

REDCLIFFE GARAGE DOORS – TERMS & CONDITIONS OF TRADE

1. DEFINITIONS

In these terms and conditions:

“Seller” means Redcliffe Garage Doors ABN 43 554 125 338 along with its successors or employees and assigns and any person acting on behalf of it.

“Customer” means the customer specified on the Quote or Invoice (or if there is no Quote or Invoice, the person placing the order for Goods, or on whose behalf the Order is placed, with the Seller);

“Agreement” means the agreement between the Seller and the Customer comprising of these Terms and Conditions together with any Invoice or Quote.

“Australian Consumer Law” means Schedule 2 of the Competition and Consumer Act 2010 (Cth) and any other equivalent legislation (such as the Fair-Trading Acts (or equivalent legislation) in each State and Territory in Australia);

“Consequential Loss” means any loss or damage suffered by a party or any other person which is indirect or consequential, or which relates to loss of revenue, loss of income, loss of business, loss of profits, loss of goodwill or credit, loss of business reputation, future reputation or publicity, loss of use, loss of interest, damage to credit rating, or loss or denial of opportunity;

“Installation Date” means the date agreed between the Parties for the Goods to be installed by the Seller to the Customer at the Site.

“Defect” means a defect, flaw or imperfection in the Goods which prevents the Goods from being used for the purposes intended for such Goods or which makes the use of the Goods dangerous, but does not include anything which has been disclosed by the Seller as a feature or limitation of the Goods prior to the date of purchase, or any defect, flaw or any imperfection that is trivial or insubstantial;

“Site” means the place where the Seller’s Goods will be supplied;

“Servicing Works” means works supplied by the Seller to the Customer relating to the servicing of garage doors and related parts, which will be charged on a time spend basis, plus parts.

“Parties” means the Seller and the Customer;

“Party” means either the Seller or the Customer;

“Price” means the price payable for the Goods agreed between the Seller and the Customer, in accordance with clause 6 of this Agreement;

“Goods” means all products and services agreed to be supplied by the Seller to the Customer from time to time under this Agreement;

“GST” means any goods and services tax and any replacement or similar tax;

“GST Law” means A New Tax System (Goods and Services Tax) Act 1999 (Cth);

“Invoice” means the invoice issued by the Seller to the Customer setting out the amount to be paid by the Customer for the Goods purchased under this Agreement;

“Quote” means the quote issued to the Customer by the Seller setting out the scope of work and estimated Price for the Goods purchased as specified in clause 3 of this Agreement.

“PPSA” means the Personal Property Securities Act 2009 (Cth)

2. GENERAL

(a) To the maximum extent permitted by law and subject to sub-clause 2(c), this Agreement:

i. supersedes and excludes all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Goods including, but not limited to, those relating to the performance of the Goods or the results that ought to be expected from using the Goods; and

ii. overrides any documents exchanged between the parties whether or not such documents expressly provide that they override this Agreement.

(b) Subject to sub-clause 2(c), unless the Seller otherwise agrees in writing, this Agreement is the only agreement which shall apply to all Goods supplied by the Seller to the Customer.

(c) If there is an inconsistency between any other terms agreed by the Customer to the Seller in writing (including those documents referred to in clause 2(a)(ii)) and/or this Agreement, this Agreement will prevail to the extent of any inconsistency.

3. QUOTES

3.1 Seller Supply Quote

(a) The Seller may give the Customer a quote specifying the work required to be done in order to fulfil the Customer’s instructions and an estimate of the Seller’s charge for the performance of such work.

(b) The Quote may not cover any additional works or materials not specified therein and may not cover unforeseen works or alterations required in addition to works quoted.

(c) The Quote may not cover works or materials required to repair, replace or service any existing plumbing or building services or structures which is not in fair condition prior to quoted works commencing.

3.2 Acceptance by the Customer

(a) Where the Seller has given the Customer a Quote, the Seller need not commence work until the Quote has been accepted by the Customer.

(b) The Customer is taken to have accepted this Agreement where the Customer signs the Quote and/or these Terms and Conditions and/or accepts the Quote and/or these Terms and Conditions in writing in any form, for example, by email or text message.

(c) Quotes are valid for twenty-eight (28) days only, unless specified otherwise or an extension has been authorised by the Seller in writing.

4. VARIATIONS

(a) The Seller reserves the right to vary the Quote once the supply of Goods has commenced. The Customer will be notified at their earliest convenience of any variation and where practical and possible, approval sought to provide additional Goods, as the case may be. Where it is not practical and possible to obtain approval of a variation, the Customer agrees that the Seller shall be entitled to proceed to vary the Quote provided the Seller acts in good faith in the Customer’s best interest.

