

Thursday, 21 May 2015

STANDARD TERMS AND CONDITIONS OF SALE

1. APPLICATION OF TERMS AND CONDITIONS

- 1.1 These terms and conditions apply to the sale, installation, service and maintenance by E & C Security Systems Pty Ltd ("the Provider") of electronic security systems and equipment ("Goods") and where applicable provision of monitoring services ("Services"). These terms and conditions prevail over the Customer's terms and conditions of purchase (if any).
- 1.2 These terms and conditions will be interpreted so as to be consistent with the law and should any provisions be inconsistent with the law, then the same shall be severed so as to permit the balance of the terms and conditions to operate to the fullest extent permitted by law.
- 1.3 Where Services are to be provided to the Customer, the Provider may require the Customer to enter into a separate monitoring contract in respect of such Services. In such event, the terms of that contract will apply in addition to these terms and conditions.

2. ORDERS

- 2.1 Any order from the Customer to the Provider will not be binding upon the Provider until accepted by the Provider in writing or performed by the Provider (whichever occurs first).

3. PRICES

- 3.1 Provider's published prices, if any, are subject to change without notice. Prices contained in written quotations or proposals are firm for thirty (30) days from the date of the quotation or proposal; thereafter, they are subject to change.
- 3.2 If the Provider provides any additional goods or services, the Provider may charge the Customer for:
 - (i) The time of the Provider's employees, agent or subcontractor's at the Provider's then current professional rates for services; and
 - (ii) The goods provided.
- 3.3 Unless otherwise agreed in writing, all prices are exclusive of taxes and duties (including GST). The Customer will pay on demand any goods and services tax ("GST") or other duty payable in respect of the Goods and/or Services provided to the Customer.
- 3.4 The Provider reserves the right to charge the Customer for any costs, charges or expenses whatsoever that the Provider may incur as a result of:-
 - (a) Any special requirements of the Customer accepted by the Provider but not provided for in the terms of sale;
 - (b) Any increase in duties, taxes or other charges or expenses after the date of acceptance of the order by the Provider.

4. PAYMENT

- 4.1 Payment for Goods and Services must be paid in full by the Customer within 7 days of the date of invoice. The time for payment is of the essence.
- 4.2 Accepted forms of payment are by cash, cheque or direct debit. The Provider may in its discretion accept payment by credit card (Visa or Mastercard only), subject to the Customer paying any applicable surcharge.
- 4.3 If the Customer fails to pay any invoice by the due date then, without effecting any other right or remedy available, the Provider may:
 - (a) Charge interest on the amount unpaid at the rate of one percent (1%) above the highest rate set by the Commonwealth Bank of Australia as its rate for overdraft accounts, or if there is no such rate at the rate of twelve percent (12%) per annum, (such interest to be calculated daily) until the amount and all interest accrued is paid in full;

- (b) Recover from the Customer an administration fee of \$25.00 to cover bank and/or administration charges; and
 - (c) Suspend the performance of any Services or supply of any Goods to the Customer.
- 4.4 The Provider may collect payment of interest and any additional charges directly from the Customer or may act with the Customer's credit card provider or Financial Institution to collect such payment.

