

Terms & Conditions of Trade

1. Definitions

- 1.1 "Seller" means Allegion (New Zealand) Limited, its successors and assigns or any person acting on behalf of and with the authority of Allegion (New Zealand) Limited.
- 1.2 "Buyer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Buyer is a reference to each Buyer jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by the Seller to the Buyer at the Buyer's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).
- 1.4 "Confidential Information" means any information supplied by the Seller to the Buyer and any confidential information of the Seller that comes into the possession of the Buyer in connection with this Agreement, including without limitation the terms of this Agreement, other than information that is or become in the public domain other than through breach of this Agreement by the Buyer.
- 1.5 "Price" means the Price payable for the Goods as agreed between the Seller and the Buyer in accordance with clause 5 below.

2. Acceptance

- 2.1 The Buyer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Buyer places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with the Seller's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Buyer and the Seller or Terms and Conditions posted on the Seller's website.
- 2.3 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.
- 2.4 The Buyer acknowledges that:
 - (a) all descriptive specifications, illustrations, drawings, data, dimensions and weights stated in the Seller's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Buyer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by the Seller;
 - (b) while the Seller may have provided information or figures to the Buyer regarding the performance of the Goods, the Buyer acknowledges that the Seller has given these in good faith, and are estimates based on the prescribed standards.
- 2.5 The Buyer shall be responsible for ensuring that the Goods ordered are suitable for their intended use.
- 2.6 The Seller reserves the right to substitute comparable Goods (or components of the Goods), and in all such cases the Seller will notify the Buyer in advance of any such substitution.
- 2.7 In the event that the Goods and/or Services provided by the Seller are the subject of an insurance claim that the Buyer has made, then the Buyer shall be responsible for the payment of any monies payable to the insurance company and agrees to honour their obligation for payment for such transactions invoiced by the Seller and shall ensure payment is made by the due date irrespective of whether the insurance claim is successful.

3. Electronic Transactions Act

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 (NZ), or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Change in Control

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

5. Price and Payment

- 5.1 At the Seller's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by the Seller to the Buyer; or
 - (b) the Price as at the date of delivery of the Goods according to the Seller's current price list; or
 - (c) the Seller's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 The Seller may, by giving thirty (30) days' notice to the Buyer, increase the Price of the Goods or Services at its sole discretion. Any variation from the plan of scheduled Services or specifications (including, but not limited to, in the event that overseas transactions increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges or as a result of increases to the Seller in the cost of the Goods) will be detailed in writing and charged for on the basis of the Seller's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 5.3 At the Seller's sole discretion a non-refundable deposit may be required.
- 5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Buyer on the date/s determined by the Seller, which may be:
 - (a) on delivery of the Goods;
 - (b) before delivery of the Goods;
 - (c) by way of instalments/progress payments in accordance with the Seller's payment schedule;
 - (d) for certain approved Buyers, due twenty (20) days following the end of the month in which a statement is posted to the Buyer's address or address for notices;
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Buyer by the Seller.
- 5.5 Any discounts applicable to the Price shall become null and void if payment is not made by the due date stated on the invoice and/or statement.
- 5.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Buyer and the Seller.
- 5.7 Unless otherwise stated the Price does not include goods and service tax (GST). In addition to the Price the Buyer 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 Buyer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Buyer pays the Price. In addition the Buyer 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. Delivery of Goods

- 6.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
 - (a) the Buyer or the Buyer's nominated carrier takes possession of the Goods at the Seller's address; or
 - (b) the Seller (or the Seller's nominated carrier) delivers the Goods to the Buyer's nominated address even if the Buyer is not present at the address.

- 6.2 Orders to the value of \$250.00 net Price and over will have freight prepaid to the Buyer's nominated address in orders accepted by the Seller. Orders to the value of less than \$250.00 net Price, or where overnight, weekend, or special delivery is requested will have freight charged to the Buyer. The Buyer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Buyer is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.3 The Seller 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.
- 6.4 Any time or date given by the Seller to the Buyer is an estimate only. The Buyer must still accept delivery of the Goods even if late and the Seller will not be liable for any loss or damage incurred by the Buyer as a result of the delivery being late.

7. Risk

- 7.1 Risk of damage to or loss of the Goods passes to the Buyer on Delivery and the Buyer must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Buyer, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 7.3 If the Buyer requests the Seller to leave Goods outside the Seller's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Buyer's sole risk.

