

## TERMS AND CONDITIONS

### 1. Terms & Conditions – Definitions

- 1.1 Customer means any person, organisation, or other entity that has requested the supply of Goods from the Seller as stated on any order, invoice or document;
- 1.2 Goods mean any goods or Services (as that term is defined below) available for sale by the Seller to the Customer, at the Customer's request;
- 1.3 Order means any order made by the Customer from the Seller for the supply of Goods;
- 1.4 Quotation means any quotation issued by the Seller to the Customer for the supply of Goods;
- 1.5 Price means the price payable for the supply of Goods in accordance with clause 4;
- 1.6 Seller means Garage Doors and More (Aust) Pty Ltd (ABN 32 601 193 686);
- 1.7 Services mean any services to be rendered by the Seller to the Customer, at the Customer's request; and
- 1.8 Terms means these terms of trade which apply to any supply of Goods by the Seller to the Customer.

### 2. Supply of Goods / Supply and Installation of Goods.

- 2.1 The Seller may issue a Quotation upon the Customer's request or otherwise accept an Order for the supply of Goods from the Customer.
- 2.2 Any Quotation issued by the Seller remains open for acceptance from the time stated on the Quotation or otherwise for 30 days unless withdrawn earlier. All Quotations are estimates only and are subject to withdrawal, correction or alteration at any time prior to the Seller's acceptance of the Customer's request. All amounts and prices stated on the Quotation are as at the date of the Quotation.
- 2.3 An Order shall identify the goods or services ordered and the quantity required and refer to any Quotation pursuant to which the Order is made.
- 2.4 The Seller may supply, and the Customer must accept goods/services which vary from the Goods ordered by the Customer so long as such variations are not material.

Any variation of an Order requested by the Customer is only accepted if the Seller agrees in writing.

2.5 The Seller may cancel or terminate any Order at any time without cause, in the Seller's absolute discretion and in that event, the Seller shall repay the Customer any money paid by the Customer and the Seller is not liable for any loss or damages in any respect arising from any cancellation.

2.6 The Seller reserves the right, whether or not an Order has been accepted and without notice to the Customer to withhold supply to the Customer and will not be liable for loss or damage resulting directly or indirectly from such action, including if the services cannot be rendered for any reason whatsoever, if the Customer is in default of these Terms or if the Seller has determined in its absolute discretion that credit should no longer be extended to the Customer.

2.7 If the Customer cancels and Order, the Customer remains liable and shall indemnify and keep indemnified the Seller for any and all loss is suffered (whether direct or indirect) by the Seller as a direct result of the cancellation (including but not limited to loss of profits).

### 3. Acceptance

3.1 The Customer warrants that it has the power to enter into this agreement, is solvent and able to pay its debts as and when they fall due, and this agreement creates a binding and legal obligation and all information provided to the Seller by the Customer is true and correct in all material respects.

3.2 The Customer acknowledges these Terms apply to any Quotation or Order or other supply of Goods and the Customer accepts the Terms without amendment and agrees to be bound by them.

3.3 The Customer agrees that the Terms apply over any other document or agreement to the extent of any inconsistency.

3.4 If the Customer is the trustee of a trust, then in addition to that entity the trustee agrees to bind all trusts of which the entity is a trustee from time to time.

3.5 The Customer acknowledges that the Seller may make changes to these Terms from

time to time. If the Seller makes changes, it will notify the Customer in writing before they take effect. The Customer will be deemed to have accepted the changes it orders further Goods or makes payment for Goods after the date of notification.

#### 4. Payment, Credit and Price

4.1 The Price is the price determined by the Seller, in its absolute discretion, the price in accordance with the Quotation, the price on any invoices rendered by the Seller or the Price as at the date of supply in accordance with the Seller's current price list. The Customer agrees if there is any change to cost or rates for insurance, duties, exchange rates, labour or any other amounts used to calculate the Price or amounts stated on the Quotation or if those inputs increase in cost then the Customer shall be liable for the increase and such increase forms part of the Price.