5. TITLE AND RISK

- 5.1 Unless otherwise specified, risk in Goods passes to the Customer on delivery, or on installation, where installation is provided by the Provider.
- 5.2 All legal and equitable title remains with the Provider until full payment for amounts accrued or owed is received by the Provider.
- 5.3 The Customer acknowledges that by virtue of clause 5.2 the Provider has a security interest in the Goods for the purposes of the *Personal Property Securities Act 2009 (Cth)* ("PPS Act") and the proceeds of sale of such Goods to the extent the PPS Act applies.
- 5.4 The Customer acknowledges that the Provider may do anything reasonably necessary, including but not limited to registering any security interest which the Provider has over the Goods or the purchase money security interest ("PMSI") in the Goods on the Personal Property Securities Register ("PPSR") established under section 147 of the PPS Act in order to prefer the security interest and comply with the requirements of the PPS Act. The Customer agrees to do all things reasonably necessary to assist the Provider to undertake the matters set out above. The Customer waives pursuant to section 157(3)(b) of the PPS Act the right to receive notice of a verification statement in relation to any registration on the register.
- 5.5 The Customer and the Provider agree that, pursuant to section 115 of the PPS Act, the following provisions in the PPS Act do not apply in relation to a security interest in the Goods to the extent, if any, mentioned (words in this provision have the same meaning as in the PPS Act:
 - (a) Section 129 (disposal by purchase);
 - (b) Section 125 (obligation to dispose of or retain collateral) in that the Company may extend the time for delay as the Company considers appropriate;
 - (c) Section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor before disposal;
 - (d) Subsection 132(4) (statement of account if no disposal);
 - (e) Section 135 (notice of retention);
 - (f) Section 142 (redemption of collateral); and
 - (g) Section 143 (reinstatement of security agreement).
- 5.6 Pursuant to section 275(6) of the PPS Act, the Customer and Provider agree that neither will disclose to any interested person information pertaining to the Provider's security interest as set out in section 275(1) of the PPS Act.
- 5.7 The Customer undertakes:
 - (a) Promptly to do all things including signing any further documents and providing any further information which the Provider may reasonably require to enable it to perfect and maintain the perfection of its security interest or PMSI (including by registration of a financing statement or financing change statement on the PPSA Register) and the Customer warrants that any such information the Customer provides will be complete, accurate and up-to-date in all respects);
 - (b) It will not register a financing statement or financing change statement in respect of the Goods without the Provider's prior written consent; and
 - (c) It will give the Provider not less than 14 days' prior notice of any proposed change in the Provider's name or any other change in the Customer's details (including but not limited to, changes in its address, facsimile number or trading name).

6. DELIVERY / PERFORMANCE

6.1 Any delivery or service times notified to the Customer are estimates only and the Provider will not be liable for any delay in provision of the Services or Goods.

7. DEFAULT

7.1 The Customer will be in default if:-

- (a) The Customer breaches the terms and conditions;
- (b) Payment for the Goods and/or Services has not been received by the Provider by the due date of payment; or
- (c) The Provider forms the opinion that changes to the Customer's company (if applicable) or credit standing would cause collecting risks.

7.2 If the Customer defaults, the Provider may, at its discretion:-

- (a) Immediately suspend the Services or refuse to supply any Goods to the Customer;
- (b) Terminate all agreements with the Customer;
- (c) Claim the return of any Goods in the Customer's possession where title has not passed to the Customer; and/or
- (d) Recover from the Customer the amount of any direct loss or damage sustained as a result of the termination, including any costs of recovery.

8. INDEMNITIES AND LIMITATION OF ANY LIABILITY ACKNOWLEDGEMENT

8.1 Except as expressly provided in by these terms and conditions and to the extent permitted by law, no guarantee, warranty, condition, undertaking or term, express or implied, statutory or otherwise, as to the condition, quality, performance, merchantability or fitness for purpose of any Goods or Services provided under these terms and conditions is given or assumed by the Provider and all such guarantees, conditions, warranties and liabilities (including liability as to negligence) express or implied relating to such goods or services are, subject to clauses 8.2 and 8.3, hereby excluded.

8.2 The Provider acknowledges that certain legislation in Australia, including the Australian Consumer Law, provides consumers with guarantees and rights which cannot be excluded, restricted or modified or which may in certain cases only be modified or restricted to a limited extent. Nothing in these terms and conditions excludes, restricts or modifies, or is intended to exclude, restrict or modify, any guarantee, condition, warranty, right or liability implied by law (including any guarantee, condition, right or liability imposed under the Australian Consumer Law) which cannot lawfully be excluded, restricted or modified.

8.3 Notwithstanding clause 8.1, if these terms and conditions constitutes a supply of goods or services to a Consumer, as defined in Australian Consumer Law or any other any applicable consumer protection legislation, then to the full extent permitted by law, the liability of the Provider in respect of a breach of a guarantee, condition or warranty implied by such legislation (other than any non-excludable implied guarantees, conditions or warranties), including liability for any consequential loss which the Customer or any other entity or person may sustain or incur, will be limited, at the Provider's option, to:

- (a) The repair or re-supply of the Goods or Services;
- (b) The payment of the costs of having the Goods or Services repaired or re-supplied; or
- (c) In the case of Goods, the replacement of the Goods with equivalent Goods, or the payment of the costs of such replacement.

