

## SECURE EMPTY PROPERTY LIMITED

### TERMS OF BUSINESS FOR THE SUPPLY OF SERVICES

#### 1 INTERPRETATION

1.1 In these Conditions the following words have the following meanings:

<b>“Conditions”</b>	these terms of business;
<b>“Contract”</b>	the contract between the Supplier and the Customer for the supply of the Services and the Goods (if any);
<b>“Customer”</b>	the person, firm or company with whom the Supplier contracts to provide the Services and the Goods (if any);
<b>“Delivery Point”</b>	the place where delivery of the Goods or installation of the Equipment is to take place under Condition 3.1;
<b>“Equipment”</b>	any equipment to be provided on hire to the Customer as part of the Services;
<b>“Goods”</b>	any goods identified in the Proposal and agreed by the Supplier to be sold to the Customer;
<b>“Materials”</b>	any documents, materials, data or information in any form (including computer programs, data, reports, specifications and drafts) provided by the Supplier in connection with a Contract;
<b>“Proposal”</b>	any estimate, quotation, proposal, offer or similar document put forward by the Supplier (prior to starting the Services) that describes the Services, the Equipment and the Goods (if any);
<b>“Services”</b>	the services provided or to be provided by the Supplier to the Customer which may include the installation and hire of Equipment;
<b>“Supplier”</b>	Secure Empty Property Limited, a company registered in England and Wales with company number 7930767 whose registered office is at c/o Moore & Smalley, Richard House, 9 Winckley Square, Preston, Lancashire, PR1 3HP.

1.2 In these Conditions references to the singular include the plural and vice versa and headings will not affect the interpretation of these Conditions.

#### 2 INCORPORATION

2.1 These Conditions shall apply to the Contract, to the Services and to the Goods (if any) to the exclusion of all other terms and conditions and shall prevail over all inconsistent terms that the Customer seeks to apply to the Contract.

- 2.2 Variations to these Conditions shall have no effect unless approved in writing by a director of the Supplier.
- 2.3 No order for Services or Goods placed by the Customer shall be deemed to be accepted by the Supplier until it has received an order from the Customer (oral or written) and has either issued an acknowledgement of order or has started to perform the Services (including the installation of any Equipment) or delivered the Goods (if any).
- 2.4 Each Proposal is valid for a period of ninety days only from its date (or such longer period as it may state), although the Supplier may withdraw a Proposal at any time before it is accepted.
- 2.5 All samples, drawings, descriptive matter, specifications and advertising issued by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services, Equipment or Goods described in them. They will not form part of the Contract.
- 2.6 The Contract constitutes the entire agreement and understanding between the parties.
- 2.7 The Customer acknowledges that it has not relied on, and shall have no remedy in respect of, any statement, promise, warranty or representation (whether made innocently or negligently) made or given by or on behalf of the Supplier which is not expressly set out in the Contract. An action for breach of contract is the only remedy for any statement, promise, warranty or representation set out in the Contract (whether made innocently or negligently). Nothing in this Condition 2.7 shall limit or exclude liability for fraud.

### **3 DELIVERY/TIME OF PERFORMANCE**

- 3.1 Unless otherwise agreed in writing by the Supplier delivery of any Goods or the installation of any Equipment to be provided as part of the Services shall take place at the Customer's premises.
- 3.2 Time for performance of the Services (including any response times set out in the Proposal) and delivery of the Goods shall not be of the essence and, unless agreed otherwise by the Supplier in writing, any specific dates stated by the Supplier shall be estimates only and time for delivery or performance shall not be made of the essence by notice. If no dates are specified, delivery and performance will be within a reasonable time.
- 3.3 Under each Contract, the period for the provision of the Services shall, unless the parties agree or the Proposal stated otherwise, commence on installation of the Equipment at the premises stipulated in the Proposal and shall terminate on the expiry date set out in the Proposal or earlier in accordance with these Conditions.
- 3.4 Subject to the other provisions of these Conditions the Supplier will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in performing the Services or the delivery of the Goods (if any) (even if caused by the Supplier's negligence), nor will any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 3.5 If the Supplier has agreed to sell Goods to the Customer and the Customer will not accept delivery of the Goods when they are ready for delivery, or the Supplier is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations, at the Supplier's option, either:

### 3.5.1

- a) risk in the Goods will pass to the Customer (including for loss or damage caused by the Supplier's negligence); and
- b) the Goods will be deemed to have been delivered; and
- c) the Supplier may store the Goods until delivery whereupon the Customer will be liable for all related costs and expenses (including without limitation storage and insurance); or

3.5.2 the Supplier may terminate the Contract with immediate effect and recover from the Customer any loss suffered and cost or expenses incurred (including storage costs) as a result of the Customer's refusal or failure.

