

# Hamilton Locksmiths

## TERMS OF TRADE

### Interpretation

“**Good Faith**” means honesty in fact in the conduct or transaction concerned, and is a notion that is extended to include negotiations precedent or subsequent to any agreement to supply goods and services.

“**Business Day**” means any day other than a Saturday, Sunday or Public Holiday, and also between the hours of 8:30 am and 5.00 pm.

“**Reasonable time**”. Whenever any agreement between us requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by our consent. What is reasonable time for taking any action depends on the nature, purpose and circumstances of such action, recognizing that Time is of the Essence in determining any particular course of action and shall be the primary consideration when interpreting the reasonableness of any particular situation.

“**Description of the Parties**”. Hamilton Locksmiths is the “seller”, that is the person who sells or contracts to sell goods and services. The client is the “Buyer”, that is, the person who buys or contracts under the authority of another, whether expressly or impliedly, to buy goods or services.

“**Goods**” means those things which are moveable and have been identified and referenced in some way by the parties, and have been supplied by either of the parties in any way whatsoever, including goods which at the time of sale or subsequently, are to be affixed to real property, whether or not severable there from. Goods must both exist and be identified before any interest in them can pass.

“**Services**” means work, skill, use of intellectual equipment, services and labour, including but not limited to, services furnished in connection with repair alteration, or improvement in a premises or motor vehicle, or services furnished in connection with the sale and repair of goods. The supply of services may be based upon a supply of goods component or vice versa.

The transactions contemplated hereunder may be for the supply of goods or services or may be some combination of both

### Payment

1. The Buyer must pay the price indicated on the invoice for the goods or services issued by the seller. Any price estimate made by the seller or any agent or employee of the seller or contained in advertisements or flyers or price lists or other similar matter, is not binding on the seller and the buyer accepts and acknowledges that the price of the goods and services will be that as set out in the sellers invoice. However if the buyer satisfies the seller that the invoice is in error then the seller will issue a credit for the difference. Any price quotation will be binding on the seller only if the quotation is in writing and only so far as the expiry date expressly written on the quotation. Any verbal quotation, whilst every reasonable effort will be made to keep within it, shall nevertheless be not binding on the seller.

2. The seller reserves the right to vary the price of the goods or services ordered by the buyer to take account of (a) errors in the formulation of a quotation (b) finding that the work required is different to the work ordered or expected, (c) changes in the cost of goods or the type of goods required for completion. Where the quoted or estimated price varies significantly from that required, the seller will make every reasonable effort to contact the buyer for authorization. Where it is not possible to contact the seller for authorization, then the buyer will rely upon the sellers good judgement to effect services and supply appropriate goods.
3. The Buyer agrees to pay on demand all costs (including without limitation, legal fees as between solicitor and own client) incurred by the seller or the sellers agents relating to the recovery of any amounts payable by the buyer to the seller under these terms of trade.
4. All payments must be made in full without any deduction or right of set off or counter claim.
5. Where credit is granted casually without a regular credit account generated, payment is due immediately, and should be made within 7 days
6. Where a credit account is opened and a credit facility is granted, the account holder recognizes that (a) The granting of credit is a privilege, not a right and (b) All payments must be made on or before the 20<sup>th</sup> of the month following invoice and (c) any late payments without good cause may be counted as a breach of the terms of trade and may be considered an abuse of the credit privilege, subsequent to which the privilege of a credit account may be suspended or withdrawn.
7. Where payment is not made under the terms of clause 5 and 6, the seller will have the right take possession of such item of goods and otherwise exercise in relation to the goods any of its rights whether those rights are as owner and / or unpaid seller or otherwise and whether those rights are conferred by common law, contract, statute or in any other way. By way of taking possession of the goods and otherwise the seller shall have the right to enter any property whether occupied or not, where the goods are installed or are believed to be, and remove them forthwith without prior notice. This right of repossession shall not preclude any other remedy the seller may have in order to obtain payments in full or in part.

