

# CASTLEBAY LIMITED - TERMS AND CONDITIONS OF BUSINESS

## 1. DEFINITIONS

In these definitions the following terms shall have the following meanings:

"Client" means a party entering into a contract with the Company for the provision of the Services

"Company" means CASTLEBAY LIMITED (company number 6558368) whose registered office address is 6070 Birmingham Business Park, Birmingham B37 7BF.

"Conditions" means these terms and conditions

"Equipment" means any property brought onto the Client's premises by the Company in carrying out the Services

"Fees" means the Company's fees as determined in accordance with Clause 3

"Initial Term" means a fixed term of 12 months

"Services" means the Services provided under these Conditions

"License" means the license as defined by the Private Security Act 2001

"SIA" means the Security Industry Authority

"Security Personnel" means door supervisors or uniformed guards as defined by the Private Security Act 2001

## 2. CONDITIONS APPLICABLE

2.1 These Conditions shall apply to all contracts for the provision of Services by the Company to the Client to the exclusion of all other terms and conditions including any terms or conditions that the Client may purport to apply under any purchase order confirmation of order or similar document.

2.2 All orders for Services shall be deemed to be an offer by the Client to contract for Services pursuant to these Conditions.

2.3 Acceptance of delivery of the Services shall be deemed conclusive evidence of the Client's acceptance of these Conditions.

2.4 Any variation to these Conditions (including any special terms and conditions agreed by the parties) shall be inapplicable unless agreed in writing by a Director of the Company.

2.5 No employee of the Company has any authority (whether express or implied) to waive, vary or exclude any of the Conditions.

## 3. TERM

This Agreement shall continue for a minimum period of the Initial Term and thereafter shall be capable of termination in accordance with Clause 19.

## 4. FEES AND PAYMENT

4.1 The Fees for the Services shall be the Company's quoted fees.

4.2 The Company may by giving not less than 4 weeks notice to the Client at any time after the expiry of the Initial Term increase the Fees for the Services.

4.3 The Company shall be entitled to invoice the Client in relation to the Fees such expenses as have been reasonably incurred in the provision of the Services.

4.4 The Company's minimum charge for Door Supervisors is for a 4 hour shift and for Uniformed Guards is for a 6 hours shift, both at the agreed rate.

4.5 If the Client requires only one Door Supervisor per shift, then in addition to the agreed rate, there will be a 50% surcharge applicable.

4.6 The Company reserves the right to supply sub-contractors when necessary.

4.7 The Fees are exclusive of VAT which shall be due at the rate ruling on the date of the VAT invoice.

4.8 Payment of the Fees and VAT shall be due within 14 days of the date of the invoice. Payment shall be made by cash, cheque, BACS or Internet Transfer. Time for payment shall be of the essence.

4.9 The Client shall pay the Fees in full without any set-off or counterclaim whatever.

4.10 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 4% above Barclays Bank Plc's base rate from time to time in force and shall accrue at such a rate after as well as before any judgment.

4.11 No claims for errors in hours invoiced will be entertained unless reported to us within 10 days of the date of the invoice.

## 5. THE COMPANY'S OBLIGATIONS

The Company shall from the commencement date for the term or until the termination of the Agreement provide Security Personnel to the owners' premises in accordance with the Risk Assessment document annexed to Schedule 1 of this Agreement.

Throughout the duration of this Agreement the Company agrees that:- All Security Personnel supplied will be licensed in accordance with the Private Security Industry Act 2001 in force for the said premises.

(ii) All Security Personnel supplied by the Company will be trained in accordance with the provisions of the Private Security Industry Act 2001 in force for the said premises.

(iii) All Security Personnel supplied will have had criminal record checks undertaken by the Security Industry Authority before such licence is granted and the company undertakes to the best of its knowledge and belief that all such Security Personnel have passed the appropriate examination before the licence is granted.

(iv) The Company will be responsible for ensuring the Approved Contractor Licence as provided for in the Private Security Act are properly renewed and will bear the cost of that licence and its renewal, subject to the Company maintaining Approved Contractor status.

(v) All such Security Personnel will be supervised by the Inspector or other senior Officers of the Company who will make periodic checks in accordance with the recommendations of British Standard BS7960.2005.

(vi) The Company will insure all Security Personnel against any injury sustained by them in the course of carrying out their duties and unless such injury shall be due to the act of negligence or default by the owner or any person for whom the owner is responsible, the Company will indemnify the owner against all actions, claims and demands in respect of such injury.

