



## **TERMS AND CONDITIONS OF SALE**

### **1. SUPPLY OF GOODS AND/OR SERVICES**

These Terms and Conditions of Sale apply to and form part of any Contract for the supply of Goods and/or the performance of any Services provided by LockNet to the Customer.

### **2. CUSTOMER'S REQUEST FOR PRICING**

- 2.1. The Customer may, at any time, issue to LockNet a request for pricing or a purchase order, both of which are deemed to be a request for pricing (**RFP**).
- 2.2. LockNet will within a reasonable time from receipt of the RFP (which shall be determined by LockNet or as otherwise agreed between the parties) do any of the following:
  - (a) Provide the Customer a quotation that sets out the Goods and/or Services that it offers to provide together with the price and times for delivery of those Goods and/or Services (**Quotation**); or
  - (b) Inform the Customer that it cannot supply the Goods and/or Services.
- 2.3. Notwithstanding that the Customer may have relied on any catalogue or publication issued by LockNet, LockNet reserves the right to correct any errors or omissions (including pricing) contained in any catalogue or publication issued by LockNet and shall not be bound by any information contained therein.
- 2.4. All Quotations provided by LockNet are for indicative purposes only and do not constitute a binding offer to sell.
- 2.5. Times stated for the supply of Goods or the provision of Services in any Quotation are estimates only based on the information available at the time of quotation.
- 2.6. Any Price quoted by LockNet (unless specifically stated otherwise on the Quotation) is exclusive of any present or future federal, state or local sales taxes, or other taxes which may be levied or assessed upon any sale or purchase of any Goods and/or Services from or by LockNet which in all cases shall be payable by the Customer in addition to the Price.

### **3. QUOTATION AND ACCEPTANCE OF A PURCHASE ORDER**

- 3.1. Upon issue of LockNet's Quotation, the Customer must issue to LockNet a purchase order that is in accordance with the Quotation, references the Quotation Number, states the Customer's purchase order number, and sets out the full description of the Goods and/or Services together with LockNet's prices set out in the Quotation. To the extent that the Customer's has provided terms and conditions with its purchase order and those terms

and conditions are inconsistent or different to these Terms and Conditions of Sale, the Customer's terms and conditions will be void and of no legal effect and will not constitute any part of the Contract unless a Director of LockNet signs those terms and conditions and those terms and conditions are annexed to the purchase order.

- 3.2. Any purchase order placed by the Customer pursuant to a Quotation is not binding on LockNet unless and until accepted by LockNet in writing, which is the time that the Contract is formed.

### **4. CANCELLATION OF A PURCHASE ORDER**

- 4.1. The Customer may not cancel any purchase order issued to LockNet without the express written consent of LockNet.
- 4.2. In the event LockNet consents to the cancellation of a Customer purchase order the Customer shall:
  - (a) pay for the Goods delivered and/or Services performed by LockNet in accordance with the purchase order prior to the date of cancellation;
  - (b) pay for the Goods under manufacture by LockNet in accordance with the purchase order at the date of cancellation;
  - (c) pay LockNet for the cost of materials purchased for the purposes of providing the Goods and/or performing the Services;
  - (d) pay LockNet for any other costs that LockNet reasonably incurred prior to the date of cancellation in relation to providing the Goods and/or performing the Services; and
  - (e) pay LockNet twenty percent (20%) of the Price as fair and reasonable compensation for loss of profits and remedial work.

### **5. DELIVERY**

- 5.1. Unless otherwise expressly stated in writing, all Goods sold by LockNet are sold on an Ex Works basis (Incoterms® 2010).
- 5.2. LockNet is deemed to have delivered the Goods upon the earlier of:
  - (a) the time the Goods are made available for collection by the Customer (or it's agent); or
  - (b) upon loading at LockNet's premises where LockNet has agreed (at the Customer's sole cost and risk) to effect delivery or to arrange freight for and on behalf of the Customer to an address specified by the Customer.

