

MyGARD Safe & Secure Monitoring and Patrol Response Services

Terms and Conditions of MyGARD plc

Section 1: General Provisions

1. Definitions and interpretation

1.1 In these Terms and Conditions, the following words shall have the following meanings unless the context provides otherwise:

“AMS”	the computer systems and security management software of MyGARD and its Agents upon which the Customer Security Response Instructions are held and is applicable to the provision of the Services;
“Personal Identity Number - PIN”	a 4 number PIN supplied by MyGARD at registration which can be used by a Customer to access their Account and to abort false alarms when the AMS places a check call to the Protected Premises;
“Account”	that part of the AMS dedicated to storing Security Response Instructions and processing alarms pertaining to a particular Customer;
“Agents”	Group 4 Total Security Limited (company number 02380900) or other Patrol Response security providers acting as agents or sub-contractors for MyGARD;
“Alarm Activation”	the signalled state of any detection device, which indicates that intrusion, attempted intrusion, or unauthorised interference has occurred. For the purposes of these Terms and Conditions, an Alarm Activation is taken to be one that emanates from the Alarm System installed in the Protected Premises via a telephone line;
“Alarm System”	any suitable intruder alarm system that is operated by the Customer at the Protected Premises, and which is capable of transmitting Alarm Activations to the AMS;
“Charges”	the amounts to be charged to and paid by the Customer under these Terms and Conditions, including the annual monitoring charge and any further charges that may become payable;
“Keyholder”	a person who is a Respondent but is also registered as holding keys for the Protected Premises, and who is requested to attend the Protected Premises after an Alarm Activation and/or upon the attendance of Patrol Response;
“Patrol Response”	a Group 4 Total Security Limited patrol containing a security officer or an identical service provided by a similar Agent. The Patrol Response service (where applicable) is either automatically dispatched as requested by the Customer's Security Response Instructions or optionally requested by a Respondent authorised to do so, after being informed of an Alarm Activation at the Protected Premises;
“MyGARD Alarm Number”	a unique number that MyGARD will supply to the Customer and must be sent by the Alarm System in order that MyGARD can identify it;
“Protected Premises”	all or part of the premises registered with MyGARD and its Agents where the monitored alarm system is situated;
“Respondent”	a Contact name with associated telephone number(s) and email address(es) stored within the AMS who is to be Contacted when an Alarm Activation occurs according to the Security Response Instructions;
“Security Response Instructions”	instructions supplied by the Customer to MyGARD detailing Respondents, and the manner and order by which they are to be informed;
“Services”	the services to be provided by MyGARD and/or its Agents as set out in sections 2 and 3;
“Memorable Word”	Password selected by the Customer which in connection with other information allows the Customer access to their Account;
“Acts of Terrorism”	any act, including but not limited to the use of violence or force and/or the threat thereof, of any person(s) committed for political, religious, ideological or similar purposes, including the intention to influence any government and/or to put the public in fear;
“Biological or Chemical Contamination”	contamination, poisoning or prevention and/or limitation of use of objects due to the effect of biological or chemical substances;
“Computer Virus”	any corrupting, harmful or otherwise unauthorised instructions or code that propagates through a computer system or network of whatsoever nature, including but not limited to Trojan horses, worms, bots or time and logic bombs;

1.2 These Terms and Conditions shall be binding upon and inure to the benefit of the Agents, and references to any party shall include its respective heirs, successors in title, permitted assigns and personal representatives.

1.3 In these Terms and Conditions unless expressly stated otherwise, words importing the singular number shall include the plural and vice-versa, words importing any particular gender shall include all other genders, reference to persons shall include bodies of persons whether corporate or incorporate, and words importing the whole shall be treated as including a reference to any part of the whole.

1.4 Any reference to a statute or statutory provision shall be construed as referred to that statute or statutory provision as it may from time to time be amended, modified or replaced and including all subordinate legislation from time to time made under it.

1.5 In the event of conflict between provisions of these Terms and Conditions, the provisions of sections 2 and 3 hereof shall prevail over the provisions of section 1 hereof.

