

## IMPORTANT CUSTOMER INFORMATION

The Services Program and the Terms & Conditions stated below contain the entire agreement and understanding between us, THE COMPANY and you, THE CUSTOMER on everything connected with the provision of the Equipment and Services (the "agreement").

**Term:** This agreement commences on the Commencement Date and continues for the stated Term period (Initial Term) and will automatically renew for the same subsequent Term period (Renewal Term), at the end of the Initial Term. Either party (us, THE COMPANY or you, THE CUSTOMER) can terminate this agreement by giving the other party at least one (1) month's written notice of termination prior to the end date of the Initial Term and one (1) month's written notice of termination at any time during the Renewal Term.

**Acknowledgement:** By entering into this agreement and by obtaining the Equipment and Services you, THE CUSTOMER represent and warrant that you have read and understood and agree to all of the Terms & Conditions and that the person signing this agreement for and on behalf of you, THE CUSTOMER has the authority to sign this agreement.

## TERMS AND CONDITIONS

- 1) **Entire Agreement**

These terms and conditions and the Services Program contain the entire agreement and understanding between THE COMPANY and THE CUSTOMER on everything connected with provision of the Services and the Equipment. To the extent permitted by law, we, THE COMPANY expressly exclude all warranties, guarantees, representations and conditions except as may be made by us to you in writing.
- 2) **Provision of the Services**
  - a) We agree to provide the Services, from the Commencement Date (or such other date as may be agreed by the parties in writing) and for the Term.
  - b) If during the Term we are no longer able to provide the Services (or part thereof) to you, we will immediately notify you and provide the reasons as to why the Services (or part thereof) can no longer be provided. In the event that such notification is given and no remedy or solution between the parties is agreed, we have no further obligation to provide those Services. Possible reasons as to why Services cannot be provided include but are not limited to:
    - (i) Site access constraints'
    - (ii) Site occupational health and safety concerns;
    - (iii) Service technician safety issues; or
    - (iv) Non-payment for services.
  - c) You must provide access to the Service Address to allow us to provide the Services and where directed, must ensure that all persons leave the vicinity where the Services are to be provided. If you fail to give us access to the Service Address, there will be no adjustment to the Annual Value. You warrant that you have all necessary rights to grant us access to, install any Equipment at, and perform the Services at the Service Address.
  - d) If, in the course of providing the Services, there is a requirement for us to conduct any drilling, cutting or similar work, you acknowledge and agree:
    - (i) that you are responsible for identifying the location of all utility services, structural, sanitation or hydraulic services and any other potential risks at the Service Address in writing prior to us providing the Services; and
    - (ii) that we will rely on the written details provided by you under paragraph 2(d)(i), and
    - (iii) we are not responsible for any damage or liability incurred to the Service Address property as a result of our reliance on the written details provided by you.
  - e) If for any reason a health or safety hazard results from the provision of the Services, you must immediately inform us.
  - f) You must ensure that the Service Address is always a safe working environment, and, to the extent permitted by law, you must indemnify us for any loss or damage that we may suffer where you fail to do so. You warrant that you have disclosed to THE COMPANY all material information which may have an effect on the provision, performance and/or installation of the Equipment and/or the Services at the Service Address and agree to notify THE COMPANY as soon as possible where any circumstances (including in respect of the Service Address) changes.
- 3) **Supply and Maintenance of the Equipment**
  - a) We will endeavour to install the Equipment on the Commencement date set out in the Services Program (if any), but we are under no

- obligation to do so, and may install the Equipment on another agreed date. All Equipment supplied for the provision of the Services remains our property at all times notwithstanding its installation at the Service Address.
- b) You agree to comply with all instructions given by us concerning the use and operation of the Equipment and will advise us as soon as possible if the Equipment is damaged or in need of repair. You will not attempt to relocate, move, dismantle, modify or repair the Equipment or allow any person other than us to do so.
  - c) You agree to take care of the Equipment (including prevention from misuse and theft) and, to the extent permitted by law, you indemnify us for all loss of or damage to the Equipment from any cause whatsoever on a replacement cost basis.
  - d) If for any reason the Equipment becomes a health or safety hazard, you must immediately inform us.
- 4) **Equipment with Integrated Data Systems**
    - a) Some of our Equipment have an integrated system where data regarding the use of our Equipment (such as but not limited to equipment failures, observations, measurement data, sensor levels) is stored automatically. Such Equipment may digitally send, upload, communicate or transmit data to us for our use by in accordance with this agreement.
    - b) All data relating to the Services is owned by us.
    - c) We may use data for any purpose including but not limited to provide and manage the Service, statistical purposes, development of the Service, our Equipment and other of our products or services, research and marketing. We undertake to, if personal data is included in the data, as far as is reasonably possible to use such data on a pseudonymized and/or anonymized basis.
    - d) You must not access, use or disclose to any third party any of the integrated system data on Equipment (including for any unauthorised purpose) without the prior written consent of THE COMPANY.
  - 5) **Additional Services and Equipment**
    - a) If you require additional services and/or equipment ("Additions") (and we agree to provide them), those Additions will be provided on the terms and conditions of this agreement.
    - b) The price for the Additions will be added to the Annual Value of this agreement.
    - c) All Additions including the pricing needs to be mutually approved by both the Customer and us, the Company.
  - 6) **Service Effectiveness**

