

1. Definitions

- 1.1 **"Additional Work"** means work authorised by the Client and carried out by APS for which an extra charge is payable at APS' normal rates in addition to work accepted by the Client in a written quotation. Additional 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 APS;
 - (c) system maintenance, unless otherwise agreed by APS in writing.
- 1.2 **"APS"** means Allpoint Security Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Allpoint Security Pty Ltd.
- 1.3 **"Client"** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting APS to provide the Services as specified in any proposal, quotation, order, invoice, or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is on behalf of or part of, a Trust, shall be bound in its own capacity as a trustee; and
 - (d) includes the Client's executors, administrators, successors, and permitted assigns.
- 1.4 **"Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, Contracts, client information (including but not limited to, **"Personal Information"** such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.5 **"Contract"** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.6 **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when using APS' website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.7 **"GST"** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 1.8 **"Monitoring Commission Form"** means the Client's written instructions to APS detailing response procedures and the Client's voice codes and/or passwords.
- 1.9 **"Price"** means the Price payable (plus any GST where applicable) for the Services as agreed between APS and the Client in accordance with clause 5 below.
- 1.10 **"Products/Equipment"** means all Products supplied or Equipment supplied on hire (*where applicable*) by APS to the Client, at the Client's, request from time to time (and where the context so permits shall include any provision of Services as defined below) and is as described on any quotation, order, invoice, or other document as provided by APS to the Client.
- 1.11 **"Services"** means all Services provided by APS to the Client, at the Client's, request from time to time, and:
- (a) includes "Monitoring Services" – around-the-clock monitoring of the security alarm system for alarm signals and/or static occurrences that includes callouts by Patrol Security Officer's where applicable and, if selected by the Client, opening, and closing signals and/or other security services; and
 - (b) includes "Cash Services" – cash/cheques (or on occasion, and upon prior approval between APS and the Client, valuable items) which shall be collected by a licenced security officer from the Client's nominated collection point/site and either transported to a designated point of delivery, or banked on the same business day; and
 - (c) where the context so permits the terms 'Services' shall include any supply of Equipment as hereinafter defined.

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 of the Services.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Services on credit shall not take effect until the Client has completed a credit application with APS and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Services requested exceeds the Client's credit limit and/or the account exceeds the payment terms, APS reserves the right to refuse delivery.
- 2.6 These terms and conditions are meant to be read in conjunction with the Terms and Conditions contained in APS' Monitoring Service Agreement. If there are any inconsistencies between the two documents, then the terms and conditions contained in that document shall prevail.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that APS shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by APS in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by APS in respect of the Services.

- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of APS; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 3.3 In circumstances where the Client is required to place an order for Products, in writing, or otherwise as permitted by these terms and conditions, the Client is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Products (whether they are made to order Products or not) ("**Client Error**"). The Client must pay for all Products it orders from APS notwithstanding that such Products suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take Delivery of such Products. APS is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.

4. Change in Control

- 4.1 The Client shall give APS 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, change of trustees, or business practice). The Client shall be liable for any loss incurred by APS as a result of the Client's failure to comply with this clause.

