

2Secure Security Limited

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TERMS AND CONDITIONS

1 Definitions

1.1 In these terms and conditions:

1.1.1 **Agreement** means the agreement between the Customer and the Supplier for the provision of Goods and/or Services by the Supplier to the Customer and includes these terms and conditions.

1.1.2 **Collateral** has the meaning ascribed to it in clause 8.1.

1.1.3 **Customer** means the person to whom Goods and/or Services are to be supplied pursuant to each Agreement (and, unless agreed otherwise by the Supplier, includes the person named in the invoice for the Goods and/or Services supplied).

1.1.4 **Goods** means any goods supplied by the Supplier to the Customer pursuant to this Agreement;

1.1.5 **Price** means the price for Goods and/or Services supplied by the Supplier to the Customer in accordance with clause 3 below, plus any additional charges pursuant to these terms and conditions, plus GST.

1.1.6 **Services** means any services provided by the Supplier for the Customer pursuant to this Agreement;

1.1.7 **Supplier** means **2Secure Security Limited**.

2 Orders

2.1 The Customer may order Goods and/or Services from the Supplier from time to time during the term of this Agreement.

2.2 All orders are subject to acceptance by the Supplier. The Supplier is not under any obligation to accept any given order made by the Customer, and the advertisement of any Goods or Services or supply of information about any Goods or Services by the Supplier (including through the Supplier's internet website) does not constitute an offer by the Supplier to supply the Goods or Services with the specifications and/or at the price or rates advertised or otherwise oblige the Supplier to supply those Goods or Services.

2.3 If the order is accepted by the Supplier then a contract for the supply of the Goods and/or Services by the Supplier to the Customer will exist on these terms and conditions, and the Supplier will

supply those Goods and/or Services to the Customer and the Customer will pay the Price for those Goods and/or Services to the Supplier in accordance with these terms and conditions.

- 2.4 The Customer acknowledges and agrees that where any order is made by the Customer orally (including by telephone), the Supplier's written confirmation of that order shall be determinative of the existence and terms of the contract (subject only to any subsequent correction by the Supplier of any mistake in the written confirmation), unless disputed by the Customer in writing within five working days of the date of such written confirmation. The Supplier may at any time send an amended written confirmation of any order (whether written or oral) which shall override any previous confirmation of that order to the extent necessary, unless disputed by the Customer in writing within five working days of the date of the amended written confirmation. This clause is without prejudice to the Supplier's legal and equitable rights and remedies in the case of legal or factual mistake.

3 Price

- 3.1 All Goods are supplied at the prices ruling at delivery date and all Services are supplied at the Supplier's usual rates for completing the work at the date those Services are performed, and the Supplier reserves the right to pass on to the Customer any change in price or rates after the date of any quotation or estimate provided by the Supplier in relation to the Price of any Goods and/or Services.
- 3.2 All Prices are exclusive of Goods and Services Tax, which is payable by the Customer in addition to the price quoted or estimated or advertised by the Supplier.

4 Variations

- 4.1 No variations to the Goods and/or Services originally ordered or contracted for shall be carried out without the agreement of both the Customer and the Supplier. Where the Customer and the Supplier have agreed to a variation the Supplier will be entitled to charge for the Goods and/or Services involved in such variation at the Supplier's usual prices and rates.

5 Payment

- 5.1 Payment of the Price for the Goods and/or Services will be made without set-off or deduction on the 20th day of the month following the earlier of the date of invoice or delivery of the Goods or performance of the Services (as the case may be), or such other date as the Customer and Supplier may agree to in writing.
- 5.2 If full payment of all amounts due under this agreement is not made by the Customer to the Supplier in accordance with clause 5.1 above then:
- 5.2.1 The Customer will be in default under this Agreement and the Supplier may exercise all of the rights and remedies set out in it and otherwise available at law; and
- 5.2.2 The Customer will pay interest on the unpaid monies at the rate of 2.5% per month payable on a daily basis from the due date; and
- 5.2.3 The Customer will be liable for all expenses (including debt collection and solicitor - client costs) incurred by the Supplier as a result of the default; and
- 5.2.4 The Supplier may withhold the further supply of Goods and/or Services on credit.

- 5.3 The Customer acknowledges that all payments made to the Customer's account with the Supplier are in the ordinary course of the Customer's business; are received by the Supplier on the reasonably held belief that those payments are valid unless the Customer advises otherwise in writing; and that by accepting any payments on or after the due date for payment the Supplier has altered its position in reliance on the validity of those payments.