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- 5.3. Unless expressly agreed otherwise in writing, the Customer is responsible for unloading the Goods from the delivery vehicle.
- 5.4. Unless expressly agreed otherwise in writing, LockNet may supply the Goods by instalments, and LockNet may claim payment for the Goods supplied in accordance with these Terms and Conditions of Sale.
- 5.5. LockNet will use its best endeavors to deliver the Goods and/or perform the Services by the Date for Delivery.
- 5.6. LockNet shall not be liable to the Customer for any loss or damage (including consequential loss or damage whether liquidated or otherwise) arising from delay in delivery or failure to deliver due to circumstances beyond its reasonable control. The Customer must pay for the Goods notwithstanding late delivery.

## 6. ADDITIONAL CHARGES

- 6.1. LockNet reserves the right to charge the Customer for any costs, charges or expenses whatsoever that LockNet may incur as a result of:
  - (a) vehicle or wagon detention (to the extent the same is not caused or contributed to by LockNet);
  - (b) demurrage in consequence of any act or omission of the Customer; or
  - (c) any special requirements or stipulations of the Customer accepted by LockNet but not expressly provided for under the Contract.

## 7. STORAGE

- 7.1. If LockNet notifies the Customer that the Goods are ready for delivery and the Customer requests LockNet to hold the Goods on its behalf or refuses to accept scheduled delivery, such Goods will be held by LockNet for the Customer at the Customer's sole cost and risk and LockNet shall be entitled to charge a reasonable storage fee in respect of the Goods.

## 8. TITLE AND RISK

- 8.1. Title in Goods passes to the Customer upon payment of the Price referred to in the Contract by the Customer.
- 8.2. Risk in Goods passes to the Customer upon loading onto transport at LockNet premises.

## 9. RETURN OF STOCK ITEMS

- 9.1. Goods ordinarily sold as standard stock items by LockNet may be returned for credit to the Customer's account within fourteen (14) days of the date of delivery of the Goods ONLY IF prior written consent is given by a duly authorized representative of LockNet, the Goods are undamaged, the Goods are unused and the Goods are in good and saleable condition.

- 9.2. Special order Goods or Goods not ordinarily sold as standard stock items by LockNet are not returnable to LockNet for credit under any circumstances whatsoever.
- 9.3. LockNet will apply a re-stocking charge of thirty percent (30%) of the Price to the amount of credit allowed to cover restocking and repacking charges to all Goods returned for credit subject to the conditions set out in above paragraph 9.1. LockNet invoice number and Customer purchase order number must be stated with the Customer's application to return Goods for credit.

## 10. INTELLECTUAL PROPERTY

- 10.1. The specifications, drawings, technical instructions or any other documentation whatsoever issued to the Customer by LockNet during tendering and/or at the time of establishing any Contract will remain the exclusive property of LockNet and are to be kept strictly confidential.
- 10.2. LockNet warrants that:
  - (a) the Goods supplied and/or Services performed by LockNet and the license granted by it to the Customer do not infringe any intellectual property rights of any third party; and
  - (b) the Goods supplied and/or Services performed are not subject to any intellectual property rights of any third party that in any way restrict the rights of the Customer to use or sell the same.
- 10.3. The Customer acknowledges that LockNet remains the owner of all intellectual property relating to the Goods. Furthermore, the Customer agrees that subject to clause 10.4, title in all (present and future) intellectual property created, discovered or coming into existence as a result of, for the purposes of or in connection with the supply of the Goods and/or performance of the Services under any Contract created pursuant this Agreement, shall vest exclusively in LockNet upon its creation (LockNet IP).
- 10.4. LockNet grants the Customer a non-exclusive, irrevocable, royalty free license to use LockNet IP to the extent necessary to enable the Customer to use, maintain, and/or repair the Goods supplied to the Customer by LockNet under any Contract created pursuant to this Agreement.

## 11. CONFIDENTIALITY

- 11.1. The Customer agrees not to divulge to third parties any information provided by LockNet or otherwise obtained by the Customer relating to the Goods and/or Services (including any intellectual property), LockNet or the supply to the Customer by LockNet, unless and until such information is within the public domain (other than by a breach of this clause) or express written consent has been given by LockNet.

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11.2. The Customer shall indemnify LockNet and keep LockNet indemnified from and against all liabilities, losses, damages, actions, suits, proceedings, claims, costs (including legal costs) and expenses arising from any breach of this clause 11 by the Customer whatsoever.

