

## TERMS AND CONDITIONS OF BUSINESS

### 1 DEFINITIONS

**"THE COMPANY"** is Bath & West Technical Services Limited trading as BW-Tech Fire & Security, registered at 17 The Market Place, Devizes, Wiltshire SN10 1BA registered in England & Wales no. 8138629 being the organisation responsible for the design, installation, maintenance and/or monitoring of the Installation, which is the subject of this Contract, sometimes referred to as "our" or "we" in these Terms and Conditions.

**"THE CUSTOMER"** is the person or organisation being a signatory to this Contract, sometimes referred to as "you" or "your" in these Terms and Conditions.

**"THE EQUIPMENT"** is the equipment to be installed at the Premises as set out in the System Design Proposal.

**"THE PREMISES"** are the premises set out in the System Design Proposal at which the Installation will take place.

**"THE INSTALLATION"** is the installed system defined in the System Design Proposal.

**"INSTALLATION STANDARD"** is the standard to which the Equipment is to be installed and/or maintained, together with any other formal requirements stipulated as a condition of the regulatory body by which the Company is approved.

**"CONTRACT"** means the Quotation, System Design Proposal, Maintenance and Acceptance together with these Terms and Conditions.

**"SYSTEM DESIGN PROPOSAL"** means the System Design Proposal which defines the level of protection, surveillance or access afforded by the security Installation. It is an integral part of this Contract.

**"QUOTATION"** means the proposed price for the Equipment, its installation and/or maintenance and monitoring as itemised in this Contract.

**"ALARM RECEIVING CENTRE"** means a continuously manned remote centre to which alarm activations and/or video data are signalled and passed to the relevant response authority (e.g., police, fire brigade, keyholder).

**"HANDOVER DATE"** means the date on which the Installation is completed (notwithstanding that connection of any remote signalling is outstanding) and the Handover Acceptance Certificate has been signed.

**"HANDOVER ACCEPTANCE CERTIFICATE"** is the certificate handed to the Customer on completion of the Installation in accordance with 4(ii)

**["PREVENTATIVE MAINTENANCE"** means the routine inspection of the Installation to verify that it continues to function in accordance with its System Design Proposal and to identify and rectify any items found faulty, worn or in need of scheduled replacement.]

**["CORRECTIVE MAINTENANCE"** means the investigation and repair of faults reported by the Customer, including false alarms from intruder alarm systems.]

### 2 GENERAL

Acceptance of this Contract, signified by the signature of each party, includes acceptance of the Quotation and these Terms and Conditions along with any other requirements defined in the System Design Proposal. For the purposes of interpretation, where the requirements of the System Design Proposal conflict with any clauses of these Terms and Conditions, the System Design Proposal requirements shall take precedence.

### 3 COSTS

i) The Quotation may be revised if:

- a) you want the work carried out more urgently than agreed, or
- b) you change the System Design Proposal, or
- c) your Premises are in some way unsuitable for the Equipment and this was not apparent from our original survey or there are circumstances about which we should have been made aware by you, or
- d) there are any other special circumstances we were not aware of when supplying our original Quotation, or
- e) any other reason beyond our reasonable control including without limitation any increase in costs or fees payable by us to any third party in respect of the Equipment.

ii) All telephone line installation, rental and call charges are the responsibility of the Customer.

iii) If you are late in paying us, we shall be entitled to charge you interest at the rate of 4% per year over the base rate of National Westminster Bank plc from the due date until the date we receive payment.

iv) If our labour or material costs increase after twelve months from the Handover Date, we may give you two months' notice of any increase in our annual maintenance charges.

v) The Installation is normally carried out during usual working hours of 9.00am to 5.00pm Monday to Friday except statutory holidays. Requests made by the Customer to install outside these hours may incur additional charges.

vi) Unless otherwise agreed in writing, the Quotation does not include additional work such as redecoration, carpet laying or building work. Additional charges may be made if our engineers are not provided with access to doors, shutters, windows or any other areas where cables and Equipment needs to be installed.

vii) Any Equipment forming part of the Installation which is not sold to the Customer (and which is identified as such in the System Design Proposal), such as signalling equipment or firmware, shall remain the property of the Company and will be maintained and/or replaced at the Company's expense unless such failure was attributed to any of the causes given in 4 (v). Any Equipment which remains the property of the Company shall be defined in the System Design Proposal. We reserve the right to recover such Equipment on termination of the maintenance contract.

