

STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF SECURITY EQUIPMENT AND SERVICES TO BUSINESS CUSTOMERS

These Terms and Conditions set out the basis on which members of the Banham Group (as defined below) will provide our equipment and/or services to business customers. If you are buying the equipment or services for purposes not connected with a business, you are a consumer and our standard Terms and Conditions for consumers (a copy of which is available on request) will apply. Your attention is particularly drawn to the provisions of **clause 15**.

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions, the following definitions apply:

"Banham Group" means Banham Patent Locks Limited (registered company number 00457812) and each of its subsidiary (as defined in section 1159 of the Companies Act 2006) companies;

"Business Day" means a day other than a Saturday, Sunday or public holiday in England when the banks in London are open for business;

"Call-Out" means an instance when we are required to attend the Property, **this includes but is not limited to**; either in response to an alarm activation or a request by the Customer or an Emergency Contact;

"Commencement Date" has the meaning set out in **clause 3.2**;

"Conditions" means these terms and conditions as amended from time to time in accordance with **clause 18.7**;

"Contract" means the contract between us and the Customer for the supply of Equipment and/or Services in accordance with these Conditions;

"Customer" means the person or firm who purchases the Equipment and/or Services from us;

"Deposit" means 50 per cent of the price of the Equipment and the Installation Services;

"Emergency Contacts" mean the individuals whom the Customer has requested us to contact in the event of a Security Breach or other emergency;

"Equipment" means the keys, locks, alarm system, CCTV system or other security equipment or devices (or any part of them) set out in the Order;

"Event Outside Our Control" means any cause materially affecting the performance of our service and of our obligations under the Contract arising from any event or circumstances beyond our reasonable control including acts of God, strikes, lock-outs or other industrial disputes, war, riot, fire, flood, or any natural disaster affecting us or a third party for which a substitute third party is not reasonably available;

"Insolvency Event" means an event in relation to a Customer whereby that person a) suspends or threatens to suspend payment of its debts or is unable to pay its debts within the meaning of any relevant legislation; or b) commences negotiations with all or any class of its creditors to reschedule its debts or proposes or enters into a compromise or arrangement with creditor; or c) has a resolution passed, a petition filed or an order made for that person's winding up, bankruptcy or administration; or d) another person becomes entitled to appoint or has appointed a receiver or administrative receiver over that person's assets or d) any event happens in any jurisdiction to which it is subject that has similar or equivalent effect to the preceding events;

"Installation Services" means the installation of the Equipment at the Premises and **"Install"**, **"Installing"** and **"Installed"** shall be interpreted accordingly;

"Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"Keyholding Services" means services relating to holding Keys and making Call-Outs to the Premises;

"Keys" means keys or devices to the Premises;

"Legal Requirement(s)" means all legal and regulatory requirements related to or affecting the Equipment and/or the Services provided;

"Maintenance Services" means services in respect of the maintenance of the Equipment;

"Monitoring Services" means the remote monitoring of the Security System from our Alarm Receiving Centre and "Monitor" and "Monitored" will be interpreted accordingly;

"Order" means the Customer's order for the supply of Equipment and/or Services, as set out in your written acceptance of the Proposal;

"Personal Data" shall have the meaning given to that term by the Data Protection Act 1998;

"Process" shall have the meaning given to that term by the Data Protection Act 1998;

"Proposal" means our written proposal or quotation for the supply of the Equipment and/or Services setting out details of the Equipment and/or Services and the applicable charges;

"Premises" means the Customer's premises at the address set out in the Proposal;

"Recurring Charges" means the charges payable in respect of the Recurring Services;

"Recurring Services" means services which, in accordance with the Proposal, are intended to be performed on an on-going or recurring basis during the term of the Contract including Keyholding Services, Maintenance Services and Monitoring Services;

"Security Breach" means any activation of the security system at the protected Premises;

"Security System" means the Customer's security system at the Premises including any CCTV, intruder alarm, fire alarm or access entry-phone systems;

"Services" means the services set out in the Proposal;

"Staff" means our employees, agents, consultants and sub-contractors; and

"we", "us" or "our" means the member of the Banham Group which is named in the Proposal.

