



## TERMS AND CONDITIONS OF SALE AND INSTALLATION

Please see below Shaliben Pty Ltd Trading as Macquarie Garage Doors terms and conditions for all our products.

These Terms and Conditions shall apply between Shaliben Pty Ltd Trading as Macquarie Garage Doors ("**the Supplier**") and the Person to whom this quotation is addressed ("**the Customer**") and applies to any contract or agreement between the Supplier and Customer for the supply of goods and/or service to the Customer to the exclusion of any terms the Customer issues.

### 1. Definitions

In these Terms and Conditions:

"**Accession**" has the meaning given by s.10 of the Personal Property Securities Act 2009

"**Goods**" means the goods delivered by the Supplier to the Customer on the subject of an order by the Customer

"**PMSI**" has the meaning of the term "Purchase Money Security Interest" of the PPSA.

"**PPSA**" means Personal Property Securities Act 2009 (Cth). "PPS Register" has the meaning in clause 7.4 (e).

"**Proceeds**" has the meaning by s.31 of the PPSA.

"**Security Interest**" has the meaning by s.12 of the PPSA. "**Supplier's Security Interest**" has the meaning defined in clause 7. (a)-(c).

"**Supply**" means the supply of goods and/or services under these Terms and Conditions.

### 2. Credit Account

2.1. Subject to these terms and conditions, the Supplier agrees to supply goods and/or services to the Customer on credit for the amount as is notified by the Supplier to the Customer ("the Credit Limit"). 2.2. The Supplier may, at its discretion and at any time:

- (a) Vary this Agreement by notice in writing to the Customer at the address last notified to the Supplier;
- (b) Vary the Credit Limit; and
- (c) Withdraw credit without notice to the Customer.

### 3. Price

3.1. Unless otherwise agreed or required by law, the price for the Goods is exclusive of sales tax and/or goods and services tax ("GST").

3.2.

- (a) If GST is or will be payable on a Supply, then the Supplier may increase the amount payable by the Customer otherwise provided pursuant to these Terms and Conditions for that Supply by the amount of that GST.
- (b) If there is an event in relation to a Supply which results in the amount of GST on the Supply being different from the amount of GST recovered under clause 3.2(a), the Supplier may recover from the Customer any amount by which the GST on the Supply exceeds the amount recovered and must refund to the Customer any amount recovered which exceeds the GST to the Supply, whichever is the case.
- (c) if, as a result of the introduction of a GST or a subsequent change to the imposition or calculation of the GST or as a result of any change in or abolition of other taxes (excluding income tax) occurring immediately before upon or subsequent to the introduction of a GST, such that the costs incurred by the Supplier in making a Supply (excluding GST on the Supply) are increased, then the price payable by the Customer can be increased by the supplier by the same proportion as the increase in the Supplier's costs.
- (d) any rebates, discounts, allowances or other reductions in price calculate by reference to the sales value to which the Customer is entitled or which are granted by the Supplier are to be calculated on the base price, that is after excluding any amount in respect of the GST payable by the Supplier on the relevant sales.
- (e) quotations provided by Macquarie Garage Doors are open for acceptance for a period of 30 days from the date of quotation. Acceptance thereafter will be at the option of Macquarie Garage Doors and subject to its written agreement.

3.3. In addition to a variation to the amount payable by the Customer under clause 3.2, the Supplier may vary the price of Goods supplied to the Customer by giving written notice of variation.

3.4. A variation under clause 3.3 will not apply to Goods ordered before the date of receipt by the Customer of written notice of variation.

### 4. Delivery

4.1. The Supplier shall deliver the goods at a place for delivery nominated by the Customer.

4.2. Delivery of Goods to the Customer occurs when they are delivered by the Supplier, regardless of, whether the Customer accepts delivery.

4.3. Any time which the Supplier quotes for delivery is an estimate only.

4.4. The Supplier may cancel the order if it determines that it will be unable to deliver the goods within a reasonable time.



