

# Max-Rom Investments Limited – Terms & Conditions of Trade

## 1. Definitions

- 1.1 "Contract" means the terms and conditions contained herein, together with any Price, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "MIL" means Max-Rom Investments Limited t/a AceDoor Systems 2013 Limited & Flexible Door Technology 2014 Limited (or otherwise referred to as the "Vendor"), its successors and assigns or any person acting on behalf of and with the authority of Max-Rom Investments Limited t/a AceDoor Systems 2013 Limited & Flexible Door Technology 2014 Limited.
- 1.3 "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting MIL to provide the Goods as specified in any proposal, price, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
  - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
  - (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (d) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.4 "Goods" means all Goods, Materials or Services, supplied by MIL to the Customer supplied by MIL to the Customer at the Customer's request from time to time (where the context so permits the terms "Goods", "Materials" or "Services" shall be interchangeable for the other).
- 1.5 "Cookies" means small files which are stored on a user's electronic device. They are designed to hold a modest amount of data (including PII) specific to a particular Customer and website and can be accessed either by the web server or the Customer's electronic device. If the Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable/disable the Cookies first by selecting the option to enable/disable provided on the website, prior to ordering Goods via the website.
- 1.6 "Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between MIL and the Customer in accordance with clause 6 below.

## 2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of any Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a customer information form with MIL and it has been approved with a credit limit established for the account, if required.
- 2.5 In the event that the supply of Goods request exceeds the Customers credit limit and/or the account exceeds the payment terms, MIL reserves the right to refuse acceptance for new orders or refuse delivery of the Services.
- 2.6 In the event that the Goods provided by MIL are the subject of an insurance claim that the Customer has made, then the Customer 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 MIL and shall ensure payment is made by the due date irrespective of whether the insurance claim is successful.
- 2.7 Where MIL gives any advice, recommendation, information, assistance or service provided by MIL in relation to Goods supplied is given in good faith and is based on MIL's own knowledge and experience and shall be accepted without liability on the part of MIL.
- 2.8 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.9 Emailed acceptance of quotation by Customer is deemed to be the signoff stage of order, any variations after this stage, will incur additional costs as per clause 6.2.
- 2.10 In the event that MIL has been requested to do additions or alterations to an existing building or structure then the following shall apply:
- (a) MIL shall not be liable for any loss or damage suffered by the Customer in relation to the Services where such loss or damage results from the state or condition of the Customer's existing building or structure and the effect of such state or condition on the Services or the effect of the Services on the existing building or structure which could not reasonably have been foreseen by MIL during the course of the Services; and
  - (b) MIL will use reasonable endeavours to match new Materials to existing Materials. However, the parties recognise that it may not be possible to provide an exact match of Materials due to availability of Materials and in such event the Materials are not or cease to be available, MIL reserves the right to provide alternate Materials and there shall be no claim against MIL. In all such cases MIL will notify the Customer in advance of any such substitution, and also reserves the right to place the Customer's order and/or Services on hold, in accordance with 7.2 until such time as MIL and the Customer agree to such changes; and
  - (c) where as a result of opening up any part of the existing building or structure to carry out the Services, any additional or altered Services is required because of non-standard construction or any substandard timber or other Materials or because of any Material which is required to be replaced or removed to carry out the Works, all costs involved will be charged to the Customer and will be treated as a variation.
- 2.11 All literature, samples, specifications, submitted with this quotation is expressly illustrative and is by way of a general description of Goods only in accordance with industry standards. Any descriptions, dimensions or specifications contained in catalogues and other advertising material while being as accurate as possible but may not necessarily be identical with products and Services MIL is to supply. MIL will not accept liability to the Customer for quality of Goods which comply with accepted industry standards.
- 2.12 Any remote-control keys MIL is to supply with the Goods will only be released to the Customer once full payment is received.
- 2.13 If MIL has been requested by the Customer to prepare a quotation that involves a site measurement visit or third-party involvement, all costs involved will be charged to the Customer irrespective of whether or not the Services proceed.
- 2.14 In the event that MIL is required to provide the Goods urgently, that may result in MIL to work outside normal business hours (including, but, not limited to working through lunch breaks, weekends and/or Public Holidays) or incur travel or accommodation costs, then MIL reserves the right to charge the Customer the additional costs unless otherwise agreed between MIL and the Customer.

