

TERMS AND CONDITIONS

1. Definitions, etc.

- 1.1 "Applicable Standards" means those adopted by any approvals or regulatory organisation by which Orion Security Solutions is for the time being recognised or any modification or replacement thereof, current at the date of this Contract.
- 1.2 "Conditions" means these terms and conditions as amended from time to time in accordance with clause 10.2;
- 1.3 "Contract" means the contract for one of the following between the Customer and Orion:
a) Supply of equipment;
b) Supply and commissioning of system(s) or;
c) Supply, installation and commissioning of system(s).
- 1.4 "Equipment" means the security and/or fire alarm equipment and items of associated equipment described in the design specification set out in the Quotation and which is the subject of this Contract.
- 1.5 "Customer" means any company, firm or individual or agent thereof to whom the Quotation is addressed.
- 1.6 "Delivery Address" means the property to which the Equipment is to be delivered, as stated in the Quotation.
- 1.7 "Force Majeure Event" means any event beyond the reasonable control of Orion.
- 1.8 "Maintenance Contract" means the Contract between the Customer and Orion or an appropriately certified competent alternative for the maintenance of the Equipment.
- 1.9 "Orion" means Orion Security Solutions Ltd, a private company limited by shares and registered in England with company number 05551260, the registered office of which is situated at 10 Glyme Court, Langford Lane, Kidlington, Oxfordshire, OX5 1LQ. The company is part of the Scutum Group.
- 1.10 "Quotation" means the written quotation provided by Orion to the Customer, setting out its proposals for the Equipment.
- 1.11 "Quotation Price" is that price accepted by the Customer and is not subject to revision except by agreement in writing of both parties.
- 2. General**
- 2.1 The Contract shall come into force on the date on which the Customer gives its written acceptance of the Quotation.
- 2.2 The Contract and any document referred to in it constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Orion which is not set out in the Contract.
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.4 The Quotation is only valid for a period of 30 days from its date of issue. Orion has the right to withdraw at any time.
- 2.5 In the event that any term of the Quotation conflicts with a term of these Conditions, the Quotation shall prevail.
- 2.6 Orion and the Customer may enter into a Maintenance Contract (or vary any existing maintenance arrangement) upon completion of the installation of the Equipment, subject to a signed Maintenance Contract being in place.
- 3. Basis of Quotation for Equipment**
- 3.1 Any dates set out in the Quotation for delivery of the Equipment are approximate only, and the time of delivery is not of the essence. Orion shall not be liable for any delay in delivery of the Equipment that is caused by a Force Majeure Event or the Customer's failure to ensure that the Delivery Address is suitable, ready and available for the Equipment to be delivered and installed, to provide Orion with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment.
- 3.2 Delivery of the Equipment shall be completed upon its arrival at the Delivery Address.
- 3.3 If a Force Majeure Event prevents Orion from providing the Equipment for more than two weeks, Orion shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
- 3.4 Installing work is to be done in accordance with agreed hours i.e. Monday to Friday 8.30 a.m. to 5.00 pm these are not our normal hours. (statutory holidays accepted). Any extension of such hours or period directly or indirectly caused by the Customer may entitle Orion to charge the Customer for any reasonable extra costs that result.
- 3.5 Any variation or additional work ordered by the Customer not provided for in the Quotation shall be charged by Orion on the basis of reasonable time and materials at rates and costs current at the time of such work (unless separately agreed in writing prior to the variations/additional work starting).
- 3.6 Unless otherwise specifically agreed, the Quotation Price does not include any extraneous work, making good, re-decoration, carpet laying, building or carpentry work etc. and is contingent on engineers having unhindered access to doors, windows, cable runs and all other areas where work must be carried out.
- 3.7 Any item of the Equipment not actually sold to the Customer shall be denoted as such in the equipment design specification and shall be subject to separate rental and/or maintenance terms as may be appropriate.
- 3.8 All attendances by Orion at the Location, e.g. any 240v mains supplies, Site clearance or extra low voltage power supplies required will be agreed prior to delivery of the Equipment.

