

## **B&M SECURITY LTD TERMS AND CONDITIONS OF TRADE**

### **1. Definitions**

- 1.1 "Seller" shall mean B&M Security Ltd and its successors and assignees.
- 1.2 "Buyer" shall mean the buyer or any person or Seller acting on behalf of and with the authority of the buyer.
- 1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Buyer if a Limited Liability Seller on a principal debtor basis.
- 1.4 "Goods & Service" shall have the same meaning as in section 3 of the Consumer Guarantees Amendment Act 2003 (2003 No 33) and are goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.5 "Price" shall mean the cost of the goods as agreed between the Seller and the Buyer subject to clause 4 of this contract.
- 1.6 "Premises" shall mean any premises the buyer has specified to the seller.
- 1.7 "B&M Security Employee" shall mean any person employed/contracted to B&M Security Ltd.
- 1.8 "Bureau Monitoring" means the monitoring agency acting on behalf of B&M Security Ltd.
- 1.9 "Standard Working Hours" means between the hours of 8am to 5 pm Monday to Friday, except Public Holidays.
- 1.10 "After Hours" means all other hours not stated in 1.9.
- 1.11 "Digital Cloud" is a division of B&M Security Ltd which provides ISP Services.

### **2. Acceptance**

- 2.1 Any instructions received by the Seller from the Buyer for the supply of Goods shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Upon acceptance of these terms and conditions by the Buyer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Seller.
- 2.3 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.

### **3. Goods / Services**

- 3.1 The Goods and/or Services are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Seller to the Buyer.

### **4. Price and Payment**

- 4.1 At the Sellers sole discretion;
  - (a) The Price shall be as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied; or
  - (b) The Price shall be the Seller's current price at the date of delivery of the Goods according to the Sellers current Price list; or
  - (c) The Price of the Goods shall be the Seller's quoted price which shall be binding upon the Seller provided that the Buyer shall accept the Seller's quote within thirty (30) days.
  - (d) All You Can Eat pricing is provided with the following conditions:
    - (i) Security system is to have (at a minimum) annual maintenance.
    - (ii) Where a faulty security device is found either during security maintenance or repeated alarm activations (more than 3 unexplained activations within a 14-day consecutive period), this must be repaired and/or replaced within a suitable time frame, limited to 5 working days.
    - (iii) A soft limitation to provide up to an average of 8 Guard Callouts per month. Excessive Guard Call Outs to be invoiced at the standard rate at the discretion of B&M Security Ltd.
- 4.2 Time for payment for the Goods and/ or Service shall be of the essence and will be stated on the invoice, work authorisation and quotation form or any other order forms. If no time is stated, then payment shall be due on delivery of the Goods/Services or on receipt of invoice.
- 4.3 At the Seller's sole discretion, payment for approved Buyers shall be due 14 days from date of invoice.
- 4.4 Payment will be made by cash, or electronic methods or any other method as agreed to between the Buyer and the Seller. The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Seller.

### **5. Delivery of Goods**

5.1 Delivery of the Goods shall be made to the Buyer's address unless explicitly stated otherwise. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Buyer at the Sellers address.

5.2 Delivery of the Goods to a carrier, either named by the Buyer or failing such naming to a carrier at the discretion of the Seller for the purpose of transmission to the Buyer, is deemed to be a delivery of the Goods to the Buyer.

5.3 At the Sellers discretion the Buyer may cancel delivery of Goods and/or Services. In the event that the Buyer cancels delivery of Goods and/or Services the Buyer shall be liable for any costs incurred by the Seller up to the time of cancellation including any and all re-stocking fees.

5.4 The Buyer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that;

(a) such discrepancy in quantity shall not exceed 5%, and

(b) the Price shall be adjusted pro rata to the discrepancy.

5.5 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.

5.6 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.

## 6. Guard Services

6.1 Guard Services: We will provide to you the goods and/or services as specified by Clause 3 of this agreement and such further Services requested by you from time to time (including any request for us to dispatch B&M Security Employee to your Premises at any unscheduled time), provided that:

(a) no B&M Security Employee may be requested to provide any static guard services to you for anything less than a four-hour unbroken period;

(b) no B&M Security Employee will be dispatched to your Premises unless a start and end time for the deployment has been agreed, with the exception only of attending alarm activations;

(c) once we have agreed to dispatch a B&M Security Employee to your Premises for the purpose of a static guard, that dispatch may not be cancelled by you unless you provide us with notice in writing of the cancellation:

(i) in the case of Casual Services, at least four hours prior to the commencement of the dispatch (and if you provided less than eight (standard working) hours' notice, you shall be charged for all the scheduled hours of the deployment notwithstanding that such deployment may no longer be required and/or not occur); and

(ii) in the case of Permanent Services, at least 30 days' prior to the commencement of the last dispatch (and if you provide less than 30 days' notice, you shall be charged for all the scheduled hours of the dispatch notwithstanding that such dispatch may no longer be required and/or not occur);

(d) we shall determine, in our sole discretion, the manner and means by which the Services are performed.

