

# COMMERCIAL DOOR SERVICES LIMITED

## GENERAL TERMS & CONDITIONS OF TRADE

### 1. DEFINITIONS

- 1.1 'CDS' shall mean Commercial Door Services Limited and/or associated organisations; Sensormatic Automatic Doors Limited, Industrial Door Services a division of 'CDS' its successors and assigns or any person acting on behalf of and with the authority of Commercial Door Services Ltd, Sensormatic Automatic Door Services Ltd and/or associated organisations.
- 1.2 'Customer' means the person/s buying the Products, Goods or Services as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 'Product' shall mean:
- 1.3.1 All products supplied by Commercial Door Services Ltd to the Customer, and
- 1.3.2 All inventory of the Customer that is supplied by CDS and
- 1.3.3 All products supplied by CDS and further identified in any invoice issued by CDS to the Customer, which invoices are deemed to be incorporated into and form part of this agreement, and
- 1.3.4 All products that are marked as having been, supplied by CDS or that are stored by the Customer in a manner that enables them to be identified as having been supplied by CDS, and
- 1.3.5 All of the Customer's present and after-acquired Products that CDS has performed work on or to in which products, goods or materials supplied or financed by CDS have been attached or incorporated.
- 1.3.5 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 'Products' and 'Services'
- 1.4.1 Shall means all 'Products', 'Goods', 'Services' and advice supplied by Commercial Door Services Ltd to the Customer at the Customer's request from time to time (where the context so permits the terms 'Products' 'Goods' or 'Services' shall be interchangeable for the other) and shall include without limitation all third party supplied products and services and all charges for labour, hire charges, insurance charges or any fee or charge associated with the supply of products and services by CDS.
- 1.5 "Price"
- 1.5.1 Shall mean the Price payable for the Products as agreed between Commercial Door Services Ltd and the Customer in accordance with clause 4 below and shall mean the cost of the products and services as agreed between CDS and the Customer and includes all disbursements eg charges CDS pay to others on the Customer's behalf subject to clause 4 of this contract.

### 2. ACCEPTANCE

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Products by any of the afore mentioned organisations that form part thereof Commercial Door Services Ltd and / or Sensormatic Automatic Door Ltd.
- 2.2 These terms and conditions are meant to be read in conjunction with CDS Automatic Door Compliance Agreement (if applicable) and completed Credit Application Form. If there are any inconsistencies between the three documents then the terms and conditions contained in this document shall prevail.
- 2.3 These terms and conditions may only be amended with CDS's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and CDS.

### 3. CHANGE IN CONTROL

Customer shall give Commercial Door Services Ltd not less than fourteen (14) days prior written notice of any proposed change of ownership of Customer and/or any other change in Customer's details (including but not limited to, changes in Customer's name, address, contact phone or fax number/s, or business practice). Customer shall be liable for any loss incurred by CDS as a result of Customer's failure to comply with this clause.

### 4. PRICE & PAYMENT

- 4.1 At Commercial Door Services Ltd sole discretion the 'Price' shall be either:
- (a) as indicated on any invoice provided by CDS to the Customer; or
- (b) CDS's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 CDS reserves the right to change the Price if a variation to CDS's quotation is requested.
- 4.3 At CDS's sole discretion a non-refundable deposit may be required.
- 4.4 CDS may submit a detailed payment claim at intervals for work performed up to the end of each month. The value of work so performed shall include the reasonable value of authorised variations and the value of materials delivered to the site but not yet installed. Progress payments shall be due on the 20th of the following month in which the invoice is dated to the Customer's address or address for notices.
- 4.5 Time for payment for the Products shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due by the 20th of the month following date of invoice, to CDS's address or address for notices or nominated bank account.
- 4.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, and credit card or by any other method as agreed to between the Customer and CDS.
- 4.7 Unless otherwise stated the Price does not include GST. Price" Shall mean the cost of the products and services as agreed between CDS and the Customer and includes all disbursements eg charges CDS pay to others on the Customer's behalf subject to clause 4 of this contract.
- 4.8 In addition to the Price the Customer must pay to CDS an amount equal to any GST CDS must pay for any supply by CDS under this or any other agreement for the sale of the Products. 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.