5. Price and Payment

- 5.1 At APS' sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by APS to the Client; or
 - (b) the Price as at the date of Delivery of the Products according to APS' current price list; or
 - (c) APS' 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 APS reserves the right to change the Price:
- (a) if a variation to APS' quotation is requested; or
 - (b) if any variation from the plan of scheduled Services or specifications (including, but not limited to, any variation as a result of Additional Work required due to unforeseen circumstances, such as poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed, change of design, inaccessible wiring or any existing wiring which does not comply with Australian Standards and causes the new installation to be non-compliant, or as a result of any increase to APS' in the cost of materials and labour) shall allow APS the right to halt all Services until such time as APS and the Client agree to changes to the plans and/or specifications as outlined in the quotation to incorporate such variances; or
 - (c) in the event of increases to APS in the cost for overseas transactions may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges for foreign sourced components.
- 5.3 Variations will be charged for on the basis of APS' quotation, and will be detailed in writing, and shown as variations on APS' invoice. The Client shall be required to respond to any variation submitted by APS within ten (10) working days. Failure to do so will entitle APS to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.4 APS reserves the right to increase the Price at any time, provided the Client receives one (1) month prior written notice.
- 5.5 At APS' sole discretion, a non-refundable deposit of up to twenty percent (20%) may be required on Product sales and installations.
- 5.6 Time for payment for the Products being of the essence, the Price will be payable by the Client on the date/s determined by APS, which may be:
- (a) on or before delivery of the Products/ Equipment;
 - (b) on completion of the Services;
 - (c) by way of progress payments in accordance with APS' 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 yet installed; or
 - (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 date of any invoice given to the Client by APS.
- 5.7 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and APS.
- 5.8 APS may in its discretion allocate any payment received from the Client towards any invoice that APS determines and may do so at the time of receipt or at any time afterwards. On any default by the Client APS may re-allocate any payments previously received and allocated. In the absence of any payment allocation by APS, payment will be deemed to be allocated in such manner as preserves the maximum value of APS' Purchase Money Security Interest (as defined in the PPSA) in the Products.
- 5.9 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 APS nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify APS in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as APS investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in APS placing the Client's account into default and subject to default interest in accordance with clause 16.1.
- 5.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to APS an amount equal to any GST APS must pay for any supply by APS under this or any other agreement for the sale of the Products. The Client must pay GST, without deduction or set-off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

6. Delivery and Installation

- 6.1 Delivery of the Products ("**Delivery**") is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Products at APS' address; or
 - (b) APS (or APS's nominated carrier) delivers the Products to the Client's nominated address, even if the Client is not present at the address.

- 6.2 Where APS has provided software, APS retains ownership of the software, but grants a licence to the Client for use of the software. The Client will use any software supplied by APS strictly in terms of the licence under which it is supplied and shall not modify, change or copy any such software. The Client will use any third-party software supplied by APS, and identified as such, strictly in terms of the licence under which it is supplied.
- 6.3 At APS' sole discretion, the cost of Delivery is included in the Price.
- 6.4 APS may deliver the Products by 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 APS for the Delivery and/or installation of the Products is an estimate only and APS 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 the Products to be delivered and/or installed at the time and place as was arranged between both parties. In the event that APS is unable to deliver and/or install 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 nominated site ready (and/or notify APS that the site/area is ready) for the Delivery and/or installation of the Products, or if the Client refuses to accept Delivery of the Products, etc.), then APS shall be entitled to reschedule the delivery and/or installation of the Products, and (at APS' sole discretion) charge the Client for any resulting additional costs incurred by APS (including storage and transportation costs, etc.).
- 6.6 The Client shall provide clear and reasonable access to the site on the date of installation, as agreed between the parties. Delays to APS' technical staff waiting for access and/or clearing of obstacles, or other Client causes, may result in additional fees to be added to the Price.
- 6.7 Any telecommunications connection required for the installation and/or maintenance of the Products will be arranged and paid for by the Client unless otherwise agreed in writing.

7. Risk

- 7.1 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.
- 7.2 If any of the Products are damaged or destroyed following Delivery but prior to ownership passing to the Client, APS is entitled to receive all insurance proceeds payable for the Products. The production of these terms and conditions by APS is sufficient evidence of APS' rights to receive the insurance proceeds without the need for any person dealing with APS to make further enquiries.
- 7.3 The Client warrants that any structures to which the Products are to be affixed are able to withstand the installation of the Products and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Products once installed. If for any reason (including the discovery of asbestos, defective or unsafe wiring or dangerous access to roofing) that APS, its employees or APS' reasonably form the opinion that the Client's premises is not safe for the installation of Products to proceed then APS shall be entitled to delay installation of the Products (in accordance with the provisions of clause 5.2 and 6.5 above) until APS is satisfied that it is safe for the installation to proceed.
- 7.4 The Client acknowledges that in the event asbestos, or any other toxic substances are discovered during the installation that it is the Client's responsibility to ensure the safe removal of the same. The Client further agrees to indemnify APS against any costs incurred by APS as a consequence of such discovery. Under no circumstances will APS handle removal of any asbestos product.
- 7.5 The Client accepts that all electronic security systems, smoke detectors, heat detectors and any similar devices installed at or attached to the address are:
- (a) for monitoring and detection purposes only and should not be regarded as life saving devices; and
 - (b) do not guarantee that the address will be free from malicious damage or loss caused by attack and/or breaking or entering.
- 7.6 It shall be the Client's responsibility:
- (a) to ensure the security system equipment is tested and maintained to full operational condition; and
 - (b) for all phone calls emanating from the security system panel; and
 - (c) to ensure all electronically protected areas are free from obstacles which may impair the operation of the system.
- 7.7 The Client acknowledges that:
- (a) APS is only responsible for components that are replaced by APS and does not at any stage accept any liability in respect of previous services and/or products supplied by any other third party that subsequently fail and found to be the source of the failure;
 - (b) where the Client has supplied Products for APS to complete the Services, the Client acknowledges that they accept responsibility for the suitability of purpose, performance, quality, and any faults inherent in those Products and APS offers no guarantee pertaining thereto; and
 - (c) APS shall not be liable for any loss or damage to the Services (or any part thereof) howsoever arising where sub-clauses (a) and (b) applies.

