

1. General Obligation

HSM Group agrees to provide the Customer with the Products and Services, and the Customer agrees to pay HSM Group the Fees, in accordance with:

- (a) these terms and conditions; and
- (b) the Contract Details and any schedules, forms, specifications and other referenced materials, together with these terms and conditions.

If there is an inconsistency between the documents referred to in this clause, this document prevails to the extent of the inconsistency unless specifically stated otherwise in the Contract Details and any terms and conditions referred to therein which are expressed to prevail over these terms and conditions.

2. Interpretation**(a) Definitions**

Agreement means the Contract Details, any signed quote, proposal, agreement, renewal or contract accepted by the Customer and including these terms and conditions.

Additional Services means the additional services or equipment provided by HSM Group to the Customer that is not specifically requested by the Customer at the date of this Agreement but offered by HSM Group as part of the Services.

Contract Details means the document setting out specific details relating to the Services and/or Products to be supplied including term, fees, products and services.

Customer means the customer identified in the Contract Details.

Fees means the Fees specified in the Contract Details and clause 12.

HSM Group means HSM Group Holdings Limited and/or HSM Installations Limited and/or HSM Monitoring Limited and/or Consulting Security Arm (HB) Limited.

Initial Term means the initial term of the Agreement as specified in the Contract Details.

Product means the products described in the signed quote or proposal accepted by the Customer as the same may be added to or varied by written agreement of both parties to the Agreement.

Renewal Term means a period of 12 months commencing on the expiry of the Initial Term or the expiry of any preceding Renewal Term.

Services means the services described in the signed quote or proposal accepted by the Customer as the same may be added to or varied by written agreement of both parties to the Agreement.

Term means the Initial Term or, if that term has expired, a Renewal Term.

(b) Headings

The section headings in this Agreement are used for convenience only, are not substantive, and shall not be interpreted to define, describe, or otherwise limit the interpretation of the provision under the section headings or of the Agreement as a whole.

3. Site Charges and Assumptions

(a) Unless otherwise agreed in writing, charges for work performed:

- i) are based on work being carried out from 08:00 to 17:00 Monday to Friday except for Public Holidays and subject to alteration by HSM Group;
- ii) are based on having continuous, uninterrupted, and unhindered access to the required people, equipment, facilities, and areas where the work is to be carried out; and
- iii) do not cover extraneous work, patching/painting, carpet lifting or refitting, building work or decoration and, should HSM Group agree to carry out such work at the request of the Customer, then HSM Group shall not be liable for any damage arising.

(b) All additional costs arising from clause 3(a) above and any alteration to the specifications required by the Customer including any interruption or delays by the Customer, its employees, agents, or other trades during the course of work performed may result in additional charges including the reasonable costs of delay.

(c) If it becomes necessary to pay any additional site allowances in excess of any current workplace agreement applicable to the type of work being performed, these costs will be added to the Fees.

(d) In the event that HSM Group has agreed to deliver the Services by a date agreed between the parties and such delivery is delayed by the occurrence of a Force Majeure Event (as set out in clause 16) or by any third party, including without limitation, the Customer or its agents, HSM Group shall be entitled to a reasonable extension of time to complete the Services and compensation for additional costs incurred.

(e) Any variations to the Services required by the Customer must be agreed in writing by both parties and will be priced in accordance with HSM Group's standard price lists and shall include an amount for any design, management, overheads and profit.

(f) Emergency service call-outs will be charged in accordance with HSM Group's standard fees for such emergency services.

4. Delivery

(a) HSM Group shall use reasonable endeavours to complete delivery of the Products and Services. However, delivery dates or periods quoted are estimates only and are subject to prompt receipt of all Customer information, other material, and permits from the Customer necessary to allow HSM Group to proceed with the delivery of the Product and Services. HSM Group accepts no liability whatsoever for any loss or damage suffered by the Customer as a consequence of any delay or failure to deliver the Products and Services.

(b) Title to and ownership of the Products shall only pass to the Customer upon receipt of payment in full for any current or outstanding monies owed.

5. Additional Services

If the Customer requests HSM Group to provide additional services, the Customer will set out in writing the requested scope of such additional services beyond those described in this Agreement and HSM Group agrees that the terms of this Agreement apply to the additional services and the Customer must pay for the additional services at the following rate(s):

- (a) if HSM Group has quoted an amount before providing the additional services, the amount quoted; and
- (b) if HSM Group has not given any quote, an amount calculated for the additional services provided at HSM Group's standard rates for such additional services applicable at that time.