## 5. QUOTATION

- 5.1 No quotation given by Commercial Door Services Ltd for products and services shall be valid unless it is recorded in writing and is signed for and on behalf of Commercial Door Services Ltd.
- 5.2 Where a quotation is given by CDS for products and services:
- (a) unless otherwise agreed the quotation shall be valid for sixty (60) days from the date of issue and
  - (b) the quotation shall be exclusive of products and services tax unless specifically stated to the contrary
- 5.4 CDS reserve the right to alter the quotation at any time because of circumstances beyond its control.
- 5.5 Where Products and Services are required in addition to the quotation the Customer agrees to pay for the additional cost of such Products and Services.

## 6. DELIVERY OF PRODUCTS

- 6.1 Delivery ("Delivery") of the Products is taken to occur at the time that:
- (a) Customer or Customer's nominated carrier takes possession of the Products at Commercial Door Services Ltd address; or
  - (b) CDS (or CDS's nominated carrier) delivers the Products to Customer's nominated address even if Customer is not present at the address.
- 6.2 At CDS's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 6.3 Customer must take delivery by receipt or collection of the Products whenever they are tendered for delivery. In the event that Customer is unable to take delivery of the Products as arranged then CDS shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.4 CDS may deliver the Products in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.5 Any time or date given by CDS to Customer is an estimate only. Customer must still accept delivery of the Products even if late and CDS will not be liable for any loss or damage incurred by Customer as a result of the delivery being late.

## 7. RISK ASSOCIATED WITH DELIVERY & INSTALLATION

- 7.1 Risk of damage to or loss of the Products passes to Customer on Delivery and Customer must insure the Products on/ or before Delivery.
- 7.2 If any of the Products are damaged or destroyed following delivery but prior to ownership passing to Customer, Commercial Door Services Ltd is entitled to receive all insurance proceeds payable for the Products. The production of these terms and conditions by Commercial Door Services Ltd is sufficient evidence of CDS's rights to receive the insurance proceeds without the need for any person dealing with CDS to make further enquiries.
- 7.3 If Customer requests CDS to leave Products outside CDS's premises for collection or to deliver the Products to an unattended location then such Products shall be left at Customer's sole risk.
- 7.4 Where CDS is required to install the Products Customer warrants that the structure of the premises upon which these Products are to be installed or erected is sound and will sustain the installation and work incidental thereto. Furthermore, has clear and free access to the work site at all times to enable them to undertake the works.
- 7.5 CDS shall not be liable for any claims, demands, losses, damages. Costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto unless due to the negligence of CDS.