We are obliged to use reasonable endeavours to provide the Services, the Equipment and any Additions and we will provide the same in a competent and professional manner considering the terms and conditions of this agreement. The ongoing effectiveness of the Services, the Equipment and any Additions provided depends on your implementation of our recommendations. You acknowledge that our Services, Equipment and any Additions 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 and / or poor hygiene.

The Disinfection Misting and/or Fogging service is a general broad-spectrum disinfection service for homes, offices and workplaces that targets both surfaces and inaccessible areas to aid in the prevention of harmful bacteria, fungus and viruses. Although Flick Anticimex is providing this disinfection misting service and will use the product as per label specifications, Flick Anticimex cannot guarantee or warrant the effectiveness of the product on any specific type of bacteria e.g. Salmonella, fungus e.g. mould, or virus e.g. Novel Coronavirus.
  - 7) **Reduction in Services and Equipment**

If you request a reduction in Services and/or Equipment then we will review the current agreement and will notify you if a proportionate increase in price is required for the provision of the Services and/or Equipment at the reduced level requested by you, including within the first 12 months of this agreement.
  - 8) **Payment and Trading Terms**
    - a) You agree to pay for the Service in accordance with our trading terms that are stated in this agreement. To minimize administration and assure efficient processing, our invoicing will be based on the Annual Value of this agreement (excluding GST) and invoiced Quarterly in advance (unless otherwise agreed):
      - Payment terms are thirty (30) days from the date of invoice.
      - You may not set-off against any payment under this agreement any amount of money that we may owe to you.
    - b) We will invoice you based on the Annual Value of this agreement. It is not our responsibility to assure that any purchase orders have been issued by the Customer and this agreement supersedes any purchase orders from the Customer.
    - c) One annual price increase will be applied to all contracted services linked to each customer's Bill-To Account on 1st January each year. Written notice of all proposed annual increases will be communicated