(vii) The Company will produce upon reasonable written notice a copy of its Public Liability Insurance and Employers Liability Insurance.

(viii) Security personnel will wear a uniform provided by the Company and visible licences at all times whilst on duty.

## 6. COMPLAINTS PROCEDURE

6.1 In the event that the Client is not satisfied with the Services, the Client shall notify the Company of their reason for their dissatisfaction or the event giving rise to the complaint.

6.2 Upon receiving a notice in accordance with Clause 6.1 the Company shall take all reasonable steps to investigate and where possible take such steps to rectify the complaint as appropriate.

6.3 If the Client shall fail to serve any notice under Clause 6.1 the Services shall be conclusively presumed to be in accordance with the contract and the client shall be deemed to be satisfied with the Services.

6.4 If the Services are not in accordance with the contract for any reason the Client's sole remedy shall be limited to the Company making good any such dissatisfaction by replacing such Services, or if the Company shall elect, by refunding a proportionate part of the Fees.

6.5 Complaints of a minor nature should be notified to the Company by telephone and may be dealt with on an official basis if the Client so elects.

## 7. LIMITATION OF LIABILITY

7.1 The Company shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of breach by the Company of these Conditions.

7.2 In the event of any breach of these Conditions by the Company the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of the Company exceed the Price of the Services.

7.3 All warranties and conditions whether implied by statute or otherwise are excluded from any contract made under these Conditions provided that nothing in these Conditions shall restrict or exclude liability for death or personal injury caused by the negligence of the Company or affect the statutory rights of a Client dealing as a consumer.

## 8. INDEMNITY

The Client shall indemnify the Company and keep the Company indemnified and hold the Company harmless against any breach by the Client of these Conditions and any claim brought against the Company by a third party resulting from the provision of the Services by the Company to the Client and the Client's use of the Services including, without limitation, all claims, actions, proceedings, losses, liabilities, damages, costs, expenses (including reasonable legal costs and expenses) howsoever suffered or incurred by the Company in consequence of the Client's breach or non-observance of these Conditions except to the extent that nothing in these Conditions shall exclude liability for death or personal injury caused by the negligence of the Company.

## 9. ENTICEMENT OF EMPLOYEES

9.1 The Client covenants with the Company that he will not during the Initial Term or for the period of 6 months immediately following the termination of any contract entered into under these Conditions and whether on its own behalf or on behalf of any other person, firm, company or contractor, directly or indirectly, solicit, canvass or entice away (or endeavor to solicit, canvass or entice away) from the Company any person employed by the Company for the purposes of providing to the Client any services materially competing with the Services. This covenant shall apply whether or not such a person is subsequently employed by the Client or is providing Services as an independent contractor or as an employee or agent of an independent contractor.

9.2 Without prejudice to the right of the Company to enforce paragraph 9.1 of this Agreement, the Company at its sole discretion may waive the enforceability of the appropriate clause whereby the client in consideration pays to the company the sum of £2,000.00 per security personnel operative.

## 10. RETENTION OF TITLE

10.1 Property in any Equipment provided by the Company in carrying out the Services shall not pass from the Company.

10.2 The Client shall upon request deliver up such of the Equipment as has been supplied by the Company in the course of carrying out the Services. If the Client fails to do so the Company may enter upon any premises owned, occupied or controlled by the Client where the Equipment is situated and repossess the Equipment.

10.3 The Client shall not pledge or in any way charge by way of security for any indebtedness any of the Equipment which are the property of the Company. Without prejudice to the other rights of the Company, if the Client does so all sums whatever owing by the Client to the Company shall forthwith become due and payable. Should the client lose the equipment, the equipment will be invoiced to the client and payable at the full retail price.

10.4 Any such Equipment supplied to the Client by the Company in the performance of this Agreement which if subject to a Rental Agreement between the Company and the owner of the said Equipment is held pursuant to the owner's terms and conditions which are exhibited to this Agreement at Appendix 2.

## 11. DELIVERY OF SERVICES

11.1 The Services shall be provided at such address as the Client shall have notified to the Company.

11.2 The Client shall be solely responsible for ensuring that the premises are safe and suitable for the employees of the Company to provide the Services.

11.3 The Client warrants that he has in place Public Liability and Employer Liability insurance for the premises for lawful visitors and undertakes to produce such policy of insurance to the Company if required.

