

Golden Electronics – Terms and Conditions

PART I – GENERAL TERMS AND CONDITIONS

1. **Definitions**
 - 1.1 "GE" means Maura Holdings Pty Ltd T/A Golden Electronics, its successors and assigns or any person acting on behalf of and with the authority of Maura Holdings Pty Ltd T/A Golden Electronics.
 - 1.2 "Client" means the person/s buying the Products as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
 - 1.3 "Products" means all Products or Services supplied by GE to the Client at the Client's request from time to time (where the context so permits the terms "Products" or "Services" (including "Monitoring Services") shall be interchangeable for the other).
 - 1.4 "Price" means the Price payable for the Products as agreed between GE and the Client in accordance with clause 5 below.
 - 1.5 "Client Information Sheet" shall include the Client's written instructions to GE detailing response procedures and the Client's voice codes and/or passwords (this is applicable to Monitoring Services only).
 - 1.6 "Extra Work" means work authorised by the Client and carried out by GE for which an extra charge is payable at GE's normal rates in addition to work accepted by the Client in a written quotation (Extra Work includes service work undertaken on a 'do and charge' basis and is not necessarily specified as exclusions in any quotation).
 - 1.7 "Extra Work" means work authorised by the Client and carried out by SMS for which an extra charge is payable at SMS' normal rates in addition to work accepted by the Client in a written quotation. Extra Work includes:
 - (a) service work undertaken on a 'do and charge' basis and is not necessarily specified as exclusions in any quotation;
 - (b) repairs and replacement parts, except in the event that such work is completed under warranty as agreed by SMS;
 - (c) system maintenance, unless otherwise agreed by SMS in writing.
 - 1.8 "Site" means the address nominated by the Client where the Products are to be delivered.
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 Products, or accepts Delivery.
 - 2.2 These terms and conditions may only be amended with GE's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and GE.
 - 2.3 Where the Client is a tenant (and therefore not the owner of the Site) then the Client warrants that the Client has obtained the full consent of the owner for GE to deliver the Products to the Site. The Client acknowledges and agrees that they shall be personally liable for full payment of the Price for all Products supplied under this agreement, and to indemnify GE against any claim made by the owner of the Site (howsoever arising) in relation to the supply of Products by GE, except where such claim has arisen because of the negligence of GE when supplying the Products.
 - 2.4 These terms and conditions may be meant to be read in conjunction with GE's Hire Form, and:
 - (a) where the context so permits, the terms 'Products' and 'Services' shall include any supply of Equipment, as defined therein; and
 - (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.
3. **Change in Control**
 - 3.1 The Client shall give GE 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 GE as a result of the Client's failure to comply with this clause.
4. **Specifications**
 - 4.1 The Client acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions and weights stated in GE's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of this agreement, unless expressly stated as such in writing by GE.
 - 4.2 The Client shall be responsible for ensuring that the Products ordered are suitable for their intended use, as they are made to order and GE offers no refund, either partial or fully, in the event of any cancellation by the Client.
 - 4.3 The Client acknowledges and accepts that the supply of Products for accepted orders may be subject to availability and if, for any reason, Products are not or cease to be available, GE reserves the right to substitute comparable Products (or components thereof) and vary the Price as per clause 5.2. In all such cases GE will notify the Client in advance of any such substitution, and also reserves the right to place the Client's order on hold until such time as GE and the Client agree to such changes.