## 12. SECURITY INTEREST

12.1. The Customer grants LockNet, and LockNet retains, a purchase money security interest and lien on any and all of the Customer's rights, title and interest in each and any Goods sold by LockNet to Customer, wherever located, until the invoice for the applicable Goods is paid in full, including any late charges and costs of collection. Customer authorizes LockNet to, and will assist LockNet in, taking all necessary steps to perfect and maintain LockNet's interest in such Goods.

## 13. DEFAULT

13.1. Should the Customer fail to make due payment for any Goods and/or Services supplied by LockNet, or being a natural person commit an act of bankruptcy, or being a corporation by act of omission enable the appointment of a scheme manager, trustee, official manager, receiver, receiver and manager, liquidator, administrator or any other person authorized to enter into possession of the assets of the Customer pursuant to a mortgage, or other security (**Default**) LockNet may, without prejudice to any other rights it may have, do any or all of the following:

- (a) withdraw any credit facilities which may have been extended to the Customer;
- (b) become entitled to immediate payment for all Goods and/or Services supplied under a Contract incorporating these Terms and Conditions. In this case, the Customer is deemed to have waived all of its rights to make payment in accordance with the payment terms in the Contract; or
- (c) withhold any further deliveries of Goods and/or Services to be provided by LockNet if the Customer breaches any term of the Contract, which includes the breach of any of these Terms and Conditions of Sale or is in Default, as defined under this clause 13.

## 14. INDEMNITY

14.1. The Customer will indemnify LockNet and LockNet's Personnel and will keep LockNet and LockNet's Personnel indemnified from and against all Claims, including without limitation injury to (including illness or disability), or death of, any person and loss of, damage to or destruction of or loss of use of any property (including property of LockNet or LockNet's Personnel) caused or contributed to by an act or omission of the Customer or the Customer's Personnel or by any breach of this Contract by the Customer (including any breach of a warranty), except to the extent and the proportion that such Claim has been

caused or contributed to by the willful default or unlawful or negligent act or omission of LockNet.

14.2. The Customer shall be solely liable for and indemnify and keep indemnified LockNet and LockNet's Personnel against any Claims which may be brought against LockNet or LockNet's Personnel by any:

- (a) employee of the Customer;
- (b) subcontractor engaged by the Customer; or
- (c) employee of a subcontractor engaged by the Customer in relation to their employment with or engagement by the Customer, or incurred by LockNet in connection with the supply of the Goods and/or provision of the Services, except to the extent and the proportion that such Claim has been caused or contributed to by the willful default or unlawful or negligent act or omission of LockNet.

## 15. LIMITATION OF LIABILITY

15.1. Despite any other provision of these Terms and Conditions of Sale but subject to clause 15.2, and to the maximum extent permitted by law LockNet's overall liability:

- (a) under, or arising out of, or in connection with a Contract incorporating these Terms and Conditions of Sale; and
- (b) otherwise at law or in equity including:
  - i. by statute to the extent permitted by law;
  - ii. in tort for negligence or otherwise; or
  - iii. on any other basis whatsoever,

shall not exceed 100% of the Contract Price.

15.2. Notwithstanding any other provision of these Terms and Conditions of Sale, and to the maximum extent permitted by law, LockNet has no liability to the Customer nor will the Customer be entitled to make any claim against LockNet in respect of any indirect, special or consequential loss incurred or sustained by the Customer, whether arising under a Contract incorporating these Terms and Conditions of Sale, in tort, at law, in equity or otherwise.

15.3. The provisions of this clause 15 shall survive termination of any Contract.

## 16. FITNESS FOR PURPOSE

16.1. The Customer agrees that it does not rely in the skill or judgement of LockNet in relation to the suitability of any Goods and/or Services for a particular purpose unless it has indicated that purpose in writing to LockNet and LockNet has acknowledged that the Goods and/or Services will be fit for that purpose.