6 Risk and Delivery

- 6.1 Risk in any Goods supplied to the Customer will pass when the Goods leave the premises of the Supplier in the course of delivery to the Customer, the Customer's agent, or place of business. The Customer shall insure the Goods to their full price against all risks until the full Price is received by the Supplier.
- 6.2 Any costs of delivery of Goods shall be payable by the Customer to the Supplier in addition to any other amounts including the purchase price payable under this agreement.

7 Ownership

- 7.1 Property in and title to the Goods remains in the Supplier until all money the Customer owes to the Supplier (whether under this Agreement or otherwise) has been paid in full or until property in the Goods has passed to a third party in accordance with this clause. The Customer is a fiduciary for the Supplier and has a fiduciary duty to account to the Supplier for the Goods. If the Goods are sold the Customer receives the proceeds of sale as a trustee for the Supplier.
- 7.2 If any money the Customer owes to the Supplier is overdue or if any of the events in clauses 13.1.1 to 13.1.3 occur, the Customer will at the Supplier's request re-deliver the Goods to the Supplier or do anything reasonably necessary to allow the Supplier to retake possession of them and make any records available which may assist the Supplier to trace the Goods or proceeds of sale of the Goods.
- 7.3 The Supplier will not be liable for any fault or defect in the Goods or failure to collect data or recordings due to fire, flood, earthquake, act of god, or other matters beyond the reasonable control of the Supplier or if the Goods or components of the Goods are (in the opinion of the Supplier) found to be mis-used, tampered, altered or modified in any way.
- 7.4 If the Customer is in default of any of these terms and conditions, then the Supplier will be entitled without notice to repossess any Goods still owned by the Supplier. The Customer grants a license and authorises the Supplier or its representatives, servants, agents or employees to enter the premises where the Goods are situated for the purpose of repossession. The Supplier will not be liable for any costs, expenses, damage, loss of any kind suffered by the Customer as a result of repossession.

8 Personal Property Securities Act 1999 (PPSA)

- 8.1 The Customer hereby grants the Supplier a Security Interest in all Goods supplied by the Supplier to the Customer under these terms and conditions (**Collateral**).
- 8.2 The Supplier reserves the right at its discretion to register a Financing Statement in respect of each category of Goods supplied to the Customer which comprises Collateral. The Supplier's costs of registering a Financing Statement or a Financing Change Statement shall be paid by the Customer and debited by the Supplier against the Customer's account with the Supplier. On the request by the Supplier the Customer shall promptly execute any documents and do anything else required by the Supplier to ensure that the Supplier's Security Interest in the Collateral created by

these terms and conditions constitutes a Perfected Security Interest over the Goods comprising Collateral.

8.3 The Customer shall not agree to allow any person to file a Financing Statement over the Collateral without the prior consent of the Supplier and shall notify the Supplier immediately if it becomes aware of any person taking steps to file a Financing Statement against any of the Collateral.

8.4 The Customer:

8.4.1 Agree(s) that nothing in s114(1)(a), 133, and 134 of the PPSA will apply to these terms and conditions; and

8.4.2 Waive(s) the Customer's right to do any of the following:

- (a) Object to the Supplier's proposal to retain any Personal Property under s121 of the PPSA;
- (b) Not have goods damaged when the Supplier removes an Accession under s125 of the PPSA;
- (c) Receive notice of the removal of an Accession under s129 of the PPSA;
- (d) Apply to the Court for an order concerning the removal of an Accession under s131 of the PPSA;
- (e) To receive a copy of the Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to the Security Interest created by these terms and conditions.

9 Warranties and Liability on Claims

9.1 No warranty, condition or guarantee either express or implied is given by the Supplier as to the quality, state or condition of any Goods and/or Services or as to their appearance, content or fitness for any particular purpose.

9.2 The Supplier will use its best endeavours to enforce any guarantees or warranties given by the manufacturer of Goods supplied by the Supplier. Any guarantees or warranties given by the manufacturer of Goods supplied by the Supplier shall become void if the product or components of the product are (in the opinion of the Supplier) found to be mis-used, tampered, altered or modified in any way or if the damage or defect is due to theft, fire, flood, earthquake, act of god, matters outside the control of the Supplier, or similar.

9.3 The Customer acknowledges that any warranty provided by the Supplier to the Customer in respect of the Goods and/or Services will be void in any instance where the Customer has not complied with the regular maintenance and/or service recommendations given by the Supplier.

9.4 All claims against the Supplier by the Customer in respect of Goods and/or Services must be made within 20 days of issue of the Supplier's invoice to the Customer for those Goods and/or Services.