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### 5. Payment

5.1. The Supplier may at any time, issue an account statement to the Customer setting out;

- (a) the price for all goods and services supplied to the Customer up to and including the date of the statement inclusive of GST;
- (b) any payments made to the Supplier by the Customer;
- (c) amounts authorised by the Customer to be charged to the account;
- (d) any fees, charges or taxes paid or payable to the Supplier in connection with the establishment or operation of the account; and
- (e) any credit charges or interest owing by the Customer.

5.2. The Customer must pay the Supplier the amount stated in any account invoice without deduction within the period of time specified on the invoice, unless otherwise indicated ("the due date").

5.3. The Supplier may require the Customer to pay up to 50% Deposit upon placing of the order and 90 – 100% on the making of the booking for installation.

5.4. Agreed discounts, rebates and allowances to which the Customer is entitled are credited to the Customer by the Supplier. In no circumstances is the Customer permitted to deduct any discount, rebate or allowance from moneys owing by it to the Supplier.

5.5. If the Customer has not paid in full by the due date, the Supplier may:

- (a) charge the Customer interest on the overdue moneys from the date of delivery of the Goods until Paid in full at a rate of 21% per annum, calculated on a daily basis from the time of payment until the date the unpaid amount is paid. This interest rate may be amended at any time by the Supplier without prior notice to the Customer at such rate as the Supplier may from time to time determine, which interest shall be deemed a genuine pre-estimate of the Supplier's loss by reason of the Customer's default, unless proven otherwise by the Customer;
- (b) pursue an action for the price of the goods for which payment has not been made (plus damages, interest and costs), even though property in the goods remains with the Supplier.

5.6. The Customer must pay the Supplier for the Goods in full even if:

- (a) there was a delay in the delivery of Goods;
- (b) the Customer disputes the quality, quantity or condition of the Goods delivery.

5.7. All payments must be made in Australian Dollars.

5.8. The Customer must pay to and indemnify the Supplier against all costs and expenses incurred by the Supplier in connection with:

- (a) default by the Customer under these Terms and Conditions;
- (b) the recovery of any monies due and payable but unpaid by the Customer (including legal costs on a solicitor /client basis, commercial or mercantile agent and dishonour fees); and
- (c) the exercise or attempted exercise by the Supplier of any power conferred on it by these Terms and Conditions.

5.9. A statement in writing signed by an authorised officer of the Supplier setting out the moneys due or owing to the Supplier at the date of the statement shall be sufficient evidence of the amount so due or owing unless manifest error can be shown.

5.10. If the Customer is a partnership no change to the constitution of the partnership shall affect, impair or discharge the liability of the Customer under this Agreement whether past, present or future notwithstanding the provisions of any legislation or any similar enactment in amendment, modification or substitution regulating partnerships.

5.11. If the Customer enters into this Agreement as a Trustee of any Trust, then the following provisions shall apply:-

- (a) the Customer shall be personally liable for the performance of all obligations and undertaking under this Agreement.
- (b) the Customer warrants that the Customer has complete and valid authority pursuant to the Trust to enter into this Agreement.
- (c) notwithstanding that there is no reference to a specific Trust the Supplier's rights of recourse shall extend both the Customer's assets personally and the assets of the Trust.
- (d) The Customer undertakes to the Supplier that the Customer's right of indemnity against the Trust assets have not been excluded by the provisions of the Trust or any breach of trust or otherwise and that the Customer will not release or otherwise prejudice such rights of indemnity.

5.12. If the Customer defaults under any term of this Agreement; or the Supplier has reasonable grounds to believe that any information supplied by the Customer to the Supplier for the purpose of this Agreement or otherwise is false or misleading the Supplier may terminate this Agreement and the balance of the Customer's account together with all the moneys payable by the Customer to the Supplier shall become immediately due and payable notwithstanding that the time for payment under clause 5.2 has not yet expired.