6. Customer's Responsibilities

The Customer shall:

- (a) provide HSM Group with access to the site as reasonably required for the purpose of allowing HSM Group to perform its obligations under this Agreement;
- (b) ensure that its employees, agents and other contractors shall:
 - i) not interfere with or disrupt, delay or hinder HSM Group, its employees, agents, subcontractors, agents or other persons engaged by HSM Group or prevent them from carrying out their work or cause them to incur additional cost;
 - ii) reasonably co-operate with HSM Group and its employees, agents and subcontractors;
- (c) advise HSM Group of the existence of any concealed pipes, wires and cables for water, gas, electricity, telephone or other services affecting the premises and shall confirm the location of such services to HSM Group's technician before work commences. In the absence of such notice HSM Group accepts no liability for any loss or damage to such services or any consequence thereof and the Customer agrees to indemnify HSM Group against any claim whatsoever for any loss or liability under this clause;
- (d) provide HSM Group with data, specifications and information as may be requested by HSM Group to enable it to fulfil its obligations under this Agreement;
- (e) provide adequate facilities at the premises at no cost to HSM Group, including parking, power, lifting equipment, scaffolding, scissor lifts, and rubbish removal skips;
- (f) ensure that the premises are at all times a safe working environment and (without limitation) will not contain asbestos or similar hazards. If HSM Group considers that the premises are unsafe it may delay or cease delivery of the Services until the premises are restored to a safe condition. Any such delay or cessation of the Services:
 - i) will entitle HSM Group to an extension of time to complete the Services;
 - ii) will not constitute a breach of this Agreement; and
 - iii) will not entitle the Customer to any payment of a financial penalty;

- (g) indemnify HSM Group against any claims for the failure of fire alarm monitoring equipment, telecommunication carrier lines, power supply, costs relating to fire brigade charges, or relocation of equipment.

7. Warranty and Product Returns

- (a) The Products supplied by HSM Group to the Customer under this Agreement are covered by a 12-month manufacturer warranty which shall commence from the date of completion of installation of Products, or for Products sold on a supply only or supply and commission basis, upon delivery of the Products to the Customer ("Warranty Period").
 - (b) During the Warranty Period, any Products that prove to be defective will be repaired or replaced by HSM Group at its option.
 - (c) The warranty provided under this Agreement is dependent upon regular maintenance work being carried out to the relevant New Zealand and/or Australian Standard or manufacturer's recommendations.
 - (d) The parties agree that when evaluating a claim for defect, due allowance shall be made for fair wear and tear of the Product. Should the Customer or any other party attempt to install, carry out repairs, mal-operate or modify the Products in any way during the Warranty Period, HSM Group shall be relieved of its obligations under the warranty provisions. In addition, the warranty does not cover work required to be done to repair a defect or damage caused by the Customer's negligence, fault, neglect, abuse, incorrect use or as a result of vandalism, fire, water damage, power surge or other circumstance outside of HSM Group's control or that of the manufacturer.
 - (e) To the extent permitted by law, HSM Group may, at its reasonable discretion, exclude from its obligations under sub clauses (a), (b) and (g), any Products that are connected to any of the Customer's systems.
 - (f) The Customer shall inspect all Products upon delivery and within 5 business days of delivery, give notice to HSM Group if any of the Products are not in accordance with the Customer's order, including the specification.
 - (g) HSM Group will accept Products returned for credit where HSM Group has incorrectly supplied a Product or the Product has been damaged in transit by HSM Group's carrier.
 - (h) Customers may not return Products for credit without obtaining prior written authorisation from HSM Group.
 - (i) Products returned for credit, except under (g) above, may be subject to a 15% or \$20.00 (whichever is greater) restocking fee and except where Products are returned under (g) above, all freight charges for goods returned for credit shall be prepaid by the Customer unless otherwise approved by HSM Group in writing.

8. Intellectual Property Rights

- (a) HSM Group retains all rights, title and interest subsisting in any design(s), documentation, diagrams plans, or other information and materials supplied to the Customer in relation to this Agreement.
- (b) All intellectual property rights in materials supplied by the Customer at the commencement of this Agreement remains the property of the Customer but the Customer grants HSM Group a perpetual, irrevocable, royalty free, non-exclusive licence to use, reproduce and modify the Customer's materials for any purpose related to this Agreement.
- (c) The Customer agrees to accept full responsibility for the Customer's materials and to indemnify HSM Group for any action, claim, liability, cost or expense arising out of any threatened or actual claim of intellectual property infringement arising out of HSM Group's use of the Customer's materials.

9. Quotation Validity

Unless otherwise agreed in writing, a quotation provided by HSM Group may be accepted up to 30 days from the quotation date, after which HSM Group reserves the right to amend or withdraw it.