3.6 The Supplier may deliver the Goods (if any) or install the Equipment by instalments and each instalment shall be treated as a separate Contract so that failure to deliver or defect in one or more instalment shall not entitle the Customer to reject the Services or the other instalments.

3.7 Any liability of the Supplier for non-delivery of the Goods (if any) or Equipment shall be limited to replacing the Goods or installing alternate Equipment within a reasonable time or issuing a credit note at the *pro rata* Contract rate against any invoice raised for any such Goods or Equipment.

## 4 RISK/TITLE

4.1 The Goods (if any) and the Equipment are at the risk of the Customer from the time of delivery and/or installation.

4.2 Ownership of the Goods (if any) shall not pass to the Customer until the Supplier has received in full (in cash or cleared funds) all sums due to it in respect of:

4.2.1 the Goods; and

4.2.2 all other sums which are or which become due to the Supplier from the Customer on any account.

4.3 Until ownership of the Goods (if any) has passed to the Customer and at all times in relation to the Equipment and save to the extent the Equipment or Goods have been installed in the Customer's premises by the Supplier in the performance of the Services, the Customer shall (and shall ensure that its employees, agents and representatives shall):

4.3.1 hold the Goods on a fiduciary basis as the Supplier's bailee;

4.3.2 store the Goods and the Equipment (at no cost to the Supplier) separately from all other goods or property of the Customer or any third party in such a way that they remain readily identifiable as the Supplier's property;

4.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods and/or the Equipment;

4.3.4 maintain the Goods and the Equipment in satisfactory condition insured on the Supplier's behalf for their full price against all risks to the reasonable satisfaction of

the Supplier. On request the Customer shall produce the policy of insurance to the Supplier; and

- 4.3.5 hold the proceeds of the insurance referred to in Condition 4.3.4 on trust for the Supplier and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 4.4 The Customer's right to possession of the Goods (if any) shall terminate immediately if:
  - 4.4.1 the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
  - 4.4.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe/perform any of its obligations under the Contract or any other contract between the Supplier and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
  - 4.4.3 the Customer encumbers or in any way charges any of the Goods.
- 4.5 The Supplier shall be entitled to recover payment for the Goods (if any) notwithstanding that ownership of any of the Goods has not passed from the Supplier.
- 4.6 The Customer grants the Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Goods and/or Equipment are or may be stored or installed in order to inspect them, or, where the Customer's right to possession or the Contract has terminated, to recover them.

## **5 CHARGES**

- 5.1 Unless otherwise agreed by the Supplier in writing, the Supplier's charges for the Services (the "**Charges**") are as set out in the Proposal or if no Proposal is issued, are as agreed with the Supplier when the Customer's order is accepted. If no charges are stated in the Proposal or no Charges are agreed the Supplier's then current standard rates (the "**Standard Rates**") shall apply.
- 5.2 Details of the Standard Rates are available upon request. The Standard Rates are subject to alteration without notice to the Customer.
- 5.3 The Supplier may increase the Charges if they are based on inaccurate or incomplete information supplied by or on behalf of the Customer.
- 5.4 In any event, the Supplier reserves the right to increase the Charges at any time to take account of any increase in its costs of performing the Services including (but not limited to)

increases in sub-contractor charges, employment costs or overheads, but it shall give the Customer notice of any such increase.

- 5.5 If the Supplier provides additional Services or the scope of the Service increases or changes (including the number of properties in relation to which the Services are provided, the number of windows/openings at such properties, the number of visits to be made to such properties and/or requests to provide the Services on a public holiday or within unusual timescales) the Supplier may charge for such additional services at the current Standard Rates.
- 5.6 The Charges are exclusive of any applicable VAT which the Customer will pay in addition.
- 5.7 In addition to the Charges the Customer shall pay the Supplier the full amount of any disbursement (including VAT) incurred by the Supplier or its employees in the performance of the Services.
- 5.8 Any estimate of disbursements given shall constitute a non-binding estimate prior to arrival at the property site only and notwithstanding that an estimate may have been given, the Customer shall pay the full amount of all disbursements incurred by the Supplier and agreed in the performance of the Services.