5. **Price and Payment**
 - 5.1 At GE's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by GE to the Client; or
 - (b) the Price as at the date of Delivery according to GE's current price list; or
 - (c) GE's 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 GE reserves the right to change the Price:
 - (a) in the event of a variation to GE's quotation. Any variation from the plan of scheduled Services or specifications of the Products (including, but not limited to, any variation as a result of Extra Work required due to due to the discovery of hidden or unidentifiable difficulties which are only discovered upon Delivery, such as any existing cabling which does not comply with Australian Standards and causes the new installation to be non-compliant, poor weather conditions, limitations to accessing the Site, obscured Site defects which require remedial work, health hazards and safety considerations (such as the discovery of asbestos), prerequisite work by any third party not being completed, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring, etc.), or due to increases to GE in the cost of materials and labour (including additional transportation, packing, freight, storage, handling, insurance, or government, statutory or regulatory charges that relate to the supply of the Products (if any), or fluctuations in currency exchange rates) which are beyond GE's control, will be detailed in writing and charged for on the basis of GE's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion; or
 - (b) at any time, provided the Client receives one (1) month's prior written notice.
 - 5.3 At GE's sole discretion, a non-refundable deposit of up to thirty percent (30%) may be required.
 - 5.4 Time for payment for the Products being of the essence, the Price will be payable by the Client on the date/s determined by GE, which may be:
 - (a) before Delivery;
 - (b) on Delivery;
 - (c) by way of instalments/progress payments in accordance with GE's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Products delivered to the Site but not installed;
 - (d) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) failing any notice to the contrary, the date which is seven (7) days following the end of the month in which the invoice/s and/or statement is posted to the Client's address or address for notices.
 - 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two percent (2%) of the Price), or by any other method as agreed to between GE and the Client.
6. **Delivery and Installation**
 - 6.1 Delivery of the Products ("Delivery") is taken to occur at the time that GE (or GE's nominated carrier) delivers the Products to the Client's nominated address, even if the Client is not present at the address.
 - 6.2 At GE's sole discretion, the costs of Delivery are either included in, or in addition to, the Price.
 - 6.3 The Client shall make all arrangements necessary to take Delivery whenever the Products are tendered for delivery. In the event that the Client is unable to take Delivery as arranged then GE shall be entitled to charge a reasonable fee for redelivery.
 - 6.4 GE may deliver the Products 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 GE for Delivery is an estimate only and GE will not be liable for any loss or damage incurred by the Client as a result of any delay. However both parties agree that they shall make every endeavour to enable Delivery at the time and place as was arranged between both parties. In the event that GE is unable to deliver the Products as agreed solely due to any action or inaction of the Client (including, but not limited to, any failure by the Client to make a selection, have the Site ready for installation and/or notify GE the Site is ready, etc.) then GE shall be entitled to charge a reasonable fee for delivering the Products at a later time and date and/or extend the completion date by whatever time is reasonable.
 - 6.6 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations 2002. All of the cabling work will comply with the Australian and New Zealand Wiring standards.
7. **Client's Warranties**
 - 7.1 The Client:
 - (a) shall provide, at the Client's cost, mains power connection so as to enable installation and/or service work to be undertaken at the Site. 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;
 - (b) warrants that all information supplied to GE in connection with the supply of Products is true and accurate, and acknowledges that GE has relied on that information in supplying the Products;
 - (c) acknowledges that while GE may have provided information to them about the performance of the Products generally, it has not made any representation or warranty concerning the performance of the Products or the suitability of the Products for the Site;
 - (d) warrants that notwithstanding sub-clause (c), they have not relied upon any representation or warranty concerning the performance of the Products or the suitability of the Site;
 - (e) warrants that any structures to which the Products are to be affixed are able to withstand the installation of the Products and that all electrical and plumbing infrastructure and installations at the Site, including but not limited to, meter boxes, main switches, circuit breakers, and electrical cable ("System") are of suitable capacity to handle the Products once installed and complies with all laws, Acts, rules, regulations and codes and the requirements and directions of any relevant commonwealth, State and Local Government departments and other bodies ("Laws"). If, for any reason (including the discovery of asbestos, defective or unsafe wiring, or dangerous soot to roofing), GE reasonably forms the opinion that the Site is not safe for the Services to proceed then GE shall be entitled to delay the Services (in accordance with the provisions of clause 6.5 above) until GE is satisfied that it is safe to proceed;
 - (f) acknowledges that if the System is not compliant with all Laws, they may be required to repair or replace those parts of the System that are non-compliant at their own cost prior to Delivery.
