

# CITY LOCKSMITHS LIMITED

## CONDITIONS OF SALE

309 BROADWAY  
NEWMARKET  
AUCKLAND

P.O. BOX 9873  
NEWMARKET  
AUCKLAND

### 1. INTERPRETATION

- 1.01 In these conditions  
"the Buyer" means the person buying the goods from the Company  
"the Company" means City Locksmiths Limited  
"the Contract" means the contract between the Company and the Buyer as described in clause 17  
"the Goods" means the goods being purchased by the buyer from the Company which are the subject of the Contract  
"installation" means installation, removal and re-installation and the verb to "install" shall have a corresponding meaning  
"person" includes a corporation, association, firm, company, partnership or individual  
"the Price" means the price of the Goods as agreed between the Company and the Buyer subject to any variation in accordance with clauses 2.02 and 3.02
- 1.02 Also for the purposes of interpretation or construction of these conditions unless the context otherwise requires:  
Words importing one gender include the other genders;  
Words importing the singular or plural number the plural and singular numbers respectively;  
References to sections, clauses and subclauses are references to sections, clauses and subclauses in these conditions and references to parties are references to parties to the Contract;  
A right granted or reserved may be exercised from time to time;  
References to monetary amounts are to New Zealand currency.

### 2. PRICE

- 2.01 The Price is based upon rates and costs as at the date of Contract or, where the Contract arises from a quotation given by the Company, as at the date of quotation of materials, transport, labour, customs duty, insurance and other rates and costs.
- 2.02 The Price shall be increased by the amount of any increase in the cost of any such items or other factors (including any change in exchange rates) affecting the cost of supply, production or delivery of the Goods due to circumstances beyond the reasonable control of the Company between the date of the Contract and the date of delivery.

### 3. TAXES AND DUTIES

- 3.01 The Price shall be GST exclusive.
- 3.02 Unless expressly included in the Price by quotation given by the Company, and subject to clause 2.02, taxes, including GST, and duties assessed or reviewed in connection with the supply of the Goods to the Buyer are not included in the Price and shall be the responsibility of the Buyer.
- 3.02 Unless expressly included in the Price by quotation given by the Company, where the payment of such tax or duty is the responsibility of the Company at law the Price shall be increased by the amount of such tax or duty.
- 3.03 Where such tax or duty is expressly included in the Price by quotation given by the Company, any increase in the amount of such tax or duty between the date of quotation and the date of delivery of the Goods shall be the responsibility of the Buyer and the Price shall be increased accordingly.

### 4. PAYMENT

- 4.01 Subject to any provision to the contrary in the Contract, payment of monthly credit accounts shall be made on or before the 20<sup>th</sup> of the month following supply of the Goods. Payment of "cash sale invoices" and "pay on invoice" accounts shall be made on or before 14 days from the date of the supply of the Goods.
- 4.02 Any additional payments due by the Buyer pursuant to any of the provisions of the Contract shall be paid at the time provided in the Contract or, if no time is provided, within 7 days of payment being demanded in writing by the Company.
- 4.03 If the Company shall at any time deem the credit of the Buyer to be unsatisfactory, it may require security for payment and may suspend performance of its obligations under the Contract until the provision of sufficient security is provided. All costs and expenses of or incurred by the Company as a result of such suspension and in any recommencement shall be payable by the Buyer upon demand.
- 4.04 The Buyer shall not be entitled to withhold payment or to make any deductions from the Contract Price without prior written consent of the Company.
- 4.05 Receipt of a cheque bill of exchange, or negotiable instrument by the Company shall not constitute payment and the Buyer shall remain liable for the full Contract Price until such cheque, bill of exchange, or negotiable instrument is paid in full.

### 5. INTEREST FOR LATE PAYMENT

- 5.01 Interest at 3% per annum above the overdraft lending rate charged by the Company's bankers calculated on a daily basis shall be payable by the Buyer upon demand by the Company on any moneys outstanding under the Contract from the date payment was due until the date payment is received by the Company but without prejudice to the Company's other rights in respect of non-payment or late payment.

