

Cougar Security Pty Ltd T/A Chief Security – Terms & Conditions of Trade

1. **Definitions**
- 1.1 "CS" means Cougar Security Pty Ltd T/A Chief Security, its successors and assigns or any person acting on behalf of and with the authority of Cougar Security Pty Ltd T/A Chief Security.
- 1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting CS to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
(a) if there is more than one Client, is a reference to each Client jointly and severally; and
(b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
(c) includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 "Goods" means all Goods or Services supplied by CS to the Client at the Client's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).
- 1.4 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between CS and the Client in accordance with clause 5 below.
- 1.5 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
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 or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Client and CS.
- 2.3 None of CS' agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of CS in writing nor is CS bound by any such unauthorised statements.
- 2.4 CS requires access to Client's premises between the hours of 8 am and 6 pm Monday to Friday and such other times as agreed between the parties. The quotation is based on the assumption work will be performed between 8 am and 6 pm Monday to Friday. Work performed outside of these hours – for reasons beyond the control of CS may be subject to further charges. Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.5 The Client acknowledges and accepts that CS shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
(a) resulting from an inadvertent mistake made by CS in the formation and/or administration of this contract; and/or
(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by CS in respect of the Services.
- 2.6 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of CS: the Client shall not be entitled to treat this contract as repudiated nor render it invalid.
3. **Errors and Omissions**
- 3.1 The Client acknowledges and accepts that CS shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
(a) resulting from an inadvertent mistake made by CS in the formation and/or administration of this contract; and/or
(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by CS in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of CS: the Client shall not be entitled to treat this contract as repudiated nor render it invalid.
4. **Change in Control**
- 4.1 The Client shall give CS 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 business practice). The Client shall be liable for any loss incurred by CS as a result of the Client's failure to comply with this clause.
5. **Price and Payment**
- 5.1 At CS' sole discretion, the Price shall be either:
(a) as indicated on any invoice provided by CS to the Client; or
(b) CS' quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 CS reserves the right to change the Price if a variation to CS' quotation is requested. Any variation from the plan of scheduled Services or specifications (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 Australian Standards and causes the new installation to be non-compliant, or as a result of increases to CS in the cost of materials and labour) will be detailed in writing and charged for on the basis of CS's quotation and will be shown as variations on the invoice. The Client shall be required to respond to any variation submitted by CS within ten (10) working days. Failure to do so will entitle CS to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.3 At CS' sole discretion, a fifty (50%) deposit may be required.
- 5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by CS, which may be:
(a) before delivery of the Goods;
(b) by way of instalments/progress payments in accordance with CS' payment schedule;
(c) seven (7) days following the date on any invoice or other form as being the date for payment; or
(d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by CS.
- 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and CS.
- 5.6 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by CS nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to CS an amount equal to any GST CS must pay for any supply by CS under this or any other contract for the sale of the Goods. 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 Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
6. **Delivery and Installation**
- 6.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
(a) the Client or the Client's nominated carrier takes possession of the Goods at CS's address; or
(b) CS (or CS's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 6.2 At CS's sole discretion the costs of Delivery are included in the Price.
- 6.3 The Client shall provide clear and reasonable access to the premises on the agreed date work is to be undertaken. Delays to CS's technical staff waiting for access and/or clearing of obstacles, or other Client causes, may result in additional fees to be added to the Price.
- 6.4 CS may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.5 Any time specified by CS for delivery of the Goods is an estimate only and CS will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that CS is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then CS shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.6 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.
- 6.7 Any telecommunications connection required for the installation and/or maintenance of a security system will be arranged and paid for by the Client unless otherwise agreed in writing.
- 6.8 Repairs and replacement parts are extra work except in the event that such work is completed under warranty as agreed by CS.
- 6.9 System Maintenance is extra work unless otherwise agreed by CS in writing.
7. **Risk**
- 7.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, CS is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by CS is sufficient evidence of CS' rights to receive the insurance proceeds without the need for any person dealing with CS to make further enquiries.
- 7.3 If the Client requests CS to leave Goods outside CS' premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Client's sole risk.