8. **Risk**
 - 8.1 Risk of damage to or loss of the Products passes to the Client on Delivery and the Client must insure the Products on or before Delivery.
 - 8.2 If any of the Products are damaged or destroyed following Delivery but prior to ownership passing to the Client, GE is entitled to receive all insurance proceeds payable for the Products. The production of these terms and conditions by GE is sufficient evidence of GE's rights to receive the insurance proceeds without the need for any person dealing with GE to make further enquiries.
 - 8.3 If the Client requests GE to leave Products outside GE's premises for collection, or to deliver the Products to an unattended location, then such Products shall be left at the Client's sole risk.
 - 8.4 The Customer acknowledges that GE is only responsible for parts that are replaced by GE, and in the event that other components/goods, subsequently fail, the Customer agrees to indemnify GE against any loss or damage to the goods, or caused by the goods, or any part thereof howsoever arising.
 - 8.5 GE shall accept no responsibility for any damage which may arise during installation of the power points, switches, data ports in the event that any third party contractor employed by the Client has removed any or all reference to the positioning thereof by either plastering or erecting GIB board over the designated area. The Client accepts that the installation thereof will then be at the sole discretion of GE, and if the Client believes they have any claim in relation to the work undertaken by that third party then said claim must be made against the third party contractor in the first instance.
 - 8.6 In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Client then the Client agrees to notify GE immediately upon any proposed changes. The Client agrees to indemnify GE against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause **Error! Reference source not found.**
 - 8.7 GE shall not be responsible for the removal of rubbish from, or clean-up of, the Site, unless otherwise agreed in writing, and it is the responsibility of the Client, or the Client's agent.
 - 8.8 In the event that GE discovers asbestos/hazardous materials whilst supplying the Services, GE shall immediately advise the Client of the same and shall be entitled to suspend the Services pending a risk assessment. The Client shall be liable for all additional costs incurred by GE (howsoever arising) as a result of the discovery of asbestos/hazardous materials and/or any suspension of the Services in relation thereto. Where GE agrees to remove any asbestos/hazardous materials on the Client's behalf then the Client shall be liable for all costs incurred by GE in the removal and disposal of those materials.
 - 8.9 The Client agrees to indemnify GE from any damage caused by any other tradesman during and after the completion of the Services. If the Client instructs GE to rectify any damage caused by any other tradesman, this will be considered a variation to the Price as per clause 5.2 and will be charged at GE's normal hourly rate.
 - 8.10 The Client accepts that all Products and/or electronic security systems, smoke detectors, heat detectors and any similar devices installed at or attached to the Site are:
 - (a) for monitoring and detection purposes only and should not be regarded as life saving devices; and
 - (b) do not guarantee that the Site will be free from malicious damage or loss caused by attack and/or breaking or entering.
 - 8.11 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.
9. **Access and Damage**
 - 9.1 The Client shall ensure that GE has clear and free access to the Site at all times to enable them to affect Delivery. GE shall not be liable for any loss or damage to the Site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of GE. The Client agrees to ensure that the Site 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.
 - 9.2 The Client shall advise GE in the event of any changed circumstances, or planned changes, to the Site which might affect GE's ability to affect Delivery in a safe manner.
 - 9.3 GE shall not be held responsible for any damage to dug up/cut cabling caused by outside agents. Where the Client requests GE to provide additional Services where such damage occurs, then GE reserves the right to charge the Client for any costs incurred in doing so.
10. **Compliance with Laws**
 - 10.1 The Client and GE shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable, including any work health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
 - 10.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required.
11. **Underground Locations**
 - 11.1 Prior to Delivery, the Client must advise GE of the precise location of all underground services on the Site and clearly mark the same. The underground mains and 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 the Site.