## 8. TITLE

- 8.1 Commercial Door Services Ltd and Customer agree that ownership of the Products shall not pass until:
- a) Customer has met all of its other obligations and made payment in full for all Products and Services provided by CDS and of all other sums due to CDS by the Customer on any account whatsoever.
  - b) Until all sums due to CDS by the Customer have been paid in full, CDS has a security interest in all Products and Services.
  - c) Receipt by CDS of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 8.2 If the Products and Services are attached, fixed or incorporated into any property of the Customer, by the way of any manufacturing or assembly process by the Customer or any third party, title in the Products and Services shall remain with CDS until the Customer has made payment for all products and services, and where those Products and Services are mixed with other property so as to be part of a constituent of any Products and Services, title to these new products and Services shall be deemed to be assigned to CDS as security for the full satisfaction by the Customer of the full amount owing between CDS and the Customer.
- 8.3 The Customer gives irrevocable authority to CDS to enter any premises occupied by the Customer or on which products and services are situated at any reasonable time after default by the Customer or before default if CDS believes a default is likely and to remove and repossess any Product and Services and any other property to which Products and Services are attached or in which Products and services are incorporated. CDS shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort otherwise in any way whatsoever unless by statute such liability cannot be excluded. CDS may either resell any repossessed products and services and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Products and Services and credit the Customer's account with the invoice value thereof less such sum as CDS reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 8.4 It is further agreed that:
- (a) until ownership of the Products passes to Customer in accordance with clause 8.1 that Customer is only a Bailee of the Products and must return the Products to CDS on request.
  - (b) Customer holds the benefit of Customer's insurance of the Products on trust for CDS and must pay to CDS the proceeds of any insurance in the event of the Products being lost, damaged or destroyed.
  - (c) Customer must not sell, dispose, or otherwise part with possession of the Products other than in the ordinary course of business and for market value. If Customer sells, disposes or parts with possession of the Products then Customer must hold the proceeds of any such act on trust for CDS and must pay or deliver the proceeds to CDS on demand.
  - (d) Customer should not convert or process the Products or intermix them with other Products but if Customer does so then Customer holds the resulting product on trust for the benefit of CDS and must sell, dispose of or return the resulting product to CDS as it so directs.
  - (e) Customer irrevocably authorises CDS to enter any premises where CDS believes the Products are kept and recover possession of the Products.

- (f) CDS may recover possession of any Products in transit whether or not delivery has occurred.
- (g) Customer shall not charge or grant an encumbrance over the Products nor grant nor otherwise give away any interest in the Products while they remain the property of CDS.
- (h) CDS may commence proceedings to recover the Price of the Products sold notwithstanding that ownership of the Products has not passed to Customer.

## **9. PERSONAL PROPERTY SECURITIES ACT 1999 (“PPSA”)**

9.1 Upon assenting to these terms and conditions in writing Customer acknowledges and agrees that:

- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Products previously supplied by Commercial Door Services Ltd to Customer (if any) and all Products that will be supplied in the future by CDS to Customer.

9.2 **Customer undertakes to:**

- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which CDS may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, CDS for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Products charged thereby;
- (c) not register a financing change statement or a change demand without the prior written consent of CDS; and
- (d) immediately advise CDS of any material change in its business practices of selling the Products which would result in a change in the nature of proceeds derived from such sales.

9.3 CDS and Customer agree that nothing in sections 114(1) (a), 133 and 134 of the PPSA shall apply to these terms and conditions.

9.4 Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

9.5 Unless otherwise agreed to in writing by CDS, Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

9.6 Customer shall unconditionally ratify any actions taken by CDS under clauses 9.1 to 9.5

9.7 The following shall constitute defaults by the Customer:

### **9.8 Non Payment of any sum by the due date**

- a) The Customer intimates that it will not pay any sum by the due date.
- b) Any Products and Services are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Products and Services.
- c) Any Products and Services in the possession of the Customer are materially damaged while any sum due from the Customer to CDS remains unpaid.
- d) The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distrains against any of the Customer's assets.
- e) A court judgement is entered against the Customer and remains unsatisfied for seven (7) days.
- f) Any material adverse change in the financial position of the Customer. The Customer changes or proposes to change its name without first notifying CDS of the new name not less than 7 days before the change takes effect.

9.9 Where the company has the rights in addition to those in Part 9 of the PPSA, the Buyer agrees that those rights shall continue to apply and in particular will not be limited by section 109 of the PPSA.

## **10. SECURITY AND CHARGE**

10.1 In consideration of Commercial Door Services Ltd agreeing to supply the Products, Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by Customer either now or in the future, to secure the performance by Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

10.2 Customer indemnifies CDS from and against all CDS's costs and disbursements including legal costs on solicitor and own client basis incurred in exercising CDS's rights under this clause.

10.3 Customer irrevocably appoints CDS and each director of CDS as Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 9 including, but not limited to, signing any document on Customer's behalf.