10. Credit Information

The Customer acknowledges and agrees that if HSM Group requires financial information about the Customer for any credit application which attracts the operation of the Privacy Act 1993, HSM Group may:

- (a) disclose and collect commercial credit information about the Customer (and if the Customer is a company, about its directors and officers) for the purpose of determining the Customer's credit worthiness;
- (b) obtain a credit report from a credit reporting agency (which may contain personal credit information, information about commercial activities or commercial worthiness) for the purpose of assessing an application for credit and any later request for credit;
- (c) provide to, or obtain from any credit provider(s) named in a credit report information about the Customer's personal or commercial credit arrangements (including information relating to credit worthiness, credit standing, credit history and credit capacity); and
- (d) disclose personal information about the Customer to a credit provider other than HSM Group or to a credit reporting agency, for the purpose of collecting outstanding amounts owed by the Customer to HSM Group.

HSM Group's obligations hereunder are subject to satisfactory credit evaluation and HSM Group reserves the right to withdraw any quotation, cancel the services, and terminate this Agreement should such credit evaluation be or become unsatisfactory.

11. Consumer Guarantees Act 1993

Nothing in this agreement is intended to have the effect of contracting out of the provision of the Consumer Guarantees

Act 1993 except to the extent permitted by the Act. The Customer agrees that if it is acquiring the System for the purpose of a business, the Consumer Guarantees Act 1993 shall not apply.

12. Fees and Charges

- (a) HSM Group will invoice the Customer for the Fees specified in the signed Agreement accepted by the Customer.
- (b) The Customer agrees to pay HSM Group the amount specified in the invoice within 7 working days and/or by the due date without set-off, deduction or discount of any kind unless prior arrangements have been made on client file. Should the Customer delay in making payment, HSM Group shall have the right to charge a 21% administration fee on all outstanding amounts.
- (c) The Customer acknowledges that HSM Group may issue progress payment invoices for materials or equipment purchased, and/or labour expended on work in progress, and to place into bond materials which cannot be accepted for delivery on site and invoice the full value thereof.
- (d) HSM Group shall have the right to issue a notice of default requesting the Customer to pay the amount of any Fee within the time specified in the notice. The Customer will be required to pay HSM Group the Fees due upon receipt of this notice and pay all reasonable expenses, including legal costs incurred in the enforcement of the notice of default.
- (e) Where any supply of Products or Services is or becomes subject to GST, an amount equal to GST paid or payable for that supply will be added to the amount exclusive of GST paid or payable for that supply under this Agreement.
- (f) Payment of fees by the Customer within the specified period is a fundamental term of this Agreement and to the maximum extent permitted by law, HSM Group will have no liability to the Customer for acts or omissions or for work required to be undertaken by HSM Group if the circumstance or event which would otherwise give rise to liability occurs at a time when the Customer is in breach of payment obligations to HSM Group.
- (g) HSM Group may adjust the Fees on an annual basis in respect of an increase/fall in the cost of any annual services and increased/decreased costs.
- (h) HSM Group may offset any amounts that HSM Group reasonably considers is due to HSM Group from the Customer against any amounts payable by HSM Group to the Customer under this Agreement.

13. HSM Group's Liability

- (a) Nothing in this Agreement excludes, restricts or modifies the application of the provisions of any act or statute where to do so would contravene that act or statute or cause any part of this Agreement to be void.
- (b) The Customer acknowledges and agrees that HSM Group will have no liability for any statements, representations, guarantees, conditions or warranties that are not expressly contained in this Agreement.

- (c) Where HSM Group breaches its obligations under this Agreement, HSM Group shall at its election, re-supply the Products or Services or pay to have those Services supplied again or the replacement, repair or repayment of the Products to a maximum total value of the Fees paid by the Customer under this Agreement.
- (d) To the extent permitted by law, the Customer agrees that any liability of HSM Group under this clause will be reduced to the extent that any loss, damage or expense was caused by the Customer or a third party including through breach of this Agreement, negligence, fault, lack of care or through any other act or omission of the Customer, its employees, subcontractors and agents or a third party and, in any event, HSM Group's aggregate liability to the Customer, whether in contract, tort (including negligence) or otherwise, will be limited to the total value of payments received by HSM Group from the Customer under this Agreement.
- (e) Notwithstanding anything else in this Agreement, HSM Group will not be liable for:
 - i) any indirect, consequential or special or economic loss, cost, liability, damage or expense howsoever arising; or
 - ii) loss of profit, loss of use, loss of income, loss of rental or other benefit, loss of production, loss of actual or potential business opportunity or loss of reputation.
- (f) The Customer acknowledges and agrees that it is reasonable for HSM Group to limit its liability under this Agreement and that the fees charged by HSM Group are based solely on the value of the Services or Products supplied.
- (g) To the extent permitted by law, HSM Group will not be liable to the Customer for matters not notified to HSM Group within one month of the date of completion of this Agreement.