 - 11.2 While GE will take all care to avoid damage to any underground services the Client agrees to indemnify GE 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 11.1.
12. **Title**
 - 12.1 GE and the Client agree that ownership of the Products shall not pass until:
 - (a) the Client has paid GE all amounts owing to GE; and
 - (b) the Client has met all of its other obligations to GE.
 - 12.2 Receipt by GE 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, and until then GE's ownership and rights in relation to the Products, and this agreement, shall continue.
 - 12.3 It is further agreed that, until ownership of the Products passes to the Client in accordance with clause 12.1:
 - (a) the Client is only a bailee of the Products and must return the Products to GE on request.
 - (b) the Client holds the benefit of the Client's insurance of the Products on trust for GE and must pay to GE the proceeds of any insurance in the event of the Products being lost, damaged or destroyed.
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Products other than in the ordinary course of business and for market value, if the Client sells, disposes or parts with possession of the Products then the Client must hold the proceeds of any such act on trust for GE and must pay or deliver the proceeds to GE on demand.
 - (d) the Client should not convert or process the Products 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 GE and must sell, dispose of or return the resulting product to GE as it so directs.
 - (e) the Client irrevocably authorises GE to enter any premises where GE believes the Products are kept and recover possession of the Products.
 - (f) GE may recover possession of any Products in transit whether or not Delivery has occurred.
 - (g) the Client shall not charge or grant an encumbrance over the Products nor grant nor otherwise give away any interest in the Products while they remain the property of GE.
 - (h) GE may commence proceedings to recover the Price notwithstanding that ownership of the Products has not passed to the Client.
13. **Personal Property Securities Act 2009 ("PPSA")**
 - 13.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
 - 13.2 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 Products and/or collateral (account) – being a monetary obligation of the Client to GE for Services – that have previously been supplied and that will be supplied in the future by GE to the Client.
 - 13.3 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 GE 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 13.3(a)(i) or 13.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, GE 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 registration made thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of GE;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Products and/or collateral (account) in favour of a third party without the prior written consent of GE;
 - (e) immediately advise GE of any material change in its business practices of selling Products which would result in a change in the nature of proceeds derived from such sales.
 - 13.4 GE 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.
 - 13.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
 - 13.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
 - 13.7 Unless otherwise agreed to in writing by GE, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
 - 13.8 The Client must unconditionally ratify any actions taken by GE under clauses 13.3 to 13.5.
 - 13.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.
14. **Security and Charge**
 - 14.1 In consideration of GE agreeing to supply the Products, 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).
 - 14.2 The Client indemnifies GE from and against all GE's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising GE's rights under this clause.
 - 14.3 The Client irrevocably appoints GE and each director of GE 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.

Please note that a larger print version of these terms and conditions is available from GE on request.

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- 15. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 15.1 The Client must inspect the Products on Delivery and must within seven (7) days of such time notify GE in writing of any evident defect/damage, error or omission, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Products as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow GE to inspect/review the Products.
- 15.2 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**).
- 15.3 GE acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, GE makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Products. GE's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.5 If the Client is a consumer within the meaning of the CCA, GE's liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 If GE is required to replace the Products under this clause or the CCA, but is unable to do so, GE may refund any money the Client has paid for the Products.
- 15.7 If the Client is not a consumer within the meaning of the CCA, GE's liability for any defect or damage in the Products is:
- limited to the value of any express warranty or warranty card provided to the Client by GE at GE's sole discretion;
 - limited to any warranty to which GE is entitled, if GE did not manufacture the Products;
 - otherwise negated absolutely.
- 15.8 Subject to this clause 15, returns will only be accepted provided that:
- the Client has complied with the provisions of clause 13.1; and
 - GE has agreed that the Products are defective; and
 - the Products are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - the Products are returned in as close a condition to that in which they were delivered as is possible.