4. Equipment Quality

- 4.1 Orion warrants that, for a period of one year from the date of its installation, the Equipment shall:
a) conform in all material respects with Applicable Standards and its description in the Quotation;
b) be free from material defects in design, material and workmanship; and
c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 4.2 Orion shall not be liable for the Equipment's failure to comply with the warranty in clause 4.1 if:
a) the defect arises because the Customer failed to follow Orion's written instructions as to the storage, installation, commissioning, use of maintenance of the Equipment or (if there are none) good trade practice;
b) the Customer alters or repairs the Equipment without the written consent of Orion;
c) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
d) the Equipment differs from its description as a result of changes made to ensure it complies with applicable statutory or regulatory standards.
- 4.3 Except as provided in this clause 4, Orion shall have no liability to the Customer in respect of the Equipment's failure to comply with the warranty set out in clause 4.1
- 5. Title and Risk**
- 5.1 The risk in the Equipment shall pass to the Customer on completion of its delivery to the Delivery Address.
- 5.2 Orion will be under no obligation to insure the Equipment once the risk has passed to the Customer.
- 5.3 Whilst the Equipment is in the possession of the Customer and before title of the Equipment has passed to the Customer, the Customer shall maintain appropriate insurance against all usual risks and shall procure that Orion's interest is noted on any relevant insurance policy.
- 5.4 Title to the Equipment shall not pass to the Customer until Orion receives payment in full (in cash or cleared funds) for the Equipment and any other goods or services that Orion has supplied to the Customer in respect of which payment has become due, in which case title to the Equipment shall pass at the time of payment of all such sums.
- 5.5 Until title to the Equipment has passed to the Customer, the Customer shall:
a) store the Equipment separately from all other goods held by the Customer so that they remain readily identifiable as Orion's property;
b) not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;
c) maintain the Equipment in satisfactory condition and keep it insured against all risks for their full price on Orion's behalf from the date of delivery;
d) notify Orion immediately if it becomes subject to any of the events listed in clause 9.2a) to clause 9.2c); and
e) give Orion such information relating to the Equipment as Orion may require from time to time.
- 5.6 If, before title to the Equipment passes to the Customer, the Customer becomes subject to any of the events listed in clause 9.2a) to clause 9.2c), then, without limiting any other right or remedy Orion may at any time:
a) require the Customer to deliver up the Equipment in its possession which has not been resold, or irrevocably incorporated into another product; and
b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Equipment is stored in order to recover it.

6. Terms of Payment

- 6.1 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of any value added tax chargeable from time to time ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by Orion to the Customer, the Customer shall, on receipt of a valid VAT invoice from Orion, pay to Orion such additional amounts in respect of VAT as are chargeable on the supply of the Equipment at the same time as payment is due for the supply of the Equipment.
- 6.2 If the Customer fails to make any payment due to Orion under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 5% per annum above the base rate of The Bank of England. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 6.3 Subject to clause 6.4, the Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. Orion may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Orion to the Customer.
- 6.4 This clause only applies to contracts which are subject to the Housing Grants, Construction and Regeneration Act 1996. Payment as required above may not be withheld by the Customer after the final date for payment of the Quotation Price unless effective notice to withhold payment has been given to Orion specifying:
a) the amount of the payment made or proposed to be made;
b) the basis upon which that account was calculated; and
c) the ground or grounds for withholding payment and if more than one, the amount attributable to each ground.
- 7. Limitation on Liability – the Customer's attention is drawn to this clause**
- 7.1 Nothing in the Contract shall limit or exclude Orion's liability for:
a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
b) fraud or fraudulent misrepresentation;
c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession).

