

NZ Commercial Pest Terms and Conditions –Service Agreement

- 1. Rentokil Initial Limited** NZBN 9429040604787 trading as Rentokil Pest Control (“**RPC**”) agrees to supply a Commercial Pest Control Inspection and Treatment Program and/or sanitisation services (the “**Service Plan**”) at the specified areas of the premises described above for the Fees (plus GST) in relation to those Pests (if applicable) described in this document and the period set out below (**Service Agreement**), or that the Customer will purchase products (**Sales**) in accordance with these terms and conditions. Customer’s furniture and equipment is excluded unless referenced in this document for inspection and/ or treatment. Additional areas or pests will be subject to a separate survey and proposal.
- 2. Acceptance:** The Customer’s acceptance of these terms may be confirmed either by signing this document, confirming its acceptance by email or by allowing RPC to perform the Service Plan.
- 3. Coverage:** The Service Plan covers the scheduled number of visits each year to inspect and provide treatments where necessary to the premises for the control of the specified Pest . RPC will provide recommendations for achieving effective Pest control (see clause 13). Additional visits required to control Pests beyond scheduled visits (including for implementing RPC recommendations) will incur additional charges. Service report may be obtained by the Customer from RPC online system using the log in details provided to the Customer (if assigned in this agreement).
- 4. Service Agreement:** The Customer will accept the Services for an initial minimum term of twelve (12) months commencing on the date of this agreement unless otherwise agreed. This agreement will automatically be extended, if not terminated or varied and will operate until such time as it is terminated by either party giving at least two (2) calendar months written notice of termination. No termination can take effect before the last day of the initial minimum term except in accordance with this agreement. The Customer acknowledges that any failure to provide this notice will result in the Customer being liable for amounts equal to the fees for the two (2) months period.
- 5. Sales:** The Customer purchases the equipment and any related items in accordance with these terms and conditions for the agreed price and in the condition as inspected by the Customer. Risks in the items purchased pass to the Customer upon delivery and title to the items passes to the Customer upon full payment. RPC sells the Equipment to the Customer free of any claims by third parties;
- 6. Fees:** Fees are payable by the Customer to RPC for the Service Plan and use of any RPC equipment. They are in addition to any fee charged by RPC for the initial pest treatment. Fees for the Service Plan are payable annually, quarterly or monthly in advance, in accordance with this agreement. Fees are exclusive of GST which shall be payable in addition to the fees upon RPC providing a tax invoice. The Fees are based on the services and equipment required allowing for set up costs, materials and equipment costs, service support and administration costs (“**Service Costs**”). If RPC agrees to accept a reduction or cancellation of any part of the Service Plan, any variation to the fees must take account of these Service Costs so the fees may not be varied pro rata to the change in the Services. Where in any invoice period, RPC has not completed the required minimum number of service visits, the Customer will be entitled to a credit calculated on a pro rata basis after appropriate deductions in respect of the Service Costs and also taking into account the number of non routine visits such as call outs and follow up visits the Customer has received. If there is a change in law which occurs after the commencement date which was not known and could not reasonably have been known by RPC as at the commencement date and such change reasonably results in RPC incurring additional costs, the Fees will be increased by an amount equal to the additional costs RPC will incur as a direct result of the change in law. Payment for Sales is within seven (7) days of delivery.
- 7. Interest on over dues & No deductions:** Interest is payable by the Customer on overdue amounts payable to RPC from the due date until the date on which the debt is paid at a rate of two per cent (2%) above the rate charged by RPC’s bank on overdrafts for less than one hundred thousand dollars (\$100,000.00). The Customer may not deduct or withhold any amount (whether by way of set off, counterclaim or otherwise) from any money owing to RPC.
- 8. Pricing Review:** After the initial minimum term, and no more than once annually, RPC may review and increase the fees charged under this agreement by notice to the Customer.
- 9. Treatment effectiveness:** RPC will deliver the Service Plan in a competent and professional manner taking into account these terms. The ongoing effectiveness of the pest control provided depends on the Customer implementing RPC’s recommended hygiene, housekeeping, stacking and property maintenance procedures. The Customer acknowledges that pest treatment may also be rendered ineffective by disturbing treated areas, building alterations, renovations and introducing untreated or infested materials to the property that encourage pest activity.
- 10. RPC Equipment:** The Customer agrees to take reasonable care of RPC owned equipment installed at the premises by RPC as part of the Plan and to follow any instructions given by RPC in relation to the equipment and its use. All such equipment shall remain the property of RPC and the Customer agrees not to move or modify the equipment including removing any label indicating the equipment belongs to RPC. The Customer accepts all costs for installing the equipment and of rectifying any damage caused to the equipment including loss, theft or damage caused by fire and flood. The customer agrees to immediately inform RPC if the equipment is damaged or removed. RPC is entitled to replace any item of equipment at any time at its sole discretion provided the replacement item is of an equivalent or better standard and upon replacement the replaced item is subject to these terms and conditions.
- 11. Insurance:** Where requested by RPC, the Customer must maintain insurance with a reputable insurer for:
 - (a) RPC equipment for its full replacement value against any loss or damage and it must note the interest of RPC as owner of the equipment; and
 - (b) the liability for loss resulting from any kind of injury or death of any person in connection with the use of the equipment.The Customer must provide RPC with evidence of the insurance upon request.
- 12. Pest Inspection and Treatment:** All pest inspections undertaken as part of the Plan will be based upon a visual inspection only limited to those areas and sections of the premises fully accessible and visible to the technician at the time and on the day of the inspection. Furniture, equipment, fittings and stock may conceal evidence of some pests that can only be revealed when these items are removed. The treatment will cover only those pests and areas described in this agreement. All other pests are excluded unless agreed by RPC in writing.
- 13. Advice and recommendations:** For pest services, RPC’s technician will provide a service report after each visit and provide advice and recommendations, as appropriate to the Customer to control and minimise pests and their habitat. These may cover hygiene, housekeeping, stacking, storage and maintenance. RPC may elect to terminate this agreement if a Customer fails to implement recommendations necessary to eliminate factors or conditions contributing to Pests and the re-infestation by Pests.
- 14. Access and Safety:** The Customer must ensure that RPC’s staff and other authorised personnel (“**Personnel**”) have full and safe access (free of any health and safety hazards and risks, unless the Customer has notified RPC of such risks prior to accessing the premises) to the relevant areas of the premises and all facilities such as water and electricity that RPC may reasonably require to provide the services during business hours or at times agreed with the Customer. The Customer must advise the RPC technician before the commencement of any service of any health and safety risks including the presence of asbestos, or any outbreaks in diseases or viruses at the premises. The Customer must also provide RPC with all necessary information, instructions, documentation and co-operation required by RPC. RPC will comply with all reasonable security and safety instructions of the Customer while present at the Customer’s premises.
- 15. Customer Co-operation:** The Customer must comply with all advice and instructions provided by RPC to the Customer including any relating to pesticides and equipment usage and the health and safety of persons using the premises during and following the completion of any service.