### **Delivery**

Delivery is deemed to be made:

1. When the buyer or the buyers agent is given possession of the goods at the sellers premises or elsewhere, or when the goods arrive at the buyers premises, whichever is the earlier .
2. On delivery, the goods are at the buyers sole risk and insurance becomes the buyers responsibility
3. The seller will choose the carrier and method of transportation of the goods, unless otherwise agreed in writing by the the seller. The seller will dispatch the goods where possible in one installment. Where this is not possible, the balance of the order will be back ordered and dispatched when it becomes available, unless the buyer has expressly ordered that back orders are not to be taken automatically.
4. Where the buyer requests a particular method of delivery, the cost of that delivery will be covered in full by the buyer from the point of dispatch of the goods or service by the seller.
5. Any estimates of delivery times agreed by the seller are made in good faith but remain estimates, not quotations or commitments and no delay in delivery will entitle the buyer to refuse to accept the delivery or cancel its order.

### **Shortages**

Liability for shortages in the quantity of the goods is limited to making up the shortages. No claim ofr shortages in quantity will be allowed unless the buy gives written notification of the shortage in writing within seven days of the delivery and gives the seller reasonable opportunity to investigate the claim.

### **Retention of title**

1. It is expressly agreed that ownership is reserved and legal and equitable title to and property in all goods supplied by the seller is and remains vested in the seller until payment in full has been

- received by the seller in respect of such goods and all other moneys owing by the buyer to the seller
2. Unless the buyer has sold the goods in the ordinary course of its business, the buyer will store the goods in such a way that they are clearly identified as the property of the seller and keep the goods in good order and condition.
  3. If Payment is not made in accordance with the provisions of this agreement, the seller and its agents are irrevocably authorized to enter any premises where the seller believes the goods may be, which may include the premises of any other party, for the purpose of recovering the goods. . The buyer will indemnify the seller on demand in respect of any cost or liability incurred by the seller in exercising its rights under this clause.

### **Sellers Liability and Maintenance Guarantee**

1. The buyer acknowledges that it must rely upon its own judgement as to the nature, quality and condition of the goods supplied by the seller and as to their sufficiency for any use or purpose and the buyer acknowledges that the seller is under no duty to ascertain the suitability of the goods for any purpose whatsoever. Any representations by the seller are made in good faith using the experience gleaned from the sellers experience but the buyer must use its own judgement as to the suitability of any goods supplied for its own purposes.
2. In the case of goods not manufactured by the seller, the buyer is entitled to only such benefits as the seller may receive under any guarantee given to the seller by the manufacturer of the goods. The seller will not be liable for any consequential or other damage.
3. If the goods are manufactured by the seller and the seller is otherwise ever liable to the buyer, the liability of the seller, arising from defect or non compliance of the goods is, limited to the replacement or the repair of the goods within the guarantee period stated by the seller, or otherwise within 12 months of the date of delivery of the goods provided that the liability of the seller is limited to the amount of the invoice price of the goods. At the termination of the guarantee period all liability on the sellers part ceases.
4. In respect of End consumers, the provisions of the Consumers Guarantees act 1993 and its amendments applies, however the expressed liability is 12 months from the date of supply for the goods used or installed, and 3 months for repairs to existing goods, where liability extends only to the invoiced cost of the separate components of that repair, and to the repaired component only.
5. In respect of buyers for the purpose of business or reselling, then the provisions and remedies of the Consumers Guarantees act 1993 does not apply, and are excluded. The provisions of clauses 1, 2, and 3, apply in this case.
6. The liability of the seller does not cover in any respect whatsoever any defect caused or contributed to by the buyer, whether by act, or omission to take steps in order to limit consequential loss, or any attempt to repair the defective goods or repair, where such a repair is done by any person or persons not previously authorized by the seller to make such repairs. Further there shall be no liability of the seller to any consequential loss so suffered to the buyer due to these elements of negligence.
7. If the seller elects to replace any defective goods or failed repair, the buyer will be responsible at its cost and at its risk for shipment of the defective goods to the sellers premises.
8. The sellers' liability under clause 4 is for the benefit of the buyer only and the seller has no liability to any purchaser of the goods from the buyer. The Buyer will indemnify the seller against any claims by the buyers' employees, agents, purchasers or other persons in respect of loss or damage or injury arising from any defect or non compliance of the goods or repair.

