

Whangarei Mobile Locksmiths
Terms of Trade

In these Terms of Trade, **we, us, and our** refer to Whangarei Mobile Locksmiths and include our employees. **You** refers to the Customer named in the customer application form. **Parties** refers to you and us.

The agreement between you and us is contained exclusively in these Terms of Trade (**Terms**) and any subsequent variations made in accordance with clause 10.1.

You accept the Terms to the exclusion of any of your terms and any previous representations made to you.

1. Definitions

1.1 In these Terms of Trade:

"Call-Out" means the dispatch of our representative to your location or Site to address, without limitation, a specific issue, to perform repairs, and/or to provide assistance.

Completion means one of the following (as applicable): (1) the collection of the Products from our premises; (2) delivery of the Products to your nominated premises; (3) the completion of the Services.

Contract Price is the amount you will be charged for the Products or Services determined under clause 5.

Order means your confirmation to us (whether in writing or verbally) that you would like to order Products and/or Services from us, including by accepting a Quote or Estimate.

Products means all products and goods supplied by us to you from time to time.

Services means the performance of services as undertaken by us for you from time to time.

Site refers to all areas where the Services are to be carried out including (but not limited to) buildings and structures situated on land, motor vehicles and other property.

1.2 Reference to a party includes that party's successors, executors, administrators and permitted assigns.

1.3 Reference to a statute includes references to all regulations, orders, rules, or notices made under that statute; all amendments to that statute and those regulations, orders, or notices; or any statute passed in substitution of that statute.

2. Title and Risk

2.1 We shall retain title to Products we supply to you including Products we supply as part of the Services ("**Products**") until:

- (a) they have been paid for in full;
- (b) all other amounts you owe us have been paid for in full; and
- (c) you have performed all your other obligations under these Terms.

2.2 The risk in the Products supplied under these Terms passes to you on the earlier of: (a) collection by you or your agent of the Products from our premises; (b) on delivery by us of the Products to your nominated delivery address; or (c) on the date and time that the Products arrive on the Site at which we are to complete Services in relation to or incorporating those Products.

2.3 Until title in the Products passes to you, you shall hold the Products as a fiduciary and bailee for us and the following provisions apply:

- (a) The Products must be readily identifiable as our property and you must maintain records so that we can readily identify the Products as our property.
- (b) You must not part with possession, sell, damage, alter or deface the Products but shall keep them in good order and repair. If in contravention of the foregoing provisions of this clause, you sell or part with possession of the Products, you must keep any proceeds of sale of the Products in a separate account in our name and provide full particulars of who the Products were supplied to.

2.4 You must immediately inform us of any attempt by any third party to exercise any remedies against the Products or of any circumstances that may affect our rights to the Products.

2.5 You shall insure the Products for their full price, and will not sell, dispose or part with possession of them or do anything else inconsistent with our ownership of the Products, from the date that risk passes you in the Products in accordance with clause 2.2 until title in the Products passes to you.

3. Estimates and Quotes

3.1 Unless expressly labelled in writing by us as a quote, any price we give you for the Products or Services is an estimate ("**Estimate**") of the anticipated cost for the supply of Products or for us to perform the Services. Where we provide a quote to you ("**Quote**"), the Quote is open for acceptance for 14 days after it is dated unless withdrawn by us earlier and prior to acceptance by you.

3.2 We are not liable for checking (and you are solely responsible for) the accuracy of any information that you provide to us (including, without limitation, measurements, quantities, plans) for the purpose of providing an Estimate or Quote to you for the Products or Services.

3.3 If we provide an Estimate or Quote to you, it is based on information available to us at that time and we may charge you more than the amount estimated or quoted if our costs including (but not limited to) the amount we pay for the Products or any part of them or the cost of transport, tax, exchange rates or other costs) change.

3.4 Any Estimate or Quote is strictly for the Products or Services expressly specified in the Estimate or Quote and is based on information available to us at that time. It does not include any allowance for unforeseen work required (such as poor weather conditions, limitations to accessing the Site, safety considerations, prerequisite work or services to be undertaken by you or any third party not being completed at all or not being completed to the necessary standard, error in design, extra work in order to complete the performance of the Services and Products being required due to incorrect information being provided to us or similar matters); and for additional work not included in the Estimate or Quote that you request that we complete upon your request (whether in writing or verbally).

3.5 We will not commence any work for the supply of Products or performance of Services that is the subject of a Quote or Estimate until you have placed an Order.

4. Commencement and Completion

4.1 These Terms apply in relation to each and every Order that you make with us.

4.2 We may, acting in our sole discretion, require an upfront payment of some or all of the Contract Price prior to ordering the Products or performing the Services under these Terms. If we decide that an upfront payment is required then you will pay it within 5 working days after we provide written notice to you specifying that an upfront payment is required. We are under no obligation to supply the Products or perform the Services until you have paid the upfront payment.