8. Title

- 8.1 The Seller and the Buyer agree that ownership of the Goods shall not pass until:
 - (a) the Buyer has paid the Seller all amounts owing to the Seller; and
 - (b) the Buyer has met all of its other obligations to the Seller.
- 8.2 Receipt by the Seller 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 Buyer in accordance with clause 8.1 that the Buyer is only a bailee of the Goods and must return the Goods to the Seller on request.
 - (b) the Buyer holds the benefit of the Buyer's insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Buyer 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 Buyer sells, disposes or parts with possession of the Goods then the Buyer must hold the proceeds of any such act on trust for the Seller and must pay or deliver the proceeds to the Seller on demand.
 - (d) the Buyer should not convert or process the Goods or intermix them with other goods but if the Buyer does so then the Buyer holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as it so directs.
 - (e) the Buyer irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods.
 - (f) the Seller may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) the Buyer 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 Seller.
 - (h) the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Buyer.

9. Personal Property Securities Act 1999 ("PPSA")

- 9.1 Upon assenting to these terms and conditions in writing the Buyer 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 Seller to the Buyer (if any) and all Goods that will be supplied in the future by the Seller to the Buyer.
- 9.2 The Buyer 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 Seller 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 Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register a financing change statement or a change demand without the prior written consent of the Seller; and
 - (d) immediately advise the Seller 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 Seller and the Buyer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 9.4 The Buyer 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 Seller, the Buyer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 9.6 The Buyer shall unconditionally ratify any actions taken by the Seller under clauses 9.1 to 9.5.

10. Security and Charge

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

11. Buyer's Disclaimer

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

12. Defects

- 12.1 The Buyer shall inspect the Goods on delivery and shall within fourteen (14) days of delivery

(time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. If the Buyer 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 Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods.

13. Returns

13.1 Returns will only be accepted provided that:

- (a) the Buyer has complied with the provisions of clause 12.1; and
- (b) the Seller has agreed in writing to accept the return of the Goods; and
- (c) the Goods are returned at the Buyer's cost within fourteen (14) days of the delivery date; and
- (d) returned Goods are clearly identified with the Buyer's name; and
- (e) Goods are returned with the original packing slip or invoice number; and
- (f) the Seller will not be liable for Goods which have not been stored or used in a proper manner; and
- (g) 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 Seller may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of twenty percent (20%) of the value of the returned Goods plus any freight.

13.3 Non-stocklist items or Goods made to the Buyer's specifications are under no circumstances acceptable for credit or return.

14. Warranty

14.1 The Seller's standard limited warranty(ies) related to the Goods or Services are applicable to this Agreement. The limited warranty(ies) are (i) attached to this Agreement; or (ii) separately furnished by Seller to Buyer. In the event that certain product warranties are not attached to this Agreement or separately furnished, Seller warrants only to Buyer that the products will be free from defects in material and workmanship for a period of two (2) years from the date of shipment of the products. Seller's sole obligation under this warranty is limited to repairing or replacing, at its option, the defective products.

14.2 The conditions applicable to the warranty given by clause 14.1 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 Buyer to properly maintain any Goods; or
 - (ii) failure on the part of the Buyer to follow any instructions or guidelines provided by the Seller; 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 Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Seller's consent.
- (c) in respect of all claims the Seller shall not be liable to compensate the Buyer for any delay in either replacing or remedying the workmanship or in properly assessing the Buyer's claim.

14.3 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller 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.

14.4 NO OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE MADE WITH RESPECT TO THE GOODS OR SERVICES INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

15. Consumer Guarantees Act 1993

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

16. Intellectual Property

16.1 Where the Seller has designed or drawn Goods or produced any other documentation for the Buyer or the Buyer's benefit (directly or indirectly) or in any other way connected to this agreement, then the copyright in those designs, drawings and documents shall remain vested in the Seller. All such designs and drawings or other documentation provided by Seller are proprietary and will not be disclosed or reused by Buyer without the prior written consent of Seller.

16.2 The Buyer warrants that all designs, drawings, documentation or instructions that it supplies to the Seller will not cause the Seller to infringe any patent, registered design, trademark or other intellectual property right in the execution of the Buyer's order and agrees to indemnify and defend Seller for any such infringement. The Buyer agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Seller has created for the Buyer.