## **11. CUSTOMER DISCLAIMER**

11.1 Customer hereby disclaims any right to rescind, or cancel any contract with Commercial Door Services Ltd or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to Customer by CDS and Customer acknowledges that the Products are bought relying solely upon Customer's skill and judgment.

## **12. DEFECTS**

12.1 Customer shall inspect the Products on delivery and shall within seven (7) days of delivery (time being of the essence) notify Commercial Door Services Ltd of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. Customer shall afford CDS an opportunity to inspect the Products within a reasonable time following delivery if Customer believes the Products are defective in any way. If Customer shall fail to comply with these provisions the Products shall be presumed to be free from any defect or damage. For defective Products, which CDS has agreed in writing that Customer is entitled to reject, CDS's liability is limited to either (at CDS's discretion) replacing the Products or repairing the Products.

12.2 Products will not be accepted for return other than in accordance with 12.1 above.

## **13. WARRANTY**

13.1 Subject to the conditions of warranty set out in clause 13.2 Commercial Door Services Ltd warrants that if any defect in any workmanship of CDS becomes apparent and is reported to CDS within twelve (12) months of the date of delivery (time being of the essence) then CDS will either (at CDS's sole discretion) replace or remedy the workmanship.

13.2 The conditions applicable to the warranty given by clause 13.1 are:

- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
  - (i) failure on the part of Customer to properly maintain any Products; or
  - (ii) failure on the part of Customer to follow any instructions or guidelines provided by CDS; or
  - (iii) any use of any Products otherwise than for any application specified on a quote or order form; or

(iv) the continued use of any Products after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or

(v) fair wear and tear, any accident or act of God.

(b) the warranty shall cease and CDS shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without CDS's consent.

(c) in respect of all claims CDS shall not be liable to compensate Customer for any delay in either replacing or remedying the workmanship or in properly assessing Customer's claim.

13.3 For Products not manufactured by CDS, the warranty shall be the current warranty provided by the manufacturer of the Products. CDS shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Products.

#### **14. CONSUMER GUARANTEES ACT 1993**

14.1 If Customer is acquiring Products or Services for the purposes of a trade or business in terms of section 2 and 43 of that Act, Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Products by Commercial Door Services Ltd to Customer.

#### **15. INTELLECTUAL PROPERTY**

15.1 Where Commercial Door Services Ltd has designed, drawn or developed Products for Customer, then the copyright in any designs and drawings and documents shall remain the property of CDS.

15.2 Customer warrants that all designs, specifications or instructions given to CDS will not cause CDS to infringe any patent, registered design or trademark in the execution of Customer's order and Customer agrees to indemnify CDS against any action taken by a third party against CDS in respect of any such infringement.

15.3 Customer agrees that CDS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Products which CDS has created for Customer.

#### **16. PERSONAL GUARANTEE OR COMPANY DIRECTORS OR TRUSTEES**

16.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for Commercial Door Services Ltd agreeing to supply Products and Services and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to CDS the payment of any and all monies now or hereafter owed by the Customer to CDS and indemnify CDS against non-payment by the Customer.

16.2 Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

#### **17. DEFAULT & CONSEQUENCES OF DEFAULT**

17.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Commercial Door Services Ltd sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

17.2 If Customer owes CDS any money Customer shall indemnify CDS from and against all costs and disbursements incurred by CDS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, CDS's collection agency costs, and bank dishonour fees).

17.3 Without prejudice to any other remedies CDS may have, if at any time Customer is in breach of any obligation (including those relating to payment) under these terms and conditions CDS may suspend or terminate the supply of Products to Customer.

17.4 CDS will not be liable to Customer for any loss or damage Customer suffers because CDS has exercised its rights under this clause.

17.5 Without prejudice to CDS's other remedies at law CDS shall be entitled to cancel all or any part of any order of Customer which remains unfulfilled and all amounts owing to CDS shall, whether or not due for payment, become immediately payable if:

(a) any money payable to CDS becomes overdue, or in CDS's opinion Customer will be unable to make a payment when it falls due;

(b) Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of Customer or any asset of Customer.