2. Appointment

2.1 Subject to these Terms and Conditions and in consideration of the payment of the Charges, MyGARD undertakes to use reasonable endeavours to provide the Services to the Customer for the duration of the Agreement.

3. Limitation of liability

- 3.1 MyGARD shall indemnify the Customer for personal injury or death caused by the negligence of MyGARD's and its Agents' employees, in connection with the provision of the Services.
- 3.2 Subject to this clause, in no event shall MyGARD be liable for any claim:
- 3.2.1 for damages resulting from loss of data, goodwill, profits, loss of anticipated savings, nor for any damages that are an indirect or secondary consequence of any act or omission of MyGARD and its Agents, whether such damages were reasonably foreseeable or actually foreseen;
- 3.2.2 unless the Customer gives written notice of such claim to MyGARD within six months of the date on which the Customer first became aware, or ought reasonably to have become aware, of the facts giving rise to such claim; or
- 3.2.3 made by the Customer if the Customer shall be in breach of any of its obligations under these Terms and Conditions where such breach is a material and contributing cause of the loss, damage or liability giving rise to the claim.
- 3.3 Except as provided above in the case of personal injury and death, MyGARD's maximum liability to the Customer for any cause whatsoever (whether in the form of a refund, the additional cost of remedial services or otherwise) will be for direct costs and damages only, and will be limited to the lesser of:
- 3.3.1 the actual amount of damage or loss suffered by the Customer; or
- 3.3.2 the actual amount recovered by MyGARD under any policies of insurance in force from time to time; provided that if any such costs and damages arises as a result, wholly or in part, of the fault of the Customer (including its employees, agents and contractors), the amount payable by reason of this clause shall be reduced by such proportion as is just and equitable having regard to the degree to which the Customer is responsible.
- 3.4 MyGARD undertakes to effect and maintain a policy of insurance in respect of claims made by the Customer arising from MyGARD's negligence or breach of these Terms and Conditions for an insured sum of not less than £1,000,000.
- 3.5 All liability that is not expressly assumed in these Terms and Conditions is hereby excluded. These limitations will apply regardless of the form of action, whether under statute, in contract, tort, including negligence, or any other form of action. For the purposes of this clause, "MyGARD" includes its employees, sub-contractors, Agents and suppliers. The Customer acknowledges that MyGARD's employees, sub-contractors, Agents and suppliers shall have the benefit of the limits and exclusions of liability set out in this clause in terms of the Contracts (Rights of Third Parties) Act 1999. Nothing in these Terms and Conditions shall exclude or limit liability for fraudulent misrepresentation.
- 3.6 All warranties not expressly stated in these Terms and Conditions, including any implied warranties of satisfactory quality or fitness for purpose are hereby excluded to the fullest extent permitted by the applicable law. In the absence of fraud, no oral or written information or advice given by MyGARD or its Agents shall create a warranty or give rise to any other liability other than is given in these Terms and Conditions.
- 3.7 The Customer acknowledges and agrees that the indemnities and limitations of liability set out in these Terms and Conditions are fair and reasonable having regard to the facts that:
- 3.7.1 the potential losses that might or could be caused as a result of any breach of the terms of these Terms and Conditions are greatly in excess and wholly disproportionate to the amount being charged by MyGARD for the provision of the Services;
- 3.7.2 MyGARD has no responsibility for, the installation of the Alarm System at the Protected Premises; and
- 3.7.3 MyGARD has no control over the actions of Respondents.
- 3.8 Recognise that it is the Customer's responsibility to maintain adequate insurance cover and security arrangements for the Protected Property and its contents.
- 3.9 If any such loss or damage occurs or any liability arises as a result wholly or in part at the fault of the Customer, its employees or agents, the amount which would otherwise have been payable shall be reduced to such an extent as it is just and equitable, having regard to the degree to which such fault is responsible for the loss, damage or liability in question.