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- 16. Damage to Utilities:** If delivery of the Service Plan requires drilling or cutting any materials, the Customer will be responsible for identifying the location of all utility services to the property including water and drainage pipes, electrical and telephone cables, gas pipes etc. RPC will exercise due care in performing any drilling or cutting but the Customer will be liable for any damage caused by penetration to any such services unless caused by the negligence of RPC.
- 17. Reliance on Service and Report:** All reports provided by RPC in relation to the Service Plan are provided solely for the benefit of the Customer named in the report. Neither this agreement nor any report may be assigned by the Customer to another person or relied upon by any other person without the prior written approval of RPC that may be given conditionally or withheld.
- 18. Service Confirmation:** The Customer acknowledges that any of the following constitute proof of satisfactory performance of the Services by RPC:
- (a) a customer service docket signed by the Customer;
 - (b) an electronic record of the Customer's signature recorded by RPC on a portable electronic; or
 - (c) for services undertaken at a specific Customer site, an electronic scan record recorded by RPC when RPC Personnel scans the bar code located at the site.
- 19. Indemnity:** To the extent permitted by law, the Customer will indemnify RPC and its Personnel against all actions, claims, proceedings or costs (including legal costs on a full indemnity basis) which RPC may incur as a result of:
- (a) any person alleging loss or injury due to the equipment not being used by the Customer or its staff or invitees in the manner recommended by RPC;
 - (b) any reliance placed on the content of a service or inspection report by any person other than the Customer who obtained the report from the Customer without the written approval of RPC,

except to the extent any loss or damage is caused by RPC or its Personnel.