- 15.9 Notwithstanding clauses 15.1 to 15.8 but subject to the CCA, GE shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- the Client failing to properly maintain or store the Products;
 - the Client using the Products for any purpose other than that for which they were designed;
 - the Client continuing the use of the Products after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - the Client failing to follow any instructions or guidelines provided by GE;
 - fair wear and tear, any accident, or act of God.
- 15.10 Notwithstanding anything contained in this clause if GE is required by a law to accept a return then GE will only accept a return on the conditions imposed by that law.
- 16. Intellectual Property and Confidentiality**
- 16.1 Where GE has designed, drawn or developed Products for the Client, then the copyright in any designs and drawings and documents shall remain the property of GE.
- 16.2 The Client warrants that all designs, specifications or instructions given to GE will not cause GE to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify GE against any action taken by a third party against GE in respect of any such infringement.
- 16.3 The Client agrees that GE may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Products which GE has created for the Client.
- 16.4 Information provided by GE to the Client in documentation (including, but not limited to, monitoring reports) is done so in confidence, and the Client agrees not to reproduce or provide said information in any manner to any third party without the prior written approval of GE.
- 17. Default and Consequences of Default**
- 17.1 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 GE's sole discretion such interest shall compound monthly at such rate) after as well as before any judgment.
- 17.2 If the Client owes GE any money the Client shall indemnify GE from and against all costs and disbursements incurred by GE in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, GE's contract default fees, and bank disbursement fees).
- 17.3 Further to any other rights or remedies GE may have under this agreement, if the Client has made payment to GE by credit card, 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 GE under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 17.4 Without prejudice to any other remedies GE may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions GE may suspend or terminate the supply of Products to the Client (and shall suspend or terminate the monitoring of the Client's alarm system, after giving the Client ten (10) days' notice in writing). GE will not be liable to the Client for any loss or damage the Client suffers because GE has exercised its rights under this clause.
- 17.5 Without prejudice to GE's other remedies at law GE shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to GE shall, whether or not due for payment, become immediately payable if:
- any money payable to GE becomes overdue, or in GE's opinion the Client will be unable to make a payment when it falls due;
 - 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
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 18. Cancellation**
- 18.1 GE may cancel Delivery at any time before the Products are delivered by giving written notice to the Client. On giving such notice GE shall repay to the Client any sums paid in respect of the Price. GE shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.2 In the event that the Client cancels Delivery the Client agrees to notify GE in writing or via telephone request subject to voice recording and accepts that the Client shall be liable for any loss incurred by GE (including, but not limited to, any loss of profits) up to the time of cancellation.
- 18.3 Cancellation of orders for Products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 19. Privacy Act 1988**
- 19.1 The Client agrees for GE 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 GE.
- 19.2 The Client agrees that GE may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- to assess an application by the Client; and/or
 - to notify other credit providers of a default by the Client; and/or
 - 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
- to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 19.3 The Client consents to GE being given a consumer credit report to collect overdue payment on commercial credit.
- 19.4 The Client agrees that personal credit information provided may be used and retained by GE for the following purposes (and for other agreed purposes or required by):
- the provision of Products; and/or
 - analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Products; and/or
 - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - enabling the collection of amounts outstanding in relation to the Products.
- 19.5 GE may give information about the Client to a CRB for the following purposes:
- to obtain a consumer credit report;
 - allow the CRB to create or maintain a credit information file about the Client including credit history.
- 19.6 The information given to the CRB may include:
- personal information as outlined in 19.1 above;
 - name of the credit provider and that GE is a current credit provider to the Client;
 - whether the credit provider is a licensee;
 - type of consumer credit;
 - 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);
 - 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 GE has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - information that, in the opinion of GE, the Client has committed a serious credit infringement;
 - advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 19.7 The Client shall have the right to request (by e-mail) from GE:
- a copy of the information about the Client retained by GE and the right to request that GE correct any incorrect information; and
 - that GE does not disclose any personal information about the Client for the purpose of direct marketing.