1.2 In these Conditions, unless otherwise expressly stated, the following rules apply:

1.2.1 the headings and sub-headings in these Conditions are for ease of reference only and do not affect the meaning of these Conditions;

1.2.2 words in the singular include the plural and vice versa;

1.2.3 the masculine includes the feminine and vice versa;

1.2.4 any reference to a party is to a party to the Contract and includes the respective successors or permitted assigns of the original parties;

1.2.5 where examples are given by using words or phrases such as **"include"**, **"including"** or **"in particular"**, the examples do not restrict the meaning of the related general words;

1.2.6 a reference to a person includes an individual, firm, partnership, company, corporation, association, organisation or trust (in each case whether or not having a separate legal personality);

1.2.7 a reference to a clause is to a clause or paragraph of these Conditions;

1.2.8 a reference to a company includes any company, corporation or any other body corporate (wherever incorporated);

1.2.9 a reference to a statute or statutory provision includes that statute or statutory provision as amended, modified or replaced and any subordinate legislation or mandatory codes of practice made under it, except to the extent that any amendments, modifications, replacements or subordinate legislation would create or increase a party's liability;

1.2.10 a reference to these Conditions or to any other document shall include any variation, amendment or supplement made to these Conditions or that other document;

1.2.11 the words **"writing"** and **"written"** shall include any method of reproducing words in a legible and permanent form.

2. ABOUT US

- 2.1 We are a member of the Banham Group and a private limited company.
- 2.2 If you need to contact the member of the Banham Group which is named in the Proposal you can do so by writing to us at 20 Thornsett Road, London, SW18 4EF, telephoning us on 020 7622 5151 or emailing us at security@banham.com.

3. BASIS OF CONTRACT

- 3.1 The Order constitutes an offer by the Customer to purchase the Equipment and/or Services in accordance with these Conditions.
- 3.2 The Order will only be accepted when we contact you to tell you that we are able to provide the Equipment and/or Services. At this point and on this date (the "**Commencement Date**") the Contract will come into existence and these Conditions will be binding on you and us.).
- 3.3 The contract for Monitoring, Maintenance and Keyholding Services shall remain in force for a minimum period of 12 months from the Commencement Date and thereafter from year to year unless either party terminates the contract by giving 1 month's written notice to the other.
- 3.4 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.
- 3.5 The Proposal shall not constitute an Offer and is only valid for a period of 20 Business Days from its date of issue.
- 3.6 The Proposal is based on the information provided by the Customer in relation to its security requirements and the Customer must satisfy itself that the contents of the Proposal are correct before placing an Order.
- 3.7 All of these Conditions shall apply to the supply of both Equipment and Services except where application to one or the other is specified.
- 3.8 The Contract constitutes the entire agreement between the parties in relation to its subject matter. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by on our behalf and who is not set out in the Contract.
- 3.9 Except in respect of the Proposal, all drawings, descriptions, advertising and images provided or published by us of the Equipment and/or Services are for the sole purpose of giving an approximate idea of the Services and/or Equipment described in them. They shall not form part of the Contract or have any contractual force.
- 3.10 The images and descriptions of our Equipment and/or Services on our website and other advertising materials are for illustrative purposes only and, although we make every effort to be accurate, the Customer's Equipment and/or Services may differ in some respects, including dimensions.

4. THE EQUIPMENT

- 4.1 We may amend the specification of the Equipment without liability to the Customer if required to do so by any Legal Requirement and in any other circumstance where the amendment would not materially affect the quality or Customer's use of the Equipment.
- 4.2 We warrant that for a period of 12 months from the date of delivery (the "**warranty period**"), the Equipment shall:
 - 4.2.1 conform in all material respects with its description in the Proposal (as amended in accordance with **clause 4.1**); and
 - 4.2.2 be free from material defects in design, material and workmanship.
- 4.3 Subject to **clause 4.4**, if the Customer gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Equipment does not comply with the warranty set out in **clause 4.2** and we are given a reasonable opportunity of examining such Equipment we shall, at our option, repair or replace the defective Equipment, or refund the price of the defective Equipment in full.
- 4.4 We shall not be liable for the Equipment's failure to comply with the warranty in **clause 4.2** if the defect arises as a result of:
 - 4.4.1 the Customer's failure to follow our instructions in relation to the installation, maintenance or use of the Equipment;