7.2	Subject to clause 7.1:	9.5	On termination of the Contract for any reason:
	a) Orion shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract nor for any loss or damage suffered as a result of the failure, inadequacy or interruption of any primary or temporary power supply at the Delivery Address;		a) the Customer shall immediately pay to Orion all of Orion's outstanding unpaid invoices and interest and, in respect of goods or services supplied but for which an invoice has not yet been submitted, Orion shall submit an invoice, which shall be payable by the Customer immediately on receipt;
	b) Orion may, in its sole discretion, make good any liability under the Contract by replacing or repairing the Equipment or re-performing installation of the Equipment; and		b) the Customer shall return all of Orion Materials which have not been fully paid for. If the Customer fails to do so, then Orion may enter the Delivery Address or the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
	c) Orion's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Quotation Price.		c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
7.3	The Customer expressly acknowledges that delivery of the Equipment and its installation may cause some minor damage to the Delivery Address and any property belonging to the Customer on, in or near such Delivery Address. Whilst Orion will use reasonable endeavours to avoid such minor damage, it does not accept any liability, subject to clause 7.1, whatsoever for any minor damage to the Delivery Address or to the Customer's property caused as a result of the Equipment and its installation.		d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.
7.4	The Customer further acknowledges that the Equipment may be neutralised, circumvented or otherwise rendered ineffective by the Customer, intruders or other unauthorised persons.	10.	Variation and Waiver
7.5	The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract. This clause 7 shall survive termination of the Contract.	10.1	A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
8	Customer Obligations	10.2	Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by Orion.
8.1	The Customer shall:	11.	Third parties
	a) ensure that the specification of the Equipment set out in the Quotation is complete and accurate, and to provide Orion with all relevant information relating to the environment in which the Equipment are intended to be used and relating to their Delivery;		A person who is not a party to the Contract shall not have any rights to enforce its terms.
	b) co-operate with Orion in all matters relating to the Services;	12.	Right to Refer Disputes to Adjudication in Contracts which are subject to the Housing Grants, Construction and Regeneration Act 1996
	c) provide Orion, its employees, agents, consultants and subcontractors, with access to the Delivery Address and such other facilities as may be reasonably required by Orion to install the Equipment;		If this Contract is a contract to which the Housing Grants, Construction and Regeneration Act 1996 applies then:-
	d) provide Orion with such information and materials as Orion may reasonably require to install the Equipment, and ensure that such information is accurate in all material respects;	12.1	If any dispute or difference arises out of or in connection with this Contract, any party ("the referring party") may by notice given to every other party to the agreement at any time refer the said dispute or difference to adjudication to be conducted in accordance with the Adjudication Provisions of the Scheme for Construction Contracts prescribed under the Housing Grants, Construction and Regeneration Act 1996.
	e) prepare the Delivery Address for delivery of the Equipment and its installation; and	12.2	The said adjudication shall be conducted by an adjudicator appointed by agreement between the parties or in default of agreement, the referring party shall request the Centre for Dispute Resolution being a nominating body under Clause 2.1(b) of the said Scheme for these purposes to select a person to act as adjudicator.
	f) keep and maintain all materials, equipment, documents and other property of Orion (the "Orion Materials") at the Delivery Address in safe custody at its own risk, maintain Orion Materials in good condition until returned to Orion, and not dispose of or use Orion Materials other than in accordance with Orion's written instructions or authorisation.	13.	Mediation
8.2	If Orion cannot deliver the Equipment or provide its installation services as a result of the Customer's failure to comply with clause 8.1, the Equipment may be retained by Orion and the Customer will be liable for any re-delivery or storage charges.		Subject always to the right of any party at any time in a contract to which the Housing Grants, Construction and Regeneration Act 1996 applies, to refer a dispute or difference arising out of or in connection with this Contract to adjudication as above, either party may request by notice in writing, with record of posting, that the dispute be referred to mediation by a person agreed between the parties. Should the parties agree to mediation but fail to agree upon the person to mediate within seven days of such a request being made, then either party may apply to the National Security Inspectorate (NSI) for the appointment of a Mediator and such mediation will be conducted in accordance with guidelines for mediation published by the Academy of Experts.
8.3	All Orion Materials are the exclusive property of Orion.		(Note: Mediation does not result in a resolution being imposed or enforceable upon any party. It aims to assist the parties in reaching a mutually agreed resolution of their dispute or differences)
9	Termination and Suspension	14.	Governing Law and Jurisdiction
9.1	If the Customer becomes subject to any of the events listed in clause 9.2, Orion may terminate the Contract with immediate effect by giving written notice to the Customer.	14.1	This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
9.2	For the purposes of clause 9.1, the relevant events are:	14.2	Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).
	a) the Customer suspends, or threatens to suspend, payment of his debts, or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay his debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;		
	b) the Customer's financial position deteriorates to such an extent that in Orion's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and		
	c) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.		
9.3	If the Customer fails to comply with its obligations under clause 8.1, becomes subject to any of the events listed in clause 9.2(a) to clause 9.2(c), or Orion reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment, then Orion may, without limiting its other rights or remedies:		
	a) may suspend the supply of the installation services or the delivery of the Equipment under the Contract or any other contract between the Customer and Orion; or		
	b) terminate the Contract or any other contract between the Customer and Orion.		
9.4	The Customer indemnifies Orion in respect of all costs and expenses (including, but not limited to, any legal costs or disbursements) incurred for or on behalf of Orion in enforcing its rights under this clause.		