- 19.8 GE 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 agreement or is required to be maintained and/or stored in accordance with the law.
- 19.9 The Client can make a privacy complaint by contacting GE via e-mail. GE 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.
- 20. Unpaid Seller's Rights**
- 20.1 Where the Client has left any item with GE for repair, modification, exchange or for GE to perform any other service in relation to the item and GE has not received or been tendered the whole of any moneys owing to it by the Client, GE shall have, until all moneys owing to GE are paid:
- a lien on the item; and
 - the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 20.2 The lien of GE shall continue despite the commencement of proceedings, or judgment for any moneys owing to GE having been obtained against the Client.
- 21. General**
- 21.1 The failure by GE to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect GE'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 Tasmania, the state in which GE has its principal place of business, and are subject to the jurisdiction of the Melbourne courts in that State. Subject to clause 15, GE 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 GE of these terms and conditions (alternatively GE's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 21.4 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 GE nor to withhold payment of any invoice because part of that invoice is in dispute.
- 21.5 GE may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 21.6 The Client agrees that GE may amend these terms and conditions at any time. If GE makes a change to these terms and conditions, then that change will take effect from the date on which GE notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for GE to provide Products to the Client.
- 21.7 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.
- 21.8 The Client warrants that it has the power to engage GE's services and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that such engagement creates binding and valid legal obligations on it.
- PART II – SERVICE, MAINTENANCE, MONITORING, PATROL, ALARM RESPONSE SERVICES**
- 22. Provision of Patrol Services**
- 22.1 The Client acknowledges that:
- patrol services are shared with other customers. 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 GE's inability to complete agreed patrols for more than ten (10%) of the agreed contract will be notified to the Client and adjustments will be negotiated to patrol services and/or credit/refunds given for the undelivered Services exceeding this percentage;
 - any associated patrol services shall be charged additionally to the Client.
- 22.2 The Client will inform GE if there are any changes to the Site if these changes have the potential to restrict the provision of the patrol services or cause any harm to the patrol officers.
- 23. GE's Responsibilities**
- 23.1 GE agrees to use due care and skill to provide the Services for alarm signals and/or other recurring services selected by the Client.
- 23.2 GE shall action alarm signals emanating from the alarm in accordance with the Client's documented instructions and GE's Standard Operating Procedures.
- 23.3 Whilst GE shall endeavour to provide a timely response to actionable alarm signals, no warranty is given by GE that patrol response will be available at any time, if at all. GE 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.
- 23.4 Whilst GE uses due care when contacting and advising emergency services, they cannot guarantee prompt response times or attendance of such services.
- 23.5 The Client acknowledges that GE will retain archived security log and recordings for a period of seven (7) years, after which this information will be destroyed unless otherwise requested by the Client.
- 24. Client's Responsibilities**
- 24.1 The Client shall immediately advise GE, in writing, in the event of any changes to their contact details or alarm response requirements.
- 24.2 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 GE to provide the 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 GE.
- 24.3 The Client shall supply at the Client's expense keys, swipe cards, alarm codes, electronic access controls to the site, to GE to enable GE to carry out alarm responses and/or patrols. GE's liability for loss or damage of the Client's keys, swipe cards, etc. is limited to the costs of obtaining a replacement or five hundred dollars (\$5,000), whichever is the lesser.
- 24.4 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 Services, GE shall be entitled to destroy them.
- 24.5 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 Site.
- 24.6 The Client cannot transfer, or attempt to transfer, the right to receive the Services or any other right to any other party.
- 24.7 Upon termination of the 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 GE.
- 24.8 GE will not be responsible for any communication costs post cancellation (including, but not limited to, telephone charges, etc.), and signals received after the termination of the Services will not be acted upon by GE.
- 24.9 The Client agrees that any costs associated with the provision of services by the Police, Ambulance, Fire or other emergency services to the Site shall be met by the Client.