- 4.4.2 any alteration or repair by the Customer or by a third party who is not one of our authorised repairers; and
- 4.4.3 fair wear and tear, wilful damage, abnormal storage or working conditions, accident or negligence by the Customer or a third party.
- 4.5 In addition to the Customer's rights under **clause 4.2**, if, at any time, any fault arises in any Equipment that has been continuously Monitored by us under its full police response Monitoring Service; we will replace or repair such Equipment at no extra cost to the Customer except in respect of our reasonable charges for labour.
- 4.6 We will not be responsible for any failure of Equipment due to changes to the environment in which it was Installed. This includes electrical and wireless signal interference.
- 4.7 Except as provided in this **clause 4**, we shall have no liability to the Customer in respect of the Equipment's failure to comply with the warranty set out in **clause 4.2**.
- 4.8 The terms of these Conditions shall apply to any repaired or replacement Equipment supplied by us under **clause 4.4**.
- 4.9 We may, from time to time in the course of Installing, Monitoring or Maintaining the Equipment, recommend that additional security equipment is necessary to ensure the proper functioning of the Security System. The Customer agrees that:
 - 4.9.1 The supply by us of any such additional equipment will be on and subject to these Conditions;
 - 4.9.2 If the Customer chooses not to purchase any such additional equipment, the Security System may not operate to maximum effect; and
 - 4.9.3 The Monitoring and/or Maintenance by us of any such additional equipment will be subject to the Customer paying any increase in our charges for those Services that is notified to the Customer by us prior to its acceptance of any Order for that additional equipment
- 4.10 Where the Equipment includes the ability to remote control that Equipment via the Banham SmartAlarm+ mobile application software ("**App**"), the App is supplied to the Customer by Pyronix Limited ("**Pyronix**") and the Customer's use of the App shall be governed by Pyronix's end user licence agreement for the App, including where applicable Pyronix's additional terms governing access to the Pyronixcloud service and Banhams shall have no liability to the Customer of whatever nature arising from the Customer's use of the App or the Pyronixcloud service.

5. DELIVERY OF EQUIPMENT

- 5.1 If we have agreed in writing to Install the Equipment or deliver it to the Customer at the Premises, then delivery of the Equipment will be made by us delivering it to the Premises at any time after notifying the Customer that the Equipment is ready. In all other cases, delivery will be made by the Customer collecting the Equipment from us within seven Business Days of us notifying you that the Equipment is available for collection.
- 5.2 Subject to **clause 5.4.1**, delivery of the Equipment shall be completed:
 - 5.2.1 if we have agreed to deliver the Equipment, on the Equipment's arrival at the Premises; or
 - 5.2.2 if we have not agreed to deliver the Equipment, upon the Customer collecting the Equipment from us.
- 5.3 Any dates quoted for delivery of the Equipment are approximate only, and the time of delivery is not of the essence. We shall not be liable for any delay in delivery of the Equipment or failure to deliver the Equipment that is caused by an Event Outside Our Control or the Customer's failure to provide us with adequate delivery or other relevant instructions.
- 5.4 If the Customer fails to accept delivery of the Equipment on the first occasion that we attempt to deliver it or to collect the Equipment within seven Business Days of being notified of its availability (as the case may be), then except where such failure or delay is caused by an Event Outside Our Control or by our failure to comply with its obligations under the Contract in respect of the Equipment:
 - 5.4.1 delivery will be deemed to be completed on the date of the first attempted delivery of the Equipment or at the end of the seventh Business Day (as the case may be); and
 - 5.4.2 we shall store the Equipment until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 5.5 If 14 Business Days after we have notified the Customer that the Equipment is ready for delivery or collection the Customer has not collected or accepted delivery of the Equipment, we may resell or otherwise dispose of part or all of the Equipment and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Equipment.

6. TITLE AND RISK

- 6.1 The risk in the Equipment shall pass to the Customer on completion of delivery in accordance with **clause 5**.
- 6.2 Title to the Equipment shall not pass to the Customer until we receive payment in full (in cash or cleared funds) for the Equipment, the Installation Services (if applicable) and any other debts owed from time to time by the Customer to us.
- 6.3 Until title to the Equipment has passed to the Customer, the Customer shall:
 - 6.3.1 ensure that the Equipment remains readily identifiable as our property, including by not removing or obscuring any identifying marks on it;
 - 6.3.2 keep the Equipment on the Premises;
 - 6.3.3 maintain the Equipment in satisfactory condition and keep it insured against all risks for their full price on our behalf from the date of delivery;
 - 6.3.4 notify us immediately if it becomes subject to any of the events referred to in **clause 16.1.1** or **clause 16.1.2**; and
 - 6.3.5 give us such information relating to the Equipment as we may require from time to time.
- 6.4 If before title to the Equipment passes to the Customer the Customer becomes subject to any of the events referred to in **clause 16.1.1** or **clause 16.1.2**, then, without limiting any other right or remedy we may require the Customer to deliver up the Equipment and, if it fails to do so, we may enter the Premises and recover it.
- 6.5 We will provide the Customer with a certificate of compliance from the National Security Inspectorate for the Equipment provided that:
 - 6.5.1 the Customer has agreed to purchase Maintenance Services for a period of not less than 12 months from Delivery of the Equipment; and
 - 6.5.2 the Customer has paid the invoices for the Equipment, any associated Installation Services and 12 months' Maintenance Services.