8. Compliance with Laws

- 8.1 The Client and APS shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 8.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- Modern Slavery*
- 8.3 For the purposes of clauses 8.3 to 8.8:
- (a) "**Act**" means the *Modern Slavery Act 2018 (cth)*
 - (b) "**Modern Slavery**", "**Modern Slavery Statement**" and "**Reporting Entity**" have the meanings given by the Act.
- 8.4 If the Client is a Reporting Entity, it shall comply with all of its obligations under the Act.
- 8.5 Whether the Client is a Reporting Entity or not, the Client shall:
- (a) use reasonable endeavours to identify, assess and address risks of Modern Slavery practices in its operations and supply chains;
 - (b) use its reasonable endeavours to ensure that the personnel responsible for managing the operations and supply chains used for the purposes of the Contract have undertaken suitable training to identify and report Modern Slavery;
 - (c) use its reasonable endeavours to ensure that if at any time the Client becomes aware of Modern Slavery practices in its operations and supply chains, the Client must as soon as reasonably practicable take all reasonable steps to address or remove these practices;

- (d) provide to APS a copy of any Modern Slavery Statement that it submits under the Act within seven (7) days of so doing; and
 - (e) within seven (7) days of APS' request (or such longer period as APS agrees), provide to APS any information or assistance reasonable requested by APS;
 - (i) concerning the Client's compliance with the Act;
 - (ii) concerning the Client's operations and supply chains;
 - (iii) to enable APS to prepare a Modern Slavery Statement or otherwise comply with the Act; or
 - (iv) to enable APS to assess and address risks of Modern Slavery practices in its operations and supply chains.
- 8.6 The parties agree that in the circumstances a breach arises pursuant to this clause or the terms of the Act, the parties will try and resolve the breach by way of remediation and APS will be able to terminate the Contract for any breach by the Client.
- 8.7 The Client warrants that any information supplied to APS is true and accurate and may be relied upon for the purposes of the Act.
- 8.8 The Client shall indemnify APS against any loss or liability suffered by APS as a result of the Client's breach of this clause 8.

9. Access and Damage

- 9.1 The Client shall ensure that APS has clear and free access to the nominated address at all times to enable them to supply the Products. APS shall not be liable for any loss or damage to the address (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of APS.
- 9.2 The Client shall advise APS in the event of any changed circumstances, or planned changes, to the premises which might affect APS' ability to supply the Products in a safe manner.
- 9.3 Prior to APS installing the Products, the Client must advise APS 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.
- 9.4 Whilst APS will take all care to avoid damage to any underground services the Client agrees to indemnify APS in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 9.3.
- 9.5 APS shall not be held responsible for any damage to dug up/cut cabling caused by outside agents. Where the Client requests APS to provide additional services where such damage occurs, then APS reserves the right to charge the Client for any costs incurred in doing so.
- 9.6 Unless otherwise stated, the Client shall make good all finished surfaces (including, but not limited to, ceiling tiles and panels, face brickwork and rendered masonry surfaces) which APS may reasonably have to break into or disturb in order to install the Products.

