

# TERMS AND CONDITIONS OF SERVICE CALL

## 1. DEFINITIONS

In these terms and conditions of sale: "**Business**" and "**Consumer**" have the meanings ascribed to them by the Consumer Guarantees Act 1993. "**Company**" means "**Smartway Security Services Limited**" at Hamilton and its trading divisions. "**Customer**" means the person, trust, partnership or body (howsoever incorporated) purchasing the Products and/or Services specified in this Agreement. "**Products**" means the equipment or other goods supplied by the Company to the Customer under this Agreement of which these conditions form part. "**Services**" means the installation and commissioning of Products or other services provided by the Company to the Customer as set out in this Agreement. "**Date of Commissioning**" in relation to a Product installed by the Company means the date on which the Company certifies in writing that it has completed all installation and testing and that the Product is ready for use, or the date the Product is put into use, whichever occurs first. "**Agreement**" means this Service Call Report in association with any maintenance agreement authorising the carrying out of the Services detailed in this Service Call Report. "**SCR**" means this Service Call Report.

## 2. EFFECTS

These terms and conditions apply to all Products and/or Services. Any term or condition of an order placed by the Customer which conflicts with or purports to vary or modify these terms and conditions will have no effect whatsoever and will not be binding on the Company.

## 3. ORDER

- The Products and/or Services detailed on this SCR are deemed to have been authorised by the Customer where any general authorisation exists in a maintenance agreement and the SCR has been completed by an authorised Smartway representative with or without the Customer's signature.
- Descriptions, illustrations and materials contained in any catalogue, price list, brochure, leaflet or other descriptive material including samples provided or exhibited by or on behalf of the Company are informative only and do not constitute a representation or render any contract a sale by description.
- The Company reserves the right to change or modify the design of any of the Products or Services without notice, provided such modification does not substantially alter the performance of the Product unless the modification is required by law in which case the modification may be as required by law. The Company will advise the Customer of such modifications.
- The Customer warrants that any of the Products manufactured or supplied by the Company which are based in whole or in part upon designs, drawings, specifications or samples supplied to the Company by or on behalf of the Customer do not infringe any copyright, patent, registered design, trade mark or other intellectual property right. The Customer shall indemnify the Company and keep the Company safe, harmless and indemnified from and against any and all liabilities, which the Company may suffer or sustain, arising out of, or consequent on, breach by the Customer of this clause.

## 4. PRICES

- The Customer agrees to pay the Company for the Products and/or Services supplied as detailed on this SCR inclusive of all travel and incidental expenses at the Company's standard rates from time to time.
- All prices and/or rates quoted by the Company for Products or Services to be supplied by the Company are plus Goods and Services Tax (GST).

## 5. PAYMENT

- All Products are supplied on a C.O.D. basis unless expressly stated to the contrary in writing in any related maintenance agreement or attached to this Agreement. The extension of credit shall be at the Company's absolute discretion and subject to satisfactory credit reference being obtained and a satisfactory credit Agreement being entered into. Where credit is extended by the Company payment shall be made in full by the Customer without deduction, abatement, legal equitable or statutory set-off, within seven (7) days of the date of invoice or by arrangement in writing. Payment shall not be withheld by the Customer by reason of the existence of any 'pay when or if paid' provision of any contract to which the Customer is a party.
- Interest at a rate equal to four percent (4%) above the Company's bank overdraft lending rate of interest from time to time calculated on a daily basis shall be payable on any moneys outstanding from the date payment is due until the date payment is received by the Company but without prejudice to the Company's other rights or remedies in respect of the Customer's default in failing to make payment on the due date.
- No cash retention's or set-offs against the purchase price are allowable.
- If an invoice becomes overdue beyond the terms & conditions of invoice and we hold a direct debit on your bank account, you agree that we may deduct the money from your bank account to clear the account.
- The Company shall be entitled to cancel any order at any time if the Customer has failed to, or the Company believes on reasonable grounds that the Customer will not make payment for the Products or Services as required by this Agreement. The Customer shall be liable for any costs incurred by the Company associated with any Products and/or Services supplied up until such cancellation.

## 6. DELIVERY AND RISK

- Risk of loss or damage to the Products will pass upon the first to occur of any of the following events:
  - the passing of property in the Products to the Customer; or
  - the delivery of such Products by the Company to the Customer (or when the Products are tendered for delivery) or to a carrier at the contractual point of delivery; or
  - upon the Products being uplifted from the Company's premises by the Customer or the Customer's agent.