(b) For the removal of doubt, Customer approval is not a precondition to the Seller’s right granted by clause 4(a).

5. ADVICE

(a) Except for any guarantees, rights or remedies which cannot be excluded or modified under any law including the Australian Consumer Law, the Customer hereby acknowledges that the Customer has not relied on any service involving skill or judgment, or on any advice, recommendation, information or assistance provided by the Seller in relation to the Goods or their use.

6. PRICE AND PAYMENT

(a) At the Seller’s sole discretion, the Price shall be either:

i. as indicated on the Invoice provided by the Seller to the Customer; or

ii. the Price as at the date of installation of the Goods according to the Seller’s current price list;

iii. as indicated on the Quote provided by the Seller to the Customer (subject to clause 3); or

iv. with respect to Servicing Works, on a time spent basis in accordance with the Seller’s rates for Servicing Works.

(b) Payment may be made by cash, cheque, bank cheque, electronic/on-line banking (to the nominated bank account detailed on the Quote), credit card or by any other method as agreed to between the Customer and the Seller.

6.1 Deposit

(a) The Seller requires that the Customer pay to the Seller a deposit as indicated on the Quote or otherwise agreed to between the Parties.

(b) The Customer is to provide the Seller with a remittance advice confirming payment of the deposit as indicated on the Quote.

(c) The Customer acknowledges that the Seller is under no obligation to undertake any work until the deposit is received by the Seller in full.

6.2 Time for payment

(a) Time for payment for the Goods shall be of the essence, the Price will be payable by the Customer or the Seller on the date/s determined by the Seller, which may be:

i. at the time of booking;

ii. on installation of the Goods;

iii. before installation of the Goods;

iv. the date specified on the Quote or Invoice as being the date for payment; or

v. if 6.1(a)(i),(ii) and (iii) are not provided by the Seller to the Customer, seven (7) days following the date of the Invoice.

6.3 Set-off

(a) All payments required to be made by the Customer under this Agreement will be made free of any set-off, or counterclaim and without deduction or withholding. Any amount due to the Seller from time to time may be deducted from any monies which may be or may become payable to the Customer by the Seller.

6.4 GST

(b) Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

6.5 Interest

(a) The Seller reserves the right to charge the Customer interest at a rate of 2% per annum on any outstanding amount/s from the due date of payment until the date of full payment.

6.6 Damages

(a) The Customer must pay to the Seller any costs, expenses or losses incurred by the Seller as a result of the Customer’s failure to pay to the Seller all sums outstanding as owed by the Customer to the Seller

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including without limiting the generality of the foregoing any debt collection and legal costs incurred (on an indemnity basis) in enforcing payment.

7. DEFAULT

(a) If:

- i. the Customer defaults on any payments or is unable, or unable to state that the Customer is able, to pay the Customer's debts as and when they fall due;
- ii. the Customer is an individual and the Customer commits an act of bankruptcy or has a controller or trustee appointed in respect of the Customer's estate or any part of the Customer's property or assets;
- iii. the Customer is a company and the Customer passes a resolution for the Customer's winding up or entry into liquidation or an application for winding up is filed against the Customer;
- iv. a receiver, receiver and manager, controller or voluntary administrator is appointed over any part of the Customer's property or assets; or
- v. the Customer experiences any analogous event having substantially similar effect to any of the events specified above; then, subject to the operation of any applicable law, the Seller may, at the Seller's sole discretion, withhold or cancel any Goods without notice to the Customer and without prejudice to any other action or remedy which the Seller have or might otherwise have under this Agreement.

(b) In such circumstances, all moneys owing and outstanding to the Seller on any Invoice and irrespective of whether the due date on any Invoice has occurred or passed shall become immediately due and payable and, additionally, the Seller reserves the right to charge the Customer any and all expenses incurred by the Seller in order to recover the outstanding monies owed to the Seller pursuant to clause 7(a).

(c) Notwithstanding clause 7(a), the Seller may at all times in the Seller's sole and unfettered discretion and without being under any duty or obligation to assign reasons to such discretion, alter or terminate the Customer's credit limit or payment terms without notice. Payment term changes will not apply to orders already placed and will be effective on all future orders. Without limiting the generality of the foregoing, the Seller's decision shall be final and the Seller accepts no liability or responsibility for any loss (including Consequential Loss), howsoever arising, incurred by the Customer due to the operation of this condition.

8. NO WAIVER

(a) A power or right is not waived solely because the party entitled to exercise that power or right does not do so. A single exercise of a power or right will not preclude any other or further exercise of that power or right or of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

9. CANCELLATION

(a) In the event the Customer cancels the delivery or installation of Goods, the Customer shall be liable for any loss incurred by the Seller (including but not limited to, any loss of profits) up to time of cancellation.