4.2 The Customer must pay a 50% deposit at the date of Order and the balance is due on the date of delivery of the Goods (unless prior written consent by the Seller).

4.3 Unless stated otherwise, the Price is exclusive of goods and services tax (GST).

4.4 The Customer agrees that GST at the prevailing rate at the date of invoice will be included in the amount due and payable on the Price and is payable by the Customer in full at the same time as payment of the Price. The Customer must also pay any other taxes, charges, duties or imports that may be applicable in addition to the Price, unless expressly included in the Price.

4.5 Unless stated otherwise, time for payment is of the essence and will be payable as nominated by the Seller, and may be altered or revoked at any time without notice to the Customer, either on or before the delivery of the Goods, seven (7) days following the date of any invoice provided by the Seller to the Customer or otherwise as stated on the invoice.

4.6 Payment must be made by cash, cheque, electronic payment, credit card or by any other payment method nominated by the Seller.

4.7 The Seller may charge to the Customer a fee for overdue payments or Customer bank fees imposed on payments including credit card payments.

4.8 The Customer acknowledges that if the Seller supplies the goods and/or service on

credit, then any credit provided is to be applied wholly or predominately for business purposes.

4.9 The grant of any credit facility or nomination of any credit limit is in the absolute discretion of the Seller. The Seller may vary, withdraw or suspend any credit facility at any time and without any liability to the Customer or any other party. The Customer agrees that if payment is outstanding to beyond the Seller's payment terms, the amount is immediately due and payable by the Customer and the Customer shall pay cash on delivery on all future Orders until any amount outstanding is paid to the Seller.

## 5. Unpaid Invoices, Interest and Costs

5.1 If invoices or monies outstanding are not paid in full by the due date for payment, the Seller may charge the Customer interest on the unpaid amount to be accrued daily from the date when payment becomes due until the date of payment at the rate of 10 per cent per annum.

5.2 The Customer is not entitled to set off, deduct or otherwise withhold payment of any amount due and owing to the Seller including where the Customer has disputed the invoice or alleged amounts are owed or will become owing by the Seller to the Customer.

5.3 The Customer is liable for all costs and disbursements incurred by the Seller or its appointed agents in recovering payment of any outstanding invoice or in enforcing its rights under these Terms, including, but not limited to, legal costs determined on a solicitor/own client basis, mercantile agents' costs or commission and bank dishonour fees.

5.4 The Seller is entitled to retain any goods or other documents held on the Customer's behalf pending payment of any outstanding monies by the Customer.

## 6. Title

6.1 Until the Seller receives full payment in cleared funds of all monies due for all Goods supplied by it to the Customer, as well as all other amounts owing to the Seller by the

Customer and the Customer has complied with all obligations pursuant to these Terms:

- (a) title and property in all goods vests in the Seller and does not pass to the Customer;
- (b) the Customer must hold the goods as fiduciary bailee and agent for the Seller and must return the goods, including goods in transit which have not yet been delivered, to the Customer upon the Seller's request;
- (c) the Customer holds the benefit of its insurance of the goods on trust for the Seller and must pay to the Seller the proceeds of insurance in the event the goods are lost, destroyed or damaged;
- (d) the Customer must keep the goods separate from its goods and maintain the Seller's labelling and packaging;
- (e) the Customer must not charge or otherwise grant an interest over the goods while they remain the Seller's property;
- (f) the Customer must not convert, process or otherwise commingle the goods but if the Customer does so, then it holds the commingled good on trust for the benefit of the Seller and must sell or dispose of the commingled good to the Seller, on the direction of the Seller;
- (g) the Customer may sell or dispose of the goods only in the ordinary course of business in its capacity as agent for the Seller and if the Customer sells or disposes of the goods then the Customer must hold the proceeds on trust for the Seller and deliver up the proceeds to the Seller on demand;
- (h) the Customer must hold the proceeds of sale of the goods on trust for the Seller in a separate account with a bank to whom the Customer has not given security however failure to do so will not affect the Customer's obligation as trustee; and
- (i) the Seller may without notice, enter any premises where it suspects the goods are and recover possession of the goods, notwithstanding that they may have been attached to other goods and not the property of the Seller, and for that purpose the Customer irrevocably licences the Seller to enter such premises and indemnifies the Seller from and against all costs, claims, demands, or actions by any party arising from such action.