10. Dimensions, Plans and Specifications

- 10.1 All customary building industry tolerances shall apply to the dimensions and measurements of the Products unless APS and the Client agree otherwise in writing.
- 10.2 APS shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client.
- 10.3 If the giving of an estimate or quotation for the supply of Products involves APS estimating measurements and quantities, it shall be the responsibility of the Client to verify the accuracy of APS' estimated measurements and quantities before the Client places an order based on such estimate or accepts such quotation.
- 10.4 Should the Client require any changes to APS' estimated measurements and quantities, the Client shall request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.

11. Title

- 11.1 APS and the Client agree that ownership of the Products shall not pass until:
 - (a) the Client has paid APS all amounts owing to APS; and
 - (b) the Client has met all of its other obligations to APS.
- 11.2 Receipt by APS 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.
- 11.3 It is further agreed that, until ownership of the Products passes to the Client in accordance with clause 11.1:
 - (a) the Client is only a bailee of the Products and must return the Products to APS on request;
 - (b) the Client holds the benefit of the Client's insurance of the Products on trust for APS and must pay to APS 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 APS and must pay or deliver the proceeds to APS 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 APS and must sell, dispose of or return the resulting product to APS as it so directs;
 - (e) the Client irrevocably authorises APS to enter any premises where APS believes the Products are kept and recover possession of the Products;
 - (f) APS 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 APS;
 - (h) APS may commence proceedings to recover the Price of the Products sold notwithstanding that ownership of the Products has not passed to the Client.

12. Personal Property Securities Act 2009 ("PPSA")

- 12.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

- 12.2 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 that have previously been supplied and that will be supplied in the future by APS to the Client, and the proceeds from such Products.
- 12.3 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 APS 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 12.3(a)(i) or 12.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, APS 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 Products charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of APS;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Products or the proceeds of such Products in favour of a third party without the prior written consent of APS;
 - (e) immediately advise APS of any material change in its business practices of selling the Products which would result in a change in proceeds derived from such sales.
- 12.4 APS 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.
- 12.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 12.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by APS, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8 The Client must unconditionally ratify any actions taken by APS under clauses 12.3 to 12.5.
- 12.9 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

13. Security and Charge

- 13.1 In consideration of APS 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, and the Client grants a security interest in all of its present and after-acquired property for the purposes of, including but not limited to registering APS' security interest over the Client on the PPSA, 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).
- 13.2 The Client indemnifies APS from and against all APS' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising APS' rights under this clause.
- 13.3 The Client irrevocably appoints APS and each director of APS as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.

14. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 14.1 The Client must inspect the Products on Delivery and must within seven (7) days of Delivery notify APS in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Products as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow APS to inspect the Products.
- 14.2 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**).
- 14.3 APS acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 14.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, APS makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Products. APS' liability in respect of these warranties is limited to the fullest extent permitted by law.
- 14.5 If the Client is a consumer within the meaning of the CCA, APS' liability is limited to the extent permitted by section 64A of Schedule 2.
- 14.6 If APS is required to replace the Products under this clause or the CCA, but is unable to do so, APS may refund any money the Client has paid for the Products.
- 14.7 If the Client is not a consumer within the meaning of the CCA, APS' liability for any defect or damage in the Products is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by APS at APS' sole discretion;
 - (b) limited to any warranty to which APS is entitled, if APS did not manufacture the Products;
 - (c) otherwise negated absolutely.
- 14.8 Subject to this clause 14, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 14.1; and
 - (b) APS has agreed that the Products are defective; and
 - (c) the Products are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Products are returned in as close a condition to that in which they were delivered as is possible.
- 14.9 Notwithstanding clauses 14.1 to 14.8 but subject to the CCA, APS shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Products;
 - (b) the Client using the Products for any purpose other than that for which they were designed;

- (c) the Client continuing the use of any Products after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Client failing to follow any instructions or guidelines provided by APS;
 - (e) fair wear and tear, any accident, or act of God.
- 14.10 In the case of second hand Products, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Products prior to Delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by APS as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that APS has agreed to provide the Client with the second hand Products and calculated the Price of the second hand Products in reliance of this clause 14.10.
- 14.11 APS may in its absolute discretion accept non-defective Products for return in which case APS may require the Client to pay handling fees of up to twenty percent (20%) of the value of the returned Products plus any freight costs.
- 14.12 Notwithstanding anything contained in this clause if APS is required by a law to accept a return, then APS will only accept a return on the conditions imposed by that law.
- 14.13 Subject to clause 14.1, customised, or non-stocklist items or Products made or ordered to the Client's specifications are not acceptable for credit or return.