- 7.4 Where CS is required to install the Goods the Client warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and CS shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
- 7.5 The Client accepts that electronic security systems, smoke, heat and like detectors installed to / at their premises:
(a) are for monitoring and detection purposes and should not be seen as a life saving device; and
(b) do not guarantee the site will be free from malicious damage or losses caused by attack, break and/or enter.
- 7.6 It shall be the Client's responsibility:
(a) to ensure the security system equipment is tested and maintained to full operational condition; and
(b) for all phone calls emanating from the security system panel; and
(c) to ensure all electronically protected areas are free from obstacles which may impair the operation of the system.
- 7.7 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 the same. The Client further agrees to indemnify CS against any costs incurred by CS as a consequence of such discovery. Under no circumstances will CS handle removal of any asbestos product.
8. **Access**
- 8.1 The Client shall ensure that CS has clear and free access to the work site at all times to enable them to undertake the works. CS shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of CS.
9. **Underground Locations**
- 9.1 Prior to CS commencing any work the Client must advise CS of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 9.2 Whilst CS will take all care to avoid damage to any underground services the Client agrees to indemnify CS in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 9.1.
10. **Title**
- 10.1 CS and the Client agree that ownership of the Goods shall not pass until:
(a) the Client has paid CS all amounts owing to CS; and
(b) the Client has met all of its other obligations to CS.
- 10.2 Receipt by CS of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 10.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 10.1:
(a) the Client is only a bailee of the Goods and must return the Goods to CS on request.
(b) the Client holds the benefit of the Client's insurance of the Goods on trust for CS and must pay to CS the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
(c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for CS and must pay or deliver the proceeds to CS on demand.
(d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of CS and must sell, dispose of or return the resulting product to CS as it so directs.
(e) the Client irrevocably authorises CS to enter any premises where CS believes the Goods are kept and recover possession of the Goods.
(f) CS may recover possession of any Goods in transit whether or not delivery has occurred.
(g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of CS.
(h) CS may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
11. **Personal Property Securities Act 2009 ("PPSA")**
- 11.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 11.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Client to CS for Services – that have previously been supplied and that will be supplied in the future by CS to the Client.
- 11.3 The Client undertakes to:
(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which CS may reasonably require to:
(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
(ii) register any other document required to be registered by the PPSA; or
(iii) correct a defect in a statement referred to in clause 11.3(a)(i) or 11.3(a)(ii);
(b) indemnify, and upon demand reimburse, CS for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
(c) not register a financing change statement in respect of a security interest without the prior written consent of CS;
(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral
- (account) in favour of a third party without the prior written consent of CS;
(e) immediately advise CS of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 11.4 CS and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 11.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 11.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 11.7 Unless otherwise agreed to in writing by CS, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 11.8 The Client must unconditionally ratify any actions taken by CS under clauses 11.3 to 11.5.
- 11.9 Subject to any express provisions to the contrary (including those contained in this clause 11) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
12. **Security and Charge**
- 12.1 In consideration of CS agreeing to supply the Goods, 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).
- 12.2 The Client indemnifies CS from and against all CS' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising CS' rights under this clause.
- 12.3 The Client irrevocably appoints CS and each director of CS as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.
13. **Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 13.1 The Client must inspect the Goods on delivery and must within seven (7) days of delivery notify CS in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification, the Client must allow CS to inspect the Goods.
- 13.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 13.3 CS acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 13.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, CS makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. CS' liability in respect of these warranties is limited to the fullest extent permitted by law.
- 13.5 If the Client is a consumer within the meaning of the CCA, CS' liability is limited to the extent permitted by section 64A of Schedule 2.
- 13.6 If CS is required to replace the Goods under this clause or the CCA, but is unable to do so, CS may refund any money the Client has paid for the Goods.
- 13.7 If the Client is not a consumer within the meaning of the CCA, CS' liability for any defect or damage in the Goods is:
(a) limited to the value of any express warranty or warranty card provided to the Client by CS at CS' sole discretion;
(b) limited to any warranty to which CS is entitled, if CS did not manufacture the Goods;
(c) otherwise negated absolutely.
- 13.8 Subject to this clause 13, returns will only be accepted provided that:
(a) the Client has complied with the provisions of clause 13.1; and
(b) CS has agreed that the Goods are defective; and
(c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 13.9 Notwithstanding clauses 13.1 to 13.8 but subject to the CCA, CS shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
(a) the Client failing to properly maintain or store any Goods;
(b) the Client using the Goods for any purpose other than that for which they were designed;
(c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
(d) the Client failing to follow any instructions or guidelines provided by CS; (e) fair wear and tear, any accident, or act of God.