## 3. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that MIL shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by MIL in the formation and/or administration of this Contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by MIL in respect of the Goods.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1 and is not attributable to the negligence and/or wilful misconduct of MIL; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 3.3 Clerical errors or omissions, whether in computation or otherwise in the quotation, acknowledgement or invoice shall be subject to correction.

## 4. Authorised Representatives

- 4.1 The Customer acknowledges that MIL shall (for the duration of the Goods) liaise directly with one (1) authorised representative, and that once introduced as such to MIL, that person shall have the full authority of the Customer to order any Goods, and/or to request any variation thereto on the Customer's behalf. The Customer accepts that they will be solely liable to MIL for all additional costs incurred by MIL (including MIL's profit margin) in providing any Goods, or variation/s requested thereto by the Customer's duly authorised representative.
- 4.2 If the Customer's duly authorised representative as per clause 4.1 is to have only limited authority to act on the Customer's behalf, then the Customer must specifically and clearly advise MIL in writing of the parameters of the limited authority granted to their representative.
- 4.3 The Customer specifically acknowledges and accepts that they will be solely liable to MIL for all additional costs incurred by MIL (including MIL's profit margin) in providing any Goods, or variations requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).

## 5. Change in Control

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

## 6. Price and Payment

- 6.1 At MIL's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by MIL to the Customer in respect of Goods performed or Goods supplied; or

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- (b) MIL's quoted Price (subject to clause 6.2) which shall be binding upon MIL provided that the Customer shall accept MIL's Price in writing within thirty (30) days.
- 6.2 MIL reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested (including any applicable designs, plans and/or specifications), which must be made in writing prior to order placement of the Goods. Any variation once the order for the Goods has been processed shall not be accepted; or
  - (b) where the quotation allows for one initial visit to the worksite for installation of the Goods and it becomes inevitable that extra trips will be required, there will be an additional charge for such visits which shall be invoiced (unless otherwise agreed) in accordance with this clause 6.2; or
  - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, availability of machinery, non-consented plans or specifications supplied by the Customer, safety considerations, pre-existing structural integrity of the supporting framework to the installation site, prerequisite work by any third party not being completed or code compliant, difficulties or matching colour, lead times for specifically coloured hardware, etc.) which are only discovered on commencement of the Services; or
  - (d) in the event of increases to MIL in the cost of labour or materials (including but, not limited to any variation as a result of fluctuations in currency exchange rates or increases to MIL in the cost of taxes, levies, freight or insurance charges, or delays in shipment, wholesale supply rates etc) which are beyond MIL's control.
- 6.3 Variations will be charged for on the basis of MIL's Price, and will be detailed in writing, and shown as variations on MIL's invoice. The Customer shall be required to respond to any variation submitted by MIL within ten (10) working days. Failure to do so will entitle MIL to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At MIL's sole discretion a non-refundable deposit may be required:
- (a) for commercial Customers, non-account holders, 100% payment before work or delivery is commenced or undertaken; or
  - (b) for commercial Customers, account holders ordering from overseas a 45% deposit before work or delivery is commenced or undertaken; or
  - (c) for commercial Customer ordering from within New Zealand, no initial deposit required; or
  - (d) for non-commercial Customers, a 75% deposit due upon acceptance of quotation with the balance to be paid before installation.
- 6.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by MIL, which may be:
- (a) before delivery of the Goods; or
  - (b) the date specified on any invoice or other form as being the date for payment (as part of a progress payment or other) ; or
  - (c) for certain approved Customers, due twenty (20) days following the end of the month in which an invoice is sent to the Customer's address or address for notices; or
  - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by MIL; or
  - (e) immediately payable at the time the Customer places an order for any non-stock list item or bespoke Goods that MIL have to pay to any third-party supplier.
- 6.6 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Customer and MIL.
- 6.7 MIL may in its discretion allocate any payment received from the Customer towards any invoice that MIL determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer MIL may re-allocate any payments previously received and allocated. In the absence of any payment allocation by MIL, payment will be deemed to be allocated in such manner as preserves the maximum value of MIL's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.8 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by MIL nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to MIL an amount equal to any GST MIL must pay for any supply by MIL under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer 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.