## **6 PAYMENT**

- 6.1 Unless the Supplier agrees otherwise in writing the Charges shall be paid in pounds Sterling within 30 days of the date of the relevant invoice for the Services covered by the Contract, subject to Condition 6.4.
- 6.2 Should the Supplier have reasonable concerns as to the creditworthiness of the Customer it may adjust the credit terms applicable to the Customer and may impose credit limits on the Customer which, if reached, allow the Supplier to suspend the Services and/or delivery of the Goods (if any) or terminate the Contract.
- 6.3 No payment shall be deemed to have been received until the Supplier has received that sum in full cleared funds.
- 6.4 All sums payable to the Supplier under the Contract shall become due immediately on its termination, without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 6.5 The Customer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 6.6 Time for payment shall be of the essence of the Contract.
- 6.7 Without prejudice to any other rights or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may:
  - 6.7.1 suspend performance of the Services (which could include entering the premises and retrieving the Equipment) and/or delivery of the Goods until payment has been made in full; and
  - 6.7.2 the Supplier may claim interest and a not unreasonable administration fee under the Late Payment of Commercial Debts (Interest) Act 1998.

6.8 The Supplier may, without prejudice to any other right it may have, set-off any liability of the Customer to the Supplier against liability of the Supplier to the Customer.

## **7 QUALITY**

7.1 The Supplier shall perform the Services using reasonable care and skill.

7.2 The Supplier warrants that (subject to the other provisions of these Conditions) upon delivery, the Goods (if any) and the Equipment will:

7.2.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979;

7.2.2 be reasonably fit for securing any window/opening to which it is attached against intrusion by an unauthorised third party; and

7.2.3 be reasonably fit for any particular purpose for which the Goods (if any) are being bought or Equipment is being hired if the Customer had made known that purpose to the Supplier in writing and the Supplier has confirmed in writing that it is reasonable for the Customer to rely on the skill and judgment of the Supplier.

7.3 The Customer acknowledges and agrees that, in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these terms and conditions or not) relating to the subject matter of this contract, other than expressly set out in the Contract. The Customer must examine the Goods (if any) and the Equipment and inform the Supplier of any defects in or shortages in quantity of Goods (if any) and the Equipment within 72 hours of delivery or installation.

7.4 If the Customer considers that the Supplier has provided sub-standard, defective or negligent Services, Equipment or Goods it will immediately inform the Supplier, who will investigate, and, if the Customer is proven to be correct, the Supplier shall, as it determines, provide remedial Services or replacement Goods or Equipment or shall issue a credit note to the Customer for the Services, Equipment or Goods concerned. This Condition 7.4 sets out the Supplier's sole liability for defective Goods or Equipment installed or Services, subject to Condition 9.3.

7.5 If notification of a claim is not made within 72 hours of the date the Services are completed or any Goods are delivered, they shall be deemed to be in all respects in accordance with the Contract. The Supplier shall, in any event be discharged from all liability unless proceedings are brought within twelve months of the date on which Services, Equipment or the Goods are provided.

7.6 The Supplier shall not be liable for a breach of any of the warranties in Condition 7.2 if:

7.6.1 the Customer makes any further use of such Goods or Equipment after giving notice of a claim pursuant to Condition 7.4; or

7.6.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or Equipment or (if there are none) good trade practice; or

7.6.3 the Customer alters or repairs such Goods or Equipment without the written consent of the Supplier.

- 7.7 Subject to Conditions 7.5 and 7.6 if any of the Goods or Equipment do not conform with any of the warranties in Condition 7.2 the Supplier shall at its option repair or replace such Goods or Equipment (or the defective part) or refund the price of such Goods or Equipment at the *pro rata* Contract rate provided that, if the Supplier so requests, the Customer shall, at the Customer's expense, return the Goods or Equipment or the part of such Goods or Equipment which is defective to the Supplier.
- 7.8 If the Supplier complies with Condition 7.7 it shall have no further liability for a breach of any of the warranties in Condition 7.2 in respect of such Goods or Equipment.

