

Be Alarmed Limited – Terms & Conditions of Trade

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(b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Be Alarmed and must pay to Be Alarmed the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;	
(c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Be Alarmed and must pay or deliver the proceeds to Be Alarmed on demand;	
(d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Be Alarmed and must sell, dispose of or return the resulting product to Be Alarmed as it so directs;	
(e) the Customer irrevocably authorises Be Alarmed to enter any premises where Be Alarmed believes the Goods are kept and recover possession of the Goods;	
(f) Be Alarmed may recover possession of any Goods in transit whether or not Delivery has occurred;	
(g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Be Alarmed; and	
(h) Be Alarmed may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.	
13. Personal Property Securities Act 1999 ("PPSA")	
13.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:	
(a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and	19.4
(b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Customer to Be Alarmed for Services – that have previously been supplied and that will be supplied in the future by Be Alarmed to the Customer.	
13.2 The Customer undertakes to:	
(a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Be Alarmed may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;	
(b) indemnify, and upon demand reimburse, Be Alarmed for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;	
(c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Be Alarmed; and	20.1
(d) immediately advise Be Alarmed of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.	
13.3 Be Alarmed and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.	20.2
13.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.	
13.5 Unless otherwise agreed to in writing by Be Alarmed, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.	
13.6 The Customer shall unconditionally ratify any actions taken by Be Alarmed under clauses 13.1 to 13.5.	20.3
13.7 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.	20.4
14. Security and Charge	
14.1 In consideration of Be Alarmed agreeing to supply the Goods, the Customer 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 Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).	21.1
14.2 The Customer indemnifies Be Alarmed from and against all Be Alarmed's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Be Alarmed's rights under this clause.	
14.3 The Customer irrevocably appoints Be Alarmed and each director of Be Alarmed as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Customer's behalf.	
15. Defects	
15.1 The Customer shall inspect the Goods on Delivery and shall within five (5) days of Delivery (time being of the essence) notify Be Alarmed of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Be Alarmed an opportunity to inspect the Goods within a reasonable time following Delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Be Alarmed has agreed in writing that the Customer is entitled to reject, Be Alarmed's liability is limited to either (at Be Alarmed's discretion) replacing the Goods or repairing the Goods.	21.2
15.2 Goods will not be accepted for return other than in accordance with 15.1 above, and provided that:	
(a) Be Alarmed has agreed in writing to accept the return of the Goods; and	
(b) the Goods are returned at the Customer's cost within seven (7) days of the Delivery date; and	
(c) Be Alarmed will not be liable for Goods which have not been stored or used in a proper manner; and	21.3
(d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.	
15.3 Be Alarmed may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of twenty five percent (25%) of the value of the returned Goods plus any freight.	
15.4 Subject to clause 15.1, non-stocklist items or Goods made to the Customer's specifications are not acceptable for credit or return.	
16. Warranty	
16.1 For Goods not manufactured by Be Alarmed, the warranty shall be the current warranty provided by the manufacturer of the Goods. Be Alarmed shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.	21.4
16.2 In the case of second hand Goods, the Customer acknowledges that full opportunity to inspect the same has been provided and accepts the same with all faults and that no warranty is given by Be Alarmed as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. Be Alarmed shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.	21.5
17. Consumer Guarantees Act 1993	
17.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Goods by Be Alarmed to the Customer.	21.7
18. Intellectual Property	
18.1 Where Be Alarmed has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Be Alarmed. Under no circumstances may such designs, drawings and	22.1
documents be used or reversed engineered without the express written approval of Be Alarmed.	
18.2 The Customer warrants that all designs, specifications or instructions given to Be Alarmed will not cause Be Alarmed to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Be Alarmed against any action taken by a third party against Be Alarmed in respect of any such infringement.	
18.3 The Customer agrees that Be Alarmed may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Be Alarmed has created for the Customer.	22.2
19. Default and Consequences of Default	
19.1 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 Be Alarmed's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.	23.1
19.2 If the Customer owes Be Alarmed any money the Customer shall indemnify Be Alarmed from and against all costs and disbursements incurred by Be Alarmed in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Be Alarmed's collection agency costs, and bank dishonour fees).	
19.3 Further to any other rights or remedies Be Alarmed may have under this Contract, if a Customer has made payment to Be Alarmed, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Be Alarmed under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.	
19.4 Without prejudice to Be Alarmed's other remedies at law Be Alarmed shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Be Alarmed shall, whether or not due for payment, become immediately payable if:	
(a) any money payable to Be Alarmed becomes overdue, or in Be Alarmed's opinion the Customer will be unable to make a payment when it falls due;	
(b) the Customer has exceeded any applicable credit limit provided by Be Alarmed;	24.1
(c) the Customer 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 Customer or any asset of the Customer.	
20. Cancellation	
Without prejudice to any other remedies Be Alarmed may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Be Alarmed may suspend or terminate the supply of Goods to the Customer. Be Alarmed will not be liable to the Customer for any loss or damage the Customer suffers because Be Alarmed has exercised its rights under this clause.	