4. Indemnity

- 4.1 The Customer shall indemnify and keep indemnified MyGARD against any claims in respect of loss, damage or injury to any person or property caused or resulting from a breach of the Customer's obligations as set out in these Terms and Conditions or as a result of the Customer's negligence.
- 4.2 The Customer agrees to indemnify and hold harmless MyGARD in respect of:
- 4.2.1 all claims made against MyGARD by any person or body (other than the Customer) of whatever nature for death or injury arising from any negligence on the part of MyGARD, its servants, agents or anyone else for whom MyGARD is responsible in law;
- 4.2.2 all claims, loss or actions brought against MyGARD arising from the Customer's use of the internet access facility to update information held on computer systems within the AMS. It is further agreed that where such a facility is granted to the Customer either for the direct input by the Customer into the Security Response Instructions or in writing to MyGARD, MyGARD accepts no responsibility for its accuracy;
- 4.2.3 all claims and expenses incurred by MyGARD in excess of MyGARD's contractual limit of liability where such claim and expenses arise, wholly or in part, as a result of the act or omission of the Customer (including its employees, agents and contractors).

5. Payment terms

- 5.1 The Customer shall pay all Charges to MyGARD immediately without deduction, withholding or set-off whatsoever, by cheque, direct debit or authorised credit/debit card, unless expressly agreed otherwise.
- 5.2 The Customer shall pay interest on any outstanding sum due under these Terms and Conditions in accordance with the provisions of the Late Payment of Commercial Debts (Interest) Act 1998, including payment of the fixed compensation payment as provided therein, from the due date until the actual date of payment, both before and after the date of any judgment.
- 5.3 If the Customer fails to make payment of additional charges on the due date, or the Customer's account is in arrears, then without prejudice to any other right or remedy available to MyGARD, MyGARD shall be entitled to disconnect all or part of the Services upon giving to the Customer not less than seven days' notice.
- 5.4 All sums payable unless otherwise stated, are inclusive of value added tax and any other tax or duty that may be levied from time to time by the Government or Customs & Excise. MyGARD reserves the right to adjust its Charges if these taxes are varied.
- 5.5 MyGARD reserves the right to amend the Charges at any time. MyGARD will notify the Customer of any such changes prior to them taking effect, provided that any increase in annual monitoring Charges will only take effect on each anniversary of the date of the Agreement. Where Charges are prepaid, the Charges levied will be those prevailing at the time of payment.

6. Termination by Customer

- 6.1 The Customer may terminate the Agreement or any section hereof upon giving MyGARD not less than one month's written notice to expire on an anniversary of the date of the Agreement.
- 6.2 Cessation of Services and disconnection of the Alarm System shall be without prejudice to any accrued liabilities of the Customer, or to the Customer's liability to fulfil its minimum commitment.

7. Duration of the Agreement and termination by MyGARD

- 7.1 The Agreement shall operate for a period of twelve months from the date of registration, and thereafter annually until terminated in accordance with the provisions of these Terms and Conditions.
- 7.2 MyGARD may terminate the Agreement or any section upon giving the Customer not less than one month's written notice at any time.
- 7.3 MyGARD may terminate the Agreement forthwith by giving written notice to the Customer if the Customer:
 - 7.3.1 fails to pay any Charges on the due date;
 - 7.3.2 is in breach of any of its obligations set out in these Terms and Conditions; or
 - 7.3.3 (including the Customer's officers, employees or related parties) gives to MyGARD and/or its Agents any false or misleading information, whether concerning the Protected Premises or otherwise, or any misrepresentation in connection with obtaining the Agreement or at any time during the continuance of the Agreement.
 - 7.3.4 In consequence or related to an Alarm Activation/s the Customer is abusive on the telephone to monitoring staff.
- 7.4 Upon termination of the Agreement for any reason, the Customer shall immediately pay to MyGARD the full amount of all monies then or thereafter due to MyGARD (together with any accrued interest).
- 7.5 The termination of the Agreement shall be without prejudice to any accrued rights of MyGARD and its Agents or the liabilities of the parties, and any provisions hereof which relate to or govern the acts, responsibilities and liabilities of the Customer hereto subsequent to such termination, shall remain in full force and effect.

