

# BURTONSAFES

## THE SURE DEFENCE

### TERMS AND CONDITIONS OF SALE OF BURTON SAFES LIMITED

#### 1. Definitions

In these conditions, unless the context requires otherwise:

- 1.1 'Business Day' means a day between Monday to Friday excluding any day designated as a public Bank holiday in England;
- 1.2 'Buyer' means the person who buys or agrees to buy the Goods and/or Services from the Company;
- 1.3 'Company' means Burton Safes Limited (company number 4744621);
- 1.4 'Conditions' means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Company;
- 1.5 'Contract' means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Company, including in a Statement of Work;
- 1.6 'Delivery Date' means the date specified by the Company when the Goods are to be delivered;
- 1.7 'Goods' means the articles which the Company agrees to supply to the Buyer;
- 1.8 'Price' means the price for the Goods and/or Services excluding carriage, packing, insurance and VAT;
- 1.9 'Price List' means the Company's published price list at the date that the Buyer's order is made;
- 1.10 'Sample' means a sample of the Goods which the Company may supply;
- 1.11 'Services' means the installation and/or maintenance services supplied by the Company to the Buyer as set out in a Statement of Work, a Quotation in respect of a one off service or as otherwise agreed in writing by the Company;
- 1.12 'Statement of Work' means the detailed plan describing the Services and setting out the Services timetable;
- 1.13 'Quotation' means a quote provided by the Company to the Buyer in respect of Goods, Services or bespoke Goods produced to the Buyer's specification.

#### 2. Conditions applicable

- 2.1 These Conditions shall apply to all contracts for the sale of Goods and Services by the Company to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar document or implied by trade, custom, practice or course of dealing, except where a Statement of Work applies and, in such event, any terms of the Statement of Work which contradict these Conditions shall prevail.
- 2.2 The Company's brochure, Price List and any Quotation shall be deemed to be the Company's invitation to treat and shall not constitute an offer. The Company uses all reasonable endeavours to ensure the accuracy of all prices and measurements set out in its brochure and Price List but the Buyer acknowledges and accepts the Company's right to amend errors in such documents and that all sizes stated are approximate only and slight variations in size may occur.
- 2.3 All orders for Goods and Services shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions and any conditions set out in any applicable Statement of Work.
- 2.4 No order made by the Buyer for goods exceeding a value in aggregate of £5000 or for any Services shall be deemed accepted by the Company until confirmed in writing by the Company.
- 2.5 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Company.
- 2.6 Any request made by the Buyer to cancel an order for Goods or Services must be notified by the Buyer to the Company in writing. Although the Company will use reasonable endeavors to accommodate such a request, acceptance of cancellation requests is at the absolute discretion of the Company and no order which has been received and confirmed by the Company may be cancelled by the Buyer except with the agreement in writing of the Company and on terms that the Buyer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

#### 3. Specifications

- 3.1 Where Goods are to be supplied to the Buyer in accordance with the Buyer's specifications, the Buyer shall provide such specifications to the Company within the time specified by the Company to enable the Company to deliver the Goods at the Delivery Date.
- 3.2 The Company shall have no liability for any defect in the Goods where such defect is the result of inaccurate, inadequate or defective instructions from the Buyer.
- 3.3 To the extent that the Goods are supplied in accordance with the Buyer's specifications, the Buyer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Company in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's use of such specifications.

#### 4. Samples

- 4.1 Any Sample(s) which the Company agrees to supply to the Buyer shall be supplied on a sale or return basis for a period of three (3) months.
- 4.2 The Company shall invoice the Buyer for the Sample(s) at the time of delivery and shall credit the Buyer for such Sample(s) returned within three (3) months from delivery.
- 4.3 In the event that the Sample(s) are not returned within three (3) months from delivery payment for such Sample(s) shall become due immediately.
- 4.4 Risk in the Sample(s) shall pass to the Buyer on delivery. The property in the Sample(s) shall remain with the Company until payment of the invoice is received in full.

#### 5. Price and payment

- 5.1 The Price shall be the price set out in the Company's Price List less any agreed discount or where the Goods are a bespoke item the Price set out in the Company's Quotation. For Services, the Price shall be the price set out in the Statement of Work or Quotation, as the case may be. The Price is exclusive of VAT which shall be due at the rate ruling on the date of the Company's invoice.