### 7. Delivery of the Goods

- 7.1 At MIL's sole discretion, delivery of the Goods shall take place when the Goods are supplied to the Customer at the Customer's nominated address, even if the Customer is not present at the address or when the Customer or the Customer's nominated carrier takes possession of the Goods at MIL's address.
- 7.2 At MIL's sole discretion the cost of delivery is included in the price.
- 7.3 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this Contract.
- 7.4 MIL may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.5 The Services' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that MIL claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond MIL's control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
  - (b) have the site ready for the Services; or
  - (c) notify MIL that the site is ready.
- 7.6 The Customer acknowledges and accepts that where the Customer wishes to postpone the Services that MIL must be notified within twenty-four (24) hours of the proposed commencement date as agreed to between both parties. Where such notice is received inside this timeframe, MIL reserves the right to charge a reasonable fee, including any freight charges, for the delay in the commencement of the Services.
- 7.7 Any time specified by MIL for delivery of the Goods is an estimate only and MIL will not be liable for any loss or damage incurred by the Customer as a result of delivery being delayed for any reason. However, both parties agree that they shall make every endeavour to enable the Goods to be supplied at the time and place as was arranged between both parties. In the event that MIL is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then MIL shall be entitled to charge a reasonable fee for re-supplying the Goods at a later time and date, and/or for storage of the Goods.

### 8. Dimensions, Plans and Specifications

- 8.1 MIL shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, MIL accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.2 Where the Customer is to supply MIL with any design specifications (including, but not limited to CAD drawings) the Customer shall be responsible for providing accurate data. MIL shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate data being supplied by the Customer.
- 8.3 In the event the Customer gives information relating to measurements and quantities of Goods required in completing the Goods, it is the Customer's responsibility to verify the accuracy of the measurements and quantities, before the Customer or MIL places an order based on these measurements and quantities. MIL accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause.

### 9. Access

- 9.1 The Customer shall ensure that MIL has clear and free access to the delivery address at all times to enable them to undertake the Works. MIL shall not be liable for any loss or damage to the delivery address (including, without limitation, damage to pathways, trees, plants, trees, shrubs, driveways and concreted or paved or grassed areas) unless due to the negligence of MIL.
- 9.2 It is the responsibility of the Customer to ensure that access is suitable to accept the weight of laden trucks, or other moving equipment as may be deemed necessary by MIL. The Customer agrees to indemnify MIL against all costs incurred by MIL in recovering such vehicles in the event they become bogged or otherwise immovable.

### 10. Risk

- 10.1 If MIL retains ownership of the Goods under clause 14 then where MIL is supplying Goods only, all risk for the Goods shall immediately pass to the Customer on delivery and the Customer must insure the Goods on or before delivery. Delivery of the Goods shall be deemed to have taken place immediately at the time that the Goods are delivered by MIL or MIL's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).
- 10.2 Notwithstanding the provisions of clause 10.1 if the Customer specifically requests MIL to leave Goods outside MIL's premises for collection or to deliver the Goods to an unattended location then such Goods shall always be left at sole risk of the Customer and it shall be the Customer's

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responsibility to ensure the Goods are insured adequately or at all. In the event that such Goods are lost, damaged or destroyed then replacement of the Goods shall be at the Customer's expense.