8. Force majeure

- 8.1 MyGARD and its Agents shall not be liable to the Customer for any delay or failure to fulfil its obligations under these Terms and Conditions:
 - 8.1.1 where any such delay or failure is caused in whole or in part by Acts of Terrorism, Biological or Chemical Contamination, electronic data loss or Computer Virus, ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, regardless in all cases of any breach of these Terms and Conditions or other negligence by MyGARD and its Agents or employees or other event contributing concurrently or in any other sequence to such loss; or
 - 8.1.2 to the extent that any such delay or failure arises from causes beyond its control, including without limitation fire, floods, acts of God, acts or regulations of any Governmental or supranational authority, war, riot, severe weather conditions, exceptional traffic conditions or industrial disputes.

9. General

- 9.1 Subject to clauses 1.2 and 4.5 of section 1, the parties do not intend that any provision of these Terms and Conditions confers a benefit on any third party and the provisions of the Contracts (Rights of Third Parties) Act 1999 is excluded.
- 9.2 In the event that any provision of these Terms and Conditions is determined to be illegal, invalid or unenforceable, then such illegality, invalidity or unenforceability shall not affect the validity and enforceability of the remaining provisions of these Terms and Conditions, which shall be construed as if such illegal, invalid or unenforceable provisions were not part of these Terms and Conditions.
- 9.3 These Terms and Conditions and all the rights under it shall be personal to the Customer and the Customer shall not assign, transfer or sub-contract or in any manner make over or purport to assign, transfer or sub-contract or make over the Agreement or any part thereof without the prior written consent of MyGARD.
- 9.4 No failure of MyGARD to exercise any power given to it hereunder, or to insist upon the strict compliance by the Customer with any obligation or condition hereof and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of any of MyGARD's rights hereunder.
- 9.5 The Agreement constitutes the entire Terms and Conditions between the parties and supersedes all prior Terms and Conditions in connection with the subject matter hereof. Both parties hereby acknowledge that their only right of recourse shall be for breach of these Terms and Conditions (except in respect of fraudulent misrepresentation) and irrevocably and unconditionally waive any right they may have to claim damages and/or to rescind the Agreement for any misrepresentation, unless such misrepresentation was made fraudulently. No variation or waiver of any of the provisions of these Terms and Conditions shall be binding unless in writing and signed by a duly authorised officer or employee of MyGARD.
- 9.6 Any notice required to be given hereunder by any party shall be sent by prepaid post and shall be deemed effective at the expiration of 48 hours after the same was posted, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and respectively put in the post.
- 9.7 The Agreement and all rights and obligations of the parties hereto shall be governed and construed in accordance with the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the English courts.

Section 2: Alarm Monitoring Terms and Conditions

1. Alarm monitoring services

- 1.1 The Services in respect of intruder alarm systems shall comprise of the:
 - 1.1.1 receiving of Alarm Activations transmitted from the Protected Premises to the AMS 24/7/365;
 - 1.1.2 providing of an Account within the AMS where the Customer enters their Security Response Instructions and Respondents Contact details;
 - 1.1.3 verification (when required following an Alarm Activation) that the alarm is genuine and then making all reasonable efforts to carry out the Security Response Instructions by attempting to inform by telephone, text message or email within a reasonable time to the Respondents;
 - 1.1.4 provision of a facility for Customers to amend their Security Response Instructions directly via their Account held on the MyGARD website or by post, fax or e-mail to MyGARD customer services, such amendments coming into force upon having been acknowledged by MyGARD;
 - 1.1.5 informing of the Customer within a reasonable period, either by post or email of excessive false activations created by the Alarm System;
 - 1.1.6 continuing acceptance of the connection of the Alarm System to the AMS for the duration of the Agreement subject to these Terms and Conditions; and
 - 1.1.7 opportunity of Patrol Response attendance if the Customer is within designated areas covered by this service and has pre-registered for the service.