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## 17. WARRANTY AND CLAIMS

- 17.1. To the maximum extent permitted by law all terms and warranties which would otherwise be implied under the Uniform Commercial Code (UCC) or any other applicable statute, the common law, equity, trade, custom, usage or otherwise in relation to the Goods and/or Services or in connection with the Contract are expressly excluded.
- 17.2. The Customer shall inspect the Goods immediately upon delivery and, if the Goods are damaged or not otherwise in compliance with the Contract, the Customer must give written notice to LockNet of the details of the damage or non-compliance within seven (7) days of delivery. Failure to comply with this clause 17.2 means the Customer has or is deemed to have waived any right to claim for compensation, replacement, damages or costs in relation to such damage or non-compliance and shall pay the purchase Price thereof in accordance with the Contract.
- 17.3. The Goods the subject of a notice made under clause 17.2 shall be preserved intact and made available for inspection by LockNet. If the Goods are not so left in the state and condition in which they were delivered, the Customer shall be deemed to have accepted the Goods and shall pay the purchase Price thereof.
- 17.4. LockNet warrants that all Goods supplied by LockNet shall be free from defects in materials in and workmanship and do all things for that which the Goods were ordinarily intended, for the greater of:
- (a) twelve (12) months from the date of delivery; or
  - (b) such other time and subject to the terms, conditions and limitations as the original manufacturer may consent.
- 17.5. LockNet warrants that all Services provided by LockNet shall be free from defects in materials in and workmanship for a maximum period of three (3) months from the date the Services were performed.
- 17.6. Within a reasonable period of receipt of the notice issued under clause 17.2, 17.4 or 17.5, LockNet may, at its option:
- (a) replace the Goods or supply equivalent Goods;
  - (b) pay the cost of replacing the Goods or purchasing equivalent Goods;
  - (c) re-supply the Services; or
  - (d) pay the cost of having the Services re-supplied.
- 17.7. On written request from LockNet, Goods which have been replaced pursuant to clause 17.6 shall be made available to LockNet and shall be the property of LockNet.
- 17.8. No Goods may be returned to LockNet without the prior written consent of LockNet. If Goods are returned without the prior written consent of LockNet, LockNet may return those goods to the Customer at the Customer's cost and risk.
- 17.9. Notwithstanding any other provision of these Terms and Conditions of Sale, and to the maximum extent permitted by law, LockNet has no liability to the Customer nor will the Customer be entitled to make any claim against LockNet for loss and damage incurred or sustained by the Customer arising out of or in connection with any defect, including the cost of rectification of defects, searching for the cause of any defect, dismantling, removal, transport, repair, reinstallation, retesting and similar costs, whether arising under a Contract incorporating these Terms and Conditions of Sale, in tort, at law, in equity or otherwise.
- 17.10. Clause 17.9 shall survive termination of any Contract.
- 17.11. The Customer agrees that no warranty is provided in respect of defects caused by:
- (a) failure to handle, store, install, maintain or repair the Goods in an appropriate manner after delivery;
  - (b) failure to use the Goods in the manner for which they were designed;
  - (c) normal wear and tear; or
  - (d) alterations to the Goods made without the prior written consent of LockNet.

## 18. PAYMENT

- 18.1. Where the Customer has established and maintained a credit account with LockNet to LockNet's satisfaction, the Customer must pay for any Goods and/or Services provided within thirty (30) days from the date of invoice issued by LockNet for having delivered the Goods and/or provided the Services under a Contract incorporating these Terms and Conditions.
- 18.2. Where the Customer has not established and maintained a credit account with LockNet to LockNet's satisfaction, full payment is required prior to the commencement of any work by LockNet under any Contract incorporating these Terms and Conditions and the Contract will not be deemed to have commenced until the date upon which payment is received by LockNet as free and clear funds into LockNet's bank account.
- 18.3. LockNet reserves the right to require a thirty percent (30%) deposit to be paid on any Contract incorporating these Terms and Conditions of Sale prior to commencing any work under the Contract.
- 18.4. LockNet may charge interest on overdue payments at the rate of 12% per annum, compounding daily, for each and every day that the account remains unpaid and overdue.