4.3 If applicable, you will give us access to the Site on the date(s) and time(s) we agree with you.

4.4 If we have given you a date for Completion, that date is approximate only. We give no warranty that Completion will occur on or before that date.

4.5 We may unilaterally, and without liability to you, extend the date for Completion for any reason outside our control or by a reasonable period where within our control.

5. Price

5.1 You will pay us the Contract Price for the Products and/or Services. The Contract Price will be:

- (a) where you validly accepted a Quote, the quoted price (subject to any express provision in these Terms that allow us to revise the quoted price); and
- (b) in other cases, the total of the following amounts:
 - (i) any disbursements, including delivery costs, incurred by us in relation to the Products plus our reasonable margin on such amounts;
 - (ii) the price of all Products supplied based on our standard prices prevailing at the relevant time;
 - (iii) the cost of any subcontractors engaged by us in accordance with clause 11 plus our reasonable margin on such amounts (for arranging / managing the subcontractor(s));
 - (iv) the price of Services provided based on our prevailing rate as at the relevant time including any Call-Out Fee and Additional Call Out Charges determined in accordance with clause 6;
 - (v) travel charges for a Call-Out or for the performance of Services that are conducted outside the Whangarei city limits (as determined by us) which will be calculated based on a price per kilometre, determined by our prevailing rate as at the date the Call-Out or the performance of Services is conducted;
 - (vi) any other amounts that we may charge you under the express provisions of these Terms; and
 - (vii) GST on all such amounts.

5.2 Unless specified otherwise, any Quote or Estimate is provided on a GST exclusive basis and GST will be payable in addition to the relevant amount.

6. Call-out

6.1 If the performance of Services includes a Call-Out, then we reserve the right to impose a minimum call-out fee which will be based on our prevailing rate as at the date the Call-Out is conducted ("**Call-Out Fee**").

6.2 If a Call-Out exceeds a duration of 60 minutes, then any additional time that we spend will be subject to charges based on our prevailing hourly labour rates as at the date the Call-Out is conducted ("**Additional Call-Out Charges**")

7. Terms of payment

7.1 You will pay the Contract Price (or the balance thereof if clause 4.2 is applicable) on the due date ("**Due Date**"), being, either:

- (a) on Completion; or,
- (b) such other date as determined by us acting in our sole discretion.

7.2 If you do not make payment on the Due Date, you will be in default and must pay us default interest at the rate of 12% per annum, accruing on a daily basis on the total amount outstanding from the Due Date to the date of payment in full of the amount due, including any accrued interest.

7.3 We are under no obligation to supply Products to you or perform Services for you on credit and may require payment in full prior to and/or immediately upon supply of the same to you.

7.4 As security for any credit we grant you, in addition to the security in clause 8, you agree to give any further securities as we may from time to time require (acting in our sole discretion), in the form required by us, and to comply with all of your obligations under those securities.

7.5 We may notify you at any time that we are going to stop supplying Products to you or perform Services for you on credit. This shall be without prejudice to your obligation to pay amounts owing.

7.6 We may apportion payments to outstanding accounts as we see fit.

7.7 We reserve the right to require guarantees from persons acceptable to us before accepting any Order from you or providing any credit to you.

7.8 Payment of all sums under these Terms will be without set-off or deduction of any kind.

8. Personal Property Securities Act 1999 (PPSA)

8.1 All terms in this clause 8 have the meaning given in the PPSA and section references shall be to sections of the PPSA. Clause 2.1 creates a security interest in Products we supply to you. You shall not grant any other security interest or any lien over Products that we have a security interest in. At our request you shall promptly sign any documents and do anything else required by us to ensure that our security interest constitutes a first ranking perfected security interest in the Products. If the Products are processed, included or dealt with in any way causing them to become accessions, processed or commingled goods, our security interest will continue in the whole in which they are included. You waive any rights you may have under sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, and 133 of the PPSA. You waive your right to receive a copy of any verification statement (as that term is defined in the PPSA). You will give us prior written notice of a proposed change of your name or address.