2. Performance and procedure

- 2.1 Following an Alarm Activation, MyGARD will attempt to verify that the alarm is genuine by telephoning the Protected Premises. If there is no verbal confirmation of a false alarm, and in the case of intruder and panic alarms, the correct PIN is not provided, then MyGARD shall assume the Alarm Activation to be genuine and shall carry out to the best of its ability the Security Response Instructions contained within the appropriate Account.

- 2.2 In carrying out the Security Response Instructions, MyGARD shall:
 - 2.2.1 make at least one repeat call attempt if a Respondent's phone is engaged;
 - 2.2.2 leave messages on answering machines or with persons other than the Respondent should they answer a call from MyGARD; and
 - 2.2.3 record the result of all Security Response Instructions and make these available for viewing by the Customer on the MyGARD website.
- 2.3 MyGARD annual monitoring Charges entitles the Customer to up to five Alarm Activations (including genuine, false and test activations by the Customer) during each twelve months (commencing on the date of the Agreement and each anniversary thereof). Any Alarm Activations in excess of five p.a. will be subject to the current extra charge per Alarm Activation. MyGARD reserves the right to suspend the monitoring services until such payment has been made.
- 2.4 MyGARD automatically monitors the frequency of Alarm Activations and may, at its absolute discretion, suspend a Customer's monitoring service if more than three false Alarm Activations are received within any seven-day period. In such cases, MyGARD will inform the Customer as soon as reasonably possible and shall re-activate the monitoring when the Customer indicates that the cause of the false alarm has been resolved. MyGARD will provide a test facility by which means the Customer can test the Alarm System is communicating correctly with the AMS but without carrying out the Security Response Instructions. After suspension of the service MyGARD will make a charge at current price list for reconnection of the monitoring service.
- 2.5 MyGARD reserves the right at its absolute discretion to suspend indefinitely the monitoring service to an Alarm System if in MyGARD's sole opinion the Alarm System continues to generate false Alarm Activations because either earlier false alarm problems have not been fixed satisfactorily or new false alarm problems arise. MyGARD will inform the Customer in writing within forty-eight hours of the suspension.
- 2.6 In the interests of service provision and receipt MyGARD will record all telephone conversations between the Customer or associated parties and MyGARD monitoring staff related to or in consequence of an alarm activation.

3. Customer's obligations

The Customer shall:

- 3.1 prior to connecting any Alarm System to the AMS:
 - 3.1.1 register their Alarm System on the MyGARD website or in writing and enter the MyGARD Alarm Number into the alarm panel;
 - 3.1.2 pay the annual monitoring Charge according to the prevailing Terms and Conditions and MyGARD's rates as in force from time to time;
- 3.2 inform MyGARD of the Security Response Instructions by entering the information in the Customer's Security Response Instructions via the MyGARD website or in writing via the post, fax or e-mail;
- 3.3 maintain the Alarm System in good working order, without unauthorised modification and take all reasonable steps to ensure that false alarms are not generated;
- 3.4 ensure that the equipment is connected to an operational telephone line and recognise that any connection and call charges are the responsibility of the Customer.
- 3.5 keep all passwords, personal identity numbers, telephone numbers and the like supplied by MyGARD confidential;
- 3.6 inform and keep up to date a means by which MyGARD can Contact the Customer;
- 3.7 ensure that they have the permission of all Respondents and Keyholders and that they are aware of the Services and the possibility that MyGARD may Contact them;
- 3.8 do nothing that may cause or facilitate the cause of harm to the AMS or any aspect of the Services, and inform MyGARD immediately if he/she becomes aware of any attempts by any third party to cause harm to the AMS, Services or any of MyGARD's customers; and
- 3.9 co-operate with MyGARD and its Agents, employees and contractors in order that the Services can be effectively delivered.
- 3.10 Remove a Contact if a complaint is made by MyGARD.