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 Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

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

17.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment) under these terms and conditions the Seller may suspend or terminate the supply of Goods to the Buyer. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller has exercised its rights under this clause.

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

- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to make a payment when it falls due;
- (b) the Buyer 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 Buyer or any asset of the Buyer.

18. Compliance with Laws

18.1 Both the Buyer and the Seller agree that they will at all times ensure that they comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including occupational health and safety laws, and any other relevant safety standards or legislation.

18.2 In advertising, marketing, promoting, sales and installation of the Goods and in carrying on the

Buyer's business, each Buyer, its owners, officers, directors, employees or agents (collectively and individually in this clause "Buyer") must comply with its, his or her obligations under the law including without limitation, the Buyer must not:

- (a) make any untrue or misleading statement relating to the Seller, its goods and services including the Goods, its business or its practices;
- (b) pay, offer or promise to pay, or authorise the payment of, any monies or anything of value, directly or indirectly, to any government official or employee, any official or employee of a state-run or state-owned or controlled enterprise or entity, any official or employee of a public international organisation, any candidate for political or public office, any official or employee of any political party, or any family member or relative of such persons or any political party for the purpose of influencing any act or decision of any such official, employee, candidate, political party, enterprise or entity, public organisation, or government to obtain or retain business, or direct business to any person or entity, or for any other improper advantage or purpose, and in the event the Buyer breaches its, his or her obligations under this clause, the Seller may immediately terminate this Agreement and the Buyer shall indemnify and hold harmless the Seller against any and all claims, losses, damages, penalties or fines related to such breach of the Agreement.

19. Confidentiality

19.1 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, other than:

- (a) as required by law (in which case it must simultaneously be advised to the other respective contracted party of such disclosure); or
- (b) to the extent necessary to perform its obligations under this Agreement.

19.2 The quotation and the information contained in the quotation provided by the Seller to the Buyer is done so on a "commercial in confidence" basis thereby, the Buyer agrees not to reproduce or provide said information in any manner to any third party without the prior written approval of the Seller.

20. Cancellation

20.1 The Seller 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 Buyer. On giving such notice the Seller shall repay to the Buyer any money paid by the Buyer for the Goods. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.

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

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

21. Privacy Act 1993

21.1 The Buyer authorises the Seller or the Seller's agent to:

- (a) access, collect, retain and use any information about the Buyer;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Buyer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Buyer.
- (b) disclose information about the Buyer, whether collected by the Seller from the Buyer directly or obtained by the Seller 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 Buyer.

21.2 Where the Buyer is an individual the authorities under clause 21.1 are authorities or consents for the purposes of the Privacy Act 1993.

21.3 The Buyer shall have the right to request the Seller for a copy of the information about the Buyer retained by the Seller and the right to request the Seller to correct any incorrect information about the Buyer held by the Seller.

22. Unpaid Seller's Rights

22.1 Where the Buyer has left any item with the Seller for repair, modification, exchange or for the Seller to perform any other service in relation to the item and the Seller has not received or been tendered the whole of any moneys owing to it by the Buyer, the Seller shall have, until all moneys owing to the Seller 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; and
- (c) where the Seller has not received the Price of the Goods, then, whether the title in the Goods has passed to the Buyer or has remained with the Seller, the Seller may dispose of the Goods and may claim from the Buyer the loss to the Seller on such disposal.

22.2 The lien of the Seller shall continue despite the commencement of proceedings, or judgment for any moneys owing to the Seller having been obtained against the Buyer.

23. Construction Contracts Act 2002

23.1 The parties agree that for the purposes of the Construction Contracts Act 2002 where the Seller 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 Buyer 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 Buyer of any monies whether by progress payments or otherwise.

24. General

24.1 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller'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.

24.2 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.

24.3 The Seller shall be under no liability whatsoever to the Buyer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

24.4 The Buyer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Buyer by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.

24.5 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent, however, it is agreed by both parties that the Buyer may not license or sub-contract all or any part of its rights and obligations under this contract without the Seller's consent.

24.6 The Buyer agrees that the Seller may amend these terms and conditions at any time. If the Seller makes a change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Buyer of such change. The Buyer will be taken to have accepted such changes if the Buyer makes a further request for the Seller to provide Goods to the Buyer.

24.7 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.

24.8 The Buyer 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.