9.5 Where Goods and/or Services are supplied in a context to which the Construction Contracts Act 2002 applies, the Customer acknowledges and agrees that for all purposes any invoices issued by the Supplier to the Customer in respect of the supply of Goods and/or Services will be deemed to be a Payment Claim under the Construction Contracts Act 2002 and that any Payment Schedule in

relation to that Payment Claim must be made within 20 days of the date of issue of the Supplier's invoice to the Customer.

- 9.6 The Supplier reserves the right in its discretion to repair or replace Goods or to credit the portion of the price applicable to the Goods and Services in respect of any claims accepted. The Supplier will not be responsible for any costs incurred by or on behalf of the Customer to remedy the defect (including parts and labour) unless details of such costs are submitted in writing to the Supplier and the written approval of the Supplier is obtained prior such remedial work being carried out.
- 9.7 The total liability of the Supplier for any loss arising from any breach of warranty, defect in or non-compliance of any Goods and/or Services, or any other breach by the Supplier of its obligations under this Agreement will not in any circumstances exceed the original Price paid by the Customer to the Supplier for those Goods and/or Services.
- 9.8 The Supplier will not be liable for any consequential indirect or special damage or loss of any kind or any loss caused by the Customer's servants, agents or any other persons whatsoever and the Customer will indemnify the Supplier against any claim by the Customer's servants, agents or other persons in respect of any loss arising from any defect in or non-compliance of the Goods and Services or in respect to any other matter whatsoever.

10 Consumer Guarantees Act

- 10.1 Where the Supplier is supplying Goods and/or Services to the Customer for business purposes within the meaning of the Consumer Guarantees Act 1993, pursuant to Section 43 the provisions of that Act will not apply to this agreement.
- 10.2 Where the Customer supplies any Goods supplied to the Customer under this agreement on to a person acquiring them for business purposes it will be a term of the Customer's contract with the buyer of the Goods that the Consumer Guarantees Act 1993 will not apply in respect of the Goods.

11 Information and Privacy Act

- 11.1 For the purpose of facilitating the efficient running of the Supplier's business and for the purposes of this Agreement, the Customer authorises the Supplier:
 - 11.1.1 To collect all information it may require from the Customer and any third parties and authorises those third parties to release that information to the Supplier; and
 - 11.1.2 To use and hold all such information for the purposes of this Agreement given by the Customer or any third parties to the Supplier; and
 - 11.1.3 To use and hold all such data and information for the purposes of this Agreement relating to or contained within the Goods or relating to the Services for the purposes of maintaining and/or monitoring the Goods and/or providing the Services; and
 - 11.1.4 To use and disclose that information, including giving information to other persons to facilitate collection of debts from the Customer.
- 11.2 The information will be collected, held and used on the condition that:
 - 11.2.1 It will be held securely at the Supplier's office at 198 Riccarton Road, Riccarton, Christchurch 8041 and,

11.2.2 It will be accessible to any of the Supplier's employees and agents who need access to it for the efficient running of the Supplier's business and for the purposes of this Agreement (including provision and support of the Goods and Services); and

11.2.3 The Customer may request access to and correction of it at any time.

12 Assignment and Waiver

12.1 All the Supplier's rights will remain in full force despite any delay in enforcement. The Supplier will not be deemed to have waived any condition unless that waiver is in writing and signed by a duly authorised officer of the Supplier. Any waiver will apply only to the particular matter in respect of which it is given.

12.2 The Supplier is entitled at any time to assign its rights under this Agreement. The assignee will be entitled to claim full rights of set off or counter claim against the Customer, its charge holders or successors in respect of the debt or part of the debt which is assigned. The Customer is not entitled to assign its rights under this Agreement.

13 Termination

13.1 This Agreement may be terminated by the Supplier giving written notice to the Customer that no further Goods and/or Services will be supplied due to:

13.1.1 The Customer's breach of any term of this Agreement; or

13.1.2 The Customer becoming insolvent; being subject to the appointment of a receiver, receiver and manager liquidator or statutory manager; committing an act of bankruptcy; or making a scheme of arrangement with its creditors; or

13.1.3 The Customer being unlikely to be able to meet its obligations to the Supplier, in the opinion of the Supplier.

13.2 The agreements and obligations of the parties and the agreement evidencing them will not merge with termination under this clause 13.

14 Governing Law

14.1 This Agreement will be governed by, and construed in accordance with, the laws of New Zealand. The parties irrevocably submit to the exclusive jurisdiction of the courts of New Zealand with respect to any legal action, suit or proceeding or any other matter arising out of or in connection with this Agreement.