4. MyGARD's obligations

- 4.1 MyGARD shall be under no obligation whatsoever to examine, enquire into or inspect any of the Alarm Systems or to inspect the relevance, accuracy or any other aspect of such systems, notwithstanding any obligations of the Customer as set out in these Terms and Conditions.
- 4.2 Nothing in these Terms and Conditions shall, nor shall the commencement or continuation to supply the Services, be construed or taken to imply that MyGARD undertakes to prevent loss or damage (of whatever nature) to the Protected Premises.

Section 3: Patrol Response Terms and Conditions

1. Patrol Response services

- 1.1 MyGARD and its Agents shall use reasonable skill and care in the provision of Patrol Response and security Services in accordance with good industry practice.
- 1.2 MyGARD shall be liable to pay damages in respect of loss or damage suffered by the Customer as a direct result of any material breach by MyGARD and its Agent of its contractual obligations arising from the provision of Services pursuant to section 3, but the total liability of MyGARD shall not exceed that as set out in clause 4 of section 1.
- 1.3 The Patrol Response services are shared with other customers and may therefore be interrupted or delayed temporarily if an incident detains the Patrol Response. MyGARD and its Agents can only guarantee that the Patrol Response can remain at the Protected Premises for one hour. However, reasonable endeavours will be made to provide cover in excess of this period, if required.

2. Confidentiality

- 2.1 MyGARD and its Agents shall take all reasonable precautions not to disclose to any third party any confidential information on the security arrangements or the business of the Customer unless obliged to by law. This obligation will not apply to information that becomes public knowledge through no fault of MyGARD and its Agents.

3. Performance and procedure

- 3.1 MyGARD control centre will dispatch a Patrol Response Officer when the AMS gives instructions.
- 3.2 The cost of the 1st hour of the Patrol Response Officer commences when he sets out for the property and ends when he leaves the property.
- 3.3 Any additional time required above an hour is charged by the ¼ of an hour.
- 3.2 MyGARD or its Agents shall check the Protected Premises from the outside, as far as is reasonably possible and where access is available, for sign of any damage caused by a break-in or attempted break-in.
- 3.3 If the Keyholder for the Protected Premises should attend MyGARD or its Agents shall at their absolute discretion enter the Protected Premises and, where reasonable and access is available, check for any damage caused by a break-in.
- 3.4 MyGARD or its Agents shall inform the police and the Customer if there is any clear and obvious sign of a break-in.
- 3.5 MyGARD or its Agents shall record the results of their attendance at the Protected Premises in the AMS.

3.6 MyGARD or its Agents shall arrange for the Protected Premises to be made secure at the Customer's expense if the premises have been damaged.

4. Customer's obligations

- 4.1 The Customer agrees that all information disclosed or to be disclosed to MyGARD and its Agents is or will be true and not misleading in any material respect. MyGARD and its Agents will rely on, and will not independently verify, the accuracy and completeness of any information supplied by the Customer. The Customer shall be responsible for informing MyGARD and its Agents of any changes in the information originally presented to it.
- 4.2 The Customer will notify MyGARD and its Agents of any dishonest, wrongful or negligent acts or omissions of MyGARD and its Agents or employees in connection with the Patrol Response services as soon as possible after the Customer becomes aware of them.
- 4.3 The Customer will not cause or permit any third party to make use or benefit from the Services in any way.
- 4.4 The Customer warrants that the Protected Premises and any other locations at which MyGARD, its Agents and/or employees may visit in pursuance of the Services are safe.
- 4.5 The Customer shall take all reasonable precautions not to disclose to any third party any confidential information on its security arrangements or the Patrol Response services. This obligation will not apply to any information that becomes public knowledge through no fault of the Customer.
- 4.6 The Customer shall complete a variable Direct Debit to enable MyGARD to collect, if applicable, any attendance charges incurred after an Alarm Activation.

5. MyGARD's obligations

- 5.1 Nothing in these Terms and Conditions shall, nor shall the commencement or continuation to supply the Services, be construed or taken to imply that MyGARD undertakes to prevent loss or damage (of whatever nature) to the Protected Premises.