- 13.10 Notwithstanding anything contained in this clause if CS is required by a law to accept a return then CS will only accept a return on the conditions imposed by that law.
14. **Intellectual Property**
- 14.1 Where CS has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of CS. Under no circumstances may such designs, drawings and documents be used without the express written approval of CS.
- 14.2 The Client warrants that all designs, specifications or instructions given to CS will not cause CS to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify CS against any action taken by a third party against CS in respect of any such infringement.
- 14.3 The Client agrees that CS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which CS has created for the Client.
15. **Default and Consequences of Default**
- 15.1 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 CS' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 If the Client owes CS any money the Client shall indemnify CS from and against all costs and disbursements incurred by CS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, CS' contract default fee, and bank dishonour fees).
- 15.3 Further to any other rights or remedies CS may have under this contract, if a Client has made payment to CS, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by CS under this clause 15 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.
- 15.4 Without prejudice to CS' other remedies at law CS shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to CS shall, whether or not due for payment, become immediately payable if:
(a) any money payable to CS becomes overdue, or in CS' opinion the Client will be unable to make a payment when it falls due;
(b) the Client has exceeded any applicable credit limit provided by CS;
(c) 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

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- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 16. Cancellation**
- 16.1 Without prejudice to any other remedies CS may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions CS may suspend or terminate the supply of Goods to the Client. CS will not be liable to the Client for any loss or damage the Client suffers because CS has exercised its rights under this clause.
- 16.2 CS may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice CS shall repay to the Client any money paid by the Client for the Goods. CS shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.3 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by CS as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 16.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 17. Privacy Act 1988**
- 17.1 The Client agrees for CS to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by CS.
- 17.2 The Client agrees that CS may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 17.3 The Client consents to CS being given a consumer credit report to collect overdue payment on commercial credit.
- 17.4 The Client agrees that personal credit information provided may be used and retained by CS for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 17.5 CS may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 17.6 The information given to the CRB may include:
- (a) personal information as outlined in 17.1 above;
 - (b) name of the credit provider and that CS is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and CS has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of CS, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 17.7 The Client shall have the right to request (by e-mail) from CS:
- (a) a copy of the information about the Client retained by CS and the right to request that CS correct any incorrect information; and
 - (b) that CS does not disclose any personal information about the Client for the purpose of direct marketing.
- 17.8 CS will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.
- 17.9 The Client can make a privacy complaint by contacting CS via e-mail. CS will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 18. Building and Construction Industry Security of Payments Act 2009**
- 18.1 At CS' sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 2009 may apply.
- 18.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 2009 of South Australia, except to the extent permitted by the Act where applicable.
- 19. Service of Notices**
- 19.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this contract;
 - (c) by sending it by registered post to the address of the other party as stated in this contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 19.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 20. Trusts**
- 20.1 If the Client at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not CS may have notice of the Trust, the Client covenants with CS as follows:
- (a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
 - (c) the Client will not without consent in writing of CS (CS will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.
- 21. General**
- 21.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party'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.
- 21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of South Australia, the state in which CS has its principal place of business, and are subject to the jurisdiction of the courts in South Australia.
- 21.3 Subject to clause 13 CS 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 CS of these terms and conditions (alternatively CS' liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 21.4 CS may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 21.5 The Client cannot licence or assign without the written approval of CS.
- 21.6 CS may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of CS' sub-contractors without the authority of CS.
- 21.7 The Client agrees that CS may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for CS to provide Goods to the Client.
- 21.8 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.
- 21.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.
- PART II – MONITORING, PATROL AND ALARM RESPONSE SERVICES TERMS AND CONDITIONS**
- 22. Definitions**
- 22.1 "Monitoring Services" shall mean around-the-clock monitoring of the security alarm system for alarm signals and, if selected by the Client, opening and closing signals and/or other security services;
- 22.2 "Client Information Sheet" shall include the Client's written instructions to CS detailing response procedures and the Client's voice codes and/or passwords.