- 20. Subcontractors:** RPC may engage or employ any person, sub-contractor or agent to provide any of the services under this agreement and will be responsible for the performance of the delivery by that subcontractor of RPC's obligations under this agreement.
- 21. Force Majeure:** RPC shall not be responsible for failure to meet any obligation if the failure results directly or indirectly from a cause beyond its control.
- 22. No Bribery:** The Customer and RPC agree:
- (a) that they will not (nor allow anyone acting on their behalf) to offer, give, request or accept any undue financial or other advantage of any kind in any way connected with entry into this agreement; and
 - (b) they will each comply with all applicable laws related to bribery and corruption in connection with this agreement. Any failure to comply with this clause entitles the other party to terminate this agreement upon notice to the other party.
- 23. Termination:** RPC may suspend the Services or terminate this agreement on immediate notice to the Customer if:
- (a) the Customer is in breach of a material obligation and does not remedy that breach within seven(7) business days of notice from RPC;
 - (b) the Customer breaches any other provisions and fails to remedy that breach (if capable of remedy) within ten (10) business days of notice from RPC: or
 - (c) the Customer becomes insolvent or deemed insolvent, bankrupt, ceases or threatens to cease to carry on business, a receiver, manager, administrator or anything having a similar effect occurs in relation to the Customer.

It is agreed that non payment, any modification or removal of any equipment without the approval of RPC, refusal to allow access to the premises to be serviced are material breaches of this agreement.

- 24. Removal of Equipment:** On termination of this agreement, howsoever that arises, RPC may remove all of its equipment in the Customer's possession or control, and for that purpose may enter the premises and remove the equipment. RPC shall use all reasonable care in removing the equipment but shall not be responsible for restoring that part of the premises to the original state. If RPC is unable to remove the equipment the Customer shall be liable for the replacement value of the equipment that has not been recovered.
- 25. Debt Collection:** The Customer indemnifies RPC for all expenses incurred in relation to the recovery of debts owed by the Customer.
- 26. Privacy and Credit Reporting:** The Customer authorizes RPC, its employees and related entities, subject to compliance with applicable privacy legislation to use and disclose the personal information of the Customer for any purposes connected with this agreement or otherwise in accordance with Rentokil Initial Privacy Policy which can be accessed at www.rentokil.co.nz. This use includes communicating offers to the customer about products and services from Rentokil Initial. The Customer has the option to opt out of receiving the information at any time.

Where the Customer is provided with credit, the Customer authorizes RPC to: (a) obtain credit reports in respect of the Customer and its related entities from credit reporting agencies and other bodies permitted by law; (b) seek and or/disclose information about the Customer and its related entities (including information about their credit worthiness, credit history, standing or capacity) which credit providers or other parties are permitted to supply obtain or receive under applicable privacy legislation (c) disclose information about the application for credit under this agreement and if successful, about the credit account and credit provided to a credit reporting agency or other permitted body in order to obtain information or credit reports; (d) disclose information including identity particulars, the fact the Customer had applied for credit and details of payments that are more than 60 days over due to credit reporting agencies, other credit providers or other permitted bodies; and (e) disclose information about the Customer and its related entities to any person considering acting as a guarantor of the Customer.

- 27. Entire Agreement:** This agreement supersedes and replaces all previous agreements between the parties in relation to pest control services and contains the entire agreement between them as to its subject matter. To the extent permitted by law, RPC expressly excludes all warranties, guarantees, representations and conditions except as may be made by RPC to the Customer in writing.
- 28. Acknowledgement:** For the purposes of Section 5D of the Fair Trading Act 1986 (FTA) and section 43 of the Consumer Guarantee Act 1993 (CGA), the parties acknowledge that,
- (a) to the extent permitted by law they are contracting out of the CGA (to the extent that the CGA would otherwise apply to any matter covered by this agreement) and sections 9,12A and 13 of the FTA in respect of this agreement;
 - (b) it is fair and reasonable for the parties to be bound by this clause; and
 - (c) they have received legal advice or had the opportunity to seek legal advice in relation to this agreement.
- 29. Liability:** To the extent permitted by law:-
- (a) RPC will not be liable for any loss of profits or revenue, loss of business, wasted expenditure or any form of indirect or consequential loss arising out of or in connection with this agreement, the supply of the services, the equipment or the sale of any goods.
 - (b) where a claim relates to a guarantee or warranty under the Consumer Law, RPC's total aggregate liability to the Customer under or in relation to this agreement (including in contract, negligence, tort or any common law or statutory right) is limited at RPC' option to:
 - (i) in relation to claims relating to services, the resupply of the services, or the costs of resupply of the service; or
 - (ii) in relation to claims relating to goods, the resupply of the goods, or the cost of re supply of the goods.