20.2 Be Alarmed may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Be Alarmed shall repay to the Customer any money paid by the Customer for the Goods. Be Alarmed shall not be liable for any loss or damage whatsoever arising from such cancellation.	
20.3 In the event that the Customer cancels Delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Be Alarmed as a direct result of the cancellation (including, but not limited to, any loss of profits).	
20.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.	
21. Privacy Policy	
All emails, documents, images or other recorded information held or used by Be Alarmed is Personal Information as defined and referred to in clause 21.3 and therefore considered confidential. Be Alarmed acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 8 of the Act 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"). Be Alarmed acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by Be Alarmed that may result in serious harm to the Customer, Be Alarmed will notify the Customer 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 Customer by written consent, unless subject to an operation of law.	24.2
Notwithstanding clause 21.1, privacy limitations will extend to Be Alarmed in respect of Cookies where the Customer utilises Be Alarmed's website to make enquiries. Be Alarmed 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 Customer's:	
(a) IP address, browser, email client type and other similar details;	25.1
(b) tracking website usage and traffic; and	
(c) reports are available to Be Alarmed when Be Alarmed sends an email to the Customer, so Be Alarmed may collect and review that information ("collectively Personal Information")	
If the Customer consents to Be Alarmed's use of Cookies on Be Alarmed's website and later wishes to withdraw that consent, the Customer may manage and control Be Alarmed's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.	25.2
The Customer authorises Be Alarmed or Be Alarmed's agent to:	
(a) access, collect, retain and use any information about the Customer:	
(i) (including, 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 or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or	25.3
(ii) for the purpose of marketing products and services to the Customer.	
(b) disclose information about the Customer, whether collected by Be Alarmed from the Customer directly or obtained by Be Alarmed from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.	25.6
Where the Customer is an individual the authorities under clause 21.3 are authorities or consents for the purposes of the Privacy Act 2020.	25.7
The Customer shall have the right to request (by e-mail) from Be Alarmed, a copy of the Personal Information about the Customer retained by Be Alarmed and the right to request that Be Alarmed correct any incorrect Personal Information.	
Be Alarmed will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.	25.8
The Customer can make a privacy complaint by contacting Be Alarmed via e-mail. Be Alarmed will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at http://www.privacy.org.nz/comply/comptop.html .	25.9
26. Service of Notices	
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.	
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.	
27. Trusts	
If the Customer 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 Be Alarmed may have notice of the Trust, the Customer covenants with Be Alarmed as follows:	
(a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;	
(b) the Customer 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 Customer against the Trust or the trust fund. The Customer 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 Customer will not without consent in writing of Be Alarmed (Be Alarmed will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:	
(i) the removal, replacement or retirement of the Customer 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.	
28. Suspension of Services	
Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Customer hereby expressly acknowledges that:	
(a) Be Alarmed has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer, and:	
(i) the payment is not paid in full by the due date for payment in accordance with clause 6 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Customer; or	
(ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or	
(iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to Be Alarmed by a particular date; and	
(iv) Be Alarmed has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction Contract.	
(b) if Be Alarmed suspends work, it:	
(i) is not in breach of Contract; and	
(ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer; and	
(iii) is entitled to an extension of time to complete the Contract; and	
(iv) keeps its rights under the Contract including the right to terminate the Contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.	
(c) if Be Alarmed exercises the right to suspend work, the exercise of that right does not:	
(i) affect any rights that would otherwise have been available to Be Alarmed under the Contract and Commercial Law Act 2017; or	
(ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of Be Alarmed suspending work under this provision;	
(d) due to any act or omission by the Customer, the Customer effectively precludes Be Alarmed from continuing the Services or performing or complying with Be Alarmed's obligations under this Contract, then without prejudice to Be Alarmed's other rights and remedies, Be Alarmed may suspend the Services immediately after serving on the Customer a written notice specifying the payment default or the act, omission or default upon which the suspension of the Services is based. All costs and expenses incurred by Be Alarmed as a result of such suspension and commencement shall be payable by the Customer as if they were a variation.	
If pursuant to any right conferred by this Contract, Be Alarmed suspends the Services and the default that led to that suspension continues un-remedied subject to clause 20.1 for at least ten (10) working days, Be Alarmed shall be entitled to terminate the Contract, in accordance with clause 20.	
29. General	
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.	
These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Tauranga Courts, New Zealand.	
29.3 Except to the extent permitted by law "CGA", Be Alarmed shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Be Alarmed of these terms and conditions (alternatively Be Alarmed's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).	
29.4 Be Alarmed may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.	
The Customer cannot licence or assign without the written approval of Be Alarmed.	
Be Alarmed 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 Customer agrees and understands that they have no authority to give any instruction to any of Be Alarmed's sub-contractors without the authority of Be Alarmed.	
The Customer agrees that Be Alarmed may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Be Alarmed to provide Goods to the Customer.	
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.	
Both parties warrant that they have the power to enter into 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.	