## **8 CUSTOMER'S OBLIGATIONS**

- 8.1 The Supplier's obligation to provide the Services and the Goods (if any) is conditional upon the Customer providing to the Supplier:
- 8.1.1 access to and copies of all documentation, information and materials which may at any time be necessary or desirable for the purpose of performing the Services and/or delivering the Goods (the Customer shall obtain and maintain any licences or consents required by the Supplier in relation to the use of such documentation, information and materials);
  - 8.1.2 access to personnel and to premises in each case to such extent and at such time and for such purposes as the Supplier shall specify; and
  - 8.1.3 generally such assistance and co-operation as shall be necessary or expedient for the proper performance of the Services and/or delivery of the Goods (including compliance with its obligations set out in this Condition 8).
- 8.2 Without prejudice to Condition 4.3 the Customer shall (and shall ensure that its employees, agents and representatives shall):
- 8.2.1 not assign, sell, pledge, let, encumber or part possession with the Equipment, which shall at all times remain the property of the Supplier;
  - 8.2.2 not move, dismantle, relocate, remove, take down or interfere with the Equipment at any time without the prior written consent of the Supplier;
  - 8.2.3 take reasonable care of the Equipment and keep it clean;
  - 8.2.4 notify the Supplier if the Equipment is lost, stolen or damaged.
- 8.3 Where access to premises is provided by the Customer, the Customer shall:
- 8.3.1 ensure that it provides a safe and suitable environment for the Supplier's personnel and agents;
  - 8.3.2 comply with all relevant laws and regulations from time to time (including, without limitation, health and safety laws) in relation to the use by the Supplier's personnel and agents of the premises; and
  - 8.3.3 inform the Supplier of all health and safety rules and regulations that apply to the premises (or any part of it).

- 8.3.4 inform the supplier if they need to force entry the company 'SEP' shall not be liable for consequences of forced entry including damage to a property door or glass
- 8.4 If the Supplier's performance of its obligations under the Contract is prevented or delayed by an act or omission of the Customer, its agents, sub-contractors or employees the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer as a consequence and the Supplier shall still be allowed to be paid as though it were performing normally.
- 8.5 The Customer shall neither itself nor through any of its associates, solicit, directly or indirectly, any employee of the Supplier with whom it has had contact in connection with the Contract and if it does it shall indemnify the Supplier against any costs the Supplier incurs as a consequence.

## **9 LIMITATION OF LIABILITY**

- 9.1 The following provisions of this Condition 9 set out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer for any breach of these Conditions and any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 9.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 9.3 Nothing in these Conditions excludes or limits the liability of the Supplier for:
- 9.3.1 death or personal injury caused by the Supplier's negligence, or the negligence of its employers, agents or sub-contractors;
  - 9.3.2 fraud or fraudulent misrepresentation; or
  - 9.3.3 any other liability which cannot be legally excluded or limited.

### **(The Customer's attention is drawn to the provisions of Condition 9.4)**

- 9.4 Subject to Condition 9.3:
- 9.4.1 the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of each Contract shall be limited to the total Charges paid under the Contract during the 12 months prior to the claim arising; and
  - 9.4.2 the Supplier shall not be liable to the Customer for any indirect or consequential loss or damage nor for any loss of profit, loss of business or depletion of goodwill howsoever caused which arises out of or in connection with the Contract.
- 9.5 Without prejudice to Condition 13, the Customer accepts that the Supplier has no responsibility whatsoever for:
- 9.5.1 the use to which Materials are put, that being entirely a matter for the Customer and not something that the Supplier has influence over 'including double glazed window removal tightness or fit cracking of glazing units' or, in many cases, awareness of; or if the property has double glazed windows that require deglazing to fit security screens **we bring to your attention** that the units can be difficult in some cases to

remove and re-install because of tightness of fit and beading type. Although our installation teams are trained and careful in the removal and installation of glazing units we cannot be held responsible if a glazing unit cracks

9.5.2 any failure of the alarm system caused by a network failure, which is not something that the Supplier has control over or responsibility for.

9.5.3 Where a response service to activations is part of the service by the company or a third-party we may provide an average response to arrive at a property 'activation time'. Whilst we will always endeavour to achieve the stated time this is an estimate, traffic and weather conditions can vary as can the location of the guard actually attending a property no liability can be accepted for losses incurred through failure to meet the average response time.