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- (c) RPC will only be liable for loss of damage to the Customer's property to the extent caused by its negligence or breach of contract.
 - (d) in all other circumstances, the liability of RPC to the Customer (including in contract, negligence, tort or any common law or statutory right) under this agreement will not exceed the fees received by RPC from the Customer pursuant to this agreement.
30. **General:**
- (a) This agreement may only be amended in writing signed by both parties.
 - (b) A reference to 'writing' or 'written' includes electronic mail.
 - (c) If any provision of this agreement is illegal, invalid or unenforceable it may be severed without affecting the enforceability of the other provisions.
 - (d) The Customer may not assign its rights under this agreement without the prior approval of RPC.
 - (e) Each indemnity in this agreement is a continuing obligation separate and independent from the other obligations of the party giving the indemnity and survives termination or expiry of this agreement.
 - (f) This agreement is governed by the laws of New Zealand and the parties submit to the jurisdiction of the courts of New Zealand.
31. **PestConnect Special Conditions**
The following terms and conditions apply to PestConnect Services. To the extent of any inconsistency between these PestConnect terms and conditions and the general terms and conditions, these PestConnect Terms and conditions prevail.

Definitions

Control Panel:	the device to which the PestConnect Device transmits activity data;
PestConnect Device:	a sensing device to allow remote monitoring of pest activity;
PestConnect Equipment:	the Control Panel and / or PestConnect Device provided to the Customer under this agreement, as applicable. The PestConnect Equipment is Rental Equipment owned by RPC;
PestConnect Services:	the PestConnect services RPC has agreed to provide to the Customer at the premises as specifically set out in the agreement and as may be amended by the parties in writing.
Replacement Value:	The full cost of replacing any item of Rental Equipment at the time it is lost or damaged.

1. Additional terms for PestConnect Services

- 1.1 The Customer will pay the charges for the PestConnect Services as set out in the agreement, RPC will provide the PestConnect Services under the terms of the agreement as supplemented by these PestConnect special conditions. In the event of conflict between the agreement and these PestConnect special conditions, these PestConnect special conditions shall apply.
- 1.2 The Customer acknowledges that use of PestConnect Services does not guarantee pest free conditions at the premises.
- 1.3 As additional obligations, the Customer agrees to:
 - (a) provide a continuous and dedicated electrical supply to the Control Panel;
 - (b) ensure that the transmissions between the PestConnect Equipment are not affected by anything sited adjacent to or in front of any of the PestConnect Equipment; and
 - (c) ensure that the PestConnect Equipment is not moved, interfered with, opened or disassembled, other than by one of our employees or following RPC's written consent.
- 1.4 The Customer agrees that if the Customer fails to carry out its obligations under the agreement, which includes these PestConnect special conditions, RPC will be unable to provide the PestConnect Services and RPC will not be liable for any failure to perform the PestConnect Services. In addition to any other rights and remedies available to it, RPC may charge the Customer the then current standard hourly rate for any visits to the premises that are required as a result of any failure to carry out the Customer obligations.
- 1.5 This minimum term for the provision of PestConnect Services is twelve (12) months from the PestConnect Services Commencement Date (the "Minimum Period").
- 1.6 If the Customer terminates the PestConnect special conditions during the Minimum Period, other than for RPC's breach, RPC may seek damages from the Customer.
- 1.7 Despite any conflicting provisions within the agreement, the Customer agrees that the Customer will pay RPC at our then current standard hourly rate for:
 - (a) any maintenance of, or repair to the PestConnect Equipment to the extent due to acts or omissions not attributable to RPC, including but not limited moisture ingress during operational cleaning of the premises;
 - (b) any attendance at the premises to address a malfunction of any of the PestConnect Equipment where such malfunction is attributable to an interruption to the electrical supply to the PestConnect Equipment or to the siting of any apparatus or construction adjacent to the PestConnect Equipment adversely affecting the successful transmission of data between the PestConnect Device and the Control Panel; and
 - (c) any re-siting of any PestConnect Equipment due to any works being undertaken at the premises.

2. Termination

The termination provisions of the agreement can be applied separately to these PestConnect special conditions, so that the PestConnect Services can be terminated and the underlying agreement remains effective.

3. Limitation of Liability

The Customer agrees that despite any provisions of the agreement to the contrary, any and all RPC liability that arises under the agreement and is associated with the PestConnect Services shall be limited to \$20,000, to the maximum extent permitted by law.

4. Effect on the Agreement

All terms and conditions of the agreement remain unaffected and in full force, except as explicitly amended by these PestConnect special conditions for the provision of PestConnect Services.