

## 1. Interpretation

1.1 In these terms and conditions:

- (a) "The Company" means Twin City Roller Doors (TCRD) and any related body corporate as defined in the *Corporations Act 2001* (Cth) and its successors and assigns.
- (b) "Client" means the entity stated in the Application for Credit, its successors and assigns and any other person offering to contract with the Company on these terms and conditions or, where such person is acting in the course of employment, such persons as employer.

## 2. Agents

2.1 The Company shall be at liberty to retain any of its authorised agents or any other entity it sees fit and at the sole discretion of the Company and the Client consents to disclosure of information about the Client or its contacts to these agents.

## 3. Risk

3.1 Should the Company elect to post any goods or organise delivery of goods, the Client's risk of loss or damage to such good passes to the Client on the date and at the time that the goods were ordered, and it is the Client's responsibility to ensure these goods are insured and covered for their time in transit.

3.2 The Company will not be responsible for non-delivery or delay in delivery of any goods where such non-delivery or delay occurs, the Company may deliver the goods not delivered or delayed at any subsequent time and the Client must accept and pay for them.

## 4. Time for delivery and/or installation

Any dates given by TCRD for delivery or installations are estimates only, if TCRD is unable to deliver or install by the given date/time, TCRD is not liable for any loss or damage arising out of this delay.

## 5. Title of Property

5.1 In relation to goods supplied to the Client, ownership and property in the goods vests absolutely with the Company and does not pass to the Client UNTIL the Client:

- (a) Pays for the goods in full;
- (b) Pays in full all other monies owing or unpaid by the Client to the Company including monies in respect of goods previously or subsequently supplied to the Client by the Company.

5.2 In relation to goods supplied to the Client for which payment in full has not been received:

- (a) The relationship between the Client and the Company shall be fiduciary;
- (b) The Client will hold those goods as bailee for the Company;
- (c) Where the Client sells those goods, the Client does so as fiduciary agent of the Company;
- (d) When new goods or objects are formed with the Company's goods into other products or the goods are affixed to other objects, the Company will be given full ownership of such new goods or objects;
- (e) Where the goods are disposed of, the monies resulting from the disposal and all other proceeds received in respect of the goods, including insurance proceeds will be kept separately in trust for the Company;
- (f) Where the goods are disposed of, the Client may only dispose of the goods in the ordinary course of its business on commercially reasonable terms;
- (g) The Client undertakes that until it delivers the goods to a third party, it will store the goods on its premises separately from its own goods, or those of any other person, and in a manner which makes the goods readily identifiable as the Company's goods.

## 6. Access

6.1 The Client irrevocably permits the Company or any person authorised by the Company in writing, upon giving reasonable notice to enter the Client's premises or at premises where the goods are reasonably believed by the Company to be held on the Client's behalf for the purpose of examining or recovering the goods. The Client also agrees to indemnify and hold the Company harmless for reasonable costs of removal,

enforcement, and legal action in respect of the removal of any goods, the subject of this Agreement.

## 7. Transactions contemplated by this Agreement

7.1 The Company's tender of delivery of goods and services under this Agreement is a condition of the Client's duty to accept the goods or services provided and, unless otherwise agreed, the Client's duty to pay for them.

## 8. Disputes

8.1 If the Client disputes any goods sold or services supplied by the Company are faulty or defective or disputes the Invoices the Company has issued, the Client must notify their reasons in writing to the Company within 14 days of the Invoice date, failing which the Client loses any right to dispute the quality of the goods, services or quantum of.

## 9. Whole Agreement

9.1 This agreement constitutes the whole agreement between the parties. No other terms and conditions in any other document or any other written or oral representations bind the parties.

## 10. Custom made units

10.1 If the buyer provides TCRD with details and measurements of floor levels, heights and openings and does not require TCRD to inspect the site and verify the measurements then any error does not entitle the buyer to reject the product.

## 11. Damage to work or property

11.1 General Exceptions – They buyer releases TCRD from any claim or liability, including consequential loss or damage and loss of profit, which is the result of delay, defective or faulty materials or workmanship, negligence or any act or omission by TCRD.