6.2 The Seller is entitled to commence legal proceedings to recover any outstanding monies from the Customer regardless of ownership of the goods.

## 7. Risk and Insurance

7.1 Notwithstanding the passing of risk, all goods delivered by the Seller to the Customer remain the property of the Seller until all goods supplied by the Seller to the Customer have been paid for in full. If the goods are lost, damaged or destroyed after delivery but prior to ownership passing to the Customer pursuant to clause 6 the Seller is entitled to receive all insurance proceeds payable for the goods.

## 8. Delivery

8.1 The Seller accepts no responsibility or duty to deliver but may arrange delivery by such means and in such packaging as the Seller shall determine in its discretion and without liability at the Customer's cost and risk and to the address nominated by the Customer on the following basis:

- (a) the Customer shall pay all freight and other charges associated with the delivery and delivery may be made in instalments in the Seller's discretion;
- (b) If the Customer has provided reasonable notice of its specific requirements, the Seller shall make reasonable endeavours to meet those requirements and achieve delivery on or about that date, subject to the Seller's delivery schedule from time to time;
- (c) the Customer must take delivery of the goods whenever the goods are tendered for delivery and the Customer shall be present at the agreed place and time for delivery. If not present, the Seller may in its sole discretion, unload the goods at that place and in which case the goods will be at the sole risk of the Customer and the Seller will not be responsible for any claims, costs or losses;
- (d) the Seller does not represent that the goods will be available on that date and any date given for delivery is an estimate only and in the event that the Seller is unable to deliver the goods on that date, it shall not be liable for any loss (including consequential

loss) for any failure or a delay in delivery. The Seller is not liable for any amount payable by the Customer to a third party as a result of a failure or delay in delivery by the Seller due to any cause whatsoever; and

(e) the Seller may charge the Customer for frustrated delivery including where the Customer is unable to take delivery of the goods as arranged for an amount equal to the Seller's reasonable costs.

8.2 All the goods shall be paid for prior to delivery, irrespective of whether delivery is a part of the Price. In the Seller's discretion, the cost of delivery may be included in the Price or may be charged in addition to the Price.

## 9. Warranties

9.1 To the extent permitted by law, the Seller does not provide any warranty in the goods. The only warranties in relation to the goods are warranties provided by the manufacturer and not the Seller and to the extent that the rights in any manufacturer's warranties are required to be assigned to the Customer, the manufacturer's warranties are assigned, and title of those warranties passes with the goods. The Seller is not liable to the extent that any manufacturer is liable under a manufacturer's warranty, unless required by law.

9.2 The Seller expressly denies and excludes any warranties or conditions which would otherwise be implied to the maximum extent possible by law including but not limited to merchantable quality, suitability, fitness of purpose, quality, suitability, or otherwise. The Seller acknowledges that these Terms do not exclude any statutory warranties which may be implied pursuant to the Competition and Consumer Act 2010 (Cth).

9.3 For the avoidance of doubt, the Customer acknowledges and agrees that:

- (a) there is no warranty should the Customer have not payment of the Price; and
- (b) there is no warranty should the Customer fail to service any main entrance garage door within six (6) months of instalment.