7. SUPPLY OF SERVICES

- 7.1 We shall provide the Services to the Customer in accordance with the Proposal in all material respects or as otherwise agreed between us and the Customer verbally or in writing.
- 7.2 We shall use all reasonable endeavours to meet any performance dates for the Services specified in the Proposal or agreed in writing between the parties from time to time, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 We shall have the right to make any changes to the Services which are necessary to comply with any Legal Requirement, or which do not materially affect the nature or quality of the Services, and we shall notify the Customer in any such event.
- 7.4 We warrant to the Customer that the Services will be provided:
 - 7.4.1 using reasonable care and skill; and
 - 7.4.2 in accordance with all Legal Requirements.

8. CUSTOMER'S OBLIGATIONS

- 8.1 The Customer shall:
 - 8.1.1 ensure that the terms of the Order are complete and accurate;
 - 8.1.2 co-operate with us in its performance of the Services and provide any assistance or information as may reasonably be required by us to facilitate the performance of the Services;
 - 8.1.3 provide our Staff with unrestricted access to the Premises and any other facilities including washroom facilities that we reasonably require to complete the Services and take reasonable care to ensure the safety of Staff; and subject to prior arrangement the client shall provide a dedicated secure area on site for the storage of tools and equipment including site storage boxes.
 - 8.1.4 ensure that the Premises are prepared for the Services in the manner described in the Proposal, including by carrying out any alterations required;

- 8.1.5 inform us of any potential hazards at or changes to the Premises and provide any protective equipment necessitated by such hazards;
- 8.1.6 obtain any applicable licences or consents necessary to the Services (including, if relevant, the consent of the Customer's landlord);
- 8.1.7 comply with other requirements described in the Proposal;
- 8.1.8 ensure that appropriate environmental conditions are maintained for the Equipment and/or Services and shall ensure that such Equipment and/or Services are housed and operated in a proper manner in accordance with our and/or the applicable manufacturer's instructions;
- 8.1.9 where appropriate, nominate an authorised representative to be available to liaise with, and respond to, queries from us in respect of the provision of Services and the supply of Equipment (for example, in respect of the provision of Services, as to the resolution of conflicting priorities between two or more items of support or maintenance);
- 8.1.10 ensure that the Equipment and/or Services (or any part thereof) are not:
 - (a) modified without our prior written approval (which shall not be unreasonably withheld or delayed);
 - (b) subjected to excessive physical and/or electrical stress, accident, neglect, misuse or other damage;
 - (c) used in conjunction with any software, magnetic-media, accessory or consumable which does not meet with our or the relevant vendor's specifications, or which are defective; or
 - (d) attached to any object, repaired or reinstalled without our prior written approval (which shall not be unreasonably withheld or delayed),

in the event that the Equipment and/or Services are subjected to any of the acts set out in **sub-clauses (a)–(d)** we reserve the right to charge for any remedial action required on a time and materials basis, in accordance with our then current rates from time to time in force;
- 8.1.11 promptly report to us any faults in the Equipment;
- 8.1.12 at the Customer's own expense, execute all documents and do all acts and things reasonably required by us to give effect to the terms of the Contract and shall provide access to all information and documentation which is within its possession which is reasonably required by us to enable us to fulfil our obligations hereunder; and
- 8.1.13 provide to us in a timely manner all data, information and documentation reasonably required by us (as well as answers to queries and decisions, reasonably requested by us) to enable us to perform our obligations under the Contract and will ensure that such data, information and documentation is complete and accurate.
- 8.1.14 provide us with the correct keys and devices required for access to the premises to enable us to perform our obligations under the contract and;
- 8.1.15 will not hold us liable for being unable to gain access to the premises due to the incorrect keys being provided by the Customer
- 8.2 If our performance of any of our obligations in respect of the Services and/or Equipment is prevented or delayed by any act or omission by the Customer or failure or delay by the Customer to perform any relevant obligation ("**Customer Default**"):
 - 8.2.1 we shall have the right, without limiting our other rights or remedies, to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays our performance of any of our obligations under a Contract;
 - 8.2.2 we shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Customer's failure or delay to perform any of its obligations as set out in this **clause 8**; and the Customer shall reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from a Customer Default.

