

Hydrostatic testing of Fire Hydrant and Sprinkler Systems Waiver, Indemnity and Release of Liability

Introduction

1. The purpose of this document is to:
 - inform You of the risks associated with Us performing Hydrostatic Testing on Your System at Your Premises in compliance with the requirements of Australian Standard 1851 (AS-1851)
 - 1.1 confirm You agree for Us to proceed with the Hydrostatic Testing on Your System at Your Premises;
 - 1.2 confirm You acknowledge and agree to:
 - (a) waive all your legal rights of recovery against Us, and
 - (b) release Us from all related liabilities, in the event Your Premises sustain Material Damage, and/or You suffer Consequential Loss, as a result of Us performing the Hydrostatic Testing on Your System;
 - 1.3 confirm We acknowledge and agree that:
 - (a) We will maintain current public and products liability insurance, and professional indemnity insurance, and

We will be liable to compensate You, to the extent Your premises sustains Material Damage, and/or You suffer Consequential Loss, as a result of the Tester's negligence or wilful misconduct in Our performing of the Hydrostatic Testing on Your System.

Hydrostatic pressure testing and risk warning

2. AS-1851 sets out the compliance requirements relating to the routine servicing of fire protection systems and equipment to ensure the systems are safe and reliable (AS-1851). This includes Your System.
3. AS1851 requires that You perform a Hydrostatic Test of Your System every 5 / 6 years, dependent on system test requirements.
4. This obligation has also been codified in legislation across all Australian states and territories.¹
5. Systems such as Your System:
 - 5.1 have the propensity, and are known to, deteriorate due to age, wear and tear, rust, and poor water quality; and
 - 5.2 may resultingly develop leaks or fail during the performing of the Hydrostatic Test despite Our reasonable checking.
6. If your System fails during a Hydrostatic Test it may cause water damage to Your System, the building, fixtures, fittings, plant, equipment or stock at Your Premises and possible loss of trade/consequential losses.

Client's acknowledgement of risk

We agree to perform a Hydrostatic Test of Your System in accordance with AS-1851, AS 1851 (2012) Table 4.4.4 Item 4.3 in accordance with AS 2419.1-2005 Section 10.2 and VBA Building PN ESM-05 (2021) / AS 1851.4-1992, Section 3, Item 3.3.6 in accordance with AS 2419.1 and VBA Building PN ESM-05 (2021), as may be applicable.

7. You acknowledge and agree that:
8. the maintenance and testing procedures outlined in AS1851 requires that You perform a Hydrostatic Test of Your System every 5 / 6 years, dependent on system test requirements;
 - 8.1 Your System has the propensity, and is known to, deteriorate over time as a result of age, wear and tear, rust, poor water quality, maintenance failures and other associated causes.
 - 8.2 This deterioration may cause Your System to fail to maintain water pressure at the rate and for the period stipulated in AS-1851.
 - 8.3 Our performing of the Hydrostatic Testing at Your Premises:
 - (a) gives rise to a risk that the pipework connected to Your System may rupture, and this may result in flooding and water damage to Your Premises; and
 - (b) carries the risk of Material Damage and Consequential Loss in the event Your System fails during the Hydrostatic Testing.
 - 8.4 We have sufficiently explained to You, and You understand:
 - (a) the risks associated with Us performing a Hydrostatic Test of Your System at Your Premises; and
 - (b) the prospect of Material Damage and Consequential Loss if, during the Hydrostatic Test Your System fails to maintain water pressure at the rate and for the period stipulated in AS-1851.