5.13. The Supplier may refuse to supply goods and/or services to the Customer until all amounts due to the Supplier have been paid in full.



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### 6. Risk

6.1. The risk of loss or damage to the Goods shall pass to the Customer on delivery.

### 7. Title

7.1. Until the Customer has paid for the Goods in full and also paid all other moneys due and payable to the Supplier by the Customer:

- (a) property in the Goods shall remain with the Supplier ("the retention of title");
- (b) the Customer shall hold the Goods as a fiduciary and bailee of the Supplier;
- (c) the Customer shall hold the Goods in a way that clearly indicates the Supplier's title to the Goods.
- (d) if the Goods are processed or commingled with or made an accession to other goods by the Customer, the Customer shall record and make available to the Supplier on request the record of the date of the processing commingling or accession and hold the product, mass or whole in a way that clearly indicates the Supplier's title to the product, mass or whole.
- (e) the Customer shall not deal with the Goods, either in their original state as part of a product, mass or whole, for a consideration of less value than the amount necessary to discharge the Customer's liability to the Supplier in full for or in relation to the Goods and shall retain the consideration or other Proceeds of the Goods separate from all other property of the Customer in a manner, which clearly identifies it as such consideration or other Proceeds of the Goods, product, mass or whole (unless otherwise agreed in writing by the Supplier).

7.2. the Customer acknowledges that the installation of any goods sold to the Customer does not render such goods fixtures and that the parties intend that goods shall be capable of removal by the Supplier until property in the goods passes to the Customer.

7.3. the Customer must not sell, dispose, assign or encumber the goods (b mortgage, lien, charge or otherwise) without the consent of the Supplier.

7.4. The Customer agrees that:

- (a) a Security Interest is retained in favour of the Supplier in: i. the Goods; ii. the Proceeds of the Goods; iii. any other property, to which the Goods become an accession iv. an product or mass, of which the Goods become a part by manufacture process, assembly or commingling
- (b) the retention of title constitutes the grant of a purchase money security interest by the Customer in favour of the Supplier in respect of all present and after acquired Goods supplied to the Customer by the Supplier.
- (c) the Security Interest secures: i. the Customer's obligation to pay for the Goods, and ii. any and all other obligations of the Customer to pay money or money's worth (including costs, expenses, damages or losses) for the benefit of the Supplier now or in the future or from time to time under this agreement.
- (d) to the extent the Supplier's Security Interest secures the Customer's obligation to pay for the Goods, it constitutes a PMSI;
- (e) with respect to the Supplier's Security Interest, the Customer will when called upon by the Supplier sign any further documents or provide an further information which the Supplier may reasonably require to register financing statement or financing change statement on the Personal Property Security Register ("PPS Register"), or in connection with the issue of a verification statement;
- (f) it will not register or apply to register a financing statement or finance change statement which is in any way connected with the Goods (or an accession, mass or product, of which they form part) without the Supplier's prior written consent, which may be given or withheld at the Supplier's absolute discretion;
- (g) it will pay any costs or expenses incurred by the Supplier and keep the Supplier indemnified against any loss, damage or liability to third parties incurred in relation to: i. registering or seeking the release of any document relating to the Supplier's Security Interest on the PPS Register; or ii. enforcing the Supplier's security Interest (including its legal costs, on a solicitor-Customer basis);
- (h) it will give the Supplier at least 14 days written notice of any proposed change in its name, contact details, place of incorporation, address, location, nature of business, ownership, or business practice; and

### 8. Right of Entry and Resale

8.1. Without limiting the rights or remedies available to the Supplier under these Terms and Conditions, statute (including under the PPSA) or other law, if the Customer;

- (a) (being a natural person) commits an act of bankruptcy;
- (b) (being a corporation) does anything which entitles anyone to apply to wind up the Customer or is subject to the appointment of an administrator or receiver and manager; or
- (c) breaches any of these "Terms and Conditions", (each of which is hereafter referred to as 'an act of default'), the Supplier may take possession of and retain, resell or otherwise dispose of the Goods or any product, mass or whole, of which they form part.