9. MONITORING SERVICES

- 9.1 This **clause 9** will apply to the Contract if and to the extent that the Order includes Monitoring Services.
- 9.2 The Customer agrees that:
 - 9.2.1 if applicable to monitoring by the installation of a communication device, including either dual or single path or GPRS only communication, prior to Installation and throughout the period of the Contract, it must ensure that a suitable block telephone terminal and telephone line is available and operational at the Premises and

that failure to do so will result in us Monitoring the Security System without proper signalling, which may cause repeated fault signals to be notified, including the failure or intermittent loss of any GPRS or IP signal;

(a) we use non-geographical phone numbers for its communication receivers and the Customer is responsible for meeting the cost of the additional charges, if any, made by its supplier of telephone and internet connection services as a result of their use in connection with the Monitoring Services, including any call charges resulting from the general operation of the Security System and test calls;

(b) even if the Security System is suspended from monitoring with the ARC the Security System will continue to send signals, which will result in call charges from your supplier of telephone and internet connection services unless specifically decommissioned by an engineer;

9.2.2 if changes to the environment at the Premises (such as the overgrowing of trees) cause the Security System to be falsely activated, we will ask the Customer to remedy the situation and, if the Customer fails to do so, we will be entitled to disconnect the relevant part of the Security System without liability to the Customer;

9.2.3 the functioning of the Security System may be affected by changes to the layout of the Premises and the Customer should notify us of any such changes so that we can advise on whether or not any additions or amendments to the Security System are required;

9.2.4 notwithstanding the Customer's preferred level of response to a Security Breach, we may contact the police on any occasion if it identifies a threat to any person or is required to do so by any Legal Requirement;

9.2.5 we cannot guarantee that the Emergency Services or the Emergency Contacts will respond appropriately to a Security Breach reported to them by us;

9.2.6 subject to **clause** 15.5, we will not be liable for any failure or delay in providing the Monitoring Services or any poor performance of the Monitoring Services which is due to:

(a) a defect in any part of the Security System which has not been provided and Installed by us;
or

(b) any defect in the Equipment which is caused by any factor referred to in **clause** 4.4; or

(c) any failure or interruption of the transmission of the signal from the Security System which is caused by power failures or a problem with telephone or internet connection at the Premises or wireless transmissions from the Equipment; and

9.2.7 Banhams will perform a line test on the Security Equipment once in every 24 hour period and as such the Customer acknowledges that it may take up to 24 hours for a fault in the Security System to be notified to Banhams and the Customer agrees that Banhams shall have no liability to the Customer in respect of any losses, claims, demands, damages, costs and expenses arising solely by reason of the lapse of time between the fault occurring and the next line test.

10. KEYHOLDING SERVICES

10.1 This **clause** 10 applies if and to the extent that the Services include Keyholding Services

10.2 The Customer agrees in relation to our holding of Keys that:

10.2.1 we operate a shared service and shall attend the Premises within a reasonable time of receiving a request to do so;

10.2.2 the Keys shall be kept sealed in a secured key room, in accordance with BS 7984:2008 (Keyholding and Response Services), that all procedures relating to this Contract are regulated by the same standard and that in some cases, Keys will be held using mobile response units secured in compliance with BS 7984-1:2016;

10.2.3 the Customer may request delivery of the Keys or our attendance at any time at the cost shown in the Proposal;

10.2.4 the Customer may request duplicates of the Keys at any time during our usual business hours;

10.2.5 subject to **clauses** 10.2.66 and 10.2.77, Keys will be made available for collection by the Customer at any time during our usual business hours;

10.2.6 Keys which are not collected by the Customer within three months of termination of the Contract in relation to the Keyholding Services will be destroyed;

10.2.7 we shall be entitled to retain Keys until all outstanding payments due from the Customer under the Contract have been paid in full;