- 25. Monitoring Services**
- 25.1 The Services provided by GE shall consist of the monitoring of all signals that have been programmed into the Client's system at GE's monitoring station from the alarm system designated in the Client Information Sheet which shall be supplied to the Client.
- 25.2 GE 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. The Client acknowledges that alarm responses are considered as Extra Work and charged at GE's normal rates, subject to clause 25.9.
- 25.3 GE shall endeavour to action the following alarm system signals generally as described below or as otherwise agreed or interpreted:
- duress / panic – GE shall call the Site, as required by the Tasmania Police ("Police") first to verify the event. If deemed necessary GE shall contact and advise the Police;
 - hold up – GE shall notify the Police, and make a follow up call to the Site after thirty (30) minutes (this clause assumes that the Site comply with Police's protocols for hold up alarms); and
 - fire / smoke – GE shall call the Site to verify the event, if no answer GE will advise Fire Department and contacts (GE will dispatch a guard to the Site if no contacts are available and keys are held); and
 - medical – GE shall call the Site to verify the event, if no answer GE will advise Ambulance Service and contacts (GE will dispatch a guard to the Site if no contacts are available and keys are held); and
 - system events – GE shall contact the Client and shall advise service department if necessary (this type of event is not necessarily actioned immediately).
- 25.4 In the event that Site is found to have been violated and the Client is unable to be contacted by telephone, the Client authorises GE to arrange for a security guard to attend and remain at the Site as an agent, if GE considers it necessary, until the Client is contacted and GE is given instructions. Alternatively, GE is authorised to arrange temporary work to secure the Site with the Client agreeing to pay for such work as per clause 25.7.
- 25.5 The Client shall be entitled to one (1) false alarm response per calendar year. GE shall be entitled to charge the Client for any response to any additional false alarms within that period.
- 25.6 The Client acknowledges and accepts that, for various lawful reasons (including, security, training and monitoring purposes), phone calls made to GE may be recorded.
- 25.7 The Client accepts and acknowledges that in the event GE 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 GE in their obligations for payment as an agent acting on behalf of the Client to third parties.
- 25.8 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.
- 25.9 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 GE for patrol response fees, which may include an administration fee. GE shall advise the Client of applicable patrol response fees upon request by the Client.
- 25.10 GE may be unable to monitor the system in the event of a communication failure between the alarm panel at the Site and the monitoring centre. Failures of this nature may be malicious or otherwise. The Client acknowledges that GE's obligation to action alarm events is suspended at any time the communications link is disrupted between the Site and GE's monitoring room.
- 25.11 In the event the Client wishes to cancel the Services, the Client must provide GE with one (1) month's written notification, or in lieu of such, pay to GE one (1) month's charges which would have otherwise been payable to GE for that period.
- 26. Client's Acknowledgements**
- 26.1 The Client acknowledges that the provision of Services may not prevent unlawful entry to the Site occurring, and accordingly the Client accepts that loss or damage to property and death or injury to persons may occur even though GE's obligations under this agreement have been satisfied.
- 26.2 Unless stated otherwise in this agreement the supply of performance records, history or other reports shall only be issued direct to the Client.
- 26.3 The Client accepts and acknowledges that GE during the course of the Services:
- telephone conversations shall be recorded between GE and the Client and the Client hereby authorises GE to implement this procedure; and
 - GE's employees shall not be required to carry out any duties of an illegal or strike breaking nature; and
 - GE is not an insurer of Site 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.
- 27. Limitation of Liability**
- 27.1 The Client hereby disclaims any right to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by GE and the Client acknowledges that the Services are bought relying solely upon the Client's skill and judgment.
- 27.2 Insofar as the Client, notwithstanding provisions of this clause, may have any claim for damages against GE, its servants or agents either in contract or in tort and whether arising from negligence or otherwise (it being the intention of this clause that no such damages may be recovered) the same shall be limited to an amount equal to the sum of three (3) months fees actually paid by the Client in respect of that portion of the particular Services which gave rise to such claim.