8.2. To the extent permitted by law, in the event of any such act of default, the Customer authorises the Supplier to enter premises where the Goods may be located to take possession of the Goods or any product, mass or whole, of which they form part without notice to the Customer. The Customer shall indemnify the Supplier against all claims arising out of the entry by the Supplier into premises to take possession of the Goods or any product, mass or whole, of which they form part.



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### **9. Building and Construction Industry Security of Payments Act 1999**

9.1. At the Supplier's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services, then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.

9.2. Nothing in this Agreement is intended to have the effect of contracting out of any applicable provision of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

### **10. Return of Goods**

10.1. The Supplier will not be obliged to accept any Goods returned by the Customer or allow any credit for them, unless:

- (a) a claim is notified in writing by the Customer to the Supplier within seven (7) working days after the Supplier tendered delivery of the Goods to the Customer or the Customer collected the Goods;
- (b) the Goods returned are accompanied by the Supplier's packing reference and original invoice number;
- (c) the Goods are returned in the condition in which they were delivered or collected; and (d) the Supplier in its absolute discretion agrees in writing to accept them.

### **11. Liability**

11.1. All conditions and warranties express or implied by law, statute, or otherwise, are excluded to the extent permitted by law. Where so permitted by law, the liability of the Supplier for the breach of a condition or warranty that cannot be excluded is limited, at the Supplier's option, to the replacement of the Goods or the supply of equivalent goods, or the cost of replacing the goods or acquiring equivalent goods.

11.2. Where the Supplier installs goods, the Supplier and Supplier's officers, agents and employees, shall not be liable for any losses, costs or damages with respect to existing property on or about the place where the goods are installed, and whether as a result of negligence, breach or statutory duty or otherwise.

11.3. The Customer must indemnify the Supplier, and the Supplier's officers, agents and employees, against claims in respect of personal injury or death or loss of damage to any property, whether as a result of negligence, breach of statutory duty or otherwise, which arise out of, or are a consequence of any act or omission of the Customer.

11.4. So far as the law permits, the Supplier shall not be liable for any loss or damage, which may be suffered by the Customer for any reason including but not limited to, delay, negligence or any act, matter or thing done or permitted or omitted to be done by the Supplier.

### **12. Damage**

12.1. The seller will not be responsible for any cracking of driveways, brickwork or cement rendering or damage to surrounding fixtures. However, our installers are very experienced and every care is taken to avoid this happening. Macquarie Garage Doors will not be responsible for damage to services concealed unless prior warning to exact location is given.

### **13. Measurements**

13.1. Where opening is not completed the quoted size is given. The final measurements are taken from finished opening and the price is revised, as necessary.

13.2. Where sizes are taken from bill of quantities only and accurate site measurements cannot be taken. The buyer must guarantee final site measurements.

### **14. Access**

14.1. The buyer must leave clear access into opening to enable our vehicle which is fitted with its own power for drilling, welding and crane to operate. However, if we have to use the consumer's Power, NO responsibility will be accepted for any possible damages.

### **15. Delays**

15.1. Any delays causing extra time on site, out of the seller's control where openings are not ready as promised or where clear access is not provided for trucks to get into the opening will be charged for at an hourly rate.

15.2. The seller will not be responsible for non performance due to strikes lockouts etc. out of their control.

15.3. If delays to installation occur outside of the seller's control, storage fees will be added to the invoice at the discretion of Macquarie Garage Doors. This would be charged at \$50.00 ex GST per door per week. This charge would be applied if installation has not occurred within one (1) month or more after the lead time that was discussed with Macquarie Garage Doors at time of order.

15.4. If delay occurs that prevents Macquarie Garage Doors from installing a garage door that is due to the manufacturer or supplier not delivering the door on time, Macquarie Garage Doors will not pay on liquidated damages when outside of our control.