9.4 Further, the Customer acknowledges and agrees that:

- (a) the Customer shall rely on its own knowledge and expertise with respect of the purpose of the goods and any advice or assistance given by or on behalf of the Seller



shall be accepted at the Customer's risk and shall not be deemed to have been given as an expert or adviser or be otherwise relied on by the Customer; and

(b) the Seller shall not be liable nor responsible for any failure to comply with any requirements of the Customer or any other person (whether relating to manufacture, design, fabrication, installation and/or any other particulars provided with respect to the intended use of any goods or otherwise) which are not precisely and accurately communicated in writing to the Seller prior to agreement for supply of Goods.

## 10. Defects and Return of Goods

10.1 The Customer shall inspect the goods immediately upon delivery and carry out any tests which a prudent Customer would carry out and use their best endeavours to minimise loss and damage arising from the defect.

10.2 All claims for credit for damaged, defective or short delivered goods must be notified to the Seller immediately. The Customer shall give written notice to the Seller of any alleged defect, damage, fault, irregularity, shortage of quantity, failure to comply with description or Quotation within 5 business days from the date of delivery and provide full particulars of the claim made.

10.3 The Seller must be given reasonable opportunity to take samples, inspect, test the goods in respect of which the claim is made, otherwise the Customer shall not be entitled to any credit. Unless otherwise agreed, no return or request for credit will be approved until the Seller by its representative has inspected the goods on which the credit is claimed and agrees that the goods are defective. Until this inspection, the Customer is responsible for maintaining proper care of the goods and if this does not occur, the Seller reserves its rights not to accept the claim.

10.4 If the Customer does not make any claim pursuant to clause 10.2, the Seller does not accept any claims and the Customer is deemed to have accepted the goods and the Customer is not entitled to reject the goods or claim any remedy whatsoever (including but not limited to damages) against the Seller. The Customer specifically agrees that if no claim is made that it agrees that the quantity of the goods stated to have been delivered on the delivery docket or invoice shall be deemed correct.



10.5 The Seller is not obliged to accept the return of non-defective goods or to provide a refund however, the Seller may do so in its sole discretion and if the Seller does not agree then the Customer shall not be entitled to cancel the whole or part of any Order and the Customer shall indemnify the Seller against loss or damage suffered by the Seller. If the return is accepted by the Seller, in the Seller's absolute discretion, the Seller may impose a handling charge of an amount equivalent to 10% of the credit claimed in addition to any freight costs and the goods must be returned, at the Customer's cost, to the Seller premises from where they were purchased and in their original packaging (if applicable) in a similar condition to the condition of the goods on delivery.

10.6 Subject to the Competition and Consumer Act 2010 (Cth), the Seller is not liable for defective goods where the defect or damage was caused or partially caused by the Customer failing to properly maintain or store the goods, using the goods for a purpose other than what the good were design, the continuing use of the goods after the defect became apparent or if the defect or damage should have been apparent to a reasonably prudent user of the goods, failure to follow any directions or instructions in relation to the goods provided by the Seller or by fair wear and tear, accident or any event of force majeure.

10.7 The Customer acknowledges and agrees that goods which are custom made, goods damaged or lost in transit, goods specially ordered for the Customer and not on the usual stock list, or goods altered or damaged by the Customer shall not be accepted by the Seller for return or credit.

10.8 Notwithstanding anything contained in this clause 10, if the Seller is required by law to accept a return, then the Seller will accept the return of goods on the conditions imposed by law.

## 11. Release and Indemnity

11.1 The Customer hereby releases and indemnifies and agrees to keep the Seller indemnified from any and all costs, damages, liabilities, expenses or losses including indirect, consequential losses (including but not limited to loss of profit), that the Seller

may incur in relation to the Customer or any third party, where the cost, damage, liability, expense or loss is caused by or contributed to by the goods supplied or services performed, any defect or fault in workmanship or design or their use, a breach of these Terms or for any other reason whatsoever.