- 22.3 "Fee" shall mean the Fee payable for the Monitoring Services as agreed between CS and the Client in accordance with clause 23 of this contract.
- 23. Price and Payment**
- 23.1 At CS' sole discretion the Price shall be as indicated to the Client in the quotation (subject to clause 23.2) in respect of Monitoring Services supplied.
- 23.2 CS reserves the right to increase the Fee at any time, provided the Client receives one (1) month prior written notice.
- 23.3 At CS' sole discretion and unless otherwise agreed by CS, payment for Monitoring Services shall be billed quarterly and payment shall be due as per clause 19.5.
- 23.4 Alarm responses are Extra Work and charged at CS' normal rates, subject to Clause 24.7.
- 23.5 Time for payment for the Monitoring Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 23.6 Payment will be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction) or by any other method as agreed to between the Client and CS.
- 23.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 24. Provision of Patrol Services**
- 24.1 The Client acknowledges that CS patrol services are shared with other Clients. There may be occasions when individual patrols are late or missed due to the need to respond to high priority events such as break and enters. Other unforeseen circumstances such as storms or vehicle breakdown may also cause individual patrol calls not to be undertaken. This is taken into consideration when setting patrol pricing. Any on-going problems related to CS' inability to complete agreed patrols for more than ten (10%) of the agreed contract. Service will be notified to the Client and adjustments will be negotiated to patrol services and/or credits/funds given for the undelivered Services exceeding ten percent (10%).
- 24.2 The Client will inform CS if there are any changes to the site being patrolled if these changes have the potential to restrict the provision of the patrol Services or cause any harm to the Patrol Officers.
- 25. Access**
- 25.1 The Client shall ensure that CS has clear and free access to the designated area for monitoring at all times to enable CS to carry out the prescribed Monitoring Services. 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 of any infections or building disease.
- 25.2 The Client shall advise CS in the event of any changed circumstances, or planned changes, to the premises which might affect CS's ability to provide Services in a safe manner.
- 26. CS' Responsibilities**
- 26.1 CS agrees to use due care and skill to provide the Monitoring Services for alarm signals and/or other recurring services selected by the Client.
- 26.2 CS shall action alarm signals emanating from the alarm in accordance with the documented client instructions and CS's Standard Operating Procedures.
- 26.3 Whilst CS shall endeavour to provide a timely response to actionable alarm signals, no warranty is given by CS that patrol response will be available at any time, if at all. CS shall not be liable for any loss or damage the Client may suffer in connection with any response or the absence of any alarm response.
- 26.4 Whilst CS uses due care when contacting and advising emergency services, they cannot guarantee prompt response times or attendance of such services.
- 27. Client's Responsibilities**
- 27.1 The Client shall immediately advise CS, in writing, in the event of any changes to their contact details or alarm response requirements
- 27.2 The Client shall, at their own cost, maintain the alarm in good working order and in accordance with the manufacturer's requirements (including, but not limited to, recharging or replacing batteries on a timely basis). The obligation of CS to provide the Monitoring Services and to action alarm signals, are conditional upon the alarm being operational, in accordance with the manufacturer's requirements, and to the satisfaction of CS.
- 27.3 The Client shall supply at the Client's expense keys, swipe cards, alarm codes, electronic access controls to the site, to CS to enable CS to carry out alarm responses and/or patrols. CS's liability for loss or damage of the Client's keys, swipe cards etc are limited to the costs of obtaining a replacement or \$5,000 whichever is the lesser.
- 27.4 In the event that the Client does not claim their keys, swipe cards, alarm codes, electronic access controls within thirty (30) days of the termination or expiration of the Monitoring Service, CS shall destroy them.
- 27.5 The Client shall ensure that all voice codes, passwords, radio keys and other security devices are kept secure and provided only to those persons who reasonably require access to the alarmed premises.
- 27.6 The Client cannot transfer, or attempt to transfer, the right to receive the Monitoring Services or any other right to any other party.
- 27.7 Upon termination of the monitoring services, it is the Client's responsibility to ensure that an alternative service is arranged, if required, and the panel is deprogrammed to stop reporting to CS.
- 27.8 CS will not be responsible for any communication costs post cancellation
- 27.9 Any signals received after the termination of the monitoring service will not be actioned by CS.
