

**Diamond Electronic Systems Limited**  
**Terms and Conditions for the**  
**Sale of Equipment, Provision of Maintenance, and Alarm Monitoring**

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**DEFINITIONS**

1. In these Terms and Conditions, unless the context otherwise dictates:

**“Agreement”** means the Installation and/or Maintenance Agreement, these Terms and Conditions, and the accepted Sales Proposal.

**“Company”** means Diamond Electronic Systems Limited (NI28033) having its registered office at Diamond House, Harbour Court, 5 Heron Road, Belfast BT3 9HB.

**“Subscriber”** means the person(s) who buys or agrees to buy goods or services from the Company.

**“System”** means the Equipment as described in the installation or maintenance agreement, and/or the accepted sales proposal.

**“The Sale Equipment”** means the equipment herein sold to the Subscriber as is described in the attached Schedule of Works.

**“The Installation Date”** means the date on which the installation of the System is completed by the Company or on which such installation would have been completed had the Subscriber(s) complied with his or her obligations hereunder, whether or not the Subscriber(s) has obtained by that time and made available for connection any necessary telephone lines.

**The “Takeover Date”** means the date on which the takeover of the maintenance and or monitoring of the System is completed by the Company or on which such takeover would have been completed had the Subscriber(s) complied with his or her obligations hereunder, whether or not the Subscriber(s) has obtained by that time and made available for connection any necessary telephone lines.

**“Normal Working Hours”** means the hours of 9.00am to 5.00pm Monday to Friday inclusive except for Statutory and Common Law, Public and National Holidays.

**“Term”** means a period of five years from the Installation or Takeover Date and continuing thereafter unless terminated by not less than 3 months’ notice, given by either party in writing to the other, subject to the provisions for earlier termination contained herein.

**“Central Station”** means a Central Station as meets with the Company’s requirements and which the Company considers to be appropriate.

**“Monitoring”** means monitoring by the Company of the System connected via a signal received by the Central Station, and “Monitor” and “Monitored” shall be construed accordingly.

**“Monitoring Instructions”** means such written instructions as may from time to time be given by the Subscriber to the Company and be approved by the Company in writing as to the signals to be Monitored and the action to be taken in the event of the System being activated.

**“Premises”** means the premises at which the System is to be installed and set out in the Schedule of Works.

**“Installation & Maintenance Agreement”** means the agreement signed by the Subscriber and the Company relating to the System.

#### **COMPANYS OBLIGATIONS**

2. The Company shall install the System at the Premises and shall sell to the Subscriber(s) the Equipment, maintain and, where applicable, monitor the System during the Term for the price and at the rates set out in the Installation and or Maintenance Agreements.
3. The installation shall be in accordance with the applicable British and or European Standards and a National Security Inspectorate (NSI) Certificate of Status and Competence (“The Commissioning Certificate”) will be issued on the satisfactory completion of the installation of the System.
4. Where the Company Monitors the System:
  - (a) No responsibility will be accepted by the Company for any faults on the telephone line, or the financial costs associated with the telephone line including call charges.
  - (b) During the Term, the Central Station shall:
    - Monitor the signals received from the System

- Notify alarm and emergency activations by telephone to the Subscriber`s appointed keyholder contacts and/or appropriate emergency authority if applicable.
- Log details and times of all calls made to the subscriber`s appointed keyholders.

#### **MAINTENANCE**

5. The Company will during the Term, in accordance with applicable British and European Standards:
- (a) Carry out routine maintenance visits to the Premises where access is facilitated by the Subscriber(s); and
  - (b) Provide an emergency response service

#### **SUBSCRIBERS OBLIGATIONS**

6. The Subscriber:
- (a) Warrants to the Company that he/she is the owner of the Premises, or has obtained the consent of the Landlord and any other necessary consents to enable the Company to comply with its obligations under this Agreement.
  - (b) Shall take all such steps as may be required to make the Premises ready for the installation of the System at the agreed date and time.
  - (c) Shall allow access to the Premises to such persons authorised by the Company as necessary for the purposes of the installation and or maintenance of the System.
  - (d) Shall obtain and pay for all necessary telephone lines, and any other consents and approvals necessary for the installation and ongoing operation of the System.
  - (e) Shall ensure that any external alarm sounder does not cause a nuisance as defined under the Pollution Control and Local Government (Northern Ireland) Order 1978.
  - (f) Shall not allow any person to have access to or interference with the System other than the Company.
  - (g) Shall notify the Company forthwith of any defect appearing in the System, and shall permit the Company to take such steps as the Company shall consider necessary to remedy such defects.