## 12. Limitation of Liability

12.1 The Customer agrees, to the fullest extent possible by law, in relation to any cost, damage, liability, expense or loss (including those contributed or cause by the Seller's negligence or breach of any condition or warranty), if the Customer is not a consumer pursuant to the Competition and Consumer Act 2010 (Cth), to limit any claim made to the Seller, in the Seller's absolute discretion to: the value of any express warranty provided by the Seller to the Customer or any warranty to which the Customer is entitled; replacement of the goods or services and/or the supply of equivalent goods; repair of the goods; repay the purchase price in the event that then payment has been received from the Customer; or payment of the cost of replacing, repairing or acquiring equivalent goods. In no circumstances shall the Seller be liable for any amount in excess of the Price.

12.2 If the Seller is required to replace the goods or remedy the services pursuant to the Competition and Consumer Act 2010 (Cth) but cannot do so for any reason whatsoever, the Seller may refund the Price, if the Price has been paid by the Customer.

12.3 The Customer specifically agrees that the Seller is not responsible for any damages caused either to the goods supplied or as a result of the malfunction of the goods in the event that such goods are in any way adapted to a use to which are they are not specifically intended or the goods have added to or have been added to components or placed in a container which is not recommended or approved by the manufacturer or supplier of the goods.

12.4 The Seller shall not be liable for any damages for personal injury or death, any damage to property and/or any contingent, consequential, direct, indirect, special or punitive damages whether due to negligent act or omission of the Seller or its employees or agents or otherwise and the Customer acknowledges this limitation of

liability and agrees to limit any claim accordingly.

12.5 No other term, condition, agreement, warranty, representation and/or understanding whether express or implied, in any extending to, otherwise relating to or binding upon the Seller other than these Terms is made or given by or on behalf of the Seller.

12.6 Notwithstanding anything in this clause 12, a Customer shall not be entitled to make any claim upon the Seller whatsoever if any amounts are outstanding from the Customer to the Seller.

### 13. Security

13.1 In order to secure the performance by the Customer of its obligations, the Customer, and where the Customer is unincorporated each proprietor of the Customer, hereby charges with payment of the moneys and compliance with all obligations owed by the Customer to the Seller all beneficial interests (freehold and leasehold) in real and personal property held now or in the future by the Customer or proprietor.

13.2 The Customer, and where applicable, each proprietor agrees that if demand is made upon it, him or her by the Seller, the Customer or, if applicable, that proprietor will immediately execute a consent to caveat, or a caveat or mortgage, as required by the Seller to secure the obligations pursuant to this clause 14. The Customer or, if applicable, each proprietor, irrevocably and by way of security appoints the Seller and any director, credit manager or solicitor engaged by the Seller to be its, his or her true and lawful attorney to give effect to this clause 14 including but not limited to execute and register all documents.

13.3 The Customer indemnifies the Seller in relation to all of its costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's right pursuant to this clause 14.

## 14. Statement of Debt

14.1 A certificate signed by a director, secretary, financial controller, credit manager or any other authorised person of the Seller shall be prima facie evidence of the indebtedness of the Customer to the Seller.

## 15. Privacy and Credit Information

15.1 The Customer irrevocably authorises the Seller to make enquiries, exchange, collect and use a Customer's personal information including credit information and information relating to property, business or other solvency matter from time to time as the Seller may deem necessary which may include enquiries with persons nominated as trade references, financiers, any other credit provider, credit reporting bodies, any government department and/or any similar or other organisation (Information Provider) for the following purposes:

- (a) obtaining information on the credit position of the Customer;
- (b) investigating the credit worthiness of the Customer in relation to the credit to be provided by the Seller; marketing purposes (unless the Customer has notified the Seller it wishes to opt out of direct marketing);
- (c) to allow the Seller to provide a credit facility for the supply of Goods to the Customer; to notify the credit provider of a default by the Customer;
- (d) and to a credit reporting body to obtain a credit report or to permit a credit reporting body to maintain or update the Customer's credit file.

15.2 The Customer acknowledges that the information exchanged under clause 17.1 may include any information in relation to the Customer's creditworthiness or credit history.

