

SUMMIT GARAGE DOORS LIMITED – TERMS OF TRADE

1. About these terms

- 1.1 These terms and conditions (“Terms”) apply to the sale of Goods and provision of Services by Summit Garage Doors Limited (“us”, “we”) to the person buying Goods or Services as specified in an invoice, or an Order (“you”, “your”).
- 1.2 Unless otherwise agreed in writing between us, these Terms apply to the purchase of all Goods and Services by you from us.
- 1.3 By receiving a copy of these Terms, you are deemed to have accepted these terms.
- 1.4 We may vary these Terms from time to time by notice in writing to you, and the varied terms will apply from the next purchase of Goods or Services by you from us.
- 1.5 In these Terms, unless the context requires otherwise:
- a) “Consumer Guarantees Act” means the Consumer Guarantees Act 1993, as that act may be amended or replaced from time to time;
 - b) “Delivery” means delivery of the Goods in the manner contemplated by clause 5;
 - c) “Fair Trading Act” means the Fair Trading Act 1983 as that act may be amended from time to time;
 - d) “Goods” mean all goods supplied by us to you from time to time;
 - e) “GST” means goods and services tax as that term is defined in the Goods and Services Tax Act 1985;
 - f) “Services” means all services provided by us to you from time to time;
 - g) “Warranty” means the Goods/Services warranty given in clause
 - h) “Warranty Period” means the period referred to in clause 11.2; and
 - i) “Working Day” means a day, other than a Saturday or Sunday, on which trading banks are generally open for other-the-counter business in Christchurch.

2. Binding agreement

At any time, you may make an offer to purchase Goods or Services from us whether verbally or in writing (“Order”). Each Order:

- a) is an offer by you to purchase Goods or Services on these Terms;
- b) will not be deemed accepted unless and until we expressly acknowledge in writing (by email or text message) that your offer has been accepted; and
- c) once accepted by us in accordance with clause 2b) will form an individual and binding contract between us and you subject only to the Terms.

3. Price

- 3.1 The price for Goods and Services will be determined by us at the time the contract for the sale and purchase of Goods and Services is formed under clause 2.
- 3.2 Unless otherwise stated any price for the supply of Goods or Services:
- a) will be inclusive of freight, insurance and delivery charges; and
 - b) will be inclusive of GST and any other taxes, levies or duties.
- 3.3 We may change the price:
- a) if a variation to the Goods to be supplied is requested (including any changes to applicable specifications/designs) prior to our placing an order for your Goods; or
 - b) where we have to provide additional Services due to unexpected difficulties which are only discovered once we start providing the Services (for example, without limitation, safety considerations, pre-existing structural integrity issues); or
 - c) in the event of increases to our costs of labour or Goods (for example, without limitation, international freight and insurance charges).

4. Invoicing

- 4.1 We may require you to pay a 50% deposit, being an advanced payment for the Goods and Services, before we commence our work for you and we will provide an invoice for this purposes.
- 4.2 The price for Goods and Services, including payment for any variations, is due within 7 days of our invoice or payment claim being issued to you (“the due date”).
- 4.3 You will pay all amounts due without setoffs or retentions on or before the due date specified in our invoice.
- 4.4 We reserve the right to charge penalty interest at the rate of 4% per month, compounding monthly, from the due date to the date of payment on all overdue amounts.
- 4.5 Each invoice will:

- a) be in writing identifying the work and relevant period to which the invoice relates; and
- b) detail how the claimed amount is calculated and state the due date for payment.

- 4.6 We may, at our sole discretion, issue a payment claim under the Construction Contracts Act 2002 in respect of any Goods or Services provided under these Terms. If you issue a payment schedule in response, that payment schedule must be issued within five (5) Working Days after the payment claim is served.

5. Delivery

- 5.1 Delivery of Goods will be completed upon delivery of Goods to the address specified in your Order (which must be a physical address in New Zealand).
- 5.2 If your Order comprises more than one item, we may dispatch Goods in instalments and may not Deliver all Goods to you at the same time.
- 5.3 We will make every reasonable effort to meet estimated timeframes for Delivery, but we will not be liable to you for any loss arising from our failure to do so.

6. Risk and title

- 6.1 Risk of damage to or loss of the Goods passes to you on Delivery and we will not be liable for any loss or damage to the Goods arising following Delivery.
- 6.2 Title in Goods will not pass to you until the later of:
- a) Delivery of the Goods to you; and
 - b) when we receive payment of the Goods in full of the price for such Goods, and you agree that any part-payment of any amount for the Goods does not convey any part, right, title, and/or interest in the Goods.
- 6.3 If any of the Goods are damaged or destroyed following Delivery but prior to title passing to you, we are entitled to receive all insurance proceeds payable for the Goods and you agree these Terms are sufficient evidence of our right to receive insurance proceeds without the need for any person dealing with us to make further enquiries.]

