

GENERAL TERMS AND CONDITIONS

1. Definitions

- 1.1. "Electra" means **Electra Services Limited trading as "Safeguard" or "Securely" or "Mains Security"**, its successors and assignees or any person acting on behalf of and with the authority of Electra Services Limited.
- 1.2. "Client" means the person/s buying the Products as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3. "Products" means all Products or Services (including monitoring services) supplied by Electra to the Client at the Client's request from time to time (where the context so permits the terms 'Products' or 'Services' shall be interchangeable for the other).
- 1.4. "Extra Work" means work authorised by the Client, and carried out by Electra, for which an extra charge is payable at Electra's normal rates in addition to Services accepted by the Client in a written quotation (Extra Work includes service work undertaken on a 'do and charge' basis and is not necessarily specified as exclusions in any quotation).
- 1.5. "Charges" means the price payable for the Products as agreed between Electra and the Client in accordance with clause 4 of the Terms and Conditions.
- 1.6. "Contract Term" is the Term indicated in the Monitoring Agreement between Electra and the Client.
- 1.7. "Site" means the Client's premises where the Products and/or services are situated or carried out.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for Products or accepts Delivery
- 2.2 These terms and conditions may only be amended with Electra's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Electra.

3. Change in Control

- 3.1 The Client shall give Electra not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or Site). The Client shall be liable for any loss incurred by Electra as a result of the Client's failure to comply with this clause.

4. Charges and Payment

- 4.1 At Electra's sole discretion the Charges shall be either:
 - a. as indicated on any invoice provided by Electra to the Client; or
 - b. the Charges as at the date of Delivery according to Electra's current price list; or
 - c. Electra's quoted Charges (subject to clause 5) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days;
 - d. as specified in the **Monitoring Agreement**, subject to Clause 5 below.
- 4.2 At Electra's sole discretion, a non-refundable deposit may be required.
- 4.3 Time for payment for the Products being of the essence, the Charges will be payable by the Client on the date/s determined by Electra, which may be:
 - a. by way of instalments/progress payments in accordance with Electra's payment schedule; or
 - b. the date specified on any invoice or other form as being the date for payment; or
 - c. failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Client by Electra.

- 4.4 Payment may be made by Direct Debit, Automatic Payment or cheque, credit card (plus a surcharge of up to two percent (2%) of the Charges), or by any other method as agreed to between Electra and the Client.
- 4.5 Unless otherwise stated the Charges include GST. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Charges. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Charges except where they are expressly included in the Charges.
- 4.6 Receipt by Electra of any form of payment shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then Electra's ownership or rights in respect of the Products, and this agreement, shall continue.

5. Variations:

- 5.1 Electra reserves the right to change the Charges in the event of a variation to Electra's quotation. Any variation from the plan of scheduled Services or specifications of Products (including, but not limited to, any variation as a result of Extra Work required due to unforeseeable problems with the Site which are only revealed when undertaking the Services, such as any existing cabling which does not comply with New Zealand standards and causes the new installation to be non-compliant, or as a result of increases to Electra in the cost of materials and labour) will be detailed in writing and charged for on the basis of Electra's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 5.2 Repairs and replacement parts are considered Extra Work, except in the event that such work is completed under any warranty afforded either by Electra or the manufacturer.

6. Delivery and Installation

- 6.1 Delivery of the Products ("Delivery") is taken to occur at the time that Electra (or Electra's nominated carrier) delivers the Products to the Client's nominated address, even if the Client is not present at the address.
- 6.2 At Electra's sole discretion, the costs of Delivery are included in the Charges.
- 6.3 Any time or date given by Electra to the Client is an estimate only. The Client must still accept Delivery even if late and Electra will not be liable for any loss or damage incurred by the Client as a result of the Delivery being late.
- 6.4 The Client shall provide, at the Client's cost, mains power connection so as to enable installation and/or service work to be undertaken at the premises.
- 6.5 Unless otherwise agreed by Electra in writing:
 - 6.5.1 any telecommunications connection required for the installation and/or maintenance of the system will be arranged and paid for by the Client;
 - 6.5.2 system maintenance services are considered Extra Work.

7. Risk

- 7.1 Irrespective of whether Electra retains ownership of the Products, all risk for the Products passes to the Client on Delivery
- 7.2 The Client accepts that all Products installed at or attached to their premises:
 - 7.2.1 are for monitoring and detection purposes only and should not be regarded as life saving devices; and
 - 7.2.2 do not guarantee that the Site will be free from malicious damage or loss caused by attack and/or breaking or entering.
- 7.3 It shall be the Client's responsibility:
 - 7.3.1 to ensure the Products are tested and maintained to full operational condition; and

- 7.3.2 for all activation or notification calls emanating from the system panel; and
 - 7.3.3 to ensure all electronically protected areas are free from obstacles which may impair the operation of the Products.
- 7.4 The Client acknowledges that in the event asbestos or any other toxic substances are discovered during the installation that it is the Client's responsibility to ensure the safe removal of such substances. The Client further agrees to indemnify Electra against any costs incurred by Electra as a consequence of such discovery. Under no circumstances will Electra handle removal of any asbestos or other toxic substances.