(b) The Seller may cancel the delivery of or installation of Goods at any time, without cause and by giving written notice. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.

10. TERMINATION

(a) Either Party may terminate this Agreement, for convenience and without cause, by giving written notice to the other Party in accordance with clause 24. The Party terminating shall not be liable for any loss or damage whatever arising from such termination.

11. LIABILITY

(a) To the maximum extent permitted by law and subject to clauses 11(b) and 11(c):

- i. the Seller excludes all liability for any loss, however caused (including by the Seller's negligence), suffered or incurred by the Customer in connection with a breach of this Agreement or the supply of the Goods to the Customer in excess of the total value of the Order, Quote or Invoice which is the subject of the claim, whether or not the Seller was aware of the possibility of such loss to the Customer when this Agreement was entered into;
- ii. other than as set out in this Agreement, the Seller excludes all conditions, representations, warranties and guarantees, whether express or implied, by contract, trade or otherwise; and
- iii. notwithstanding any other clause of this Agreement, the Seller excludes all liability whatsoever to the Customer for any Consequential Loss relating in any way to the supply of Goods to the Customer.

(b) If the Australian Consumer Law confers the benefit of certain rights, representations, warranties, guarantees or remedies on the Customer which are not able to be excluded, restricted or modified except in limited circumstances, the Seller's liability for breach of any such right, representation, warranty, guarantee or remedy, subject to clause 11(c), is limited to the Seller (at the Seller's election):

- i. replacing the Goods or supplying equivalent goods;
- ii. repairing the Goods;
- iii. paying the cost of replacing the Goods or of acquiring equivalent goods; or
- iv. paying the cost of having the Goods repaired.

(c) If the Customer is a consumer for the purposes of the Australian Consumer Law the following statement applies: Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

(i) to cancel your service contract with us; and

(ii) to a refund for the unused portion, or to compensation for its reduced value. You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

12. FORCE MAJEURE

(a) The Seller is not liable for any failure to perform any of the Seller's obligations under this Agreement as a result of any event beyond the Seller's reasonable control including, without limitation, where the Seller is prevented or hindered from manufacturing, delivering or supplying the Goods as a result of any strikes, lockouts or other labour difficulty, inability to obtain any necessary materials, products, equipment, facilities or services from usual suppliers on usual terms, power or water shortage, accidents or breakdowns of plant, machinery, software, hardware or communication network. In such circumstances, the Seller may suspend performance of any obligations under this Agreement while the event continues. The Seller shall not incur any liability to the Customer in respect of such suspension.

(b) If any of the above events occur for more than 30 days, the Seller may, without liability, terminate any affected supply of Goods.

13. INSTALLATION

(a) Installation of the Goods is taken to occur at the time that the Seller (or the Seller's nominated carrier) delivers the Goods to the Customer's nominated address and the Seller installs the Goods, even if the Customer is not present at the address.

(b) At the Seller's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.

(d) The Seller will make all reasonable efforts to have the Goods delivered and/or installed on the Installation Date. However, except as regards payment, time is not of the essence under this Agreement and, except where the Seller has an obligation under the Australian Consumer Law, the Seller shall not be liable for any failure to instal or delay in installation for any reason.

(e) The Customer must notify the Seller of any rescheduling of the Installation Date 24 hours prior to the Installation Date.

(f) If the Customer fails to comply with 13(e) above, the Customer shall indemnify the Seller from additional costs or penalties incurred by the Seller as a result of the Customer's rescheduling of the Installation Date.

14. SITE ACCESS

(a) The Customer shall ensure that the Seller's access to the Site is clear, clean and uninterrupted until the Goods have been supplied and the Seller is paid in full.

(b) The Customer shall ensure that all fixing points (Noggins) are in place prior to the Installation Date (see the Noggins detail sheet attached to the Quote).

(c) If the Customer fails to comply with 14(a) or (b) above, the Customer shall indemnify the Seller from additional costs or penalties incurred by the Seller as a result of the Customer's delay to the installation of the Goods.

15. DEFECTS

(a) The Customer must examine the Goods for Defects upon installation and notify the Seller of any Defects in writing within seven (7) days of installation. Except where the Australian Consumer Law requires, if the Customer does not notify the Seller of any Defects within seven (7) days of installation the Customer shall be deemed to have accepted the Goods.

(b) The Customer must preserve any Goods that are found to have a Defect in the state in which they were installed and allow the Seller (or its nominated agent) access to the Customer's premises to inspect the Goods. If the Seller, upon inspection, agrees with the Customer that such Goods have a Defect, the remedies set out in clause 11(b) will apply.