11.4 The Client shall on demand produce to the Company within 3 days his/her statutory policy of insurance which is in place for the Client's premises for inspection by the Company and in default the Company has the right to terminate this Agreement forthwith without liability and without prejudice to such continuing financial obligation the client may have to the company.

## 12. WARRANTIES

12.1 The Company warrants that it will carry out the Services and perform its duties and obligations under these Conditions with reasonable skill and care.

12.2 All conditions, terms, representations and warranties relating to the Services, whether imposed by statute or operation of law or otherwise that are not expressly stated in these Conditions are hereby excluded.

## 13. FORCE MAJEURE

Neither party shall be liable for any default due to an act of God, war, strike, lockout, industrial action, disruption of public services, presence of dangerous structures or substances or animals, fire flood, drought, storm or other event beyond the reasonable control of either party.

## 14. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

For the purposes of the Contracts (Rights of Third Parties) Act 1999 it is agreed that nothing in these Conditions shall confer on any third party any right to enforce or any benefit of any term in these Conditions.

## 15. NOTICES

All notices or other communications under these Conditions shall be in writing and may be delivered or sent by pre-paid first class letter post or facsimile transmission or e-mail to the party to be served at the address set out in any contract or at such other address or number as that party may from time to time notify in writing to the other party.

Any notice or document shall be deemed to be served if delivered at the time of the delivery; and if posted 48 hours after posting; and if sent by facsimile transmission, at the time of the transmission if between the hours of 9.00 am and 5.00 pm from Monday to Friday (other than the statutory holidays) or by e-mail by time of electronic transmission between the hours of 9.00 am and 5.00 pm from Monday to Friday (other than the statutory holidays).

## 16. ARBITRATION

All disputes or differences which shall at any time arise between the parties whether during the Initial Term or afterwards touching or concerning these Conditions or its construction or effect or the rights, duties or liabilities of the parties under or by virtue of it or otherwise or any other matter in any way connected with or arising out of any contract made subject to these Conditions shall be referred to a single Arbitrator to be agreed upon by the parties or in default of Agreement to be nominated by the President for the time being of the Chartered Institute of Arbitrators in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment of it for the time being in force save non payment of invoices delivered which the Company reserves the right to instigate Court proceedings for recovery of monies due.

## 17. APPLICABLE JURISDICTION

17.1 These Conditions and any contract made under them are subject to the law of England and Wales.

17.2 All disputes arising out of any contract made under these Conditions shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

## 18. ASSIGNMENT

18.1 The Client shall not assign contract licence or otherwise dispose of any part of its rights or obligations under these Conditions without the prior written consent of the Company.

18.2 The Company may assign, contract, licence or otherwise dispose of any part of its rights or obligations under these Conditions and the Client consents to all such dealings.

## 19. TERMINATION

19.1 If the Client:

19.1.1 Fails to make payment for the Services in accordance with these Conditions or commits any other breach of these Conditions of provision or if any distress or execution shall be levied upon any of the Client's Services or if the Client offers to make any arrangement with its creditors or if any petition in bankruptcy is presented against the Client or the Client is unable to pay its debts as they fall due or if being a limited Company any resolution or petition to wind up the Client (other than for the purpose of amalgamation or re-construction without insolvency) shall be passed or presented or if a receiver, administrative receiver or manager shall be appointed over the whole or any part of the Client's business or assets or if any petition for the appointment of an administrator is presented against the Client or if the Client shall suffer any analogous proceedings under foreign law all sums outstanding in respect of the Services shall become payable immediately.

19.1.2 If the Client breaches any of these Conditions and fails to correct the breach within seven (7) days following written notice from the Company specifying breach

The Company may in its absolute discretion and without prejudice to any other rights which it may have:

19.1.3 suspend all future deliveries of Services to the Client; and/or

19.1.4 terminate the contract without liability on its part; and/or

19.1.5 exercise any of its rights pursuant to Clause 10.

19.2 If the Client fails to pay any sums due to the Company as they fall due, the Company may suspend the Services forthwith

19.3 The Company and the Client shall each be entitled to terminate any contract entered into under these Conditions by 28 days written notice.

19.4 If the Client instructs the Company that they do not require the Service contracted for and the period of suspension exceeds 28 days, then the Company is entitled to terminate the agreement and impose the same penalty as contained in 19.5

19.5 In the event that the Client gives the Company less than 28 days notice to terminate the Contract for whatever reason then the Client shall pay to the Company a penalty of 4 times the mean average of the preceding 12 weeks invoices raised by the Company to the Client, together with VAT.

## 20. WAIVER

The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.