15. Intellectual Property

- 15.1 Where APS has designed, drawn or developed Products for the Client, then the copyright in any designs and drawings and documents shall remain the property of APS. Under no circumstances may such designs, drawings and documents be used without the express written approval of APS.
- 15.2 The Client warrants that all designs, specifications, or instructions given to APS will not cause APS to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify APS against any action taken by a third party against APS in respect of any such infringement.
- 15.3 The Client agrees that APS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Products which APS has created for the Client.

16. Default and Consequences of Default

- 16.1 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 APS' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Client owes APS any money, the Client shall indemnify APS from and against all costs and disbursements:
- (a) incurred; and/or
 - (b) which would be incurred and/or
 - (c) for which by the Client would be liable;
- in regard to legal costs on a solicitor and own client basis, internal administration fees, APS' Contract fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 16.3 Further to any other rights or remedies APS may have under this Contract, if a Client has made payment to APS, 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 APS under this clause 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 16.4 Without prejudice to APS' other remedies at law APS shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to APS shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to APS becomes overdue, or in APS' opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by APS;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

17. Cancellation

- 17.1 Without prejudice to any other remedies APS may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions APS may suspend or terminate the supply of Products to the Client. APS will not be liable to the Client for any loss or damage the Client suffers because APS has exercised its rights under this clause.
- 17.2 APS may cancel any Contract to which these terms and conditions apply or cancel Delivery of Products at any time before the Products are delivered by giving written notice to the Client. On giving such notice APS shall repay to the Client any money paid by the Client for the Products. APS shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.3 If the Client cancels Delivery of Products, the Client shall be liable for all losses incurred (whether direct or indirect) by APS as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 17.4 Cancellation of orders for Products made to the Client's specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed.

18. Privacy Policy

- 18.1 All emails, documents, images, or other recorded information held or used by APS is Personal Information, as defined and referred to in clause 18.3, and therefore considered Confidential Information. APS acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the

- EU Data Privacy Laws (including the General Data Protection Regulation “GDPR”) (collectively, “EU Data Privacy Laws”). APS acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client’s Personal Information, held by APS that may result in serious harm to the Client, APS will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 18.2 Notwithstanding clause 18.1, privacy limitations will extend to APS in respect of Cookies where the Client utilises APS’ website to make enquiries. APS agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client’s:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to APS when APS sends an email to the Client, so APS may collect and review that information (“collectively Personal Information”)
- If the Client consents to APS’ use of Cookies on APS’ website and later wishes to withdraw that consent, the Client may manage and control APS’ privacy controls via the Client’s web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 18.3 The Client agrees that APS may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client’s repayment history in the preceding two (2) years.
- 18.4 The Client consents to APS being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 18.5 The Client agrees that personal credit information provided may be used and retained by APS for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Products; and/or
 - (b) analysing, verifying and/or checking the Client’s credit, payment and/or status in relation to the provision of Products; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Products.
- 18.6 APS may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 18.7 The information given to the CRB may include:
- (a) Personal Information as outlined in 18.3 above;
 - (b) name of the credit provider and that APS is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client’s application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults (provided APS is a member of an approved OAIC External Disputes Resolution Scheme), 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 APS has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of APS, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client’s overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 18.8 The Client shall have the right to request (by e-mail) from APS:
- (a) a copy of the Personal Information about the Client retained by APS and the right to request that APS correct any incorrect Personal Information; and
 - (b) that APS does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 18.9 APS will destroy Personal Information upon the Client’s request (by e-mail) or if it is no longer required unless it is required to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 18.10 The Client can make a privacy complaint by contacting APS via e-mail. APS will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to reach a decision on the complaint within thirty (30) days of receipt of the complaint. If the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 19. Unpaid Seller’s Rights**
- 19.1 Where the Client has left any item with APS for repair, modification, exchange or for APS to perform any other service in relation to the item and APS has not received or been tendered the whole of any monies owing to it by the Client, APS shall have, until all monies owing to APS are paid:
- (a) a lien on the item; and
 - (b) 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.
- 19.2 The lien of APS shall continue despite the commencement of proceedings, or judgment for any monies owing to APS having been obtained against the Client.