6.2. Mobile Patrol Services, where the Services include a requirement for us to provide mobile patrol services, we do not guarantee any particular number or frequency of patrols of your Premises. Any agreement to provide a certain number of patrols to your Premises within a specific period is subject to the following:

(a) the timing of those patrols shall be selected randomly by us and could be at any time during such period; and

(b) to the extent we provide less than the agreed number of patrols within that period we can make up the shortfall by providing an increased number of patrols in any subsequent period.

## 7. Alarm Monitoring

7.1 Monitored alarm systems are connected to B&M Security Ltd via a Bureau Monitoring Service, which is staffed by professional security experts around the clock – 24/7/365. You agree that we can accept instructions to supply goods and /or services from Bureau Monitoring based on instructions supplied in the B&M Security Monitoring Connection Form.

## 8. Authority

8.1 Acceptance of this Agreement by you grants us full authority to access the Premises for the purposes of carrying out the Services Requested and generally protecting your business, property and persons.

8.2 If we become aware of a security issue that may impact on you or the Premises, and we are unable to contact you to obtain instructions, we are authorised to take reasonable steps to protect the integrity, safety and security of the Premises, property and personnel, at your expense.

8.3 You shall notify us immediately if any changes are made to the access ways, and/or locks, at the Premises.

8.4 Without limiting the other persons that bind you, the contact person requesting services on your behalf has the full authority to bind you in all matters connected with this Agreement.

## 9. Digital Cloud

9.1 Digital Cloud ISP Services are covered by independent Terms and Conditions that can be found on [digitalcloud.net.nz](http://digitalcloud.net.nz). Services that are the exception to this and bound by these Terms and Conditions (including 9.2) are:

- a. Camera Hosting in the B&M Security Data Centre.
- b. Server Hosting in the B&M Security Data Centre.

9.2 Hosting Terms and Conditions include:

- (a) You must not reproduce, distribute, copy, download, transmit or otherwise exploit any content which infringes any third party intellectual property rights or similar right unless you own or control the relevant rights or have obtained all the requisite licenses and approvals.
- (b) You must not interfere with, disrupt, hack, break into or access any part of the service, our content or any data areas on ours or our Third-Party provider's servers for which you have not been authorised by us in writing.
- (c) Digital Cloud may monitor your use of the Services and any material posted, downloaded, transmitted or communicated using the Services for compliance with Digital Cloud's Terms. Digital Cloud may pass any material or information it suspects to be illegal or offensive, to the relevant authority and you will have no claim against Digital Cloud for this.
- (d) Digital Cloud may monitor your use of the Services at any time with regard to reasonable usage and if it deems your usage is in excess of the agreed service plan(s), and, or it places an unreasonable strain on Digital Cloud resources or services to its existing or prospective clients, Digital Cloud reserves the right to request you to upgrade your service plan within 48 hours of email notification from Digital Cloud to your last known contact address. Failure to authorise, or provide suitable remedies in the above event may result in the suspension of your services.
- (e) For 'Unlimited' shared Hosting services, there is no bandwidth or storage space limit. However, 'Unlimited' shared hosting services are not intended to support the needs of large enterprises that require substantial bandwidth and storage. To ensure that our shared hosting is reliable and available for all of our small business users, your usage cannot adversely affect the performance of other customers' sites. Using our 'Unlimited' shared hosting services as online storage space for archived electronic files is prohibited. You agree that if your bandwidth and storage space usage adversely affects other customers on our shared hosting platform, Digital Cloud may suspend or terminate your Hosting Services without liability.
- (f) Every shared server is backed up daily to an FTP server located in the same data centre. Backups are checked to ensure they have been successful and are restarted if failed. In the event of server failure, backups are used to restore services. Digital Cloud makes no guarantee that any individual backup attempt will succeed; nor will any restoration attempt succeed. Digital Cloud makes no guarantee regarding the performance or uptime of the backup server. We recommend that you back up your site to another location rather than storing them within your hosting account.
- (g) A service charge will apply to requests to extract data from a backup for any circumstance other than the failure of the server.
- (h) Digital Cloud will attempt to monitor any additional services on your request, however we cannot guarantee that monitoring of every service will be possible.
- (i) Digital Cloud's liability for failure to meet 100% of uptime in any one month is limited to a maximum of one month's fee for the affected services. Digital Cloud shall not be responsible for any loss, damage, cost, claim or other liability, however caused, resulting directly or indirectly from or in connection with any suspension or unavailability of your Service or failure to perform a Service.
- (j) Digital Cloud will endeavor to Provision your additional resources in a timely manner, but makes no guarantee as to Provisioning time. Digital Cloud reserves the right to limit the amount of additional server resources available for you to add to your server.