- 10.2.8 we will have no liability to the Customer for any loss consequent on our loss of any Keys which occurs later than five days from us notifying the Customer of the loss or the locks being changed, whichever comes first;
- 10.2.9 in the event that a Customer's Keys are lost as a result of any act or omission by us, we shall notify the Customer forthwith (and advise the Customer to change its locks). We shall reimburse the Customer for the cost of suitable replacement locks on presentation of proof of purchase;
- 10.2.10 we will have no liability to the Customer for any indirect or consequential loss or damage of any kind including any loss consequent on our loss of any Keys which occurs later than five days from us notifying the Customer of the loss or the locks being changed, whichever comes first;
- 10.2.11 the Customer must inform us of any changes that might affect its performance of the Keyholding Services (including changes to the layout of or locks at the Premises or to the contact details for the Emergency Contacts); and
- 10.2.12 we will not be obliged to start providing the Keyholding Services until one Business Day has passed from the date on which the Keys are first made available to us.
- 10.3 In relation to each Call-Out, the Customer agrees that:
 - 10.3.1 we will attend the Premises as soon as reasonably practicable but cannot guarantee the timescales for our attendance;
 - 10.3.2 we will not enter the Premises if the Call-Out relates to a suspected break in or other criminal activity;
 - 10.3.3 we may contact the emergency services and/or the Customer's Emergency Contacts if, in our reasonable discretion, it is necessary or beneficial to do so;
 - 10.3.4 we may allow the emergency services and/or the Customer's Emergency Contacts access to the Premises;
 - 10.3.5 if the circumstances of the Call-Out warrant the response being carried out by more than one member of Staff to ensure their safety, we can increase our charges for that Call-Out proportionately;
 - 10.3.6 if neither the Police nor one of the Emergency Contacts are in attendance at the Premises, we may, but shall not be obliged, to:
 - (a) enter the Premises;
 - (b) de-activate and/or re-set the alarm at the Premises following activation;
 - (c) investigate the cause of the alarm at the Premises being activated; and
 - (d) arrange for emergency repairs to be carried out at the Customer's expense if we reasonably consider that repairs are necessary to secure the Premises;
 - 10.3.7 we will not remain at the Premises for any longer than four hours unless, in our discretion, we consider it appropriate to do so; and
 - 10.3.8 if it is not possible to de-activate and/or re-set the alarm at the Premises, we will request the attendance at the Premises of the Customer's alarm supplier but if they fail to attend within four hours or declares the alarm inoperative, we will attempt to refer the matter to one of the Emergency Contacts.
- 10.4 The Customer agrees that in providing the Keyholding Services we will not under any circumstances do or commit to do anything that would amount to us assuming the powers of the Police.

11. INSTALLATION SERVICES

If and to the extent that the Services consist of or include Installation Services, the Customer acknowledges and agrees that:

- 11.1 it must prepare the Premises in the manner described in the Proposal at its own cost before we commence the Installation Services;
- 11.2 in the event that Banham's personnel arrive at the Premises on the start date for the Installation Services agreed with the Customer and due to the act or omission of the Customer Banham is prevented from commencing the Installation Services the Customer:
 - 11.2.1 shall be responsible for reimbursing to Banham upon request all Banham's wasted costs reasonably incurred in attending at the Premises; and
 - 11.2.2 shall be responsible for arranging a new start date for the Installation Services with Banham; and
 - 11.2.3 agrees that Banham shall have no liability of whatever nature arising from or connected to any subsequent failure to complete the Installation Services in accordance with the original programme agreed between the parties;

- 11.3 apart from damage which is caused by our negligence, Banham will not be liable to make good any damage to the Premises or any third-party equipment resulting from the Installation Services;
- 11.4 the operation of the Security System may be interrupted or prevented during the carrying out of the Installation Services;
- 11.5 where applicable the Customer should advise their insurers of the existing system being non-functional whilst works are undertaken and make alternative security arrangements for the duration of the works;
- 11.6 we will not be responsible for any conduit or containment unless specifically documented in the Proposal, including redecoration or making good/civil works;
- 11.7 we will only reuse parts of the Customer's existing Security System or other equipment if they are compatible with the Equipment and in good working order and the Customer must replace any such parts or equipment that do not meet these criteria; and
- 11.8 the locations indicated in the Proposal for the installation of the Equipment are provisional only and, if our installers recommend relocating the Equipment in alternative locations, the Customer will not unreasonably withhold its consent.