- 10.3 Extreme instances of weather, temperature or forecast weather, may cause delay to MIL being able to deliver the Goods, MIL accepts no losses, damages or costs as a result of this instance.
- 10.4 The Customer acknowledges that Goods supplied may exhibit variations in texture, shade, tone, colour, surface, finish and may fade or change colour over time. Whilst MIL will make every effort to match batches of product supplied to minimise such variations, MIL will not be held liable in any way whatsoever, should such variations occur.
- 10.5 The Customer acknowledges that the colour of the Goods are limited to those colours available from MIL's suppliers at the time of order placement and the choice of colour is entirely the responsibility of the Customer and as such commencement of manufacture of the Goods will not proceed without written confirmation of colour choice from MIL's current available range.
- 10.6 The Customer warrants that any structures to which the Materials are to be affixed are able to withstand the installation thereof and are of suitable capacity to handle the Materials once installed. If for any reason (including the discovery of asbestos, defective or unsafe structures or risk) that MIL, or MIL employees, reasonably form the opinion that the Customer's premises is not safe for the Works to proceed then MIL shall be entitled to delay the provision of the Works (in accordance with clause 6.2) until MIL is satisfied that it is safe for the installation to proceed.
- 10.7 The Customer agrees to remove from the work area any furniture, personal effects or other property likely to impede MIL in order to minimise the risk of injury or any possible damage.
- 10.8 The Customer agrees to provide any and all electrical work required with the installation of the Goods. If the Customer fails to adhere to the provisions of this clause and the responsibility is passed to MIL, all costs involved will be charged as an extra in accordance with clause 6.2.
- 10.9 The Customer agrees to obtain (at the expense of the Customer) all necessary licenses and approvals (including building and/or development permits), and associated insurances and fees, that may be required by any public authority.
- 10.10 The Customer acknowledges that all descriptive specifications, illustrations, dimensions and weights stated in MIL's or the manufacturers fact sheets, price lists or advertising material are approximate only and are given by way of identification only. The Customer shall not be entitled to rely on such information, and any use does not constitute a sale by description and does not form part of the contract, unless expressly stated as such in writing by MIL.
- 10.11 In the event that MIL discovers Asbestos/Hazardous Materials whilst undertaking any Services MIL shall immediately advise the Customer of the same and shall be entitled to suspend the Services pending a risk assessment in relation to those materials. The Customer shall be liable for all additional costs (howsoever arising) incurred by MIL as a result of the discovery of Asbestos/Hazardous Materials and/or any suspension of Works in relation thereto. Where MIL agrees to remove any Asbestos/Hazardous Materials on the Customer's behalf this shall be treated as a variation as per clause 6.2.
- 10.12 The Customer acknowledges and agrees that whilst MIL shall take all reasonable care during the performance of the Services, the Customer agrees that MIL shall not be held liable for any loss, damages, or costs howsoever resulting from drilling or fixing the Goods into any masonry or rendered surfaces etc, during the installation process
- 10.13 MIL is not responsible for the removal of rubbish (including but not limited to old doors, hardware, construction materials) from or clean-up of the building/construction site/s. This is the responsibility of the Customer or the Customer's agent.
- 10.14 The Customer agrees to indemnify MIL from any loss or damage caused by any other tradesmen (including but not limited to, incorrect or faulty installation carried out by any other third party) during and after the completion of the Services
- 10.15 Where MIL has affected delivery, all risk passes to the Customer as per clause 10.1 and the Customer claims the Goods have been stolen, it shall be the Customer's responsibility to contact the police, and shall not excuse the Customer from fulfilling their financial obligations under this Contract.

### 11. On-line Ordering

- 11.1 The Customer acknowledges and agrees that:
- (a) MIL does not guarantee the website's performance; and
  - (b) display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by MIL; and
  - (c) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades; and
  - (d) there are inherent hazards in electronic distribution, and as such MIL cannot warrant against delays or errors in transmitting data between the Customer and MIL including orders, and you agree that to the maximum extent permitted by law, MIL will not be liable for any losses which the Customer suffers as a result of online ordering not being available or for delays or errors in transmitting orders; and
  - (e) when making a transaction through the website, the Customer's information will pass through a secure server using SSL (secure sockets layer) encryption technology. The encryption process ensures that the Customer's information cannot be read by or altered by outside influences; and
  - (f) if the Customer is not the cardholder for any credit card being used to pay for the Goods, MIL shall be entitled to reasonably assume that the Customer has received permission from the cardholder for use of the credit card for the transaction.
- 11.2 MIL reserves the right to terminate the Customer's order if it learns that you have provided false or misleading information, interfered with other users or the administration of MIL's business, or violated these terms and conditions.

### 12. Insurance

- 12.1 MIL shall have public liability insurance of at least twenty (20) million dollars, it is the Customer's responsibility to ensure that they are similarly insured.???

### 13. Compliance With Laws

- 13.1 The Customer and MIL shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods including any relating Worksafe health and safety laws or any other relevant safety standards or legislation pertaining to the Goods.
- 13.2 The Customer shall obtain (at the expense of the Customer) any building consent and resource consent and any other licenses and approvals that may be required for the Goods. MIL will require confirmation that all consents and approvals have been obtained by the Customer prior to the commencement of the Services. In the event that any required consents are only obtained following commencement of the Goods, any additional cost incurred due to any changes to the original plans and specifications provided by the Customer shall be charged as a variation, in accordance with clause 6.2.
- 13.3 Notwithstanding clause 13.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") MIL agrees at all times to comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the Worksite or where they may be acting as a sub-contractor for the Customer who has engaged a third party namely MIL.