7. PPSA Security

- 7.1 You acknowledge and agree that:
- a) these Terms constitute a security agreement in terms of the Personal Property Securities Act 1999 (“PPSA”);
 - b) you grant to us a security interest in the Goods and their proceeds, which shall secure the obligations owed by you to us to pay the price of the Goods and any other obligations owed by you to us under this contract (together “the Indebtedness”); and
 - c) where the Goods and/or proceeds are not readily identifiable and/or traceable or their recoverable value is insufficient to pay the Indebtedness, the security interest shall also extend to all your present and after acquired property, to the extent required to secure the Indebtedness.
- 7.2 As and when required by us you will, at your own expense, provide all reasonable assistance and relevant information to enable us to register a Financing Statement or Financing Change Statement and generally to obtain, maintain, register and enforce our security interest in respect of the Goods supplied, in accordance with the PPSA.
- 7.3 You will not change your name without first notifying us of the new name not less than 7 days before the change takes effect.
- 7.4 You and we both agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA will apply to these Term.
- 7.5 You waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

8. Default

- 8.1 The security interest created by this contract becomes enforceable if any of the following events occur:
- a) you fail to pay any amount owing on the due date;
 - b) you sell, part with possession, lease or dispose of any Goods or do anything inconsistent with our ownership of the Goods prior to making payments in full to us;
 - c) we believe you have committed or will commit an act of bankruptcy, have had or are about to have a receiver, or voluntary administrator appointed, or be declared insolvent;
 - d) the Goods are “at risk”, as that term is defined in the PPSA; or
 - e) you neglect or fail to carry on your business to our reasonable satisfaction, or if there is a significant deterioration in your trading or asset position.

9. Plans, specifications and measurements

- 9.1 You acknowledge and agree that:

- a) all descriptive specifications, illustrations, drawings, dimensions and samples are approximate only;
 - b) you are not entitled to rely on any of the information of the type set out in this above, and use of such information does not constitute a sale by description or form part of the contract; and
 - c) while we make every effort to match sales samples to the finished Goods, we accept no liability whatsoever where such samples differ to the finished Goods supplied.
- 9.2 If you give us information relating to measurements and quantities of the Goods required to complete the Services, it is your responsibility to verify the accuracy of the measurements and quantities, before we place an order based on these measurements and quantities. We accept no responsibility for any loss, damages, or costs however resulting from the your failure to comply with this clause.
- 10. Cancellation**
- 10.1 Without prejudice to our rights and remedies under these Terms or at law, no Order for Goods accepted by us may be cancelled by you without our consent.
- 10.2 If you purport to cancel any order for Goods without our consent, you will be liable for:
- a) the full amount payable under the Order;
 - b) all costs and expenses we incur or suffer in fulfilling the Order up until and including the day of cancellation; and
 - c) all unavoidable costs we incur following the date of cancellation.
- 11. Warranty**
- 11.1 The warranties in this clause 11 apply to all Goods and Services.
- 11.2 Subject to clause 11.5 and without prejudice to our obligations to you under the Consumer Guarantees Act (if any), we warrant that for a period of:
- a) 10 years for garage doors;
 - b) 7 years for garage door openers (Merlin); and
 - c) 12 months in respect of all other Goods and Services, following the date of Delivery of Goods and/or provision of the Services in accordance with these Terms, the Goods and Services will:
 - d) conform with the specifications as provided to you in writing by us from time to time;
 - e) be fit for the purposes for which they are designed; and
 - f) be free from defects in design, operation, workmanship and materials.
- 11.3 We assign to you (by way of present assignment of future rights), with effect from Delivery, the benefit of any warranties in respect of Goods given by the manufacturer of those Goods ("Manufacturer Warranties"), to the extent that the Manufacturer Warranties are capable of assignment to you without the need for us to obtain any other person's consent on such terms as granted by the manufacturer (including any conditions).
- 11.4 Without limiting our obligations to you under clause 12.1(if applicable), during the Warranty Period, we (or our agents) will, at our option, replace or repair Goods/Services that do not meet the Warranties within 7 days of you discovering the defect in the applicable Goods/Services.
- 11.5 The Warranties will not apply where the defect or failure in the Goods or Services is caused or contributed to by:
- a) use or operation of the Goods other than in accordance with the applicable specifications and written instructions;
 - b) abuse, negligence, accident, loss;
 - c) unauthorised maintenance or modifications to the Goods; or
 - d) any damage to the Goods caused by an external source regardless of its nature.
- 11.6 To the maximum extent permitted by law, we give no warranties in respect of the Goods (either express or implied) other than the Good Warranties set out in this clause 11.
- 12. Consumer Guarantees Act**
- 12.1 If you are acquiring the Goods as a 'consumer' within the meaning given to that term by the Consumer Guarantees Act:
- a) we will meet our obligations to you under the Consumer Guarantees Act; and
 - b) except as otherwise expressly stated in these Terms, your sole remedies in respect of the breach of the Warranties will be those remedies available to you under the Consumer Guarantees Act.
- 12.2 If you are acquiring the Goods 'in trade' within the meaning given to that term by the Consumer Guarantees Act, to the fullest extent permitted by law:
- a) the Consumer Guarantees Act will not apply to the supply of the Goods;
 - b) if we fail to meet the Warranties your rights at clause 11.4 will be your sole remedies;
 - c) sections 9, 12A, 13, and 14(1) of the Fair Trading Act will not apply to the supply of, or offer to supply, the Goods or otherwise in connection with the relationship between you and us established by these Terms;
 - d) we will not be liable to you in connection with the supply of Goods or these Terms, whether in contract, tort (including negligence), breach of statutory duty, arising from our misrepresentation or otherwise, for any:
 - i) indirect or consequential loss; or
 - ii) economic loss, loss of profit, loss of revenue, loss of anticipated savings, loss of reputation (in each case, whether direct or indirect); and
 - e) our total liability to you due to or in connection with the supply of Goods, Services or these Terms, whether in contract, tort (including negligence), breach of statutory duty, arising from our misrepresentation or otherwise will be limited to the price actually paid for Goods and/or Services.
- 12.3 Where you are acquiring the Goods or Services 'in trade' you acknowledge that it is fair and reasonable to be bound by clause 12.2.
- 13. Liability**
- 13.1 We will not be liable for any loss or damage to the property (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to our negligence.
- 13.2 We will not be liable for any loss or damage whatsoever due to failure by us to deliver Goods or Services (or any part of them) promptly or at all, where due to circumstances beyond our reasonable control.
- 14. Privacy**
- 14.1 You authorise us to collect, retain, use and disclose personal information about you which is collected by us in connection with supply of Goods and/or Services, for the following purposes:
- a) to supply the Goods and Services to you in accordance with these Terms, including invoicing you;
 - b) to communicate with our agents to enable the supply of Goods and Services to you;
 - c) to communicate with you in connection with the Goods and Services including on-going maintenance requirements;
 - d) to communicate with our agents to enable the recovery of any payment for Goods and Services not made on the due date; and
 - e) any other purpose otherwise authorised by law.
- 14.2 We will otherwise collect, retain, use and disclose any personal information we collect about you in accordance with our privacy statement, which is available on our website from time to time.
- 15. Compliance with laws**
- 15.1 Each party will comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods and Services.
- 15.2 You agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation and you will comply with any of our reasonable instructions in respect of health and safety.
- 16. Construction Contracts Act 2002**
- 16.1 You acknowledge and agree that:
- a) we have the right to suspend work within five (5) working days of written notice of our intention to do so if a payment claim is served on you, and
 - i) the payment is not paid in full by the due date for payment and no payment schedule has been given by you; or
 - ii) a scheduled amount stated in a payment schedule issued by you in relation to the payment claim is not paid in full by the due date for its payment; and
 - iii) we have has given you written notice of our intention to suspend the carrying out of construction work under this construction contract; and
 - b) if we suspend work, we:
 - i) are not in breach of contract; and
 - ii) are not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by you or by any person claiming through you; and
 - c) if we exercise the right to suspend work, the exercise of that right does not:
 - i) affect any rights that would otherwise have been available to us under Subpart 3 of the Contract and Commercial Law Act 2017; or