- (h) Shall nominate two key holders who are able to attend the Premises at any time within 20 minutes, if the alarm is subject to Police Response.
  - (i) Shall comply with the local police force policy regarding the operation of the System as applicable.
  - (j) Shall notify the Company of any proposed change of ownership, tenancy or occupation of the Premises.
7. The Annual Maintenance Charge shall be paid annually in advance, within thirty days of receipt of the Company's invoice.
8. The Equipment is sold subject to such conditions as to its title as are to be implied pursuant to section 12 of the Sale of Goods Act 1979 and section 16 below.

#### **TERMINATION**

9. The Subscriber(s) shall be entitled to terminate the Agreement by giving three months written notice to the Company, provided that any such notice shall expire after a period of twelve months from the Installation or Takeover Date. If the Subscriber(s) wishes to withdraw from the agreement at any time before the expiration of twelve months from the Installation or Takeover Date and shall serve notice as above, the Company may at its sole discretion accept the Subscribers' withdrawal on the payment of the cancellation charge by the Subscriber calculated in accordance with clause 12 below.

#### **TERMINATION BY BREACH**

10. If the Subscriber shall commit any breach of his obligations hereunder or if payment of any sum due hereunder is more than 30 days in arrears, the Company shall be at liberty to terminate this agreement by notice in writing to the Subscriber without prejudice to the Company's rights to recover any sum due by the Subscriber to the Company.

### **AUTOMATIC TERMINATION**

11. This agreement shall automatically terminate without notice to either party if the Subscriber(s) shall become insolvent, or has a receiving order made against him, or enters into any arrangement with his creditors.

### **TERMINATION CHARGE**

12. If the agreement is terminated in accordance with clauses 9, 10, or 11 above the Subscriber(s) shall immediately pay to the Company a sum equivalent to three months of the Annual Maintenance Charge.

### **WARRANTY**

13. The Company undertakes that if the System or any part thereof is shown to its reasonable satisfaction to have been defective in workmanship or material at the Installation Date by reason of parts supplied, or negligence in the supply of maintenance services by the Company during the Term, the Company at its option, may replace (with the same or similar model) or make good the defective System or part thereof provided that the Company shall have no liability hereunder:

(a) where the alleged defect ought to have been apparent on a reasonable visual inspection

of the System, unless the Subscriber(s) notes the existence of the alleged defect on the Commissioning Certificate and makes a written claim in respect thereof (identifying the relevant part of the System and the nature of the alleged defect) within ten days of the Installation Date.

(b) in any case not falling within paragraph (a) above unless the Subscriber(s) makes a written claim within ten days after the time at which the alleged defect is or ought reasonably to have been discovered and in any event in respect of the Sale Equipment alone within 12 months of the Installation Date.

(c) if the System has been altered or repaired by the Subscriber(s) or a third party

- (d) if the System has been rendered defective by misuse or neglect on the part of the Subscriber (s) or a third party, including any vandalism or damage caused through forced entry to the premises
- (e) if the Subscriber makes any further use of that part of the System alleged to be defective after the time at which the Subscriber discovers or ought to have discovered the alleged defect.

#### **COMPANY'S LIABILITY**

- 14. (a)The Company acknowledges liability in respect of death or personal injury resulting from the negligence of the Company
- (b) Sub-clause (a) above sets out the Company's entire liability in respect of the System and subject thereto:
  - (i) All conditions and warranties expressed or implied by common law statute or otherwise as to any of those matters are hereby expressly excluded to the extent allowed.
  - (ii) The Company shall have no liability in contract for any loss whatsoever or howsoever suffered by the Subscriber(s) by reason of any breach or alleged breach of this agreement in particular but without limiting the generality of sub-clause (b)(i) above.
- (c) The Company does not warrant that the operation of the System will be uninterrupted or error-free.
- (d) The Company's aggregate liability in contract for any and all matters (other than for death or personal injury referred to in sub-clause (a) above) arising out of or connected with the performance of this Agreement shall not exceed 3 times the Annual Maintenance Charge.
- (e) The Company shall not be held liable for any financial or other cost associated with making good the damage caused by forced entry or vandalism of the System installed at the Premises.