- 18.5. LockNet may use the services of a credit agency from time to time to obtain information concerning the Customer and its Directors (if any) in order to assess the Customer's credit worthiness.
- 18.6. Any expenses, costs or disbursements incurred by LockNet in recovering or attempting to recover any outstanding payment including debt collection agency fees and solicitor's costs shall be paid by the Customer.
- 18.7. The Directors of the Customer jointly and severally personally guarantee payment of tax invoices raised for Goods delivered or Services provide pursuant to a Contract incorporating these Terms and Conditions and must provide an executed standard form of guarantee used by LockNet should such guarantee be required.

## 19. DISPUTES

- 19.1. Procedure for resolving disputes.
- (a) The parties agree that all disputes relating to or arising out of a Contract incorporating these Terms and Conditions must be resolved in accordance with this clause 19.
  - (b) If a dispute arises, either party may give notice to the other party that must:
    - i. be in writing;
    - ii. state that it is a notice under this subclause 19.1(b); and
    - iii. include or be accompanied by detailed particulars of the dispute.
  - (c) If a notice is given under subclause 19.1(b), then a senior management representative of each of the parties (who must be capable of binding the party) must meet at least once within five (5) business days of receipt of the notice under subclause 19.1(b)(or such other time as the parties may agree) and use reasonable endeavors acting in good faith to resolve the dispute.
  - (d) If the dispute is not resolved by the senior management representatives within the period referred to in subclause 19.1(b), either party may commence legal proceedings for the resolution of the dispute.

## 20. CHANGE OF OWNERSHIP – REGISTERED PARTICULARS

- 20.1. The Customer shall no later than fourteen (14) days prior to any proposed changes of ownership, change in Registered Particulars, alteration, addition to the shareholding or directorship, notify LockNet of the proposed change, alteration or addition, to the Customer.
- 20.2. LockNet may, in its absolute discretion;

- (a) cancel the Contract and the Customer and the Customer's obligations stated under above clause 4.2 shall apply;
- (b) require the Customer to pay a deposit that it deems appropriate;
- (c) accept the changes mentioned above and continue to perform the Contract.

## 21. ASSIGNMENT

- 21.1. The Customer must not assign its rights or obligations under a Contract incorporating these Terms and Conditions of Sale without LockNet's prior written consent, which LockNet may give or refuse in its sole discretion.

## 22. GENERAL

- 22.1. This Agreement shall constitute the entire agreement between the parties and shall be governed and construed in accordance with the laws of Kentucky and the parties submit to the jurisdiction of the courts of Kentucky.

## 23. DEFINITIONS

**Claim** means any claim, notice, demand, suit, account, action, proceeding, arbitration, litigation (including reasonable legal costs), investigation or judgment of any nature, absolute or contingent, liquidated or unliquidated, whether known or unknown, whether directly or indirectly, or whether in Law, contract, tort, negligence, statute (including strict liability) or any claim for any liability, damages, losses, costs, expenses, expenditure, charge, compensation, payment, remedy, debt, lien, relief or payment, or relief from any obligation under the Contract.

**Contract** means a contract agreement comprising:

- (a) these Terms and Conditions of Sale;
- (b) the Customer's purchase order accepted by LockNet; and
- (c) subject to clause 3.1 any attachments or annexure specifically referenced in any written acceptance of a Customer purchase order.

**Customer** means the customer specified in an Application for Commercial Credit (or if there is no application the person placing the purchase order, or on whose behalf the purchase order is placed, with LockNet).

**Customer's Personnel** means the Customer's officers, employees, agents, suppliers and contractors (other than LockNet).

**Date for Delivery** means the date upon which the Goods are due to be made available for collection by, or delivered to, the Customer as confirmed by LockNet in writing upon receipt of order placement by the Customer.



**Goods** means the goods, if any, described on the purchase order which has been accepted by LockNet.

**LockNet** means Locknet LLC. having its registered office at 800 John C Watts Drive, Nicholasville, Kentucky USA 40356.

**LockNet's Personnel** means LockNet's officers, employees, agents, suppliers and contractors.

**Price** means the price set out in the purchase order as accepted by LockNet in writing, and any and all other costs and charges not specifically referenced on the purchase order, but which are incurred by LockNet or incidental to the supply of the Goods and/or performance of the Services and specified as additional and/or recoverable costs pursuant to these Terms and Conditions of Sale.

**Services** means the services, if any, described on a purchase order that has been accepted by LockNet.

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