### **Personal Property Security Act**

1. The buyer grants to the seller a security interest in the goods and the proceeds of the goods and the buyer acknowledges that the agreement creates a purchase money security interest in the goods and the proceeds of the goods. The buyer will, if the seller requests, sign any documents (including any new agreements), provide all necessary information and do anything else required

- by the seller to ensure that the seller's purchase money security interest is a perfected security interest.
2. The buyer will not enter into any security agreement that permits any other person to register any security interest in respect of the goods and repairs or the proceeds.
  3. If the goods are for the buyer's business use the buyer agrees, to the extent Part 9 of the PPSA applies, that it will have no rights under Part 9 (Enforcement) of the PPSA. For example, but without limitation:
    - (a) The buyer will have no rights under sections 114(1)(a) (to receive a notice of sale), section 117(1)(c) (relating to distribution of surplus) and section 113 (reinstating the agreement)
    - (b) The buyer waives its right under section 116 (to receive statement of account), section 119 (to recover surplus) and sections 120(2) and 121 (to receive notice of any proposal to retain the goods and object to any proposal)
  4. The buyer waives its right under the PPSA to receive a copy of any verification statement or financing charge statement.
  5. The buyer agrees that where the seller has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.
  6. For the purpose of this clause "PPSA" means the Person Property Securities Act 1999 and any amendments thereto.
  7. The expressions used in this section have the meanings given to them under or in the context of the PPSA.

## **General**

1. The Seller may, and the buyer may not vary or replace the agreement and it will be a condition of the seller continuing to supply goods to the buyer that the buyer will accept any variation or update of this agreement by publication of the new agreement text on the website [www.hamiltonlocksmiths.net.nz](http://www.hamiltonlocksmiths.net.nz) . , provided that such notification of the update has been given to the buyer.
2. To be effective, any waiver of any or all of the rights and terms and conditions in the agreement by the seller must be in writing.
3. The buyer may not assign all or any of its rights or obligations under the agreement without the prior written consent of the Seller.
4. The seller is not bound, unless otherwise stated in the agreement, by any error or omission on any invoice order form, or packing slip or other document or statement issued by the seller.
5. Where the seller has rights and remedies at law or otherwise in addition to the rights set out in this agreement, those rights and remedies will continue to apply
6. Where any clause of this agreement is deemed to be unlawful, invalid, or superceded by legislation, then the other clauses will still continue to be valid and lawful.
7. The buyer irrevocably permits the seller or any person authorized by the seller in writing, upon giving reasonable notice to enter any premise where the goods are reasonably believed to be held. The Buyer also agrees to indemnify and hold the seller harmless for reasonable costs of removal, enforcement, and legal action in respect of the removal of the goods the subject of this agreement.
8. Notices, demands, or requests provided for or permitted to be given must, at all times, be in writing and may be given to the address identified on the most recent transaction document by:
  - (a) Personal delivery
  - (b) Facsimile transmission
  - (c) Email
  - (d) Courier with receipt confirmation
9. The buyer and the Guarantor jointly and severally acknowledge and agree that the seller is authorized to make approaches to any credit reporting agency or any other person to obtain a report about the creditworthiness of either the buyer or the guarantor or both. The Buyer and Guarantor jointly and severally authorize the seller to engage in the exchange of information with a credit reporting agency or other such parties as are necessary to give effect to the contract and to

the the ongoing relationship of the parties hereto. The Buyer and the Guarantor jointly and severally acknowledge that the information referred to in the preveious paragraph may include information about the creditworthiness, credit standing, credit history, credit capacity, and credit providers of either the buyer the guarantor, or both.

