



1. Definitions
 1.1 "Vendor" means Commercial Door Services Ltd NZB 9429037599379 of 40 Durham Street South, Christchurch 8023 its successors and assigns or any person acting on behalf of and with the authority of Commercial Door Services Ltd.
 1.2 "Purchaser" means the person/s buying the Goods as specified in any invoice, document, or order, and if there is more than one Purchaser is a reference to each Purchaser jointly and severally.
 1.3 "Goods" means all Goods or Services supplied by the Vendor to the Purchaser at the Purchaser's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
 1.4 So far as applicable these Conditions also apply to the provision of any services including advice, design, procurement and installation accompanying the supply of, or provided in relation to, Goods or Services and, where the context allows, any reference to the supply of Goods includes the provision of such Services.
 1.5 Your acceptance of products and services from us means that you accept these Terms and Conditions. These Conditions (which can only be waived or varied in writing by the Company) will prevail over all conditions of the Customer to the extent of any inconsistency.
 1.6 "Price" means the Price payable for the Goods as agreed between the Vendor and the Purchaser in accordance with clause 4 below.

2. Acceptance
 2.1 The Purchaser is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Purchaser places an order for or accepts delivery of the Goods by any of the afore mentioned organisations that form part thereof Commercial Door Services Ltd.
 2.2 These terms and conditions supersede previous terms & conditions of trade and may only be amended with the Vendor's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Purchaser and the Vendor.
 2.3 Goods are supplied in accordance with the specification ("Specifications") in force at the time of concluding the agreement between the Vendor and the Purchaser. Any Specifications as shown on the Order are deemed to be checked and accepted by the Customer. Any additions and alterations made to a Specification by the Company at the request of the Customer shall be subject to an additional charge as specified by the Company.

3. Change in Control
 3.1 The Purchaser shall give the Vendor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Purchaser and/or any other change in the Purchaser's details (including but not limited to, changes in the Purchaser's name, address, contact phone or fax number/s, or business practice). The Purchaser shall be liable for any loss incurred by the Vendor as a result of the Purchaser's failure to comply with this clause.

4. Price and Payment
 4.1 At the Vendor's sole discretion, the Price shall be either:
 (a) as indicated on any invoice provided by the Vendor to the Purchaser; or
 (b) the Vendor'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 The Vendor reserves the right to change the Price if a variation to the Vendor's quotation is requested.
 4.3 At the Vendor's sole discretion, a non-refundable deposit may be required.
 4.4 The Vendor 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 Purchaser's address or address for notices.
 4.5 Time for payment for the Goods 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 the Vendor's address or address for notices or nominated bank account.
 4.6 A call out fee shall be payable by the Purchaser (with the exception of Contract Customers) for all Goods and Services required to be delivered on public holidays or outside the Vendor's core business hours of 8am to 5pm, Monday to Friday.
 4.7 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card or by any other method as agreed to between the Purchaser and the Vendor.
 4.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Purchaser must pay to the Vendor an amount equal to any GST the Vendor must pay for any supply by the Vendor under this or any other agreement for the sale of the Goods. The Purchaser must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Purchaser pays the Price. In addition, the Purchaser 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. Delivery of Goods
 5.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
 (a) the Purchaser or the Purchaser's nominated carrier takes possession of the Goods at the Vendor's address; or
 (b) the Vendor (or the Vendor's nominated carrier) delivers the Goods to the Purchaser's nominated address even if the Purchaser is not present at the address.
 5.2 The cost of delivery is either in addition to the Price or for the Purchaser's account.
 5.3 The Purchaser must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Purchaser is unable to take delivery of the Goods as arranged then the Vendor shall be entitled to charge a reasonable fee for redelivery and/or storage.
 5.4 The Vendor may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
 5.5 Any time or date given by the Vendor to the Purchaser is an estimate only. The Purchaser must still accept delivery of the Goods even if late and the Vendor will not be liable for any loss or damage incurred by the Purchaser as a result of the delivery being late.

6. Risk
 6.1 Risk of damage to or loss of the Goods passes to the Purchaser on Delivery and the Purchaser must insure the Goods on or before Delivery.
 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Purchaser, the Vendor is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Vendor is sufficient evidence of the Vendor's rights to receive the insurance proceeds without the need for any person dealing with the Vendor to make further enquiries.

7. Damages
 7.1 The Purchaser shall ensure that the Vendor has clear and free access to the work site at all times to enable them to undertake the works. The Vendor shall not be liable for any loss or damage to the site (including, without limitation, damage to entrances/entryways pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Vendor.