### 14. Title

- 14.1 MIL and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid MIL all amounts owing to MIL; and
  - (b) the Customer has met all of its other obligations to MIL.
- 14.2 Receipt by MIL 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.
- 14.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Customer in accordance with clause 14.1 that the Customer is only a bailee of the Goods and unless the Goods have become fixtures must return the Goods to MIL on request; and
  - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for MIL and must pay to MIL the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed; and
  - (c) the production of these terms and conditions by MIL shall be sufficient evidence of MIL's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with MIL to make further enquiries; and
  - (d) the Customer 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 Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for MIL and must pay or deliver the proceeds to MIL on demand; and
  - (e) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of MIL and must sell, dispose of or return the resulting product to MIL as it so directs; and
  - (f) unless the Goods have become fixtures the Customer irrevocably authorises MIL to enter any premises where MIL believes the Goods are kept and recover possession of the Goods; and
  - (g) MIL may recover possession of any Goods in transit whether or not delivery has occurred; and

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- (h) the Customer 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 MIL; and
- (i) MIL may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

### 15. Personal Property Securities Act 1999 (“PPSA”)

- 15.1 Upon assenting to these terms and conditions in writing the Customer 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 present or after acquired Goods and/or collateral (account) – being a monetary obligation of the Customer to MIL for Goods that have previously been supplied and that will be supplied in the future by MIL to the Customer.
- 15.2 The Customer hereby acknowledges that these Terms and Conditions of Trade constitute a security agreement which creates a security interest in favour of the Vendor:
  - (a) for all Goods previously supplied by the Vendor to the Customer (if any); and
  - (b) for all of its present and after acquired Goods; and
  - (c) for intellectual property arising out of or in connection with the Services.
- 15.3 The Customer agrees to grant a "Purchase Money Security Interest" to the Vendor in respect to all amounts owed by the Customer to the Vendor, as that term is defined in the PPSA.
- 15.4 Where Goods in respect of which title has not passed to the Customer are sold by the Customer in the ordinary course of business, the book debt created on the sale and the proceeds of sale when received shall be held by the Customer for the Vendor in terms of section 45 of the PPSA:
  - (a) Where any proceeds of sale are placed in the Customer's bank account the funds in the Customer's bank account shall be deemed to be held on trust for the Vendor to the extent of proceeds of sale; and
  - (b) Where any payments are made from the Customer's bank account otherwise than to MIL payment shall be deemed to have been made from all other funds in the Customer's bank account and not from funds held on trust for the Vendor; and
  - (c) The trust obligation imposed by this clause and the Vendor's entitlements under the PPSA shall continue for so long as the Vendor is unpaid for all Goods supplied to the Customer.
- 15.5 The Customer 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 MIL may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register; and
  - (b) indemnify, and upon demand reimburse, MIL 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; and
  - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of MIL; and
  - (d) immediately advise MIL of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 15.6 MIL and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 15.7 If any of the Goods are incorporated in or used as material for other goods before payment is made ownership in the whole of the other goods shall be and remain with the Vendor until payment is made. The Vendor's Security Interest in the Goods shall continue in the terms of section 82 of the PPSA.
- 15.8 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 15.9 Unless otherwise agreed to in writing by MIL, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 15.10 The Customer shall unconditionally ratify any actions taken by MIL under clauses 15.1 to 15.9.

### 16. Security and Charge

- 16.1 In consideration of MIL agreeing to supply the Goods, the Customer 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 Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 16.2 The Customer indemnifies MIL from and against all MIL's costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising MIL's rights under this clause.
- 16.3 The Customer irrevocably appoints MIL and each director of MIL as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Customer's behalf.

### 17. Defects

- 17.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify MIL of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford MIL an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which MIL has agreed in writing that the Customer is entitled to reject, MIL's liability is limited to either (at MIL's discretion) replacing the Goods or repairing the Goods.
- 17.2 Goods will not be accepted for return other than in accordance with 17.1 above, and provided that:
  - (a) MIL have agreed in writing to accept the return of the Goods; and
  - (b) the Goods are returned at the Customer's cost within ninety (90) days of the delivery date; and
  - (c) MIL will not be liable for Goods which have not been stored or used in a proper manner.