**SUBSCRIBERS INDEMNITY**

15. (a) The Subscriber(s) shall indemnify the Company against any claim (including all costs incurred therein) arising out of the supply and installation of the System or the provision of maintenance services for the System or otherwise connected with the subject matter of the Agreement brought by any person asserting any proprietary interest of whatever nature in the Premises or contents thereof provided that the Company shall not be entitled to any indemnity
- (i) if and to the extent that the Company is bound by the Agreement to indemnify the Subscriber in respect of the loss or damage in question
- (ii) in respect of any deliberately wrongful act or omission on its part.
- (b) The Subscriber shall indemnify the Company and will keep the Company fully indemnified against all actions, claims, proceedings, costs and damages (including any damages or compensation paid by the Company on the advice of its legal advisers to compromise or settle any claim) and all legal costs or other expenses arising out of any breach by the Subscriber of the Agreement or the warranties contained in the Agreement or out of any claim by a third party based on any facts which if substantiated would constitute such a breach.

**NOTE:** WHERE THE SUBSCRIBER DEALS WITH THE COMPANY AS A CONSUMER THE PROVISIONS OF CLAUSE 16 ABOVE DO AND WILL NOT AFFECT HIS STATUTORY RIGHTS.

**TITLE**

16. Ownership of the System shall not pass to the Subscriber(s) until it is fully paid for, but the risk in the System shall be borne by the Subscriber(s) from the Installation or Takeover Date. If the system is not fully paid for within the credit terms, the Company reserves the right to recover the equipment and issue legal proceedings for the recovery of any unpaid debt.

**INCREASE IN ANNUAL MAINTENANCE CHARGES**

17. The Company may, at any time after the expiry of one year from the Installation or Takeover Date, increase the Annual Maintenance and or Monitoring Charge consequent

upon, but not limited to, additional costs of labour, materials and transport, by giving one month's written notice to the Subscriber of the increase and the date from which the increase is to be effective, by way of the annual maintenance invoice.

#### **FORCE MAJEURE**

18. Neither the Company nor the Subscriber will be liable for delay in performing obligations or for failure to perform obligations if the delay or failure results from any event beyond the parties control including, but limited to, act of god, war, invasion, hostilities, (whether war be declared or not), civil war, riot, fire, flood, lighting, explosion, accident, industrial dispute or other force majeure.

#### **ASSIGNATION**

19. The Agreement may not be assigned or otherwise transferred or encumbered by the Subscriber(s) without the prior consent in writing or the Company, it may however be assigned by the Company without the prior consent of the Subscriber(s).

#### **INTEREST**

20. (a) The Company will exercise a statutory right to claim interest, under the Late Payment of Commercial Debts (Interest) Act 1998 if not paid according to agreed credit terms.
- (b) Where the Late Payment of Commercial Debts (Interest) Act 1998 does not apply interest shall be due on all sums not paid on the due date at the rate of 8% per annum.

#### **NOTICES**

21. Any notice required to be sent to the Subscriber(s) shall be given by sending it through the post in a pre-paid letter addressed to the Subscriber(s) at the address set out in the Installation and or Maintenance Agreement, or any subsequent address communicated to the Company. Any notice required to be sent to the Company shall be given by sending it through the post in a pre-paid letter addressed to the Company at the registered office of the Company. Email is an acceptable substitute for the



written letter, using the email address supplied by the Subscriber, and a valid Company email address.

**COMPLETE AGREEMENT**

22. The Agreement shall constitute the entire agreement and understanding between the parties with respect to all matters which are referred to and shall supersede any previous agreement(s) between the parties in relation to the matters referred to in the Agreement. However, nothing in this Agreement purports to exclude liability for any fraudulent statement or act.

**LAW**

23. This agreement shall in all respects be constructed and governed by laws of Northern Ireland and nothing herein shall affect the statutory rights of the consumer.