8. Title
 8.1 The Vendor and the Purchaser agree that ownership of the Goods shall not pass until:
 (a) the Purchaser has paid the Vendor all amounts owing to the Vendor; and
 (b) the Purchaser has met all of its other obligations to the Vendor.
 8.2 Receipt by the Vendor 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.
 8.3 It is further agreed that:
 (a) until ownership of the Goods passes to the Purchaser in accordance with clause 8.1 that the Purchaser is only a bailee of the Goods and must return the Goods to the Vendor on request;
 (b) the Purchaser holds the benefit of the Purchaser's insurance of the Goods on trust for the Vendor and must pay to the Vendor the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 (c) the Purchaser must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value.

If the Purchaser sells, disposes, or parts with possession of the Goods then the Purchaser must hold the proceeds of any such act on trust for the Vendor and must pay or deliver the proceeds to the Vendor on demand.
 (d) the Purchaser should not convert or process the Goods or intermix them with other goods but if the Purchaser does so then the Purchaser holds the resulting product on trust for the benefit of the Vendor and must sell, dispose of or return the resulting product to the Vendor as it so directs.
 (e) the Purchaser irrevocably authorises the Vendor to enter any premises where the Vendor believes the Goods are kept and recover possession of the Goods.
 (f) the Vendor may recover possession of any Goods in transit whether or not delivery has occurred.
 (g) the Purchaser shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Vendor.
 (h) the Vendor may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Purchaser.

9. Personal Property Securities Act 1999 ("PPSA")
 9.1 Upon assenting to these terms and conditions in writing the Purchaser 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 Goods previously supplied by the Vendor to the Purchaser (if any) and all Goods that will be supplied in the future by the Vendor to the Purchaser.
 9.2 The Purchaser 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 the Vendor may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 (b) indemnify, and upon demand reimburse, the Vendor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereto;
 (c) not register a financing change statement or a change demand without the prior written consent of the Vendor; and
 (d) immediately advise the Vendor of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
 9.3 The Vendor and the Purchaser agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
 9.4 The Purchaser 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 the Vendor, the Purchaser waives its right to receive a verification statement in accordance with section 148 of the PPSA.
 9.6 The Purchaser shall unconditionally ratify any actions taken by the Vendor under clauses 10.1 to 10.5.

10. Security and Charge
 10.1 In consideration of the Vendor agreeing to supply the Goods, the Purchaser 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 the Purchaser either now or in the future, to secure the performance by the Purchaser of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
 10.2 The Purchaser indemnifies the Vendor from and against all the Vendor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Vendor's rights under this clause.
 10.3 The Purchaser irrevocably appoints the Vendor and each director of the Vendor as the Purchaser's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Purchaser's behalf.

11. Purchaser's Disclaimer
 11.1 The Purchaser hereby disclaims any right to rescind, or cancel any contract with the Vendor or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Purchaser by the Vendor and the Purchaser acknowledges that the Goods are bought relying solely upon the Purchaser's skill and judgment.

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

13. Returns
 13.1 Returns will only be accepted provided that:
 (a) the Purchaser has complied with the provisions of clause 13.1; and
 (b) the Vendor has agreed in writing to accept the return of the Goods; and
 (c) the Goods are returned at the Purchaser's cost within seven (7) days of the delivery date; and
 (d) the Vendor will not be liable for Goods which have not been stored or used in a proper manner; and
 (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
 13.2 The Vendor may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of fifteen percent (15%) of the value of the returned Goods plus any freight.
 13.3 Non-stockist items or Goods made to the Purchaser's specifications are under no circumstances acceptable for credit or return.

14. Warranty
 14.1 Subject to the conditions of warranty set out in clause 15.2 the Vendor warrants that if any defect in any workmanship of the Vendor becomes apparent and is reported to the Vendor within twelve (12) months of the date of delivery (time being of the essence) then the Vendor will either (at the Vendor's sole discretion) replace or remedy the workmanship.
 14.2 The conditions applicable to the warranty given by clause 15.1 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 the Purchaser to properly maintain any Goods; or
 (ii) failure on the part of the Purchaser to follow any instructions or guidelines provided by the Vendor; or
 (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 (iv) the continued use of any Goods 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 the Vendor shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Vendor's consent.
 (c) in respect of all claims the Vendor shall not be liable to compensate the Purchaser for any delay in either replacing or remedying the workmanship or in properly assessing the Purchaser's claim.
 14.3 For Goods not manufactured by the Vendor, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Vendor 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 Goods.