11.2 Specific Exceptions – TCRD is not liable for any loss or damage caused directly or indirectly by:

- A) Operating a product by any device, electronic or otherwise, which was not supplied or installed by TCRD.
- B) Any masonry, rendered or other surfaces cracking or collapsing during or after installation of the product.
- C) Any defect or deterioration of timber, including drying out after installation of the product.
- D) Any weakening or collapse of any structure to which the product is affixed, occurring at any time after installation.
- E) Any rock debris inside doors caused by transport.
- F) Any freight rub marks or minor dents in doors.

## 12. Indemnities

12.1 A Client, their servant, agent or employee who enters the company's premises for the purpose of ordering or collecting goods does so at their own risk. The company will not be liable for any damaged caused by any acts or omissions whatsoever and the client indemnifies the company against all claims, demands or suits made by any person attending the premises of the company with or on behalf of a Client, its servants, agent or employee.

12.2 Where, in order to deliver (or repossess) goods, the company or a cartage contractor enters upon the clients premises, the client must provide full and safe access to the premises. The client will be liable for, and must indemnify the company against, the costs of any loss, damage to property and injury to any person which occurs directly or indirectly as a result of the clients failure to ensure full and safe access to the clients premises.

12.3 The client must indemnify the company against any claim, demand or suit arising out of the company's use of or reliance upon any design, drawing or specification provided to the company by the client.

## 13. Payment

13.1 The Client agrees to pay all amounts due in clear funds within the Company's agreed timeframe but no later than 30 days from the date of invoice. The Client agrees that if it fails to pay in accordance with this clause, the Company may:

- (a) Charge interest on debts at 32% per annum;
- (b) Recover all collections costs and expenses incurred in collecting overdue accounts on an indemnity basis;
- (c) Withhold supply;