- 5.2 Unless otherwise stated the Price is exclusive of any onward delivery costs from the Company's premises, which if required will carry an additional charge payable by the Buyer to the Company.
  - 5.3 Unless agreed otherwise in writing, payment of the Price and VAT shall be due within 30 days of the date of the invoice, notwithstanding that delivery of the Goods or completion of the Services may not have taken place. Time for payment shall be of the essence.
  - 5.4 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
    - 5.4.1 cancel the contract or suspend any further deliveries to the Buyer;
    - 5.4.2 charge the Buyer interest (both before and after any judgment) on the amount unpaid at the rate of 8% per cent per annum above the Bank of England base rate from time to time, until payment in full is made such interest to be calculated on a daily basis and all monies owing to the Company by the Buyer for the Goods and/or Services or for any other goods or services provided to the Buyer under any other contract shall become immediately payable.
  - 5.5 The Buyer shall pay all amounts due in full without any deduction or withholding except as required by law and the Buyer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part.
- #### 6. Warranties and liability
- 6.1 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer, all warranties, conditions, or other terms implied by statute or common law are excluded to the fullest extent permitted by law and within the meaning of the Unfair Contract Terms Act 1977.
  - 6.2 Subject to the conditions set out below, the Company warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of one year, or greater period when specifically indicated in writing for any particular product ("the Warranty Period"). In all cases the warranty applicable to the lock is limited to that covered by the lock manufacturer.
  - 6.3 Subject to clauses 6.5 to 6.8 below, any claim by the Buyer which is based on any defect in the condition of the Goods at the time of delivery, damage or loss in transit, or their failure to correspond with specification at the time of delivery shall (whether or not delivery is refused by the Buyer) be notified to the Company in writing within 5 Business Days from the date of delivery (or where the Goods are lost in transit within 5 Business Days from the date of order or a later date as notified by the Company in the case of delayed delivery) and for this purpose time shall be deemed to be the essence of the Contract. If the Buyer does not notify the Company accordingly, the Buyer shall not be entitled to reject the Goods and the Company shall have no liability for such failure, damage or loss, and the Buyer shall be bound to pay the Price and any other sums payable under the Contract as if the Goods had been delivered in accordance with the Contract.
  - 6.4 Without prejudice to clause 6.3, the Company may in its absolute discretion choose to accept the return of Goods notified to it later than 5 Business Days from the Delivery Date on the basis that the Buyer shall pay to the Company a restocking charge of 15% of the Price of the Goods and the cost of all carriage charges shall also be borne by the Buyer.
  - 6.5 Where any valid claim in respect of any of the Goods which is based on any defect in the condition of the Goods, damage or loss in transit, or their failure to meet specification is notified to the Company in accordance with clauses 6.3 or 6.9, the Company shall be entitled to replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Buyer the Price of the Goods (or proportionate part of the Price), but the Company shall have no further liability to the Buyer in respect of that claim.
  - 6.6 Where a claim is made by the Buyer pursuant to clause 6.3, the Company will not be responsible for any expense incurred by the Buyer without the written consent of the Company in respect of repairs or replacement rendered necessary by damage or loss in transit.
  - 6.7 For the avoidance of doubt, where the Buyer arranges his own transport for collection from the Company's premises the Company shall not be responsible for any loss or damage in transit.
  - 6.8 Notwithstanding the terms of clause 6.3 hereof in the case of Goods for export The Company does not undertake any responsibility for damage or loss during transit. For export Goods where Bills of Lading are taken out by the Company, the Company will, if required, take out on the Buyer's behalf and at the Buyer's instructions and expense, insurance against loss and other risk, and will, on the Buyer's behalf and at the Buyer's expense, take all reasonable steps to recover from the relevant insurance company any loss or damage for which such insurance company may be liable under the policy.
  - 6.9 Any claims for defects in the Goods not brought under clause 6.3, must be brought within the Warranty Period. In order to bring such a claim the Buyer must notify the Company in writing of the defect in the Goods, support the claim with a valid written proof of purchase and the date of such purchase, and give the Company the opportunity to inspect the Goods.
  - 6.10 The Company shall not be liable to the Buyer in respect of defects in the Goods arising in the following circumstances:
    - 6.10.1 any defect in the Goods where such defect is the result of inaccurate, inadequate or defective instructions from the Buyer; and/or
    - 6.10.2 any defect arising from wilful damage and/or negligence by the Buyer, abnormal usage conditions, misuse, failure to follow the Company's or the manufacturer's installation instructions, or alteration or repair of the Goods without the Company's approval.
  - 6.11 Notwithstanding any other clause of these Conditions the Company will not accept return of or be liable for any Goods returned to the Company by the Buyer (for any reason whatsoever) which are not packaged (using the exact same packaging) in the same way as when despatched for delivery by the Company unless otherwise expressly agreed in writing by the Company.
  - 6.12 Subject to clause 6.15:
    - 6.12.1 the Company shall under no circumstances whatever be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect or consequential loss whether in contract, tort (including negligence of the Company, its employees or agents or otherwise), breach of statutory duty or otherwise for:
      - (a) loss of profit;
      - (b) loss of revenue;
      - (c) loss of use;
      - (d) loss of goodwill;
      - (e) loss of data;