14. Termination

- (a) Either party may terminate this Agreement if the other party commits any material or persistent breach of its obligations under this Agreement (which in the case of a breach capable of remedy, shall not have been remedied within 14 days of receipt by the party in breach of a notice identifying the breach and requiring its remedy, or such reasonable period depending on the circumstances) or if a party becomes insolvent, bankrupt or enters into a scheme or arrangement with creditors. Termination under this clause must be effected by written notice to the other party.
- (b) In the event that a Customer wishes to terminate this Agreement for maintenance services prior to the expiry of the then current Term, the Customer will be required to provide HSM Group with 90 days' notice of termination and pay HSM Group (within seven days of the date of termination) an amount equal to the fees for the remaining period until such Term expires, and any other payments due or outstanding under this Agreement.
- (c) If the Customer terminates this Agreement prior to the completion of the works, the Customer will be required to pay HSM Group any cost incurred by HSM Group arising from

the termination, a fair amount for overheads and profit which will be agreed by the parties, and 100% of the total Fees payable under this Agreement.

- (d) HSM Group may terminate this Agreement immediately if the Customer becomes insolvent, bankrupt or enters into a scheme of arrangement with creditors.
- (e) HSM Group may terminate this Agreement in whole or in part at its convenience upon the provision of 14 days' notice in writing to the Customer.
- (f) Termination under this clause shall be without prejudice to any rights that may have accrued for either of the parties before termination and all sums due under this Agreement shall become payable in full when termination takes effect.
- (g) The parties agree that if the Services continue beyond the Initial Term, this Agreement will automatically be renewed for additional Renewal Terms and shall remain in force until either party gives 90 days' written notice.

15. Dispute Resolution

The parties agree that they will initially use all reasonable endeavours to resolve any dispute arising under this Agreement within 10 business days of a party being advised by written notice of such a dispute. If the parties are unable to resolve the dispute within that time frame they must refer the dispute to an executive officer from each party to resolve. The parties will again use all reasonable endeavours to resolve the dispute within a further 10 business days or such other reasonable period agreed between the parties. If the dispute is not resolved in accordance with the above, the parties may agree to refer the matter to mediation or some other form of alternative dispute resolution or commence legal proceedings.

16. Force Majeure

HSM Group will not be in breach of this Agreement or liable to the Customer if it fails to perform or delays in performance of an obligation as a result of an event beyond its reasonable control, including but not limited to strikes, industrial disputes, fire, flood, acts of God, war, insurrection, vandalism, sabotage, riot, national emergency, piracy, hijack, terrorism, embargoes or restraints, extreme weather or traffic conditions, temporary closure of roads, legislation, regulation, order or other act of government or governmental agency.

17. General

- (a) If the Customer purports to cancel any order, contract or Agreement prior to its commencement or prior to the completion of the Term, then the Customer shall pay to HSM Group on demand a sum equivalent to all HSM Group's costs, fees and expenses incurred up to the date of such purported cancellation including any damages payable to HSM Group's sub-contractors or suppliers together with a reasonable proportion of HSM Group's loss of anticipated profits.

- (b) HSM Group may assign this Agreement without consent, and may perform any of its obligations through sub-contractors.
- (c) This Agreement shall be subject to the laws of New Zealand and each party submits to the non-exclusive jurisdiction of the courts of New Zealand.
- (d) This Agreement constitutes the entire agreement between the parties and supersedes all prior representations, contracts, statements and understandings, whether verbal or in writing. All other terms and conditions are excluded to the fullest extent permitted by law including any terms and conditions which the Customer may seek to impose. The terms, provisions and conditions of this Agreement may only be varied by agreement in writing between the parties.
- (e) No right under this Agreement will be deemed to be waived except by notice in writing, signed by each party and any failure by HSM Group to enforce any clause of this Agreement will not be construed as a waiver of HSM Group's rights under this Agreement.
- (f) The Agreement is entered into subject to satisfactory credit approval of the Customer by HSM Group.
- (g) HSM Group may subcontract its rights and obligations under this Agreement.

18. Where Services include Installation

- (a) the Customer may be required to pay to HSM Group a non-refundable deposit of 20% of the total Fees payable under this Agreement within 14 days of the date of this Agreement, or if works are to commence prior to 14 days elapsing, then upon commencement of the works; and
- (b) each progress payment invoice is due and payable within ten (10) days of the date of invoice.

19. Where the Services includes monitoring and/or maintenance

- (a) The Customer acknowledges and agrees that HSM Group may adjust the Fees annually for monitoring and/or maintenance services under this Agreement; and
- (b) The Customer is advised that any security system installed by HSM Group must be disconnected from Monitoring upon termination or expiration of this Agreement. Disconnection from the Monitoring Service is the responsibility of the Customer. The alarm dialler must be reprogrammed and written confirmation received of the disconnection before HSM Group can discontinue the service. Failure to complete these steps will result in ongoing charges until they have been completed. These ongoing charges are subject to these terms and conditions.