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- (d) Sue for the money owing on the goods or services provided.
- 13.2 In the event where this agreement has been entered into by more than one party each party shall be jointly and severally liable for any amounts overdue.
- 14. Default**
- 14.1 If the Client:
- (a) Fails to pay for any goods or services on the due date; or
  - (b) Otherwise breached this agreement and failed to rectify such breach within seven days notice; or
  - (c) Cancel delivery of goods or services; or
  - (d) Commits an act of bankruptcy or allows a trustee in bankruptcy or receiver and manager to be appointed to the Client or any of its property; or
  - (e) Allow a judgment or order to be enforced or become enforceable against the Client's property; or
  - (f) Permits proceedings to be commenced to wind the Client up or controller, receiver, administrator, liquidator or similar officers appointed to the Client in respect of any part of its property;
- then the Company may enter upon the Client's premises (doing all that is necessary to gain access) where goods supplied under this contract are situated at any time and re-take possession of any or all of the goods the Company has supplied to the Client and:
- (a) Resell the goods concerned;
  - (b) Terminate the agreement; and
  - (c) Sue for any monies owing.
- 14.2 The Client will be in default if the Client does not pay any monies payable when called upon so to do the Client and the Guarantor jointly and severally acknowledge and agree that the Company is authorised to contact a credit reporting agency throughout the term of the Agreement to obtain a report about the creditworthiness of either the Client or the Guarantor or both.
- 14.3 The Client and the Guarantor jointly and severally authorise the Company to engage in the exchange of information with a credit reporting agency or with other such parties as are necessary to give effect to the contract and to the ongoing relationship between the parties hereto.
- 14.4 The Company reserves the right to report a Client's delinquent account to a credit reporting agency should payment remain outstanding for more than 30 days. In addition the Company may refer the outstanding account for debt collection or issue legal proceedings to recover any outstanding invoices. Should an account be referred for debt collection the Client acknowledges and agrees to pay debt collection charges to be calculated at not less than 32% plus GST and will be incurred on the day the Company refers the matter to their nominated debt collection agency. The client shall also be liable for interest and all legal recovery costs associated with such action on a solicitor and own client or indemnity cost basis.
- 15. Charge**
- 15.1 The Client charges in favour of the Company any land that it owns (or acquires after the date of this agreement) as security for any and all monies owed to the Company and hereby authorises and consents to the Company registering a caveat over the land if the Client defaults in making payment of any amounts owing to the Company.
- 16. Warranty**
- Subject to statutory warranties, the company warrants that new product will be free from defects in materials and workmanship, from the date of purchase, for periods as specified in manufacturers warranty.
- Note: Doors used in 'high frequency' situations (eg. Entry door to carpark or frequently operated factory door) are subject to a reduced warranty period, dependent on the frequency of use. Consult TCRD for further information.
- 17. Conditions of Warranty**
- a) Correct use: the warranties only apply to a unit used by the buyer correctly and reasonably and where the product is maintained and serviced by the client as recommended by TCRD.
- b) Follow instructions: the warranties only apply if the client observes any instructions or directions provided with the product.
  - c) Installation by TCRD: the warranties cover, for a period of 6 months, defects in or malfunction of the product resulting from faulty installation of the product by TCRD. TCRD does not warrant product faults caused as a result of installation carried out by others.
  - d) Reasonable repairs: the warranties only cover repairs in a manner TCRD considers reasonable, including, if necessary, the touch-up of surface coatings.
  - e) Proven Defects: the warranties only apply to repairs of proven defects in materials and workmanship.
  - f) Proof of purchase Date: the client must establish to the reasonable satisfaction of TCRD or such distributor, the date of purchase or installation (as the case maybe)
  - g) Environmental Conditions: the warranties do not cover damage to the surface coatings or the base materials of the unit caused by gravel from the road, or similar conditions.
  - h) Events beyond the control of TCRD: The warranties do not cover defects in or malfunctions of a product due to an event or acts beyond the control of TCRD.
  - i) Model Modifications: The warranties do not require TCRD to incorporate any modifications made to existing or future models of the product sold under these warranties.
  - j) Materials: The warranty covers the cost of the faulty components(s) but the labour involved in replacing/repairing the faulty component(s), and travel expenses where the product is installed outside the metropolitan area are at extra cost to the client.
  - k) Limitations: TCRD's obligations under these warranties are limited to those contained in Clause 17.
  - l) Application: The warranties above or any terms and conditions of this agreement shall only be applied to the extent permitted by the provision of the Trace Practices Act 1974, or any terms and conditions or warranties expressed or implied by any relevant state or territorial ordinance or by the general law.
  - m) Service work has no warranty.
- 18. Right to amend terms and conditions**
- 18.1 The Company reserves the right to amend terms and conditions of this agreement by giving the Client notice in writing of the amended terms and conditions to the Client's address as specified on the face of this agreement or as notified by the Client from time to time. The Client is deemed to accept any amended Terms and Condition unless it notifies the Company in writing within seven days of its objection to the proposed amendment to the Terms and Conditions.
- 19. Set-off**
- 19.1 The Client agrees that:
- (a) The Company may set-off any credit amount that the Company owes to the Client against any debt due by the Client to the Company at the Company's sole discretion;
  - (b) The Client is not entitled to withhold payment of any money in respect of any alleged set-off or claim the Client might have against the Company.
- 20. Severance and Waiver**
- 20.1 If any part of this agreement is found to be void, unlawful, or unenforceable then that part will be deemed to be severed from the agreement and the severed part will not affect the validity and enforceability of any remaining provisions. Any waiver of the Company's right under this agreement must be in writing and signed by an authorised representative of the Company.
- 21. Jurisdiction**
- 21.1 The agreement shall be deemed to have been made in New South Wales and shall be interpreted in accordance with the Laws of New South Wales, Australia, and the parties submit to the exclusive jurisdiction of the New South Wales Courts.
- 22. Consumer Credit Code**
- 22.1 The Client and Guarantors declare that the credit to be provided is to be applied wholly or predominantly for business purposes and not for personal, domestic or household purposes.

**Acknowledgement**

I/We acknowledge that I/we have read and understood the contents of these terms and conditions of Twin City Roller Doors.

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**Signature of Applicant # 1**

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*Signature* *Date*

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*Name (please print)*

**Signature of Applicant # 2**

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*Signature* *Date*

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*Name (please print)*

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**Signature of Applicant # 3**

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*Signature* *Date*

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*Name (please print)*