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- viii) Ownership of the Equipment (as identified in the System Design Proposal) shall not pass to the Customer until the Company has received the payment of the sums due pursuant to the Contract.
- ix) Until ownership of the Equipment has passed to the Customer, the Customer must:
  - a) hold the Equipment on a fiduciary basis as the Company's bailee;
  - b) not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment; and
  - c) maintain the Equipment in a satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company.
- x) All sums payable by the Customer under this Contract will be paid in full without any set off, deduction, counterclaim or withholding of whatever nature.
- xi) All amounts stated are exclusive of VAT and/or any other applicable taxes or levy, which shall be charged in addition at the rate in force at the date any payment is required from the Customer.

#### 4 COMPANY'S OBLIGATIONS

- i) We agree to complete the Installation and hand it over in good working order conforming to the Installation Standard declared in the System Design Proposal. We will always seek your agreement should changes to the System Design Proposal be required during the Installation.
- ii) When we commission the Installation, we will train you in its operation. When you are satisfied with the Installation, we will give you a Handover Acceptance Certificate to sign. We will give you a certificate of conformity when the Equipment has been paid for in full.
- iii) If, within a period of twelve months from the Handover Date ("Warranty Period") you notify us of any defect or fault in the Equipment and such defect or fault does not result from you, or anyone acting with your authority, having interfered with the Equipment or used it for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other equipment not supplied or authorised by us, we shall attend to the Premises and use our reasonable endeavours to rectify any such default.
- iv) Any repairs undertaken by us which are outside the Warranty Period will be carried out at our discretion on a time and materials basis.
- v) The Company shall not be liable for the costs of any work, repairs or replacement of Equipment which results from fire, electrical power surge, storm, flood, accident, neglect, misuse, or malicious damage.
- v) The annual maintenance and remote monitoring facilities commence upon the Handover Date and continue from year to year upon payment of charges set out in the

Quotation until cancelled by either party in writing giving not less than two months' notice.

- vi) Time shall not be of the essence for any times for when the Installation is to be performed, whether given or agreed to by the Company or for the length of time that the Installation takes, whether specified in the Quotation or otherwise.

#### 5 CUSTOMER'S OBLIGATIONS

- i) You agree to give us and our workers full access to your Premises to survey, measure, install, test and service the Equipment. You also agree to provide an adequate electricity supply for the Equipment to operate correctly. If our work is interrupted or delayed because of a problem with access, or the electricity supply is inadequate, we may make an extra charge. We are not liable if completion is delayed due to the unavailability of signalling transmission facilities or other circumstances beyond our control. By signing the Contract with us, you guarantee that you have full authority to allow the Installation and no other consent is needed.
- ii) You must not interfere with, or allow anyone else to interfere with, adjust, service or attempt to repair or reset the Equipment at any time.
- iii) If the Equipment activates to the Alarm Receiving Centre, you need to let us know as soon as possible. If the Equipment needs to be reset, we may charge you at our usual rates then in force.
- iv) You will need to let us know in advance if any third party intends to carry out work on the telephone lines within your Premises, as this may affect the Equipment's effectiveness.
- v) The Equipment does not belong to you until it has been paid for in full. If you do not pay the balance of the charges when they are due, we have the right to remove the Equipment from your Premises without notice. By signing the Contract with us, you irrevocably authorise us to enter your Premises to remove the Equipment if payment remains outstanding.
- vi) If you cancel the Contract less than four days before Installation, we may charge you for any Equipment we have bought for your Premises without prejudice to the rights we have to recover damages for breach of contract.
- vii) If the Equipment is connected to an Alarm Receiving Centre, it is your responsibility to make sure that the telephone line is working properly and the account correctly maintained.
- viii) You need to notify us of any change in the layout of your Premises, as this may affect the effectiveness of the Equipment to detect movement or intrusion.
- ix) You agree to permit the Company's staff and representatives of its regulatory body (only whilst accompanied by the Company's staff) access to the Installation for the purposes of maintenance or inspection.
- x) You shall use your best endeavours to ensure that the Premises in which our employees or agents may have to enter are safe and without risk for them. All known risks must be clearly identified and marked by you and made known to us in advance.

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## 6 MAINTENANCE, SERVICE AND MONITORING

- i) In return for payment of the maintenance charge as set out in the Quotation, the Company will maintain the Installation in accordance with the installation standard and respond to your emergency calls for assistance. If your Equipment is installed to PD6662 (or its successor,) our response to emergency calls will be within four hours of your request, or before the Equipment needs to be set, unless mutually agreed otherwise.
- ii) If we have to attend the Premises, or repair the Equipment between routine maintenance visits, we will make a charge at our usual rates unless the work is covered by Clause 4 (iii).
- iii) The annual maintenance charge does not include charges for replacement parts or batteries, which will be charged in addition to the annual charge.
- iv) Where the Installation is monitored by an Alarm Receiving Centre for direct response by emergency services (eg police or fire brigade), it shall be a condition of such monitoring that an annual contract for Routine Maintenance exists between the Customer and the Company. Routine maintenance visits shall be undertaken by the Company as defined in the Installation Standard or this Contract.