(c) Notwithstanding clauses 15(a) and 15(b), the Seller has the right to rectify Goods for any reason, upon becoming aware of the issue, regardless of receipt of consent and/or notification from the Customer.

16. RISK AND TITLE

(a) Unless otherwise agreed in writing, all risk in and to the Goods purchased shall pass to the Customer when the Goods are loaded at the Seller's warehouse for delivery. Legal and equitable title in and to the Goods shall not pass to the Customer until payment in full for all Goods, and payment of all other amounts owing to the Seller under any other contract is made.

(b) The Seller's rights under this clause 16 secure:

- i. the Seller's right to receive the price of the Goods; and
- ii. all other amounts owing to the Seller under any other agreement.

(c) The Seller may use money received under this Agreement towards paying any part of the purchase price of the Goods, and any part of any other amounts owing to the Seller under any other contract, as the Seller chooses, including by paying a later instalment before an earlier instalment.

(d) Until full payment in cleared funds is received by the Seller for all Goods supplied by the Seller to the Customer, as well as all other amounts owing to the Seller by the Customer under any other agreement:

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i. subject to 16(d)ii, the Seller shall store the Goods separately and in such a manner that they are clearly identified as the Seller's property and ensure that the Goods are properly stored, protected, readily identifiable and insured;

ii. the Customer must not sell the Goods except in the ordinary course of the Customer's business;

iii. the Customer holds and agrees to hold the proceeds of any sale, lease or other dealing of the Goods for the Customer in a separate bank account with a bank over which the Customer has not given any security;

iv. in addition to any rights the Seller may have under Chapter 4 of the PPSA, the Seller shall be entitled at any time until title in and to the Goods passes to the Seller to demand the return of the Goods and shall be entitled without notice to the Customer and without liability to the Customer to enter, or cause its agent to enter, any premises occupied by the Customer (or any other premises where the Customer is holding the Goods) in order to search for and remove the Goods, and for this purpose the Customer irrevocably grants the Seller the right to enter such premises (including via the Seller's agent) and also indemnify the Seller from and against all loss suffered or incurred by the Seller as a result of exercising the Seller's rights under this clause. To the extent permitted by law, if there is any inconsistency between the Seller's rights under this clause 16(d)iv and the Seller's rights under Chapter 4 of the PPSA, this clause 16(d)iv prevails;

v. the Customer acknowledges and warrants that the Seller has a security interest in the Goods and any proceeds of the Goods until title passes to the Customer in accordance with this clause 16;

vi. for the purpose of section 19(2) of the PPSA, the Customer:

A. warrants that it has rights in the Goods, or the power to transfer rights in the Goods, to the Seller;

B. acknowledges that the Seller has given value for its security interest in the Goods, including by its providing or continuing to make available the Goods to the Customer; and

vii. if title in and to the Goods has not passed to the Customer in accordance with this clause 16, the Customer's right to sell the Goods shall immediately terminate upon the happening of any of the events stipulated in clause 7(a).

17. RELEASE

(a) Except where legislation which cannot be excluded (such as the Australian Consumer Law) would make this clause 17 illegal, or where the inclusion of this clause 17 would otherwise make the Seller liable to a penalty, the Customer releases the Seller from any claim that is made against the Seller for damages or otherwise in respect of any loss, damage, death or injury arising from negligence or otherwise caused directly or indirectly by or arising out of the use or condition of Goods sold to the Customer, except to the extent that such loss, damage, death or injury has been caused by the Seller.

18. GENERAL LIEN

(a) In addition to any right of lien to which the Seller may be entitled under the common law, the Seller shall be entitled to exercise a general lien over all items in its possession belonging to the Customer until the Customer has paid in full for all Goods supplied by the Seller to the Customer in accordance with this Agreement and all other amounts owing to the Seller under any other agreement. The Seller may in its sole discretion sell any item that is subject to a lien, provided that the Seller shall pay to the Customer any surplus proceeds that are realised by the Seller from a sale of any such items after discharging in full all monies outstanding to the Seller in respect of unpaid Goods, all other amounts owing to the Seller under any other contract and all reasonable costs of sale incurred by the Seller.

19. SEVERANCE

(a) If any provision of this Agreement or its application to any person or circumstance is or becomes invalid, illegal or unenforceable the provision shall, so far as possible, be read down to such extent as may be necessary to ensure that it is not invalid, illegal or unenforceable. If any provision or part of it cannot be so read down the provision or part of it shall be deemed to be void and severable and the remaining provisions of this Agreement shall not in any way be affected or impaired.