15. Consumer Guarantees Act 1993
 15.1 If the Purchaser is acquiring Goods for the purposes of a trade or business, the Purchaser acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Vendor to the Purchaser.

16. Intellectual Property
 16.1 Where the Vendor has designed, drawn or developed Goods for the Purchaser, then the copyright in any designs and drawings and documents shall remain the property of the Vendor.

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

17. Default and 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 the Vendor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
 17.2 If the Purchaser owes the Vendor any money the Purchaser shall indemnify the Vendor from and against all costs and disbursements incurred by the Vendor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Vendor's collection agency costs, and bank dishonour fees).
 17.3 Without prejudice to any other remedies the Vendor may have, if at any time the Purchaser is in breach of any obligation (including those relating to payment) under these terms and conditions the Vendor may suspend or terminate the supply of Goods to the Purchaser. The Vendor will not be liable to the Purchaser for any loss or damage the Purchaser suffers because the Vendor has exercised its rights under this clause.
 17.4 Without prejudice to the Vendor's other remedies at law the Vendor shall be entitled to cancel all or any part of any order of the Purchaser which remains unfulfilled and all amounts owing to the Vendor shall, whether or not due for payment, become immediately payable if:
 (a) any money payable to the Vendor becomes overdue, or in the Vendor's opinion the Purchaser will be unable to make a payment when it falls due;
 (b) the Purchaser 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 the Purchaser or any asset of the Purchaser.

18. Cancellation
 18.1 The Vendor may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Purchaser. On giving such notice the Vendor shall repay to the Purchaser any money paid by the Purchaser for the Goods. The Vendor shall not be liable for any loss or damage whatsoever arising from such cancellation.
 18.2 In the event that the Purchaser cancels delivery of Goods the Purchaser shall be liable for any and all loss incurred (whether direct or indirect) by the Vendor as a direct result of the cancellation (including, but not limited to, any loss of profits).
 18.3 Cancellation of orders for Goods made to the Purchaser's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.

19. Privacy Act 1993
 19.1 The Purchaser authorises the Vendor or the Vendor's agent to:
 (a) access, collect, retain and use any information about the Purchaser:
 (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Purchaser's creditworthiness; or
 (ii) for the purpose of marketing products and services to the Purchaser.
 (b) disclose information about the Purchaser, whether collected by the Vendor from the Purchaser directly or obtained by the Vendor 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 the Purchaser.
 19.2 Where the Purchaser is an individual the authorities under clause 20.1 are authorities or consents for the purposes of the Privacy Act 1993.
 19.3 The Purchaser shall have the right to request the Vendor for a copy of the information about the Purchaser retained by the Vendor and the right to request the Vendor to correct any incorrect information about the Purchaser held by the Vendor.

20. Unpaid Vendor's Rights
 20.1 Where the Purchaser has left any item with the Vendor for repair, modification, exchange or for the Vendor to perform any other service in relation to the item and the Vendor has not received or been tendered the whole of any moneys owing to it by the Purchaser, the Vendor shall have, until all moneys owing to the Vendor 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 goods.
 20.2 The lien of the Vendor shall continue despite the commencement of proceedings, or judgment for any moneys owing to the Vendor having been obtained against the Purchaser.

21. Dispute Resolution
 21.1 All disputes and differences between the Purchaser and the Vendor touching 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.

22. Construction Contracts Act 2002
 22.1 The parties agree that for the purposes of the Construction Contracts Act 2002 where the Vendor 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 Purchaser may have entered into with a third party in relation to the supply of Goods and/or Services to that third party or the payment by the third party to the Purchaser of any monies whether by progress payments or otherwise.

23. General
 23.1 The failure by the Vendor to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Vendor'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.
 23.2 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.
 23.3 The Vendor shall be under no liability whatsoever to the Purchaser for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Purchaser arising out of a breach by the Vendor of these terms and conditions (alternatively the Vendor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
 23.4 The Purchaser shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Purchaser by the Vendor nor to withhold payment of any invoice because part of that invoice is in dispute.
 23.5 The Vendor may license or sub-contract all or any part of its rights and obligations without the Purchaser's consent.
 23.6 The Purchaser agrees that the Vendor may amend these terms and conditions at any time. If the Vendor makes a change to these terms and conditions, then that change will take effect from the date on which the Vendor notifies the Purchaser of such change. The Purchaser will be taken to have accepted such changes if the Purchaser makes a further request for the Vendor to provide Goods to the Purchaser.
 23.7 Neither party shall be liable for any default due to any act of God, pandemic, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
 23.8 The Purchaser 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.