliance has the same meaning given in the AS/NZS 5601.1:2013 Gas Installations – General Installations, as provided by you or your Agent and accepted by Smarthouse. **Law** means any statute, regulations, instruments and by-laws and all other subordinate legislation or orders made by any authority with jurisdiction over the Service.

PART D – ELECTRICAL SAFETY SERVICE SCHEDULE

1. Application

1.1 This Part D together with Part A (General Terms and Conditions) applies if you or your Agent provides Smarthouse with instructions to provide electrical safety services to the necessary Electrical Appliances at the Property (**Service**).

2. Electrical Safety Service

2.1 If Smarthouse has been engaged by you or your Agent to provide the Service (subject to you or your Agent's fulfillment of your obligations under these General Terms and Conditions) Smarthouse will ensure that the Service will be conducted on the applicable Electrical Appliances at least once every two (2) years at the Property by a qualified electrician until the Service is terminated in writing by Smarthouse or you or your Agent.

2.2 The Service may, subject to agreement between Smarthouse and you or your Agent, include (but is not limited to):

- (a) electrical safety check in respect of all electrical installations, electrical fittings and the applicable Electrical Appliances;
- (b) the provision of a Certificate of Periodic Verification provided to you after each Electrical Safety Check is completed;
- (c) visual inspection and testing in accordance with selected AS/NZS 3018 2007 (the **Standard**) regulations.

3. Accessibility

3.1 You acknowledge and agree to make any electrical installations, fittings and Electrical Appliances at the Property subject to the Service easily accessible for Smarthouse to perform the Service.

3.2 Smarthouse will not provide the service to an Electrical Appliance, Installation or Fitting that:

- (a) is not owned by you;
- (b) is located in the roof space or on the roof or under the property;"
- (c) is not accessible or is obscured and unable to be moved without the risk of damage or injury;
- (d) is located 2.5 metres above floor/ground level;
- (e) prevents Smarthouse from providing the Services safely and effectively in accordance with its obligations under any Law or the Standard.

3.3 Smarthouse reserves its right to refuse to provide the Service at the Property for the purposes of this clause 3 at any time.

4. Limitations to Service

4.1 You and your Agent acknowledge and agree that:

- (a) where testing and observation of accessible power points are required, power points that are visible and accessible to Smarthouse or its Representatives will be tested only;
- (b) permanent or glass light fitting diffusers will not be removed to assess globe ratings;
- (c) no electrical installations, fittings or Electrical Appliances will be opened during the inspections other than the switchboard;
- (d) if power points, light switches or light fittings are replaced they will be replaced with items of standard appearance;
- (e) equipotential bond testing will not be completed;
- (f) leakage current testing will not be completed; and
- (g) main earth test will be completed if the main earth conductor and the main earth electrode/stake are easily accessible.

4.2 the Service provided pursuant to this Part D is for the purposes of testing and inspecting applicable Electrical Appliances and Smarthouse and its Representatives will not attend to the repair or replacement of any Electrical Appliance.

5. Call Out Fee

5.1 Smarthouse agrees to provide no call out fees for 12 months following each Service provided by Smarthouse to the Property where the call out is in relation to an electrical safety issue relating to an Electrical Appliance which was subject to the Service provided by Smarthouse including switchboards, power points or switch faults.

5.2 Where a call out relates to any faults in the Electrical Appliance, lighting and all inaccessible electrical fittings or

fixtures subject to the Service, Smarthouse need not comply with clause 5.1.

5.3 In the event that these General Terms and Conditions are terminated for whatever reason by Smarthouse, you or your Agent, clause 5.1 will cease to apply immediately.

6. Definitions

In this Part D:

Certificate of Periodic Verification has the same meaning as given in the AS/NZS 3018 2007 regulations.

Electrical Appliances means an electrical appliance supplied by you at the Property and expressly excludes solar installations and any appliance supplied by a tenant residing at your property but includes but is not limited to: electric ovens, fixed wall electric heaters, electric hot plates, electric air-conditioners, electric hot water units, refrigerators, electric range hoods and dishwashers.

Electrical Safety Check has the same meaning as given in the AS/NZS 3018 2007 regulations.

**PART E – METHAMPHETAMINE TESTING
SERVICE SCHEDULE**

1. Application

- 1.1 This Part E together with Part A (General Terms and Conditions) applies if you or your Agent provides Smarthouse with instructions to provide the Methamphetamine Testing service at the Property (**Service**).

2. Methamphetamine Testing Service

- 2.1 Smarthouse will provide the Service (subject to you or your Agent's fulfillment of your obligations under these General Terms and Conditions) upon receiving instructions from you or your Agent.
- 2.2 The Service may, subject to agreement between Smarthouse and you or your Agent, include (but is not limited to):
- (a) preliminary positive/negative swab tests with immediate on-site results; or
 - (b) swab sampling in accordance with NIOSH 9111, laboratory examining using LC-MS detection and preparation of report detailing levels of contamination.
- (**Tests**)
- 2.3 You acknowledge and agree that the number and location of testing points associated with each Test will vary depending on the requirements of each property and that for the purposes of this clause, Smarthouse will use its own judgement to determine what specific Test will be conducted at the Property.