- 27.10 The Client agrees that any costs associated with the delivery of services by the Police, Ambulance, Fire or other emergency services to the Client's monitored premises shall be met by the Client.
- 28. Monitoring Service**
- 28.1 The Monitoring Service provided by CS shall consist of monitoring all signals received at CS's Monitoring Station from the alarm system designated in the Client Information Sheet hereto.
- 28.2 CS shall respond to such signals received in accordance with its normal operating practices and by making such telephone calls as may be required in accordance with the Client's instructions.
- 28.3 CS shall endeavour to action the following alarm system signals generally as described below or as otherwise agreed or interpreted:
- (a) duress / panic – CS shall call the monitored site, as required by the South Australia Police Force (SAPF) first to verify the event. If deemed necessary CS shall contact and advise the SAPF; and
 - (b) hold up – CS shall notify the SAPF, and make a follow up call to the monitored site after thirty (30) minutes (this clause assumes that the Client's premises comply with SAPF's protocols for hold up alarms); and
 - (c) fire / smoke – CS shall call the site to verify event, if no answer CS will advise Fire Department and contacts (CS will dispatch guard if no contacts are available and keys are held); and
 - (d) medical – CS shall call the site to verify event, if no answer CS will advise Ambulance Service and contacts (CS will dispatch guard if no contacts are available and keys are held); and
 - (e) system events – CS shall contact the Client and contacts and shall advise service department if necessary (this type of event is not necessarily actioned immediately).
- 28.4 In the event that the premises is found to have been violated and the Client contact is unable to be contacted by telephone, the Client authorises CS to arrange for a security guard to attend and remain on the premises as an agent if necessary, if CS considers it necessary until the Client is contacted and CS is given instructions. Alternatively, CS is authorised to arrange temporary work to secure the premises with the customer agreeing to pay for such work as per Clause 24.5.
- 28.5 The Client accepts and acknowledges that in the event CS acts as an Agent on behalf of the Client with a third party, (including but not limited to locksmiths and/or glaziers) the Client agrees to honour their obligation for payment for such transactions invoiced by the third party and shall ensure payment is made by the due date, thereby not limiting CS in their obligations for payment as Agents acting on behalf of the Client to third parties.
- 28.6 If the Client believes that they have any claim in relation to Services undertaken by that third party then said claim must be made against the third-party contractor in the first instance.
- 28.7 The Client acknowledges that independent contractors, where available, may provide patrol response. Accordingly, patrol response fees may vary from area to area and over time. The Client agrees to pay or reimburse CS for patrol response fees, which may include an administration fee. CS shall advise the Client of applicable patrol response fees upon request by the Client.
- 28.8 CS may be unable to monitor the system in the event of a communication failure between the alarm panel in the Client's premises and the monitoring centre. Failures of this nature may be malicious or otherwise. The Client acknowledges that CS's obligation to action alarm events is suspended at any time the communications link is disrupted between the Client's premises and CS's monitoring room.
- 29. Client's Acknowledgements**
- 29.1 The Client acknowledges that the provision of Monitoring Services may not prevent unlawful entry to the designated site occurring and accordingly the Client accepts that loss or damage to property and death or injury to persons may occur even though CS's obligations under this agreement have been satisfied.
- 29.2 Unless stated otherwise in this agreement the supply of performance records, history or other reports shall only be issued direct to the Client.
- 29.3 The Client accepts and acknowledges that CS during the course of the Monitoring Service:
- (a) telephone conversations shall be recorded between CS and the Client and the Client hereby authorises CS to implement this procedure; and
 - (b) CS's employees shall not be required to carry out any duties of an illegal or strike breaking nature; and
 - (c) CS is not an insurer of the premises and it is advisable for the Client to effect and maintain all normal and prudent insurance policies in respect of all usual risks including fire, burglary, theft and consequential loss or damage; and
 - (d) the Products and Equipment relating to security of premises are deterrents only and CS does not represent that the Products and Equipment will protect the Client against theft, burglary and house breaking; and
 - (e) the Products and Equipment relating to fire are fire detection Products and Equipment only and CS does not represent that the Products and Equipment will protect the Client or his property against fire. The Products and Equipment relating to medical alarms is for notification purposes only and does not represent that the Products and Equipment will protect the Client from a medical emergency.