## 7. PASSING OF TITLE

- Title to and property in the Products remains with the Company (notwithstanding that risk therein may have passed to the Customer) and the Company reserves the right to dispose of the Products until such time as the Customer's total indebtedness to the Company for the Products is discharged.
- Until title to, and property in, the Products passes to the Customer, the Customer shall:
  - be a bailee only of the Products with a fiduciary obligation to the Company in respect of the Products;
  - store the Products supplied by the Company in a way that clearly identifies them as the property of the Company and keep separate records of any further sale of the Products;
  - insure the Products against all usual risks and take proper care of the Products and the proceeds of any and all insurance claims in respect of damage to, or destruction of, the Products are hereby assigned by the Customer to the Company; and
  - (and does hereby) indemnify the Company against the loss or damage to the Products howsoever arising.
- At all times until the Products have been paid for in full, the Customer shall ensure that the Company shall at all times have access to the premises in which the Products are held and authorises the Company to enter upon the premises or to exercise any other rights of entry of the Customer for that purpose. The Company shall be entitled to check that the Products are being stored in accordance with these terms and conditions and to remove the Products at any time if, in the opinion of the Company, payment for any of the Products has not been or is unlikely to be made by the due date. In the event that any of the Products are stored on any premises other than premises to which the Customer has a right of access, then the Customer shall forthwith notify the person or persons entitled to possession of such premises of the rights of the Company under these terms and conditions.
- If the Customer fails to pay any amount of the Customer's total indebtedness to the Company when it is due to the Company or an event of default as specified in sub-clause (a) hereof occurs the Company may without notice and without prejudice to any of its other rights and remedies recover and/or resell any or all of the Products and may enter upon the premises in which the Customer fields the Products, and where necessary disconnect and remove any installed Products, and the Customer shall be liable for any costs including any reinstallation, reinstatement or repair consequent upon such recovery.
- Notwithstanding any other provisions of these terms and conditions payment shall become due immediately upon the Customer (being a natural person) committing any act of bankruptcy or the Customer (being a company) committing any act which entitles any person to apply to wind up the Customer or a receiver or receiver manager of the Customer of any of its assets is appointed.

## 8. WARRANTIES AND LIMITATION OF LIABILITY

Nothing in this clause will limit the rights of the Customer if the Customer is a Consumer, and is not purchasing goods for the purposes of a Business in terms of the Consumer Guarantees Act 1993.

- Where the Customer acquires for Products the purposes of re-supplying them in trade or for the purposes of a Business, then, subject to the terms of this Agreement, no warranty or representation whatsoever is given or made to the Company as to the performance, quality or suitability of

the Products and with the exception of any express warranty set out herein, all warranties conditions and representations (whether as to suitability for purpose, tolerance to conditions, merchantability or otherwise and whether implied by law, custom or otherwise) are hereby expressly excluded to the fullest extent permitted by law.

- The Company warrants that any Products sold to the Customer hereunder will, upon delivery or upon installation and commissioning by the Company (as the case may be), be free from defects for a period of one (1) year from the date of invoice or the Date of Commissioning (as the case may be) and will be of the kind and quality specified in the Product specification issued by the Company. If any such defect appears within the period the Company will, at its option, repair, replace or issue credit based on equitable adjustment in price to the Purchase. Replacement parts or Products will be furnished on an exchange basis and will be either reconditioned or new. All defective parts will be returned to the Company and will become the Company's property. The Company will remedy free of charge any defect in installation appearing within the period.
- These express warranties will only apply if the Company is notified in writing within fourteen (14) days of the discovery of any relevant defects and the Company is satisfied that after delivery the Product has been properly handled, carried, installed, stored and maintained and that the Customer has complied with any applicable recommendations of the Company and that the Product has not been altered or modified in any way by any person.
- The Company will not be responsible for the non-performance or malfunction of or damage to any Product supplied by it to the Customer arising from any of, or any combination of the following:
  - adverse environmental conditions, including without limiting the generality of the foregoing, electrical noise, or electromagnetic radiation that may be direct coupled or induced in the Product's components, circuitry, power supply paths, signal paths or communication paths; or
  - the provision of utilities or services by the Customer or any third party which are not within operating limits specified in the Product specifications issued by the company or any other manufacturer of the Products (or part thereof); or
  - inter working with other equipment or software not supplied or approved by the Company; or
  - any reconfiguration or modification by the Customer or any third party of a product or system data base supplied by the Company; or
  - careless use of the Products by the Customer or use by unskilled or untrained employees of the Customer; or
  - fire, flood, water, wind, lightning, impact or any Act of God or other cause outside the control of the Company.

Any cost or expense incurred by the Company in detecting or isolating such non-performance malfunction or damage so noticed and rectification thereof will be borne by the Customer.