20. Service of Notices

- 20.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 20.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

21. Trusts

- 21.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not APS may have notice of the Trust, the Client covenants with APS as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not without consent in writing of APS (APS will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

22. Building and Construction Industry Security of Payments Act 1999

- 22.1 At APS' sole discretion, if there are any disputes or claims for unpaid Products and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 22.2 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

23. General

- 23.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality, and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 23.2 These terms and conditions and any Contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts in Gosford, New South Wales. These terms prevail over all terms and conditions of the Client (even if they form part of the Client's purchase order).
- 23.3 Subject to clause 14, APS 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 APS of these terms and conditions (alternatively APS' liability shall be limited to damages which under no circumstances shall exceed the Price).
- 23.4 APS may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 23.5 The Client cannot licence or assign without the written approval of APS.
- 23.6 APS may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of APS' sub-contractors without the authority of APS.
- 23.7 The Client agrees that APS may amend their general terms and conditions for subsequent future Contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for APS to provide Products to the Client.
- 23.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to APS.
- 23.9 Both parties warrant that they have the power to enter this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 23.10 This Contract and any subsequent hire agreement between APS and the Client, shall constitute as the entire agreement between APS and the Client, and the Client hereby acknowledges that no reliance is placed on any representation made by APS that is not embodied in this Contract.
- 23.11 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and Delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.

24. Contract Term

- 24.1 At APS' sole discretion, or unless otherwise agreed or stated in writing, all new Client's must commit to a minimum term of three (3) months standard alarm monitoring with APS (excluding CCTV installations, tendered contract works, non-alarm installations and the like).
- 24.2 Upon expiration of the contract term, this Contract will continue to operate on a month-to-month basis, subject to termination by either party with one (1) months prior written notice.
- 24.3 In the event the contract term is terminated by the Client prior to expiration thereof, the Client shall incur a termination fee equal to the remaining expected Price which would fulfil the three (3) month commitment.

25. Monitoring Services

- 25.1 The Services provided by APS shall consist of monitoring all signals received at APS' nominated monitoring station from the alarm system designated in the Monitoring Commission Form hereto.
- 25.2 APS' nominated monitoring station 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.
- 25.3 APS shall endeavour to action the following alarm system signals generally as described below or as otherwise agreed or interpreted:
- (a) duress / panic – APS' nominated monitoring station shall call the monitored site, as required by the New South Wales Police Force (NSWPF) first to verify the event. If deemed necessary APS' nominated monitoring station shall contact and advise the NSWPF;
 - (b) hold up – APS' nominated monitoring station shall notify the NSWPF, and make a follow up call to the monitored site after thirty (30) minutes (this clause assumes that the Client's premises comply with NSWPF's protocols for hold up alarms);
 - (c) fire / smoke – APS' nominated monitoring station shall call the site to verify event, if no answer APS' nominated monitoring station will advise Fire Department and contacts (APS' nominated monitoring station will dispatch guard if no contacts are available, and keys are held);
 - (d) medical – APS' nominated monitoring station shall call the site to verify event, if no answer APS' nominated monitoring station will advise Ambulance Service and contacts (APS' nominated monitoring station will dispatch guard if no contacts are available);
 - (e) system events – APS' nominated monitoring station shall contact the Client and contacts and shall advise service department if necessary (this type of event is not necessarily actioned immediately).
- 25.4 The Client accepts and acknowledges that in the event APS 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 APS and shall ensure payment is made by the due date, thereby not limiting APS in their obligations for payment as agents acting on behalf of the Client to third parties. 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.
- 25.5 The Client acknowledges that independent contractors, where available, may provide patrol response. Accordingly, patrol response fees may vary from area to area and during the course of the contract term. The Client agrees to pay or reimburse APS for patrol response fees, which may include an administration fee. APS shall advise the Client of applicable patrol response fees upon request by the Client.
- 25.6 APS' nominated monitoring station may be unable to monitor the system in the event of a communication failure between the alarm panel in the Client's premises and the monitoring station. Failures of this nature may be malicious or otherwise. The Client acknowledges that APS' nominated monitoring station obligation to action alarm events is suspended at any time the communications link is disrupted between the Client's premises and APS' nominated monitoring station.
- 25.7 The Client agrees that APS may record all telephone conversations or other communications with APS' nominated monitoring station.