#### **18. CONFIDENTIALITY**

18.1 Each party agrees to treat all information and ideas communicated by the other party confidential and each agrees not to divulge it to any third party, without the other party's written consent.

18.2 The proposal and the information contained in the proposal provided by Commercial Door Services Ltd to Customer is done so on a "commercial in confidence" basis thereby, Customer agrees not to reproduce or provide said information in any manner to any third party without the prior written approval of CDS.

#### **19. CANCELLATION**

19.1 Commercial Door Services Ltd may cancel any contract to which these terms and conditions apply or cancel delivery of Products at any time before the Products are delivered by giving written notice to Customer. On giving such notice CDS shall repay to Customer any money paid by Customer for the Products. CDS shall not be liable for any loss or damage whatsoever arising from such cancellation.

19.2 In the event that Customer cancels delivery of Products Customer shall be liable for any and all loss incurred (whether direct or indirect) by CDS as a direct result of the cancellation (including, but not limited to, any loss of profits).

19.3 Cancellation of orders for Products made to Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

**20. COLLECTION & USE OF INFORMATION**

- 20.1 Customer authorises Commercial Door Services Ltd or Commercial Door Services Ltd agent to:
- (a) access, collect, retain and use any information about Customer;
    - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing Customer's creditworthiness; or
    - (ii) for the purpose of marketing products and services to Customer.
  - (b) disclose information about Customer, whether collected by CDS from Customer directly or obtained by CDS from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by Customer.
- 20.2 Where Customer is an individual the authorities under clause 20.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 20.3 Customer shall have the right to request CDS for a copy of the information about Customer retained by CDS and the right to request CDS to correct any incorrect information about Customer held by CDS.

**21. UNPAID CUSTOMERS RIGHTS**

- 21.1 Where Customer has left any item with Commercial Door Services Ltd for repair, modification, exchange or for CDS to perform any other service in relation to the item and CDS has not received or been tendered the whole of any moneys owing to it by Customer, CDS shall have, until all moneys owing to CDS are paid:
- (a) a lien on the item; and
  - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected Products.
- 21.2 The lien of CDS shall continue despite the commencement of proceedings, or judgment for any moneys owing to CDS having been obtained against Customer.

**22. DISPUTE RESOLUTION**

- 22.1 All disputes and differences between the Customer and Commercial Door Services Ltd affecting and concerning this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

**23. CONSTRUCTION CONTRACTORS ACT 2002**

- 23.1 The parties agree that for the purposes of the Construction Contracts Act 2002 where Commercial Door Services Ltd is a commercial provider this contract is not a commercial construction contract or a construction contract whether for work on a commercial or residential property and liability under this contract shall be in no way limited by any contract that the Customer may have entered into with a third party in relation to the supply of Product, Goods and/or Services to that third party or the payment by the third party to the Customer of any monies whether by progress payments or otherwise.

**22. GENERAL**

- 22.1 The failure by Commercial Door Services Ltd to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect CDS's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 22.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Courts of New Zealand.
- 22.3 CDS shall be under no liability whatsoever to Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by Customer arising out of a breach by CDS of these terms and conditions (alternatively CDS's liability shall be limited to damages which under no circumstances shall exceed the Price of the Products).
- 22.4 Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to Customer by CDS nor to withhold payment of any invoice because part of that invoice is in dispute.
- 22.5 CDS may license or sub-contract all or any part of its rights and obligations without Customer's consent.
- 22.6 Customer agrees that CDS may amend these terms and conditions at any time. If CDS makes a change to these terms and conditions, then that change will take effect from the date on which CDS notifies Customer of such change. Customer will be taken to have accepted such changes if Customer makes a further request for CDS to provide Products to Customer.
- 22.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 22.8 Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.