- (f) loss due to interruption of business, or  
(g) loss of anticipated savings;  
whether direct or indirect, which arise out of or in connection with the supply of the Goods and/or Services under the Contract or their use by the Buyer, except as expressly provided in these Conditions; and
- 6.12.2 The Company's total liability to the Buyer whether in contract, tort (including negligence or breach of statutory duty) or otherwise, arising in connection with the Contract shall be limited to the Price.
- 6.13 The Company shall not be liable to the Buyer by reason of any delay in performing, or any failure to perform any of the Company's obligations under the Contract, if the delay or failure is caused by a Force Majeure Event. A Force Majeure Event means any event beyond the Company's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable including but not limited to:
- 6.13.1 Explosion, flood, tempest, fire or accident or other circumstances arising out of natural events;  
6.13.2 War or threat of war, terrorism, riot, sabotage, insurrection, civil disturbance or requisition;  
6.13.3 Acts, restrictions, regulation, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;  
6.13.4 Import or export regulations or embargoes;  
6.13.5 Strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);  
6.13.6 Difficulties in obtaining raw materials, labour, fuel, parts or machinery;  
6.13.7 Default of suppliers or subcontractors;  
6.13.8 Power or energy sources failure or breakdown in machinery;  
6.13.9 Explosions or collapse of building structures; or  
6.13.10 Natural disasters or extreme adverse weather conditions.
- 6.14 Without prejudice to clause 6.12 and subject to clause 6.15, where the Contract involves the Company carrying out Services at premises other than the premises of the Company, the Company shall be under no liability whatsoever for any injury loss or damage (including without limitation damage to premises or property) to the Buyer or his contractors, employees or invitees whether the same be due to the act or omission of the Company its agents, employees or sub-contractors or otherwise and the Buyer shall indemnify the Company against any claim by third parties arising from the carrying out of such works at such premises and the Buyer is advised to make his own arrangements for insurance against such risks.
- 6.15 Nothing in the Conditions shall limit or exclude any liability of the Company for:
- 6.15.1 Death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);  
6.15.2 Fraud or fraudulent misrepresentation;  
6.15.3 Breach of the terms implied by section 12 of the Sale of Goods Act 1979;  
6.15.4 Defective products under the Consumer Protection Act 1987 (where applicable); or  
6.15.5 Any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.
- 6.16 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.
- 7. Delivery of the Goods**
- 7.1 Any dates quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods (or any part thereof) howsoever caused. Time for delivery shall not be of the essence. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 7.2 Where the Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 7.3 If the Buyer fails to take delivery of the Goods or fails to give the Company adequate delivery instruction at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may:
- 7.3.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of the storage; or  
7.3.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the Price under the Contract or charge the Buyer for any shortfall below the Price under the Contract.
- 7.4 If the Goods are to be delivered outside the United Kingdom the Buyer will be responsible for obtaining all consents and licences which are necessary to enable the Company to import and use the Goods and for all necessary consents (including Exchange Control consent) to enable it to make payment for the Goods and the Buyer shall pay all expenses whatsoever incurred in connection with such matters including all import duties fees and charges and all taxes on importation
- 8. Title and risk**
- 8.1 Risk of damage to or loss of the Goods shall pass to the Buyer on delivery. If the Buyer is to collect the Goods the risk of damage shall pass to the Buyer when the Company notifies the Buyer that the Goods are ready for collection.
- 8.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Company has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Company to the Buyer for which payment is then due.
- 9. Retention of Title**
- 9.1 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Company's fiduciary bailee, and shall keep the Goods (at no cost to the Company) separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Company's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Company for the proceeds of sale or otherwise of the Goods, whether tangible or intangible insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 9.2 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Company shall be entitled at any time to require the Buyer to deliver up the Goods to the Company and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 9.3 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Buyer does so all moneys owing by the Buyer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.