### **16. Warranty**

16.1. The warranty against faulty parts and labour is as per manufacturer's terms.

16.2. 90 Days warranty for all labour repairs.

16.3. Guarantee is void unless doors and motors are kept in a well maintained condition.

### **17. Conditions of Quotation**

17.1. Macquarie Garage Doors are authorised, by my signature, to take final payment from my account details overleaf, upon completion of the works.

17.2. The attached quotation does not provide for any special site allowances or conditions that may apply.

17.3. The terms of acceptance of this quotation remains valid for one month from date hereof and acceptance thereafter is subject to the right of seller to revise price or terms quoted.

17.4. Any alterations or amendments requested by client or client's building contractor or necessitated by building structures will be charged at current rates for service and/or



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#### 18. Charge

18.1. The Customer hereby charges separately:

- (a) all the Customer's freehold and leasehold interest in land, including land which the customer, after the date of this Agreement, obtains an interest in; and
- (b) all of the Customer's personal property; as security for the performance by the Customer of its obligations to the Supplier under this Agreement and otherwise, including due payment to the Supplier of all moneys that may become payable to the Supplier arising out of the subject matter of the Agreement.

18.2. The charges created by clause 11.1 are separate charges over the Customer's property and in the event that either charge is void or unenforceable then such charge will be severable from this Agreement and does not affect validity of the other charge.

18.3. If requested by the Supplier, the Customer must promptly deliver an executed mortgage, or such other instrument of security as the Supplier may require, in registrable form as additional security.

18.4. The Customer agrees to further to:

- (a) the Supplier lodging a caveat over the Customer's title to any freehold and leasehold interest in land; and to secure the Supplier's interest in the real property.
- (b) Pay all stamp duty, registration fees and other costs (including legal costs) which the Supplier incurs in lodging, releasing or withdrawing a caveat.

#### 19. Notice

19.1. Any notice to be given by the Supplier to the Customer may be given by facsimile, post or hand delivered to the Customer's business address on the Account Application or last known to the Supplier.

19.2. Any notice to be given by the Customer to the Supplier must be in writing by facsimile, post or hand delivered to the Supplier's business address on the Account Application or last notified in writing by the Supplier. 19.3. A notice:

- (a) given by facsimile shall be deemed to be given on the business day following it is sent;
- (b) sent by pre-paid post shall be deemed to be given on the business day following the day on which it was posted; or
- (c) delivered by hand shall be deemed given when delivered.

#### 20. Entire Agreement

20.1. These Terms and Conditions, in addition to any written agreement between the Supplier and the Customer signed by an authorised representative of each party, constitute the entire agreement or contract between the Supplier and the Customer for the supply of Goods.

20.2. The Customer acknowledges that neither the Supplier nor anyone purporting to act on its behalf has made any representation or given any promise or undertaking which is not expressly set out in writing, whether as to the fitness of the Goods for any particular purpose or any other matter.

20.3. These Terms and Conditions may be varied by the Supplier with effect in relation to all Goods ordered after that variation by notice to the Customer of the Terms and Conditions, as proposed to be varied, in which case, unless advised otherwise in writing by the Customer to the Supplier, received within 7 days of despatch of the Supplier's notice, the Customer will be deemed to have accepted and be bound by those varied Terms and Conditions.

20.4. All the rights and remedies of the Supplier under these Terms and Conditions shall remain in full force and effect notwithstanding any neglect, forbearance or delay in enforcement by the Supplier and may only be waived expressly in writing.

21. Governing Law These Terms and Conditions shall be governed by and construed in accordance with the laws of the state or territory nominated by the Supplier in which either the Goods were produced or the Customer took delivery and in default of nomination in accordance with the laws of the state of New South Wales and the parties submit to the jurisdiction of the courts of the state or territory so nominated or in default of nomination, the courts of New South Wales.