8. Access and Damage

- 8.1 The Client shall ensure that Electra has clear and free access to the Site at all times to enable them to deliver the Services. Electra shall not be liable for any loss or damage to the Site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Electra. The Client agrees to ensure that the premises shall at all times be a safe working environment and (without limitation) shall not contain asbestos or any other such similar hazard.

9. Title

- 9.1 Electra and the Client agree that ownership of the Products, other than those products leased by the Client and owned by Electra, shall not pass until:
- 9.1.1 the Client has paid Electra all amounts owing for the particular Products; and
 - 9.1.2 the Client has met all other obligations due by the Client to Electra in respect of all contracts between Electra and the Client.
- 9.2 It is further agreed that, until such time as ownership of the Products shall pass from Electra to the Client as per clause 9.1 or while the Products are leased by the Client:
- 9.2.1 where practicable, the Products shall be kept separate and identifiable until Electra shall have received payment and all other obligations of the Client are met; and
 - 9.2.2 Electra may give notice in writing to the Client to return the Products or any of them to Electra. Upon such notice the rights of the Client to obtain ownership or any other interest in the Products shall cease; and
 - 9.2.3 Electra shall have the right of stopping the Products in transit whether or not Delivery has been made; and
 - 9.2.4 if the Client fails to return the Products to Electra then Electra or Electra's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Products are situated and take possession of the Products.

10. Personal Property Securities Act 1999 ("PPSA")

- 10.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- 10.1.1 these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - 10.1.2 a security interest is taken in all Products and/or collateral (account) – being a monetary obligation of the Client to Electra for Services – previously supplied (if any), and that will be supplied in the future, by Electra to the Client.
- 10.2 The Client undertakes to:
- 10.2.1 sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Electra may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;

- 10.2.2 indemnify, and upon demand reimburse, Electra for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
 - 10.2.3 not register a financing change statement or a change demand without the prior written consent of Electra; and
 - 10.2.4 immediately advise Electra of any material change in its Sites of selling the Products which would result in a change in the nature of proceeds derived from such sales.
- 10.3 Electra and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 10.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 10.5 Unless otherwise agreed to in writing by Electra, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 10.6 The Client shall unconditionally ratify any actions taken by Electra under clauses 10.1 to 10.5.

11. Security and Charge

- 11.1 In consideration of Electra agreeing to supply Products, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Client indemnifies Electra from and against all Electra's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Electra's rights under this clause.
- 11.3 The Client irrevocably appoints Electra and each director of Electra as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.

12. Client's Disclaimer

- 12.1 The Client hereby disclaims any right to rescind, or cancel any contract with Electra or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by Electra and the Client acknowledges that the Products are bought relying solely upon the Client's skill and judgment.

13. Defects, Returns and Warranties

- 13.1 The Client shall inspect the Products on Delivery and shall within ten (10) days of such time (being of the essence) notify Electra of any alleged defect, error or omission, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Electra an opportunity to inspect the Products within a reasonable time following such notification if the Client believes the Products are defective in any way. If the Client shall fail to comply with these provisions the Products shall be presumed to be free from any defect or damage. For defective Products, which Electra has agreed in writing that the Client is entitled to reject, Electra's liability is limited to either (at Electra's discretion) replacing the Products or repairing the Products.
- 13.2 Returns will only be accepted provided that:
 - 13.2.1 the Client has complied with the provisions of clause 13.1; and
 - 13.2.2 Electra has agreed in writing to accept the return of the Products; and
 - 13.2.3 the Products are returned at the Client's cost within ten (10) days of the date of Delivery; and
 - 13.2.4 Electra will not be liable for Products which have not been stored or used in a proper manner; and

- 13.2.5 the Products are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 13.3 Electra may (in its absolute discretion) accept non-defective Products for return, in which case Electra may require the Client to pay handling fees of up to twenty-five percent (25%) of the value of the returned Products, plus any freight costs. However, subject to clause 13.1, non-stocklist items, or Products made to the Client's specifications, are under no circumstances acceptable for credit or return.
- 13.4 Subject to the conditions of warranty set out in clause 13.5, Electra warrants that if any defect in any workmanship of Electra becomes apparent and is reported to Electra within twelve (12) months of the date of Delivery (time being of the essence) then Electra will either (at Electra's sole discretion) replace or remedy the workmanship.
- 13.5 The conditions applicable to the warranty given by clause 13.4 are:
 - 13.5.1 the warranty shall not be applicable to batteries;
 - 13.5.2 the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - 13.5.2.1 failure on the part of the Client to properly maintain the Products; or
 - 13.5.2.2 failure on the part of the Client to follow any instructions or guidelines provided by Electra; or
 - 13.5.2.3 any use of the Products otherwise than for any application specified on a quote or order form; or
 - 13.5.2.4 the continued use of the Products after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - 13.5.2.5 fair wear and tear, any accident or act of God.
 - 13.5.3 the warranty shall cease and Electra shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Electra's consent.
- 13.6 In respect of all claims Electra shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 13.7 For Products not manufactured by Electra, the warranty shall be the current warranty provided by the manufacturer of the Products. Electra shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Products.