## **10 INTELLECTUAL PROPERTY**

10.1 For the purpose of this Condition 10 intellectual property rights include, without limit, copyright, patent rights, utility models, rights to inventions, domain names, rights in computer software, service marks, trademarks, rights in goodwill or rights to sue for passing off, design rights, database rights, know how, trade secrets, technical information, confidential process information, trade and business names, proprietary information and all similar rights whether registered or not and all rights to apply for such registrations which subsist now or in the future in any part of the world ("**Intellectual Property Rights**").

10.2 All Intellectual Property Rights in the Services, the Goods, the Equipment, and the Materials belong to the Supplier. The Supplier shall not unreasonably refuse any request from the Customer for a licence to be granted to it to make reasonable use during the term of the Contract of the Materials, the Goods, the Equipment, and Services (provided the scope of the licence is limited to the Customer's internal purposes and is non-exclusive).

## **11 CONFIDENTIALITY**

11.1 Each party shall, and shall procure that its employees shall, keep secret and confidential all business and trade secrets, know-how, specifications, processes, initiatives, methods of doing business, price lists and other confidential information and material disclosed by or obtained from the other ("**Confidential Information**"). Each party undertakes not to disclose the other's Confidential Information to any third party other than its responsible employees to whom disclosure is in good faith necessary for the proper performance of their duties in connection with the Contract.

11.2 The obligations of confidentiality under Condition 11.1, shall not apply to any information or material which: (a) was known to the recipient before its receipt from the disclosing party; or (b) is lawfully in the public domain other than by reason of breach; or must be disclosed by law; or (c) the Supplier receives from the Customer, if the Supplier becomes entitled to terminate the Contract under Condition 12.1.

11.3 The obligations of confidentiality under Condition 11.1, shall not prevent the Supplier using, exchanging and commercially exploiting the data and results that it obtains in connection with its services to compile databases of results for itself and third parties provided that in doing so it does not disclose the identity of the Customer.

## **12 CANCELLATION OF THE CONTRACT**

- 12.1 Without prejudice to any other rights and remedies which the Supplier may have against the Customer, the Supplier may by notice in writing terminate the Contract wholly or in part or suspend the provision of the Services (which could include entering the premises and retrieving the Equipment) or delivery of the Goods if the Customer is in breach of any of its obligations under the Contract or any other contract or account with the Supplier or if any distress or execution shall be levied on its property or assets or if it makes or offers to make any arrangement or composition with its creditors or commits any act of bankruptcy or if any bankruptcy petition is presented against it or if any resolution or petition to wind it up is passed or presented or if a receiver, administrative receiver or administrator of the whole or any part of its business, property or assets is appointed (or any steps are taken to appoint an administrator, administrative receiver or receiver).
- 12.2 The Customer or the Supplier may terminate the Contract by serving not less than forty-five days' written notice on the other party.
- 12.3 On termination, without prejudice to its other rights and remedies, the Supplier shall be entitled to enter the premises and recover the Equipment.

### **13 FORCE MAJEURE**

The Supplier shall not be liable if it is delayed in or prevented from performing its obligations due to circumstances outside its reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes, failures in utility supply, supplier failures, systems interruption, power surges, network unavailability, equipment failures, virus attack and any comparable circumstances.

### **14 GENERAL**

- 14.1 To give notice under the Contract a letter must be delivered personally or sent by pre-paid first class post to the registered office address and normal business address of the recipient. A notice delivered by hand is served when delivered; a notice sent by post is served once 48 hours after posting have elapsed.
- 14.2 Nothing in the Contract shall create an agency, partnership or employment relationship.
- 14.3 The Customer may not assign or sub-contract the Contract or any part of it without the prior written consent of the Supplier. The Supplier may assign and sub-contract its rights and obligations under the Contract or any part of it to any person, firm or company.
- 14.4 Each right or remedy of the Supplier under the Contract is without prejudice to any other right or remedy of the Supplier whether under the Contract or not.
- 14.5 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 14.6 Failure or delay by the Supplier in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 14.7 The parties to the Contract do not intend that any term of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

14.8 The formation, existence, construction, performance, validity and all aspects of the Contract including the legal relationships established by the Contract shall be governed by the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the English courts.

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