15.3 The Customer consent and irrevocably authorises the Information Provider to disclose any information about the Customer in their possession to the Seller; the Seller may use any information which it holds for the purposes listed in clause 17.1; and may disclose any of the Customers' personal information to any interested person (including overseas third parties) for any purpose listed in clause 17.1, to the extent permitted by

the Privacy Act 1988 (Cth) and the Australian National Privacy Principles (if applicable).

15.4 To the maximum extent permitted by law, the Customer agrees (unless the Customer otherwise withdraws consent), to waive all rights under the Privacy Act 1988 (Cth).

## 16. Default

16.1 Without prejudice to any other remedies available to the Seller, if the Customer becomes insolvent or appoints an administrator, receiver, receiver and manager, liquidator or trustee in bankruptcy or is in breach of any these Terms (including any term for payment), all monies become immediately due and owing to the Seller and the Seller may immediately:

- (a) terminate or suspend supply of Goods;
- (b) retain all monies paid and/or take immediate possession of goods which have not been paid for;
- (c) cease all future deliveries;
- (d) cancel all or any part of any order unfilled; and/or
- (e) recover from the Customer any loss of profits arising from the Customer's default.

16.2 If the Seller exercises its rights pursuant to clause 18.1, it is not liable to the Customer for any consequential loss or damages suffered by the Customer.

## 17. Customer Restructure

17.1 The Customer shall provide written notice to the Seller of any change to its structure or management including change of director, shareholder, partnership, trusteeship or management or its details (including changes to its name or address). If the Customer fails to comply then the Customer agrees to indemnify the Seller from any resulting loss.

## 18. Miscellaneous

18.1 Notices. A notice, demand, waiver, approval or other document given pursuant to these Terms must be in writing and may be given to the recipient by way of personal service, prepaid post, facsimile transmission or email transmission at the address of the party as provided from time to time.

18.2 Severance. If any provision or part of a provision of these Terms cannot be given effect or is declared void for any reason, the provision or part which cannot be given effect shall be severed and the remaining provisions shall remain valid, binding and enforceable on the parties.

18.3 Waiver. No rights under these Terms will be waived unless agreed in writing and signed by the Seller. The Seller does not waive a right if an extension or other forbearance is given to the Customer. No waiver of a provision of these Terms shall be construed as a continuing waiver of the provision. A waiver by the Seller of any matter does not prejudice its rights in respect of any matter. Any non-exercise or partial exercise of or any delay in exercising any right or remedy does not constitute a waiver of that right or remedy.

18.4 Variation. All Goods sold by the Seller are sold and supplied on these Terms, as amended from time to time by the Seller in its absolute discretion or otherwise agreed by the Seller in writing. The Customer agrees it is deemed to have notice of change to these terms and be bound by such variations as they appear on the Seller's website from time to time, whether or not the Customer has actual notice of any such variation.

18.5 Assignment. The Customer is not entitled to assign the benefits or obligations under this agreement to any entity without the Seller's prior written consent, which may be given in the Seller's absolute discretion. The Seller may assign all or any part of the benefits and obligations under this agreement without the requirement for the Customer's consent.

18.6 Jurisdiction. The provisions of these Terms and any agreement for supply of Goods between the Seller and the Customer shall be governed by the laws of the state of New South Wales and each party irrevocably submits to the non-exclusive jurisdiction of the courts of the said state.

18.7 Entire Agreement. These Terms supersede all previous agreements, discussions and representations between the Seller and the Customer and constitute the entire agreement in relation to the agreement for provision of Goods between the Seller and the Customer. All prior correspondence, negotiations or representations do not bind either party and either party is not entitled to rely upon them.

18.8 Counterparts. This agreement may be signed in any number of counterparts and each counterpart shall together constitute one agreement. This agreement may be executed and delivered by facsimile, electronically or by way of electronic signature and the receiving party may rely upon same as if it was an original document or signature.