### 6. DELIVERY

- 6.01 Notwithstanding any obligation on the part of the Company to carry out installation work delivery shall be made at the place indicated in the Contract.
- 6.02 Delivery shall be made at the Company's premises if no place shall be indicated in the Contract.
- 6.03 If delivery is made at the Company's premises the Company shall if requested by the Buyer arrange insurance for transit.
- 6.04 If the Buyer fails or refuses or indicates to the Company that the Buyer will fail or refuse to take or accept delivery, then the Goods shall be deemed to have been delivered when the Company was willing to deliver them.
- 6.05 Without prejudice to any other rights and remedies which it may have, the Company may charge storage and transportation expenses if the Buyer fails or refuses to take or accept delivery or indicates to the Company that it will fail or refuse to take or accept delivery at the time specified in this Contract or at any other times as the Company is able to deliver.

### 7. RISK

- 7.01 Risk of any loss or damage to the Goods shall be borne by the Buyer from the time of the delivery of the Goods
- 7.02 Risk of any damage to the Goods arising out of any installation work carried out on the Buyer's premises shall be borne by the Buyer except where such damage is caused by the negligence of the Company in carrying out any such installation work in which event such damage shall be the responsibility of the Company.

### 8. PROPERTY

- 8.01 The Buyer acknowledges that before entering into the Contract it has expressly represented and warranted that it is solvent and has not committed any act of bankruptcy, or being a company with unlimited liability, knows of no circumstances which would entitle any debenture holder or secured creditor to appoint a receiver, to petition for winding up of the company or exercise any other rights over or against the company's assets.
- 8.02 The Goods shall remain the sole and absolute property of the Company as legal and equitable owner until such time as the Buyer shall have paid the Company the Price.
- 8.03 The Buyer acknowledges that it will be in possession of the Goods solely as bailee for the Company until such time as the full price of the Goods is paid to the Company.
- 8.04 If the Goods are mixed with or incorporated into the property of the Buyer the end product shall become or shall be deemed to be the sole and exclusive property of the Company.
- 8.05 If the Goods are mixed with or incorporated into the property of any person other than the Buyer the end product shall become or shall be deemed to be owned in common with that other person.
- 8.06 If the Goods are not mixed with or incorporated into the property of the Buyer or any other person the Buyer shall store the Goods on its premises separately from its own goods or those of any other person and in a manner of which makes them readily identifiable as the Goods of the Company until such time as the Buyer becomes the owner of the Goods.
- 8.07 If the Buyer has not received the proceeds of any such sale it shall, if called upon to do so by the Company, assign to the Company all rights against the person to whom it has supplied the Goods.

### 9. INSTALLATION

- 9.01 Where the Contract provides for installation of the Goods to be carried out by the Company it shall be upon the basis that it is the Buyer's responsibility to:

- a) Provide suitable access to the premises in all weather conditions for vehicles and equipment that the Company will need to use in carrying out such installation;
- b) Provide all necessary services and amenities to enable the Company to carry out such installation;
- c) Ensure that the premises and foundations are structurally sound and in a proper condition for the installation to proceed;
- d) Provide all plant, materials and services required to be provided by the Buyer at such times and in such manner as to cause the Company no delay in carrying out such installation;
- e) Provide safe and secure onsite for materials and accessories supplied and used by the Company, its employees and contractors.
- 9.02 The Buyer shall advise the Company promptly of any decision or instruction which needs to be made or given prior to the Company being able to proceed with the installation of the Goods.
- 10. DELAY**
- 10.01 If any time for delivery or installation of the Goods or completion of the Contract or any part of it shall be stated in the Contract such time shall be approximate only and shall not be deemed to be of the essence of the Contract.
- 10.02 The Company shall not be liable for failure to deliver the Goods or to carry out any installation of the Goods or any delay in the delivery or installation of the Goods where such failure or delay is beyond the control of the Company.
- 10.03 If the manufacture, supply or delivery of the Goods is delayed by reason of or as a result of any act, omission, default or request by or on behalf of the Buyer, the Company may, without prejudice to its other rights and remedies, require payment by the Buyer of such portion of the Contract Price as represents the extent to which the Company has performed the Contract or carried out work required by the Contract up to the date of such payment is required together with any expenses or additional costs incurred by the Company as a result of such delay.
- 10.04 In the event of such delay continuing beyond a reasonable time, the Company may, without prejudice to its other remedies, terminate the Contract.
- 11. WARRANTY**
- 11.01 The Company warrants that it will repair or make good any defects in materials arising within 14 days from the date of delivery or installation of the Goods.
- 11.02 No claim shall be accepted if:
- (a) Any attempt to repair the defective goods or any installation work is made by any person not authorised by the Company to effect such repairs; or
- (b) The defective goods have been modified or incorrectly stored, maintained, installed or operated.
- 11.03 If the Goods or any components of the Goods are not manufactured by the Company then the warranties contained in this section shall not apply to such Goods or Components.
- 11.04 No claim shall be accepted under the above warranties unless written notice of the claim is received by the Company as soon as reasonably possible after the defect is discovered.
- 11.05 In the event that the Company fails to perform its warranty obligations under this agreement the Company's liability for such failure shall be limited to damages which shall be subject to the limitations contained in section 12.
- 12. LIABILITY**
- 12.01 The Company shall not be liable for:
- a) Any loss of profits;
- b) Any consequential, indirect or special loss;
- c) Any damage or injury of any kind whatsoever suffered by the Buyer or any other person arising directly or indirectly from any breach of any of the Company's obligations arising under or in connection with the Contract or from any cancellation of the Contract or from any negligence on the part of the Company, its employees, agents or contractors.
- 12.02 Except as provided in this agreement the liability of the Company, whether in contract or in tort or otherwise, in respect of:
- (a) All claims for loss, damage or injury arising from breach by the Company of its obligations in connection with the Contract;
- (b) Any cancellation of the Contract or from any negligence on the part of the Company, its employees, agents or contractors shall not in aggregate exceed the Contract Price.
- 13. DEFAULT AND INDEMNITY**
- 13.01 If the Buyer shall:
- (a) Default in the payment of any moneys payable to the Company under the Contract;
- (b) Commit any act of bankruptcy;
- (c) Enter into any composition or arrangement with its creditors;
- (d) Do any act which would render it liable to be wound up or is wound up or has a receiver or receiver and manager appointed over its property, or any part of its property the Company, without prejudice to any other rights it has at law or in equity, may, at any time thereafter, suspend or terminate the Contract and payment for the Goods delivered and any other moneys payable under this Contract shall immediately become due and payable.
- 13.02 The Company also reserves the right in such event, as agent of the Buyer, to enter upon the premises where the Goods are situated and take possession of and remove the Goods without being responsible for any damage caused, and the Company may resell such Goods and apply the proceeds in or towards payment of the Price.
- 13.03 All costs and expenses incurred by the Company as a result of any such action together with transportation and storage charges shall be payable by the Buyer to the Company upon demand.
- 13.04 Any suspension of the Contract by the Company shall not prevent the Company from terminating the Contract during the period of suspension.
- 14. SPECIFICATION**
- 14.01 Specifications contained or referred to in the Contract or in any catalogues or other publications distributed by the Company are estimates only.
- 14.02 Unless otherwise expressly agreed in writing, it is not a condition of the Contract that the Goods will correspond precisely with such specifications and customary tolerances, or in the absence of customary tolerances, reasonable tolerances shall be allowed.
- 15. ACCEPTANCE**
- 15.01 Where these conditions of sale form part of a written quotation, the quotation is open for acceptance for a period of 30 days from the date of quotation. The quotation may be withdrawn by the Company at any time before acceptance. Acceptance arises upon receipt by the Company of the Buyer's written acceptance unless the Company agrees otherwise.
- 16. CONTRACT**
- 16.01 The items contained in the quotation, confirmation of order invoice and packing slip of the Company together with these terms and conditions shall constitute the Contract.
- 16.02 All other conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise (whether of like nature or not) and whether express or implied by law, trade custom or otherwise are expressly excluded.
- 16.03 In the case of any conflict between the quotation, invoice and packing slip of the Company and these terms and conditions, the invoice of the Company shall prevail.
- 16.04 In the case of any conflict between an order submitted by the Buyer and the Company's confirmation of order, the Company's confirmation of order and these conditions of sale shall prevail.
- 16.05 No agent or representative of the Company is authorised to make any representations, warranties, conditions or agreements not expressly confirmed by the Company in writing and the Company is not in any way bound by such unauthorised statements nor can any such statements be taken to form a contract or part of a contract with the Company collateral to the Contract.
- 17. WAIVER**
- 17.01 All rights, powers, exemptions and remedies of the Company shall remain in full force and effect regardless of any neglect, forbearance or delay in the enforcement of them.
- 17.02 The Company shall not be deemed to have waived any condition unless the waiver shall be in writing under signature of the Company or an authorised officer of the Company.
- 18. NO ASSIGNMENT**
- 18.01 The Buyer may not assign all or any of the rights or obligations of the Buyer under the Contract without the prior written consent of the Company.
- 19. MISCELLANEOUS**
- 19.01 If any provision of the Contract shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provision shall not be affected, prejudiced or impaired.