- to the customer prior to the price increase effective date. If there is no agreement in writing in regard to the proposed price increase between both parties after arbitration, then both parties have the right to terminate this agreement by giving 30-days' written notice and complying with clause 10) ("Term and Termination") found within these Terms and Conditions.
- d) If you fail to make payment in accordance with this agreement, you agree to reimburse us for all costs that we may incur in recovering the overdue amount. We may withhold the provision of Services where any amount is overdue under this agreement.
  - e) Paper based Invoice processing fee: If you require paper-based invoices, you agree to pay to us the invoice processing fee advised by us to you, from time to time, in writing.
  - f) Refunds: You agree that we do not have to process any overpayments by you as a refund if your accounts balance is not zero balance.
  - g) Disputed invoices: If you dispute any charges on an invoice, the dispute must be submitted to us in writing within fourteen (14) days of the invoice generation date. THE COMPANY reserves all of its rights accruing under this agreement where you fail to pay any undisputed charges by the due date. You must pay all parts of the invoice which are not the subject of a bona fide dispute before the due date for payment of the invoice.
  - h) Environmental Levy Fees: You are liable for any fees incurred by or imposed on us for supervisions or inspections according to any applicable environmental legislation.
  - i) Subscription Fees/Inductions Fees: You agree to reimburse us for any subscription fees / induction fees that are charged to us due to any such requirements for provision of the Services at the Site Address.
  - j) Set-off: You agree that at any time during the term of this agreement, THE COMPANY may set-off, deduct from or provide as a credit on any invoice, any amount that THE COMPANY owes to You.
- 9) Credit  
If you desire to obtain or have obtained commercial credit from us, you authorise us to:
- a) conduct credit checks on you, your related entities and any subsidiaries (together with any directors, partners or other authorised representatives) from credit reporting agencies;
  - b) collect and/or disclose the following types of credit-related information about you, your related entities and any subsidiaries (together with any directors, partners or other authorised representatives) which credit providers are permitted to supply obtain or receive under privacy laws including but not limited to:
    - (i) name, business address (including previous addresses), contact details (including telephone and email addresses) and other identity verification emails;
    - (ii) credit history (including any repayments missed or late repayments made);
    - (iii) details of any credit provided by other credit providers (such as other financial institutions, utilities or any other cooperation that has given you credit terms);
    - (iv) any credit rating or credit assessment score; and
    - (v) details of any credit-related court proceedings or insolvency applications;
  - c) disclose information about your application for credit under this agreement and if successful, about the credit account and credit provided to a credit reporting agency to obtain information or credit reports; and
  - d) disclose details of your payments that are more than 60 days overdue to credit reporting agencies and other credit providers; and disclose information to any person considering acting as your guarantor.
- 10) Term and Termination
- a) This agreement commences on the Commencement Date and continues until the expiry of the Term unless terminated earlier by you or us in accordance with this agreement.
  - b) Upon termination of this agreement by either party for any reason, we are entitled to immediate possession of the Equipment and you will allow us to enter the Service Address to remove the Equipment.
  - c) Notwithstanding any other provision of this agreement, if either party breaches any term or condition of this agreement the other party may notify the party in breach in writing and seek remedy of the breach via consultation and/or arbitration within 14 days. The party not in breach may at its sole discretion immediately terminate this agreement or suspend services by notice in writing to the party in breach if no agreed solution to the breach is reached within 14 days.
  - d) If you terminate this agreement within the Initial Term, when we are not in breach of any Term or Condition of this agreement, then you will pay us an early termination fee equivalent to six (6) months of the Annual value or 50% of the Annual Value for the remaining months in the Initial Term of the agreement, whichever value is the greater. The parties acknowledge that this early termination fee is a genuine pre-estimate of THE COMPANY'S loss for early termination of the Services before the end of the Initial Term.
  - e) Upon termination of this agreement:
    - (i) You must return to THE COMPANY any documentation, Equipment, notes, records or any other documentation relating to the Equipment or the Services are required by THE COMPANY; and
    - (ii) All amounts owed to THE COMPANY for Equipment and Services rendered up until the date of the termination becomes payable immediately (provided that THE COMPANY will provide to You an invoice for any amounts not yet invoiced).
- 11) Limitation of Liability  
To the extent permitted by law:
- a) nothing in this agreement operates to make us liable (whether under contract law, common law or otherwise) to you for any consequential, indirect or special loss or damage of any nature whatsoever including (but not limited to) those arising out of delay, loss of product, loss of production, business interruption, loss of revenue, loss of profits or loss of opportunity;
  - b) where a claim relates to a guarantee or warranty under the New Zealand Consumer Law, our liability to you under this agreement, whether in contract, tort (including, without limitation, negligence) or otherwise is in the case of the Equipment, limited to the replacement or repair of the Equipment or the cost of replacing or repairing the Equipment, and in the case of Services, is limited to the cost of supplying those Services again, whichever may be determined in our absolute discretion to be appropriate in the circumstances;
  - c) in all other circumstances, our liability to you (including in contract, negligence, tort or any common law or statutory right) under this agreement will not exceed the total fees received by us from you pursuant to this agreement we are not liable for any claims made for injury, loss or damage whether caused negligently or otherwise to you or your property, or to any third party as a consequence of providing the Services, the Equipment or any additions;
  - d) the parties must take all reasonable steps to mitigate any loss, liability, damage, cost or claims incurred by them under this agreement; and
  - e) a party may not recover damages or obtain payment, reimbursement or restitution more than once for the same loss, liability, damage or breach of this agreement.
- 12) Statutory Warranty  
Our Services come with guarantees that cannot be excluded under the New Zealand Consumer Law. For major failures with the Service, you are entitled:
- a) to terminate this agreement; and
  - b) to a refund for the unused portion of the Service in the relevant Term only, or to compensation for its reduced value. You are also entitled to be compensated for any other reasonably foreseeable loss or damage.
- If the failure does not amount to a major failure, you are entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel the Services and obtain a refund for the unused portion of the Services.
- 13) Services Warranty Claim:  
If you have a problem with our Services or believe that you may have a Services warranty claim in relation to our Services, you must:
- a) contact our Branch directly who provided the Services, phone 0800 101 969 or email [nationalenquiries@flick.com.au](mailto:nationalenquiries@flick.com.au)
  - b) arrange a convenient time for the Services to be inspected; and
  - c) if we determine in our absolute discretion to be appropriate in the circumstances, a convenient time for the Services to be resupplied.
- 14) Insurance  
THE COMPANY will maintain for the Term the following insurance policies with a reputable insurer:
- a) Public and products liability insurance for an amount not less than \$20 million (any one event); and
  - b) Worker's compensation insurance.
- 15) Goods and Services Tax  
Where any supply under this agreement is or becomes subject to GST, an amount equal to the GST paid or payable for that supply will be added to the amount exclusive of GST paid or payable for that supply.
- 16) Inability to Deliver Services  
To the extent permitted by law, we will not be responsible for failure to meet our contractual obligations if the failure results from Force Majeure.
- 17) Modern Slavery  
THE COMPANY will use its reasonable endeavours to identify and reduce the risk of modern slavery in its supply chain under the *Modern Slavery Act 2018* (Cth).
- 18) Privacy  
By accepting this Agreement, you acknowledge that personal information may be collected, used, held and disclosed in accordance with the Flick Privacy Policy which can be accessed at [flick.com.au/privacy](http://flick.com.au/privacy).