- 9.4 Proceeds of any sale will be held on trust by the Buyer and applied in paying to the Company the price of the Goods on demand or at the due time for payment whichever is the earliest and the balance, if any, will belong to the Buyer.
- 9.5 In addition, the Company shall be entitled to make a claim directly against any firm, company or individual to whom the Buyer has agreed to sell any of the Goods for any monies unpaid by such firm, company or individual provided that the Company shall return to the Buyer any monies recovered in excess of the amount then owed by the Buyer to the Company, and any costs and expenses involved in making such a claim.
- 10. Services**
- 10.1 The Company shall supply the Services to the Buyer in accordance with the Statement of Work or the Quotation, as the case may be.
- 10.2 The Company shall use all reasonable endeavours to meet any performance dates specified in the Statement of Work or Quotation, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 10.3 The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Company shall notify the Buyer in any such event.
- 10.4 The Company warrants to the Buyer that the Services will be provided using reasonable care and skill.
- 10.5 The Buyer shall:
- 10.5.1 co-operate with the Company in all matters relating to the Services;  
10.5.2 provide the Company, its employees, agents, consultants and subcontractors, with access to the Buyer's premises, office accommodation and other facilities as reasonably required by the Company;  
10.5.3 provide the Company with such information and materials as the Company may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;  
10.5.4 prepare the Buyer's premises for the supply of the Services;  
10.5.5 obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and  
10.5.6 keep and maintain all materials, equipment, documents and other property of the Company ("Company Materials") at the Buyer's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation.
- 11. Branding**
- 11.1 The Buyer shall not at any time remove, alter, cover or otherwise tamper with any trademarks, trade names, logos, numbers or other means of identification on the Goods or the packaging ("Branding") and acknowledges that all intellectual property rights in the Branding belong at all times to the Company or the manufacturer of the Goods, as the case may be.
- 11.2 The Buyer hereby fully indemnifies the Company against any third party claims brought or threatened against the Company and any and all losses and costs suffered by the Company (including, without limitation any legal expenses in bringing a claim against the Buyer) arising from any breach by the Buyer, its agents, employees or contractors of clause 11.1.
- 12. Default of the Buyer**
- 12.1 All sums outstanding in respect of the Goods and/or Services shall become immediately payable if:
- 12.1.1 The Buyer fails to make payment for the Goods and/or Services in accordance with these Conditions and any applicable Statement of Work or Quotation; or  
12.1.2 Commits any other breach of these Conditions; or  
12.1.3 The Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or  
12.1.4 An encumbrancer takes possession, or a receiver, administrator, administrative receiver or manager is appointed, over the whole or any part of the property or assets of the Buyer; or  
12.1.5 The Buyer ceases, or threatens to cease, to carry on business; or  
12.1.6 The Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 12.2 If this clause applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
- 12.2.1 cancel the Contract or suspend any further deliveries of Goods or performance of Services under the Contract without any liability to the Buyer; and  
12.2.2 exercise any of its rights pursuant to clause 9 of these Conditions.
- 13. Miscellaneous**
- 13.1 The Contract is between the Company and the Buyer as principals and shall not be assignable by the Buyer without the express written consent of the Company.
- 13.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 13.3 No waiver by the Company of any breach of these Conditions by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 13.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions that provision or part-provision shall, to the extent required, be deemed to be deleted and the validity and enforceability of the other provisions of these Conditions shall not be affected.
- 13.5 Unless otherwise stated, nothing in a Contract shall create any rights of third parties under the Contracts (Rights of Third Parties) Act 1999.
- 13.6 All Contracts shall be governed by the laws of England and be subject to the exclusive Jurisdiction of the English courts.