- The Company shall not be liable for any loss of profits or any consequential loss of any kind whatsoever suffered by the Customer arising from any defect of any Product or Service or any kind or from any breach of any of the Company's obligations in connection with this Agreement or from any negligence, misrepresentation or other act or omission on the part of the Company, its servants, agents or contractors.
- Notwithstanding anything else contained in this Agreement, the liability of the Company, whether in contract or in tort or otherwise howsoever, in respect of all claims, arising from breach of any of the Company's obligations arising in connection with this Agreement, from any negligence, misrepresentation or other act or omission on the part of the Company, its servants, agents or contractors shall not in aggregate exceed the price of the Products or Services, whichever is applicable.
- The Customer will indemnify and keep indemnified the Company against any and all actions, proceedings, costs, damages, claims, demands and expenses, whatsoever brought against or incurred by the Company arising out of or in connection with any act or omission of any negligent or willful default by the Customer in connection with the resupply of any Products by the Customer or any third party or use of any Products by any such third party.

## 9. INSTALLATION AND COMMISSIONING

- Any prices for installation and commissioning which may have been quoted are on the basis that the work can be performed and free and unimpeded access is granted between the hours of 8 am to 5pm Monday to Friday excluding holidays unless expressly stated otherwise.
- The Company will provide the Customer with details or environmental conditions and requirements for utilities and services and any other specified requirements considered necessary for the proper functioning of the Products and it will be the Customer's responsibility (and at the Customer's expense) to prepare the site in accordance with those requirements including providing all utilities and services necessary for the proper Installation, use and maintenance of the Products.
- It is the Customer's responsibility to obtain all necessary authorisation or approvals from any government body or statutory authority in relation to the supply, installation and commissioning of any Products under this Agreement. The Company will not be obliged to undertake any installation work until all necessary authorisations or approvals have been given. Without limiting the generality of the foregoing, the Customer shall be responsible for obtaining and complying with all Resource Consents and Territorial Authority permits and consents, and paying all fees and charges in connection therewith, and shall provide full details to the Company upon request.
- The Customer shall follow the Company's reasonable requirements and directions necessary for compliance by the Company with the Health and Safety and Employment Act 1992. The Customer warrants that it will at all time comply with the Act. The Customer shall indemnify the Company (and keep the Company indemnified) against all liabilities, costs, penalties, expenses or losses whatsoever (and howsoever arising) due to the Company performing its obligations under this Agreement or due to a breach by the Customer of its warranty in this clause.
- Where the supply and maintenance of any Products supplied by the Company under this Agreement or the provision of any other services by the Company hereunder requires compliance with any statute, bylaw, regulation, code or other legal requirement for the time being in force, then compliance with such legal requirements shall be the sole responsibility of the Customer who shall bear all compliance costs in relation thereto.
- Where in the opinion of the Company it is essential to carry out any temporary repairs or modifications the Customer agrees to pay in full the costs associated with such temporary repairs or modifications and their removal, reinstatement or replacement.

## 10. NOTICES

Any notice, demand or other communication required to be served or given by one party to the other party shall be in writing and may be sent by post, facsimile or delivered personally to the recipient at the address nominated on this Agreement (as revised from time to time by notice in writing).

## 11. PROPRIETARY INFORMATION

No title to or ownership of any intellectual property of proprietary information (including software) in any of the Products is transferred to the Customer. If any such intellectual property or proprietary information forms an integral part of any Product supplied by the Company hereunder, it is supplied under a single-user licence only and not by way of sale and may not be copied (except for the purpose of providing a back-up for the system), disclosed, transferred or used for any purpose by the Customer except with the express authority of the Company.

## 12. GOVERNING LAW

The laws in force in New Zealand will govern this contract for the sale of the Products or Services specified in this Agreement.

## 13. GENERAL

- These terms and conditions will prevail notwithstanding any terms and conditions on any other order submitted by the Customer. Signing of this SCR and/or delivery of Goods or completion of Services by the Company to the Customer pursuant to a Customer's order shall be deemed to be acceptance by the Customer and shall constitute acceptance of these terms and conditions in place of any conditions of purchase contained in the Customer's order.
- Any failure by the Company to enforce any term of condition hereof will not be deemed to be waiver of future enforcement of that or any other term or condition.
- In the event that any one or more of the provisions of this Agreement shall be invalid, void, illegal, or unenforceable the validity, existence, legality and enforceability of the remaining provisions hereof shall not in any way be affected, prejudiced or impaired thereby.
- All disputes or difference of any kind whatsoever between parties in connection with or arising out of this Agreement shall be referred to arbitration pursuant to the Arbitration Act 1996.