20. VARIATION AND ASSIGNMENT

(a) These terms may be varied and updated by the Seller from time to time upon the provision of 7 days' notice to the Customer. When the Customer offers to purchase Goods from the Seller, the Seller is offering to acquire them on the most up-to-date version of these terms as notified to the Customer by the Seller. The Customer may not assign the Seller's rights under this Agreement without the Seller's prior written consent.

21. GOVERNING LAW

(a) This Agreement is governed by the law of the State of Queensland. The Customer and the Seller submit to the non-exclusive jurisdiction of the courts of the State of Queensland, Australia.

22. DISPUTE RESOLUTION

(a) If a dispute arises between the Parties, then either party shall send to the other party a notice of dispute in writing adequately identifying & providing details of the dispute. Within seven (7) days after service of a notice of dispute, the Parties shall confer at least once, to attempt to resolve the dispute.

(b) At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered or sent by certified mail to the other party refer such dispute to a court of competent jurisdiction.

23. INTELLECTUAL PROPERTY

(a) The purchase of Goods under this Agreement does not confer on the Customer any licence or assignment of any copyright, patent, design or trademark, or any other intellectual property right (whether registered, registrable or not) that subsists in the Goods.

24. SERVICE OF NOTICES

(a) Any written notice given under this Agreement shall be deemed to have been given and received:

i. by handing the notice to the other Party, in person;

ii. by leaving it at the address of the other party as stated in this Agreement;

iii. by sending it by registered post to the address of the other Party as stated in this Agreement;

iv. if sent by facsimile transmission to the fax number of the other Party as stated in this contract (if any), on receipt of confirmation of the transmission;

v. if sent by email to the other Party's last known email address, at the time of transmission provided no message is received by the sender to the effect that the relevant email has not been transmitted successfully.

(b) Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post the notice would have been delivered.

25. ENFORCEMENT OF SECURITY INTEREST

(a) The Customer agrees that to the extent for the purposes of sections 115(1) and 115(7) of the PPSA, the Seller does not need to comply with the following provisions of the PPSA:

i. section 95 (notice of removal of accession), to the extent that it requires the Seller to give a notice to the Customer;

ii. section 121(4) (enforcement of liquid assets – notice to Grantor);

iii. section 125 (obligation to dispose of certain collateral);

iv. section 130 (notice of disposal), to the extent that it requires the Seller to give a notice to the Customer;

v. paragraph 132(3)(d) (contents of statement of account after disposal);

vi. subsection 132(4) (statement of account if no disposal);

(a) for the purposes of sections 115(10) and 115(7) of the PPSA the following provisions are excluded

i. section 142 (redemption of collateral); and

ii. section 143 (reinstatement of security agreement);

(b) for the purposes of section 115(7) of the PPSA, the Seller need not comply with sections 132 and 137(3);

(c) if the PPSA is amended after the date of this Agreement to permit a grantor and a secured party to agree to not comply with or exclude other provisions of the PPSA, the Seller may notify the Customer that any of these provisions are excluded, or that the Seller need not comply with any of these provisions, as notified to the Customer by the Seller; and

(d) the Seller agrees not to exercise the Customers rights to make any request of the Seller under section 275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.

26. NOTICES UNDER THE PPSA

(a) To the extent permitted by law, the Seller does not need to give the Customer any notice required by the PPSA (including a notice of a verification statement under section 157 of the PPSA) or any other law before a secured party exercises a right, power or remedy. However, nothing in this clause prohibits the Seller from giving a notice under the PPSA or any other law.

27. FURTHER ASSURANCES

(a) The Customer agrees to do anything the Seller reasonably asks (such as obtaining consents, getting documents completed and signed) to:

i. ensure that any security interest created under this Agreement is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective; or

ii. enable the Seller to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority the Seller requires (including a registration for whatever collateral class the Seller thinks fit and the Customer consents to any such registration or notification and agrees not to make an amendment demand); or

iii. enable the Seller to exercise rights in connection with the security interest. All costs and expenses arising as a result of actions taken pursuant to this clause 27 will be for the Customer's account.

28. PPSA REGISTRATION INFORMATION

The Customer agrees to notify the Seller:

(a) at least 14 days before the Customer does any of the following:

i. if the Customer does not have an ACN or ARBN, the Customer changes its name;

ii. the Customer becomes trustee of a trust with an ABN, or a partner in a partnership with an ABN, other than a trust or partnership referred to in this Agreement; and

(b) if the Customer has an ACN or ARBN (or is the trustee of a trust that has an ABN or is a partner in a partnership that has an ABN), as soon as possible after the Customer becomes aware that the number will change or cease to apply.