12. CHARGES AND PAYMENT

- 12.1 The price of the Equipment and/or the Services shall be as set out in the Proposal or, if none are quoted, in our published price list at the Commencement Date, subject to any increases permitted by these Conditions or otherwise agreed from time to time. The price of the Equipment is exclusive of all costs and charges of packaging, insurance, transport of the Equipment.
- 12.2 Where applicable the Customer must pay the Deposit within three Business Days of the Commencement Date and, in any Event, before delivery of the Equipment.
- 12.3 we will invoice the Customer:
 - 12.3.1 for the balance of the price of the Equipment and the charges for the Installation Services anytime following completion of the Installation Services; and
 - 12.3.2 for the charges for the Recurring Services, at the intervals set out in the Proposal.
- 12.4 In addition to our other rights under these Conditions to increase our charges, we reserve the right to increase charges for the Recurring Services, provided that such charges cannot be increased more than once in any 12-month period. If, when the Customer receives an invoice from us for the increased charges, it deems the increase unacceptable; the Customer may cancel the Contract by giving us not less than one month's written notice.
- 12.5 The Customer shall pay each invoice submitted by us within 30 days of the date of the invoice in full and cleared funds by using the bank details we give or via any other payment method approved by us. Where you have provided us with a bank mandate we will take payment of our invoices 30 days after the date of the invoice.
- 12.6 All charges payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("**VAT**") which the Customer will pay to us in addition to the charges and at the same time as payment of the charges is due.
- 12.7 If the Customer does not pay for the Services as required by these Conditions, then we may suspend the Services until the Customer has paid the outstanding amounts.
- 12.8 If the Customer fails to make any payment due to us under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of eight per cent above the base rate from time to time of our main bank in the United Kingdom. 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.
- 12.9 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. We may, without limiting our other rights or remedies, set-off any amount owing to us by the Customer against any amount payable by us to the Customer.
- 12.10 The proposal is provided to the Customer in line with the information given to us by the client at the time of survey. Any orders placed are in accordance with that information and any variation to the site or environment after the point of order, which may result in a change of the proposal will be chargeable by us. The Customer may also by written notice to us, at any time, request a variation to the specification. In the event that we agree to any variation, the charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Customer and us.

13. INTELLECTUAL PROPERTY RIGHTS

- 13.1 All Intellectual Property Rights in the Equipment and all Intellectual Property Rights arising out of or in connection with the Services shall be owned by us.
- 13.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services and/or Equipment, the Customer's use of any such Intellectual Property Rights is conditional on us obtaining a written licence from the relevant licensor on such terms as will entitle us to license such rights to the Customer.

14. CONFIDENTIALITY

- 14.1 Each party undertakes that it will not at any time hereafter use, divulge or communicate to any person, except to its professional representatives or advisers or as may be required by law or any legal or regulatory authority, any confidential information concerning the business or affairs of the other party which may have or may in future come to its knowledge and each of the parties shall use its reasonable endeavours to prevent the publication or disclosure of any confidential information concerning such matters.

15. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 15.1 Except as set out in this **clause** 15, all conditions, warranties and representations, expressed or implied by statute, common law or otherwise, in relation to the supply, non-supply or delay in supplying the Equipment and Services are excluded to the extent permitted by law.
- 15.2 The Customer acknowledges and agrees that we do not warrant or guarantee that the provision of the Equipment and/or Services will eliminate the possibility of a Security Breach or obviate the requirement for the Customer to insure the Premises.
- 15.3 Subject to **clause** 15.5, we are not liable to the Customer in contract, tort or otherwise for any of the following losses arising out of or in connection with the Equipment and Services or otherwise in connection with the Contract: loss of damage incurred by the Customer as a result of third party claims, loss of actual or anticipated profits, loss of business opportunity, loss of anticipated savings, loss of goodwill, injury to reputation or any indirect, special or consequential loss howsoever caused, even if we were advised of the possibility of them in advance.
- 15.4 Subject to **clauses** 10.2.3, 15.3 and 15.5, the entire liability of us arising out of or in connection with the supply, non-supply or delay in supplying the Equipment and Services, or otherwise in connection with the Contract, whether in contract, tort (including negligence or breach of statutory duty) or otherwise, is limited to an aggregate figure of £250,000.
- 15.5 Nothing in these Conditions shall operate to exclude or restrict our liability for:
 - 15.5.1 death or personal injury resulting from negligence;
 - 15.5.2 breach of the obligations arising from section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - 15.5.3 fraud or deceit.
- 15.6 This **clause** 15 shall survive termination of the Contract.

16. TERMINATION

- 16.1 Either party may terminate the Contract immediately on written notice to the other party if that other party:
 - 16.1.1 is subject to an Insolvency Event;
 - 16.1.2 ceases or threatens to cease to exist or carry on its business; or
 - 16.1.3 is in material breach of the Contract and either that breach cannot be remedied or has not been remedied 30 days after the other party received a notice specifying the breach and requiring it be remedied.
- 16.2 Without limiting our other rights or remedies, we may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer:
 - 16.2.1 fails to pay any amount due under a Contract on the due date for payment; or
 - 16.2.2 the Customer's financial position deteriorates to such an extent that in our opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

- 16.3 Either party may terminate the Contract in respect of the Recurring Services by giving the other not less than one month's written notice, expiring any time after the period of 12 months commencing on the Commencement Date.
- 16.4 Without limiting our other rights or remedies, we may suspend the Services or deliveries of Equipment under the Contract or any other contract between the Customer and us if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events referred to in **clause 16.1.1** or **clause 16.1.2**, or we reasonably believe that the Customer is about to become subject to any of them.
- 16.5 On termination of the Contract for any reason:
- 16.5.1 the Customer shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Equipment and/or Services supplied but for which no invoice has yet been submitted, we shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 16.5.2 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
- 16.5.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