9. Performance

9.1 You will promptly provide us with all information reasonably required by us to complete the Services.

- 9.2 You warrant that:
- you are the owner of the Site or you are authorised by the owner of the Site to contract us to carry out the Services on the Site;
 - we will have free and unimpeded access to the Site;
 - the Site will be cleared of all debris prior to commencement of the Services; and
 - all information you provide to us under these Terms are true and accurate.
- 9.3 You will:
- at your cost, provide all necessary plant, materials, services and other resources necessary to enable us to perform the Services on the Site;
 - meet all payment and other obligations under these Terms;
 - obtain our prior agreement to any other contractors accessing the Site while we are providing Services at the Site to allow continuity of the Services and minimum inconvenience or delay to us in performing the Services;
 - ensure that the Site is structurally sound and in a proper condition for the Services to proceed; and
 - not sell or in any way dispose of the Site without assigning these Terms to the purchaser or transferee.
- 10. Variations/Termination**
- 10.1 We may change these Terms at any time. Any change applies from when it is published on our website or notified to you in writing.
- 10.2 We may at any time by notice in writing to you terminate these Terms. You may terminate these Terms by giving us a minimum of one month's prior written notice.
- 10.3 If these Terms are terminated, you must immediately pay us any amount you owe us. Termination of these Terms will not affect any of our rights that have arisen before the date of termination.
- 11. Subcontractors**
- 11.1 We may subcontract any part of the Services.
- 11.2 Any subcontractor we engage will be responsible to and paid by us. The subcontractor's fees will be charged to you as part of the Contract Price.
- 11.3 Any subcontractor or consultant you engage directly will be responsible to and paid by you. Our responsibility to you for this subcontractor or consultant is limited to coordinating their services as required for completion of the Services.
- 12. Inspection**
- 12.1 You must inspect the Products and/or the Services and inform us in writing within 5 working days of Completion if you consider that:
- the Products are not materially of the correct type, are materially damaged or have a material defect; and/or
 - the Services involve defects due to defective material and/or defective workmanship.
- (each a "Defect").
- 12.2 If you fail to provide notice under clause 12.1, you are deemed to have accepted the Products and/or Services as being free from any Defect and we will have no liability to you in relation to the same except as expressly provided in clauses 15 and 16. For the avoidance of doubt, a Defect does not include (to the extent permitted by law):
- any damage or defect caused following Completion by any person other than us; or
 - any minor variation, irregularity or imperfection in the Products that does not affect the use of the Product.
- 12.3 Where you give us written notice of a Defect in the timeframe referred to in clause 12.1 you must give us the opportunity to inspect the Products and/or Services. You are liable for all costs associated with returning the Products and we have the right to charge any applicable delivery costs, which we may deduct from any amount we refund to you for the return of the Products.
- 13. Defects**
- 13.1 If we agree that there is a Defect in the Products and/or Services, our only liability to you will be, in our sole discretion, either:
- repair or replace the Products and/or perform Services in question at our own cost and expense;
 - refund you the invoice price of those Products and/or Services to you.
- 13.2 If you raise a Defect in accordance with clause 12.1 and we disagree that the Products and/or Services have any Defect we will advise you of the reasons why. If you disagree with our reasons and believe that there is a Defect with the Products and/or Services you must initiate the dispute procedure under clause 22 within 20 working days of us giving you our reasons. If you fail to do so you will be deemed to have accepted the Products and/or Services as being free from any Defect and we will have no liability to you in relation to the same except as expressly provided in clauses 15 and 16.
- 14. Warranties**
- 14.1 Most Products we supply come with a manufacturer's warranty. We pass those manufacturer's warranties to you under these Terms but do not provide, to the maximum extent permitted by law, any other warranty for any Product.
- 14.2 The Consumer Guarantees Act 1993, the Fair Trading Act 1986, and other statutes may impose warranties, conditions or obligations upon us which cannot by law (or which can only to a limited extent by law) be excluded. Other than as expressly provided for in these Terms, we exclude all such imposed warranties, conditions or obligations to the maximum extent permitted by law and exclude any warranty, condition or obligation imposed or implied under common law, equity or otherwise.
- 14.3 Where you acquire the Products and/or Services for business purposes, you acknowledge and agree that the guarantees contained in the Consumer Guarantees Act 1993 are excluded (as you are acquiring the Products and/or Services for the purposes of a business in terms of sections 2 and 43 of that Act); and the Products and/or Services are supplied and acquired in trade for the purposes of the Fair Trading Act 1986 and that we (including our representatives) and you contract out of sections 9, 12A, and 13 of that Act.
- 15. Limitation Of Liability**
- 15.1 Where the performance of the Services involves gaining access or entry to the Site (due to being locked out from the Site or similar), you acknowledge and agree that:
- the performance of the Services does, and will, not infringe upon the rights of any other person;
 - you will indemnify us against all claims and loss of any kind whatsoever however caused or arising which is brought by any person in connection with any matter, act, omission, or error by us, our agents or employees in connection with gaining access or entry to the Site where such access or entry is denied or prevented.
- 15.2 Where our Services involve the storage of your property at our premises, you agree that:
- the storage of your property, including (but not limited to) your motor vehicle, at our premises is solely at your own risk;
 - we make no warranties or representations, express or implied, regarding the safety, security, or condition of your property, including (but not limited to) your motor vehicle, while it is stored at our premises;
 - you are solely responsible for obtaining and maintaining adequate insurance coverage for your property, including (but not limited to) your motor vehicle, during its storage at our premises.
- 15.3 Except as expressly set out in these Terms, to the maximum extent permitted by law:
- neither we nor any employee, officer or other representative of us shall be liable for any loss or damage or liability of any kind whatsoever (including, without limitation, consequential loss or lost profit or business) whether suffered or incurred by you or another person and whether in contract, or tort, or otherwise and whether such loss or damage arises directly or indirectly from:
 - the supply of Products provided by us to you;
 - the performance of the Services; and/or
 - the storage of your property as referred to in clause 15.2, including (but not limited to) your motor vehicle, at our premises; and
 - our maximum liability to you will be, at our sole discretion:
 - to repair or replace the Products and/or perform the Services in question at our own cost and expense; or
 - refund you the invoice price of those Products and/or Services to you.
- 16. Force majeure**
- 16.1 We will not be liable for any failure or delay to perform our obligations under these Terms if the cause of delay or failure is beyond our reasonable control.
- 17. Default**
- 17.1 If:
- you fail to pay any money owing on the Due Date;
 - you sell, part with possession, or dispose of any Products, or do anything inconsistent with our ownership of the Products prior to making payment in full to us;
 - the Products, are at risk, as that term is defined in the PPSA;
 - we believe you:
 - have committed or will commit an act of bankruptcy;
 - have had or are about to have a receiver or liquidator appointed; or
 - are declared insolvent;
 - you are otherwise in breach under these Terms or the terms of any security that you have entered into, or enter into in the future, with us;
- then that event is deemed to be a default and, in addition to any remedies we have at law, we may do one or more of the following:
- require immediate payment of the Contract Price;
 - charge default interest under clause 7.2;
 - require you to remedy the default (if such default is capable of being remedied) in the manner and within the period that we tell you;
 - require you to pay to us all amounts you owe us immediately;
 - enforce any security interest created under these Terms or under any other security;
 - enter on to the premises where the Products are and repossess the Products to the extent that we have not been paid in full. For these purposes, you irrevocably give authority to us to enter any premises at which the Products are situated and if the Products are wholly or partially attached to or incorporated in any other object(s), we may disconnect or sever in any way whatever as may be necessary to remove the Products. We may either resell any repossessed Products and credit your account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Products and credit your account with the invoice value thereof less such sum as we reasonably determine on account of wear and tear, depreciation, obsolescence, loss or profit and costs. You warrant to us that where the Products are stored on the premises or property of a third party, you are acting as an agent for the third party and have the full authority of the third party to authorise entry on to the premises or property of the third party for the purpose of recovering the Products supplied without releasing you from liability. We shall not be responsible or liable in any way for any damage reasonably caused in the course of removal of Products supplied either in your possession or a third party and you indemnify us against any such liability that we incur;
 - exercise any rights that we have under these Terms or that are available to us at law.
- 18. Photography or video footage**
- 18.1 We may take photographic and video footage of the Site during and immediately on Completion, which we may use for promotional and marketing purposes in any medium or format.
- 19. Notices**
- 19.1 Any notice may be delivered in person or sent by email to you or to any director, where you are a company.
- 20. Costs**
- 20.1 You must pay our costs of the enforcement or attempted enforcement of our rights under these Terms including all debt recovery costs and legal costs on a solicitor and own client basis.

21. Assignment

21.1 You must not assign any of your rights, powers, or obligations under these Terms without our prior written consent.

22. Disputes

22.1 If a dispute arises under these Terms, the parties will act in good faith to resolve the dispute by seeking to reach agreement between themselves on how the dispute will be settled. If the parties are unable to reach such agreement within 20 working days of the dispute being raised by one party, the parties will refer the dispute to mediation before making or commencing any claim in court. Nothing in this clause prevents either party from taking immediate steps to seek any urgent equitable relief.

23. Credit Information

23.1 You consent to us, or any financier or credit-rating agency, making enquiries of and obtaining and sharing any information about your financial standing and credit worthiness.

24. Privacy of Information

24.1 You authorise us:

- (a) to collect, retain and use information about you from any person for the purpose of assessing your creditworthiness;
- (b) to disclose information about you:
 - (i) to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to your obligations to us;
 - (ii) to such persons as may be necessary or desirable to enable us to exercise any power or enforce or attempt to enforce any of our rights, remedies and powers under these Terms.

25. Survival

25.1 This clause 25 and any other provision which by its nature is intended to survive the termination or expiration of these Terms will survive the termination or expiration of these Terms or Completion.