- 19) Intellectual Property
- a) Nothing in this agreement transfers or assigns any intellectual property rights of THE COMPANY (whether registered or unregistered and including trademarks, patents, copyright, designs, inventions and all other intellectual property rights) to THE CUSTOMER. You agree that any intellectual property rights developed in the course of this agreement and the Services will belong to THE COMPANY and THE COMPANY is the absolute legal and beneficial owner of all derivative works, modifications, enhancements or improvements on the intellectual property rights developed under this agreement.
  - b) THE COMPANY grants to THE CUSTOMER a limited, revocable licence for the Term of this agreement to use certain intellectual property rights of THE COMPANY as necessary to enjoy the Services.
- 20) Governing Law and general terms
- a) This agreement is subject to the laws of New Zealand, and the parties submit to the jurisdiction of New Zealand.
  - b) THE COMPANY may assign, transfer, novate, dispose of or create an interest in any of its rights, title or interest in or under this agreement by giving written notice to THE CUSTOMER. You may assign your rights under this agreement with our prior written consent.
  - c) If a provision of this agreement is invalid or unenforceable in a jurisdiction, it must, in that jurisdiction, be read down or severed from this agreement to the extent of the invalidity or unenforceability and it does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions of this agreement.
  - d) Unless specified otherwise in this agreement, the rights of the parties under this agreement are cumulative and do not exclude any other rights (whether under law or otherwise).

21) Definitions for this Agreement:

"Annual Value"	means the total amount payable annually for the provision of the Equipment and Services as specified in the Services Program (as may be amended from time to time in accordance with this agreement);
"Commencement Date"	means the date specified in the Services Program;
"THE COMPANY"	means us, our, we and Flick Anticimex Limited (NZBN 9429030291577) 38 Vestey Drive, Mt Wellington, Auckland 1060, NZ;
"THE CUSTOMER"	means you being the customer as specified in the Services Program Acceptance Form;
"Equipment"	means the pest control, disinfection and/or hygiene services equipment and any other equipment provided under this agreement, and includes any additional or replacement equipment;
"Force Majeure"	means any circumstance not within our reasonable control, or any circumstance that could not have been avoided, prevented or circumvented despite the exercise of reasonable diligence by us, including extreme weather events, pandemic or outbreak of infectious disease (and any associated government or regulatory authority-mandated restrictions), fires, terrorism, wars, strikes, cyber-attacks, power blackouts, imposition of sanctions and earthquakes;
"Services Program"	means the pest control, disinfection and/or hygiene management program to be provided by THE COMPANY to THE CUSTOMER (which may or may not be specified in the Services Program);
"the Schedule"	means the services stated within the Services Program provided with this agreement;
"Service Address"	means the address specified in the Services Program;
"Service Instructions"	means the service instructions specified in the Services Program;
"Services"	means pest control and/or hygiene services, and any other services provided under this agreement as specified in the Services Program; and
"Term"	means the Initial Term and any Renewal Term as specified in the Services Program.