8.4 The Customer acknowledges and agrees that in entering into this Agreement it has not relied in any way on the Provider's representations, and that it has satisfied itself as to the suitability of a Goods, and/or Services for the Customer's purposes.

8.5 To the full extent permitted by law the Provider will not be liable to the Customer for any loss or damage (including loss of profits or any other indirect or consequential loss or damage) arising directly or indirectly from:

- (a) The supply or use by the Customer of any Good or Service; or
- (b) Any breach by the Provider of its obligations under these terms and conditions; or
- (c) The use by the Provider of any good, product or service supplied to it by a third party and in connection with which any Good or Service may be interfaced.

8.6 This clause survives termination of this Agreement.

9. **PROPER CARE AND MAINTENANCE OF SECURITY SYSTEMS**

9.1 The Goods supplied and/or installed by the Provider (Security System) must not be damaged or treated carelessly or used abnormally by the Customer or any third party.

9.2 Proper care and maintenance of the Security System includes but is not limited to the following:

- (a) Any Security System installed and/or supplied by the Provider must be tested by the Customer on a regular basis;
- (b) The Security System must only be serviced by a suitably qualified and licensed technician on a regular basis and in accordance with the Australian Standard.
- (c) Standby Batteries should be replaced in accordance with manufacturer's recommendations and in any case after no more than three years.
- (d) Any modifications to a Security System must only be undertaken by a suitably qualified and licensed technician.

9.3 The Customer acknowledges that remote monitoring by the Provider (for a fee) is available for certain intruder alarms and access control systems and that such remote monitoring provides system trouble messages to the Provider that may identify potential faults or system issues (e.g. Low Battery, Loss of Supervision, Mains Failure, System Trouble Messages) that enables early identification and rectification of such faults or system issues which may prolong the life and effectiveness of the Security System. It is the responsibility of the Customer to request and arrange with the Provider that the Provider undertake such remote monitoring.

10. **CANCELLATIONS AND RETURNS**

10.1 The Provider will not give refunds if the Customer changes their mind or makes the wrong decision. Refunds or return will only be given to the extent there is a non-excludable right to return or refund under the Australian Consumer Law or the *Sale of Goods Act* NSW or other applicable legislation.

11. **GENERAL**

- 11.1 No neglect, delay or indulgence by the Provider in relation to enforcement of these terms and conditions will prejudice the rights of the Provider or be construed as waiving any such rights.
- 11.2 Errors in these terms and conditions or in any invoice will be corrected and appropriate adjustments made between the parties.
- 11.3 All Intellectual Property Rights in the Goods and/or the Services shall remain the property of the Provider and nothing in these terms and conditions is intended to confer on the Customer any such rights or any other intellectual rights in the Goods and or the Services.
- 11.4 Clauses which are capable of surviving the termination of this Agreement shall survive.
- 11.5 The terms and conditions of this Agreement are personal to the Customer and are not assignable by the Customer. The Provider can assign any of its rights and/or obligations under this Agreement at any time.
- 11.6 These terms and conditions shall be governed by the laws of New South Wales and the parties agree to submit to the non exclusive jurisdiction of the courts of that State and the Commonwealth having jurisdiction therein.

12. **DEFINITIONS AND INTERPRETATION**

12.1 In these terms and conditions:

Agreement means the agreement between the Provider and the Customer comprising these terms and conditions and any other document which the Provider provides to the Customer and which is expressed to include or be subject to these terms and conditions

Australian Consumer Law means Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*.

Consumer means a “consumer” as that term is defined in section 3 of the Australian Consumer Law.

Consumer Contract means a contract for the supply of goods or services to a Consumer.

Customer means any person or entity to whom the Provider supplies or offers to supply Goods or Services.

Intellectual Property Rights includes any intellectual property right, including but not limited to:

- (a) Patents, copyright, rights under the *Circuit Layout Act 1989 (Cth)* (and equivalent rights outside Australia in circuit layouts), registered designs, trade marks and any right to have any confidential information kept confidential; and
- (b) Any licence or other application or right to use, or grant the use of or apply for registration of, any of the rights referred to in paragraph (a).

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