Terms of Agreement

9. The Tester and the Client agree that:
- 9.1 Prior to performing the Hydrostatic Test on Your System:
- (a) the Client will provide the Tester with all available records and information in its possession concerning the previous Hydrostatic Test/s and maintenance work that has historically been performed on Your System;
 - (b) the Tester will undertake an onsite inspection of the visible physical components comprising Your System to assess the general physical condition of the visible parts of Your System;
 - (c) the Tester will inform You of any defects observed or concerns arising from the onsite inspection that Your System may fail or be unable to maintain the required pressure levels during the Hydrostatic Test.
- 9.2 The Tester's onsite inspection is visual and based on Our onsite observations. There may be some underlying defect with Your System that cannot be identified by visual inspection and would require historical maintenance data or a comprehensive examination of the pipework, including the inside of the pipework.
- 9.3 The Tester will exercise all reasonable care and skill expected of a suitably qualified fire testing Technician and take all reasonable precautions to:
- (a) perform the inspection and the Hydrostatic Test in compliance with AS-1851 in accordance with the relevant Australian Standards, but it may not be possible in all cases to identify defects in Your System prior to performing the Hydrostatic Test;
 - (b) prevent Material Damage and Consequential Loss, including ceasing the Hydrostatic Test if the Tester observes Your System failing (usually indicated by a drop in pressure).
- 9.4 The Tester maintains public and products liability insurance and professional indemnity insurance for its liability to compensate the Client for losses caused by Our negligence in the performance of the Hydrostatic Test.

Waiver and release

10. We are not liable if:
 - 10.1 Your System fails to maintain water pressure at the rate and for the period stipulated in AS-1851, or
 - 10.2 Your System fails or ruptures during the Hydrostatic Test despite Our reasonable enquiries into Your System's service, testing, maintenance, and repair history, and the proximate cause of the failure/rupture is deterioration and wear and tear and poor condition of Your System.
11. If You are unable to source and provide to Us records evidencing the maintenance of Your System, including prior Hydrostatic Tests of Your System, then:
 - 11.1 We will undertake Our onsite inspection of the visible physical components comprising Your System and rely on this inspection to assess and determine the general physical condition of Your System and inform You of any defects We observe;
 - 11.2 Our onsite inspection is visual and is based on Our onsite observations. There may be some underlying defect or problem with Your System that cannot be identified by an external, visual inspection only and would require historical maintenance data or a comprehensive examination of the pipework; and
 - 11.3 To the extent Your System fails during the Hydrostatic Test as result of the deteriorated conditions of the pipework, We will not be liable to You for any Material Damage or Consequential Loss, unless Your System failure was caused by Our negligence.
12. The Client agrees:
 - 12.1 to indemnify, release and hold the Tester (and its officers, employees, subcontractors and agents) harmless from any and all Claims which may arise out of or in connection with the Hydrostatic Test and Your System, except in relation to the Tester's proportion of liability for the Claim according to the extent to which the loss giving rise to the Claim was directly caused by the negligence of the Tester in performing the Hydrostatic Test; and
 - 12.2 not to exercise its legal rights against the Tester except in accordance with the terms of this document.
13. The Client shall indemnify and keep indemnified the Tester against all Claims made against the Tester arising out of or in connection with the Hydrostatic Test or Your System, except to the extent the subject loss or damage was directly caused by the Tester's negligence or willful misconduct.
14. If Your System fails to perform in the event of a fire, and it is found Your system had not been maintained appropriately and in compliance with AS-1851, then Your insurer may reduce your claim or even deny liability to indemnify You in the event of any loss.
15. We suggest You inform your insurer of the Hydrostatic Test requirements and furnish Your insurer with an executed copy of this waiver and release.

Defined terms

- 16. In this document:
 - 16.1 **Claim** includes but is not limited to any demands, claims, actions, proceedings or suits in relation to loss, damage, liability or injury.
 - 16.2 **Tester, We and Us** is a reference to B SHORE Fire
 - 16.3 **Client or You** is a reference to the person or entity who has engaged the Tester to perform the Hydrostatic Test and includes its subsidiaries and related companies and the directors, officers, employees, voluntary workers, contractors, subcontractors, and agents of those entities.
 - 16.4 **Your System** includes Fire sprinklers, Fire pump sets, Fire Hydrant Systems and any other water pressurised fire protection equipment.
 - 16.5 **Material Damage** means physical loss or destruction of property.
 - 16.6 **Consequential Loss** includes any indirect or consequential loss, loss of income, loss of profit or loss of opportunity of any kind whatsoever.
 - 16.7 **Hydrostatic Test** means a method of pressurised testing to assess leaks in pipe joints and determine the structural integrity of Your System.

Execution page

Please complete the following:

I
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 have read and understood this waiver and release of liability document and consent B SHORE Fire to undertake the necessary work.

We also understand the risks involved with these tests and if damage occurs during the tests caused directly by the failure of our system, we release B SHORE FIRE from all action in relation to the damage.

Signed Date

Title

On behalf of