26. Supply of Equipment

- 26.1 The Equipment is and will at all times remain the absolute property of APS. However, all risk for the Equipment passes to the Client on Delivery.
- 26.2 If the Client fails to return the Equipment to APS when required then APS (or APS' agent) may enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated, as the invitee of the Client, and take possession of the Equipment, without being responsible for any damage thereby caused.
- 26.3 The Client is not authorised to pledge APS' credit for repairs to the Equipment, or to create a lien over the Equipment in respect of any repairs.

27. Access

- 27.1 The Client shall ensure that APS has clear and free access to the designated area for monitoring all times to enable APS to provide the prescribed Services. The Client agrees to ensure that the premises shall at all times be a safe working environment and (without limitation) shall not contain asbestos or any other such similar hazard of any infections or building disease.
- 27.2 The Client shall advise APS in the event of any changed circumstances, or planned changes, to the premises which might affect APS' ability to provide Services in a safe manner.

28. APS' Responsibilities

- 28.1 APS agrees to use due care and skill to provide the Services during the contract term for alarm signals and/or other recurring services selected by the Client.
- 28.2 APS shall action alarm signals emanating from the alarm in accordance with the Monitoring Commission Form.
- 28.3 Whilst APS shall endeavour to engage a patrol response contractor to provide a timely response to actionable alarm signals, no warranty is given by APS that a patrol response will be available at any time, if at all. APS 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.
- 28.4 Whilst APS uses due care when contacting and advising emergency services, they cannot guarantee prompt response times or attendance of such Services.

29. Client's Responsibilities

- 29.1 The Client shall:
- (a) immediately advise APS, in writing, in the event of any changes to the Monitoring Commission Form;
 - (b) ensure that, at their own cost, the alarm system is maintained by a licensed security technician;
 - (c) supply at the Client's expense: keys, swipe cards, alarm codes, electronic access controls to the site, to APS to enable APS to carry out its response patrols. APS' liability for loss or damage of the Client's keys, swipe cards, etc. are limited to the costs of obtaining a replacement or five thousand dollars (\$5,000), whichever is the lesser; and
 - (d) ensure that all voice codes, passwords, radio keys and other security devices are kept secure and provided only to those persons who reasonably require access to the alarmed premises.
- 29.2 In the event that the Client does not claim their keys, swipe cards, alarm codes, electronic access controls within thirty (30) days of the termination or expiration of the Monitoring Service Agreement, APS shall destroy them.
- 29.3 The Client cannot transfer, or attempt to transfer, the right to receive the Services or any other right under this Contract to any other party.
- 29.4 Upon termination of the Contract, 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 APS.
- 29.5 The Client agrees that any costs associated with the provision of services by the Police, Ambulance, Fire, or other emergency services to the Client's monitored premises shall be met by the Client.

30. Client's Acknowledgements

- 30.1 The Client acknowledges that the provisions of Monitoring Services Agreement under this Contract may not prevent unlawful entry to the designated site occurring, and accordingly, the Client accepts that loss or damage to property and death or injury to persons may occur even though APS' obligations under this Contract have been satisfied.
- 30.2 Unless stated otherwise in this Contract the supply of performance records, history or other reports shall only be issued direct to the Client.
- 30.3 The Client accepts and acknowledges that APS, during the course of providing the Services, acknowledges that:
- (a) APS' employees shall not be required to carry out any duties of an illegal or strike breaking nature; and
 - (b) APS is not an insurer of the premises, and it is advisable for the Client to effect and maintain all normal and prudent insurance policies in respect of all usual risks including fire, burglary, theft and consequential loss or damage.

31. Limitation of Liability

- 31.1 The Client hereby disclaims any right to rescind, or cancel any contract with APS, or to sue for damages, or to claim restitution, arising out of any inadvertent misrepresentation made to the Client by APS, and the Client acknowledges that the Services are purchased relying solely upon the Client's skill and judgment.
- 31.2 Insofar as the Client, notwithstanding provisions of this clause, may have any claim for damages against APS, 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 a three (3) months portion of the Price actually paid by the Client in respect of that portion of the particular Services which gave rise to such claim.