17. EVENTS OUTSIDE OUR CONTROL

- 17.1 We shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of an Event Outside Our Control.
- 17.2 If the Event Outside Our Control prevents us from providing any of the Services for more than four weeks, we shall, without limiting our other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

18. DATA PROTECTION

- 18.1 Each party shall comply with all relevant Legal Requirements relating to the Processing of Personal Data, together with all reasonable requirements of the other party. To the extent that either party is Processing Personal Data on behalf of the other party, the provisions of **clause 17.2** below shall apply to such Processing.
- 18.2 Unless otherwise authorised in writing by the other party, the party undertaking the Processing shall:
- 18.2.1 only undertake Processing of Personal Data to the extent reasonably required to enable it to perform its obligations under this Contract;
- 18.2.2 not disclose Personal Data to any third parties other than:
- (a) its employees, agents and permitted subcontractors; or
 - (b) to the extent required by Legal Requirement;
- 18.2.3 shall give written notice to the other party of any requirement to disclose Personal Data under **clause 17.2.2** promptly after becoming aware of that requirement;
- 18.2.4 immediately notify the other party if it receives a written request from the subject of any Personal Data for access to any relevant Personal Data, and respond to that request in accordance with the other party's instructions;
- 18.2.5 where requested by the other party, provide details of the Personal Data held by it in relation to any individual promptly after its receipt of the other party's request;
- 18.2.6 bring into effect and maintain appropriate technical and organisational measures:
- (a) to maintain security; and
 - (b) to prevent unauthorised or unlawful access to or processing of personal data and accidental loss or destruction of, or damage to, personal data,
- and shall supply a detailed written description of such measures immediately on request, which must contain sufficient detail to enable the other party to determine whether or not any applicable Personal Data is being or has been processed in compliance with all relevant Legal Requirement relating to the Processing of Personal Data.

- 18.3 Any personal information which provided by the Customer to Banhams will be processed and stored by Banhams in accordance with Banhams' privacy policy which can be accessed at www.banham.co.uk/tcs/privacy-policy.
- 18.4 Any personal information which the Customer provides in the course of using the Pyronixcloud service will be subject to the Pyronix Limited privacy policy which can be accessed at <https://www.pyronixcloud.com/privacypolicy>.

19. GENERAL

- 19.1 **Assignment.** we may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of our rights under the Contract and may subcontract or delegate in any manner any or all of our obligations under the Contract to any third party. The Customer shall not, without our prior written consent, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 19.2 **Notices.** Any notice or other communication required under these Conditions must be in writing and service must be by one of the following methods:
- (a) personally (when service shall be effective on delivery); or
 - (b) by recorded delivery (when service shall be effective on delivery).
- and a party's address for services will be its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause.
- 19.3 **Severance.** Each of the provisions of these Conditions is distinct and severable from the others. If any of those provisions is or becomes invalid or unenforceable (whether wholly or partly), the validity and enforceability of the remaining provisions (or the same provision to any other extent) shall not be affected or impaired in any way. If any provision of these Conditions is or becomes invalid or unenforceable (whether wholly or partly) then the provision shall apply with the minimum deletion or modification necessary to make it valid or enforceable.
- 19.4 **Waiver.** A party can only waive a right or remedy provided in these Conditions or by law by express written notice. No failure or delay to exercise any power, right or remedy under these Conditions shall operate as a waiver of it. Any single or partial exercise or waiver of any power, right or remedy shall not preclude its further exercise or the exercise of any other power, right or remedy. All rights of any person contained in this agreement are in addition to all rights vested or to be vested in it pursuant to common law or statute. No election by us to affirm the Contract will be effective unless it is made in writing.
- 19.5 **No partnership or agency.** Nothing in the Contract shall be deemed to constitute a partnership or agency relationship between the parties or any other person. Save as expressly provided in these Conditions the execution, completion and implementation of this agreement shall not confer on either party or any other person any power to bind or impose any obligations on other party.
- 19.6 **Third party rights.** Nothing under these Conditions confers any rights on any person under the Contracts (Rights of Third Parties) Act 1999.
- 19.7 **Variation.** 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 us.
- 19.8 **Governing law.** The Contract and all disputes or claims 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.
- 19.9 **Jurisdiction.** The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to determine any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).