## Application for Credit

CONFIDENTIAL – (this form including guarantee must be completed in full in order to process)

APPLICATION FOR CREDIT TO: - **HAMILTON LOCKSMITHS**  
**439 GREY STREET**  
**HAMILTON EAST 3216**

**I/We hereby apply for a credit account and submit the following information**

**Trading Name** \_\_\_\_\_ **GST no.** \_\_\_\_\_

**Trading Address** \_\_\_\_\_

**Postal Address** \_\_\_\_\_

**Business Phone** \_\_\_\_\_ **Business Fax** \_\_\_\_\_ **Mobile** \_\_\_\_\_

**Email** \_\_\_\_\_ **Website** \_\_\_\_\_

**Bank Name** \_\_\_\_\_ **Branch** \_\_\_\_\_

**Type of Business**    SOLE TRADER    PARTNERSHIP    TRUST    COMPANY

### Proprietorship Details

1. Full Name \_\_\_\_\_ Home Phone \_\_\_\_\_

Residential Address \_\_\_\_\_

2. Full Name \_\_\_\_\_ Home Phone \_\_\_\_\_

Residential Address \_\_\_\_\_

3. Full Name \_\_\_\_\_ Home Phone \_\_\_\_\_

Residential Address \_\_\_\_\_

4. Full Name \_\_\_\_\_ Home Phone \_\_\_\_\_

Residential Address \_\_\_\_\_

**If a Company** Please complete the following:

Registered Company Name \_\_\_\_\_ Company Number \_\_\_\_\_

Registered Office Address \_\_\_\_\_

Address for Notices \_\_\_\_\_

**Trade References**

- 1. Name \_\_\_\_\_ Phone Number \_\_\_\_\_ -
- 2. Name \_\_\_\_\_ Phone Number \_\_\_\_\_
- 3. Name \_\_\_\_\_ Phone Number \_\_\_\_\_

**Business Contacts**

Sales Contact Name \_\_\_\_\_ Phone \_\_\_\_\_ Email \_\_\_\_\_

Accounts Name \_\_\_\_\_ Phone \_\_\_\_\_ Email \_\_\_\_\_

Store Manager Name \_\_\_\_\_ Phone \_\_\_\_\_ Email \_\_\_\_\_

**DECLARATION BY / FOR AND ON BEHALF OF THE APPLICANTS**

- 1. I / We declare and warrant that the applicant is neither bankrupt or insolvent, and has not committed any act of bankruptcy nor traded while insolvent within the previous six months.
- 2. I / We authorize the client to conduct such credit checks as deemed necessary at any time
- 3. I / We agree to be bound by the conditions of trade and general terms of trade.
- 4. I acknowledge and accept the terms of trade that forms part of this Application for Credit.

*If this application is signed on behalf of a Company, Partnership, or Trust, the persons executing this application warrants that they are duly authorized to sign.*

.....  
Signature of applicant

.....  
Signature of Witness

Date ...../...../.....

Date...../...../.....

.....  
Name (Please Print)

.....  
Name of Witness (Please Print)

.....  
Position

.....  
Occupation

**Personal Guarantee**

(Required for Companies, Trusts and Partnerships)

**The undersigned is jointly and severally liable for such obligations, commitments, and payments required of the Customer**

**THE GUARANTOR, INTENDING TO BE BOUND LEGALLY, HAS HEREUNTO SIGNED THIS AGREEMENT THE DAY AND YEAR FIRST WRITTEN ABOVE.**

.....  
Signature of Guarantor

...../...../.....  
Date

.....  
Name of guarantor (Please Print)

.....  
Position

**Witnessed By:**

.....  
Signature of Witness

...../...../.....  
Date

.....  
Name of Witness (Please Print)

.....  
Occupation