## 10. Limitation of Sellers Liability and Indemnity

10.1 The Seller shall have no liability whatsoever whether in quote, contract, agreement, tort for any losses, claims, costs or damages suffered by the Buyer or third party.

10.2 The Seller expressly excludes liability for consequential loss or damage which may arise in respect of the provision of Services provided by the Seller.

10.3 The Company expressly excludes liability for consequential loss of Money which may arise in respect of the provision of Services provided by the Company.

10.4 The Buyer shall keep the Seller indemnified at all times against any loss, damage or injury arising from claims made against us by any third party with respect to any theft, loss, damage, destruction, death or injury occurring in or on the Premises arising out of, or in any way in relation to, the provision of, or failure to provide Services.

10.5 Under the Contract and Commercial Law Act 2017 Section 260, the Company is not liable for carriage at limited Company's risk and to Services for carriage at declared value risk but no to the Services for carriage at Company's risk or Services for carriage on declared terms. The Company is not liable for the loss of or damage to good that occurs while the Company is responsible for the goods

under a Services of carriage to the extent that the Company proves that the loss or damage resulted directly and without fault on the Company's part from, Inherent vice; or any breach of either of the terms implied in the Services; or seizure under legal process; or saving or attempting to save life or property in peril.

10.6 The Seller shall not be liable to the Buyer for any failure to carry out Services for any loss or damage suffered by cause of mechanical breakdown of any equipment, weather conditions, strikes, lockouts, labour disputes or restraint of labour, act of God, war (declared or not), any act of regulation or restriction imposed by Government, riot or civil commotion, any act or omission of the Buyer, and any cause beyond the control of the Seller

## 11. Risk

11.1. If the Seller retains property in the Goods nonetheless all risk for the Goods passes to the Buyer on delivery.

11.2. If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the Seller is entitled, to receive all insurance proceeds payable in respect of the Goods. The Seller will apply the insurance proceeds as follows:

(I) first, in payment of the Price of the Goods that are damaged or destroyed, if unpaid;

(ii) second, in payment of the outstanding Price of any other Goods supplied to the Buyer by the Seller whether under the terms and conditions or otherwise.

## 12. Defects & Returns

12.1 The Buyer shall inspect the Goods on delivery or installation and shall within five (5) days of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. If the Buyer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage. For defective Goods which the Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods.

## 13. Default & Consequences of Default

13.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgement.

13.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of the Seller's nominee's costs of collection.

13.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.

13.4 If any account remains unpaid at the end of the second month after supply of the goods or services the following shall apply: An immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.

13.5 In the event that:

(a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or

(b) the Buyer 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

(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer; then

(i) the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and

(ii) all amounts owing to the Seller shall, whether or not due for payment, immediately become payable.

## 14. Title

14.1 It is the intention of the seller and agreed by the Buyer that property in the goods shall not pass until the Buyer has paid all amounts owing for the particular Goods.

14.2 It is further agreed that:

(a) The Buyer shall not deal with the money of the Seller in any way which may be averse to the Seller.

- (b) Until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease.
- (c) If the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused. If all or any of the Goods are wholly or partially attached to, intermingled with or incorporated in any other Goods, then the Seller may in its sole discretion disconnect, retrieve or sever the Goods in order to remove them.
- (d) Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honored, cleared or recognized and until then the Seller's ownership of rights in respect of the Goods shall continue.
- (e) The Buyer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller.
- (f) The Seller may require payment of the Price or the balance of the Price due together with any other amounts due from the Buyer to the Seller arising out of these terms and conditions, and the Seller may take any lawful steps to require payment of the amounts due and the Price.
- (g) The Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer.