## 7 LIABILITY

- i) Nothing in this Contract will exclude or limit the liability of either party for death or personal injury resulting from the negligence of that party or any of its officers, employees, or agents
- ii) The Company will not be liable for any loss of profits, business opportunity, goodwill and any other indirect or consequential loss howsoever arising and whether arising out of the Installation or any of the provisions of this Contract or otherwise, suffered by the Customer or any third party and the Customer will indemnify the Company in respect of any claim by any person in respect of such loss.
- iii) Subject to 7(i), the Company's total liability arising in connection with the performance or contemplated performance of the Installation will not exceed the aggregate of the charges paid by the Customer to the Company under this Contract.
- iv) This clause 7 sets out the full extent of the Company's liability in respect of the performance of the Company under the Contract and any condition, warranty, representation or term which might otherwise be implied into or incorporated into this Contract, whether by statute, common law or otherwise, is hereby excluded to the fullest extent permitted by law.
- v) Although the Installation is designed to detect or deter intrusion and reduce the risk of loss or damage, the Company does not represent or warrant that the Installation may not be neutralised, circumvented or otherwise rendered ineffective by unauthorised persons

and in such event the Company shall not be liable for any loss or damage suffered by the Customer or other unauthorised persons.

- vi) Like all electronic equipment, the system could fail in rare and exceptional circumstances and the Company cannot guarantee that it will be operational at any specific time or for any specific period. The Company will explain what regular tests can be performed to verify that detection equipment is operational between routine maintenance visits carried out by the Company.
- vii) The terms and conditions given in this Contract do not affect your statutory rights.

## 8 TERMINATION

- i) Either the Customer or the Company can terminate the Contract by giving not less than two months' written notice.
- ii) The Company may terminate this Contract immediately by written notice to the Customer if:
  - a) the Customer commits a material breach of the Contract which is incapable of remedy or, if capable of remedy, has not been remedied within 28 days from the date of receipt of notice by the Company specifying the breach and requiring its remedy; or
  - b) if the Customer is in arrears with any payments due for a period in excess of 30 days. This will not prejudice the Company's right to reclaim any payments outstanding from the Customer. In such circumstances, seven days notice of cessation of any remote monitoring will be given by the Company; or
  - c) the Customer becomes or is declared insolvent or convenes a meeting of its creditors or makes or proposes to make any arrangement or composition with its creditors or becomes subject to any other insolvency procedure in any jurisdiction or (without prejudice to the generality of the foregoing) an administrator, liquidator, an administrative receiver, a receiver, manager, trustee, custodian or analogous officer is appointed in respect of all or any part of its property, undertaking or assets (or in the event that the Customer is not a body corporate anything analogous to such events occurs).
- iii) In the event that the maintenance contract is terminated, the Company shall be provided with access to recover any Equipment and/or firmware which did not belong to the Customer but was rented from the Company.
- iv) The Customer will make full payment to the Company of all amounts owing on termination within 30 days of termination.

## 9 FORCE MAJEURE

The Company will not be liable for any delay in performance or failure to perform its obligations in respect of the Installation if such delay or failure results from circumstances beyond the Company's reasonable control and the Company shall in such circumstances be entitled to a reasonable extension of time for the performance of such obligations.

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10 APPLICABLE LAW

This Contract is governed by and shall be construed in accordance with the laws of England and Wales and each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with this Contract and, for such purposes, irrevocably submits to the exclusive jurisdiction of the courts of England and Wales.

11. RIGHTS OF THIRD PARTIES

Pursuant to section 1(2) of the Contracts (Rights of Third Parties) Act 1999, the parties intend that no term of this Contract may be

enforced by any person who is not a party to this Contract pursuant to section 1(1)(a) of such Act.

12. NOTICES

All notices which are required to be given under this Contract will be in writing and sent to the address of the recipient as set out in the Quotation or such other address as the recipient may designate by notice given in accordance with the provisions of this clause. Any such notice may be delivered by hand or first class pre-paid letter or facsimile or electronic transmission and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting and if by facsimile or electronic transmission, upon the expiration of 12 hours after despatch. To prove the giving of a notice or other document it shall be sufficient to show that it was despatched.