- ii) enable you to exercise any rights that may otherwise have been available to you under that Act as a direct consequence of the us suspending work under this clause.

17. General terms

- 17.1 **Force Majeure:** Neither of us shall be liable to the other for of any delay in performance, or non-performance, of any obligations under these Terms (other than in respect of payment for Goods or Services), to the extent that the delay or non-performance is due to any circumstances not caused by or contributed to the party seeking to rely on this clause and which has been notified by that party to the other in writing.
- 17.2 **Disputes:** If a dispute arises out of or relates to these Terms, a contract or the supply of Goods or Services by us to you, we will both endeavor to resolve the dispute by good faith negotiations between us. If we are unable to resolve the dispute during negotiations, either one of us may refer the dispute to mediation by notice in writing by a mediator to be agreed between the both of us within five working days of that notice or failing agreement by the President of the New Zealand Law Society or his or her nominee. We will share the costs of the mediator equally.
- 17.3 **Confidentiality:** Each of us agree to hold in confidence all information concerning the other or the other's affairs that is acquired while working together, including information relating to the other's finances and commercial dealings. Each of us will only disclose confidential information of the other party if it is necessary or desirable to enable us to carry out the other's instructions, comply with our obligations under these Terms or to the extent it is required by law.
- 17.4 **Amendments:** Any amendments to these Terms must be in writing.
- 17.5 **Assignment:** You are not entitled to assign or transfer any right or benefit you have under these Terms without our prior written consent.
- 17.6 **Entire Agreement:** These Terms constitute the entire agreement between us relating to their subject matter.
- 17.7 **Waiver:** No failure or delay by us in exercising our rights under these terms shall be deemed to be a waiver of that right or any subsequent breach of the same or any other provisions in these Terms.
- 17.8 **Severability:** Any unlawful or voidable provision or part provision in these Terms shall be read down so as to be valid and enforceable or, if it cannot be read down, will be severed from these Terms without affecting the validity, legality or enforceability of the remaining provisions or part provisions.
- 17.9 **Governing Law:** Our relationship with you is governed by New Zealand law and the courts of New Zealand have the non-exclusive jurisdiction.