### **15. Personal Property Securities Act 1999**

15.1 Upon assenting to these terms and conditions in writing the Buyer acknowledges and agrees that:

- (b) These terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (c) A security interest is taken in all Goods previously supplied by the Seller to the Buyer (if any) and all Goods that will be supplied in the future by the Seller to the Buyer during the continuance of the party's relationship;

15.2 The Buyer undertakes to:

- (a) sign any further documents and/or provide any further information, such information to be complete, accurate and up-to-date in all respects, which the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
- (c) not register a financing change statement or a change demand without the prior written consent of the Seller;
- (d) give the Seller not less than fourteen (14) days prior written notice of any proposed change in the Buyer's name and/or any other change in the Buyer's details (including but not limited to, changes in the Buyer's address, facsimile number, or business practice); and
- (e) immediately advise the Seller 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.
- (f) The Seller and the Buyer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and Conditions.
- (g) The Buyer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA. Unless otherwise agreed to in writing by the Seller, the Buyer waives its right to receive a verification statement in accordance with section 148 of the PPSA

### **16. Security and Charge**

16.1 Notwithstanding anything to the contrary contained herein or any other rights which the Seller may have howsoever:

- (a) The Buyer shall if required by the Seller execute a registerable charge, or otherwise permit the Seller or the Seller's nominee to execute and register a security interest securing payment of the Price for the Goods and/or Services provided by the Seller hereunder to the Buyer together with any monetary obligations arising hereunder whether pursuant to the existing law or that contemplated by the Personal Properties Securities Act 1999 or otherwise howsoever; and/or
- (b) Where the Seller, as sub-contractor, provides any Goods and/or Services to the Buyer as head contractor, the Buyer hereby acknowledges that the Seller shall be entitled to a charge on any monies payable to the Buyer by whom the Buyer is contracted or employed. The Buyer shall provide all reasonable details and particulars of his/her/its/their employment or superior contract in writing and upon reasonable request of the Seller. The Buyer acknowledges and agrees that the Seller shall be entitled to demand payment directly from whosoever has contracted or employed the Buyer and the production of these terms and conditions of trade by the Seller shall be sufficient evidence of the Seller's right to receive such monies without the need for the payee, employer, head contractor or any other person dealing with the Buyer and/or Seller to make further enquiries; and/or

(c) Where the Buyer and/or the guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and/or the guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the within terms and conditions of trade. The Buyer and/or the guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.

(d) Should the Seller elect to proceed in any manner in accordance with this within clause and/or its sub-clauses, the Buyer and/or guarantor shall indemnify the Seller from and against all the Seller's legal costs and disbursements calculated on a solicitor and own client basis plus all reasonable costs of the Seller's appointed attorney (if any).

(e) To give effect to the provisions of clause 16 (a) to (d) inclusive hereof the Buyer and/or the guarantor (if any) do hereby irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Buyer's and/or guarantor's true and lawful attorney to execute mortgages and charges (whether registerable or not) and including such other terms and conditions as the Seller and/or the Seller's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Buyer and/or the guarantor in any land, realty or asset in favor of the Seller and in the Buyer's and/or guarantor's name as may be necessary to secure the said Buyer's and/or guarantor's obligations and indebtedness to the Seller and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Seller's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

### **17. Cancellation**

17.1 The Seller may cancel these terms and conditions or cancel delivery of Goods and Services at any time before the Goods are delivered by giving written notice. On giving such notice the Seller shall promptly (within 30 days) repay to the Buyer any sums paid in respect of the Price for those Goods. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.

### **18. Privacy Act**

18.1 The Buyer and the Guarantor/s (if separate to the Buyer) authorises the Seller to collect, retain and use any information about the Buyer, for the purpose of assessing the Buyers creditworthiness or marketing any Goods and Services provided by the Seller to any other party.

18.2 The Buyer authorises the Seller to disclose any information obtained to any person for the purposes set out in clause 18.1

18.3 Where the Buyer is a natural person the authorities under (clause 18.1 & 18.2) are authorities or consents for the purposes of the Privacy Act 1993.

### **19. Consumer Guarantees Act 1993**

19.1 This agreement is subject, in all cases except where the Buyer is contracting within the terms of a trade/business (which cases are specifically excluded), to the provisions of the Consumer Guarantees Act 1993.

### **20. Lien & Stoppage in Transit**

20.1 Where the Seller has not received or been tendered the whole of the price, or the payment has been dishonored, the Seller shall have:

(a) a lien on the goods;

(b) the right to retain them for the price while the Seller is in possession of them;

(c) a right of stopping the goods in transit whether or not delivery has been made or ownership has passed; and

(d) a right of resale,

(e) the foregoing right of disposal,

(f) Stoppage in transit when Goods are deemed to be in transit from the Seller to the Buyer. Subject to this agreement transit shall be deemed to have ended when the Buyer or the Buyer's agent takes physical possession of the Goods; provided that the lien of the Seller shall continue despite the commencement of proceedings or judgement for the price having been obtained.