14. Consumer Guarantees Act 1993

- 14.1 If the Client is acquiring Products for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Products by Electra to the Client.

15. Intellectual Property

- 15.1 Where Electra has designed, drawn or developed Products for the Client, then the copyright in any designs, drawings and documents are the property of Electra.
- 15.2 The Client warrants that all designs, specifications or instructions given to Electra will not cause Electra to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Electra against any action taken by a third party against Electra in respect of any such infringement.
- 15.3 The Client agrees that Electra may (at no cost) use for the purposes of marketing or entry into any competition, any, designs, drawings, documents and/or Products which Electra has created for the Client.

16 Default and Consequences of Default

- 16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Electra's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Client owes Electra any money the Client shall indemnify Electra from and against all costs and disbursements incurred by Electra in recovering the debt (including but not limited to internal administration fees, legal costs, Electra's collection agency costs, and bank dishonour fees).
- 16.3 Without prejudice to any other remedies Electra may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Electra may suspend or terminate the supply of Products to the Client (including suspending or terminating the monitoring of the Client's alarm system after giving the Client five (5) working days' notice in writing). Electra will not be liable to the Client for any loss or damage the Client suffers because Electra has exercised its rights under this clause.
- 16.4 Without prejudice to Electra's other remedies at law Electra shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Electra shall, whether or not due for payment, become immediately payable if:
 - 16.4.1 any money payable to Electra becomes overdue, or in Electra's opinion the Client will be unable to make a payment when it falls due;
 - 16.4.2 the Client 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
 - 16.4.3 a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

17. Cancellation

- 17.1 Electra may cancel any contract to which these terms and conditions apply or cancel Delivery at any time before the Products are delivered by giving written notice to the Client. On giving such notice Electra shall repay to the Client any sums paid in respect of the Charges for Products not delivered to the Client. Electra shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.2 In the event that the Client cancels Delivery the Client shall be liable for any and all loss incurred (whether direct or indirect) by Electra (including, but not limited to, any loss of profits) up to the time of cancellation.

18. Privacy Act 1993

18.1 The Client authorises Electra or Electra's agent to:

- 18.1.1 access, collect, retain and use any information about the Client;
 - 18.1.1.1 (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - 18.1.1.2 for the purposes of administering and improving the Products or for communication with the Client; or
 - 18.1.1.3 for the purpose of marketing goods and services to the Client.
- 18.1.2 disclose information about the Client, whether collected by Electra from the Client directly or obtained by Electra from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.

18.2 Where the Client is an individual the authorities under clause 18.1 are authorities or consents for the purposes of the Privacy Act 1993.

18.3 The Client shall have the right to request Electra for a copy of personal information about the Client retained by Electra, on payment of the reasonable costs incurred, and the right to request correction of such information.

19. Unpaid Seller's Rights

- 19.1 Where the Client has left any item with Electra for repair, modification, exchange or for Electra to perform any other service in relation to the item (including, but not limited to, any information such as data, codes, keys and access cards pertaining to the Client) and Electra has not received or been tendered the whole of any moneys owing to it by the Client, Electra shall have, until all moneys owing to Electra are paid:
 - 19.1.1 a lien on the item; and
 - 19.1.2 the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 19.2 The lien of Electra shall continue despite the commencement of proceedings, or judgment for any moneys owing to Electra having been obtained against the Client.
- 19.3 Electra shall be under no obligation to release any such items to the Client if the Client is in default of payment except as may be required by any law or statute.

20. Termination

- 20.1 Upon expiration of the Contract Term, this agreement will continue on a month-to-month basis, subject to termination without cause by either party with one (1) month's prior written notice.
- 20.2 If this agreement is terminated by the Client prior to expiration of the Contract Term, the Client shall incur a termination fee equal to the remaining expected monitoring Charges which would fulfil the agreement's commitment.

21. General

- 20.1 The failure by Electra to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Electra's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand
- 20.3 Electra shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Electra of these terms and conditions. Where liable, Electra's liability shall be limited to an amount equal to the sum of three (3) months Charges actually paid by the Client in respect of that portion of the particular Services which gave rise to such claim or the sum of \$5,000 whichever is less.
- 20.4 The Client shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Client by Electra nor to withhold payment of any invoice because part of that invoice is in dispute.
- 20.5 Electra may assign, license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 20.6 The Client agrees that Electra may amend these terms and conditions at any time. If Electra makes a change to these terms and conditions, then that change will take effect from the date on which Electra notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Electra to provide Products to the Client.
- 20.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 20.8 The Client warrants that it has the power to engage Electra's services and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that such engagement creates binding and valid legal obligations on it.