### 18. Returns

- 18.1 MIL has no obligation to accept the return of Goods for credit and specifically manufactured Goods will absolutely not be returned for credit whatsoever unless meeting criteria contained in clause 17.1.
- 18.2 MIL may (at its sole discretion) accept the return of Goods for credit but this may incur a handling fee of twenty percent (20%) of the returned Goods plus any freight charges.
- 18.3 Any replacement for Goods deemed as defective, will only be delivered by MIL to the same delivery address as per the original order, any delivery to an alternative address may incur additional costs.

### 19. Warranties

- 19.1 For MIL's conditions of warranty, for residential customers please refer to MIL's accompanying warranty/policy at [www.acedoors.co.nz/warranty](http://www.acedoors.co.nz/warranty) and for commercial clients please refer to supplied quotation.
- 19.2 The conditions applicable to the warranty given by clause 17.1 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 Customer to properly maintain any Goods; or
    - (ii) failure on the part of the Customer to follow any instructions or guidelines detailed in the Customer care manual provided by MIL; 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 (reference clause 28.9)
  - (b) the warranty shall cease and MIL shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without MIL's consent.
  - (c) in respect of all claims MIL shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 19.3 For Goods not manufactured by MIL, the warranty shall be the current warranty provided by the manufacturer of the Goods. MIL 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.

### 20. Consumer Guarantees Act 1993

- 20.1 The Customer agrees that if they are acquiring Goods for the purposes of a business (as that term is defined in the CGA), to the extent permitted by law the provisions of the CGA will not apply to the supply of Goods by MIL to the Customer.

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### 21. Intellectual Property

- 21.1 Where MIL has designed, drawn, written plans or a schedule of Goods, or created any products for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in MIL, and shall only be used by the Customer at MIL's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of MIL.
- 21.2 The Customer warrants that all designs, specifications or instructions given to MIL will not cause MIL to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify MIL against any action taken by a third party against MIL in respect of any such infringement.
- 21.3 The Customer agrees that MIL may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which MIL has created for the Customer.

### 22. Overdue Payments

- 22.1 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 MIL's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 22.2 If the Customer owes MIL any money the Customer shall indemnify MIL from and against all costs and disbursements incurred by MIL in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Customer basis, MIL's collection agency costs, and bank dishonour fees).
- 22.3 Further to any other rights or remedies MIL may have under this Contract, if a Customer has made payment to MIL, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by MIL under this clause 22, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 22.4 Without prejudice to MIL's other remedies at law MIL shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to MIL shall, whether or not due for payment, become immediately payable if:
- any money payable to MIL becomes overdue, or in MIL's opinion the Customer will be unable to make a payment when it falls due; or
  - the Customer has exceeded any applicable credit limit provided by MIL; or
  - the Customer becomes insolvent or bankrupt, 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
  - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

### 23. Cancellation

- 23.1 Without prejudice to any other rights or remedies MIL may have, if at any time the Customer is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Customer of such notice/s) then MIL may suspend the Goods immediately. MIL will not be liable to the Customer for any loss or damage the Customer suffers because MIL has exercised its rights under this clause.
- 23.2 MIL may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are commenced by giving written notice to the Customer. On giving such notice MIL shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to MIL for Goods already performed. MIL shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 23.3 In the event that the Customer cancels the delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by MIL as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 23.4 Cancellation of orders for products made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

### 24. Suspension of Works

- 24.1 Where the Contract is subject to the Construction Contracts Act 2002, the Customer hereby expressly acknowledges that:
- MIL has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer, and:
    - the payment is not paid in full by the due date for payment in accordance with clause 6.5 and/or any subsequent amendments; or new legislation and no payment schedule has been given by the Customer; or
    - a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
    - the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to MIL by a particular date; and
    - MIL has given written notice to the Customer of its intention to suspend the carrying out of construction work under the Construction Contract.
  - if MIL suspends work, it:
    - is not in breach of Contract; and
    - is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer; and
    - is entitled to an extension of time to complete the Contract; and
    - keeps its rights under the Contract including the right to terminate the Contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
  - if MIL exercises the right to suspend work, the exercise of that right does not:
    - affect any rights that would otherwise have been available to MIL under the Contract and Commercial Law Act 2017; or
    - enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of MIL suspending work under this provision;
  - due to any act or omission by the Customer, the Customer effectively precludes MIL from continuing the Works or performing or complying with MIL's obligations under this Contract, then without prejudice to MIL's other rights and remedies, MIL may suspend the Works immediately after serving on the Customer a written notice specifying the payment default or the act, omission or default upon which the suspension of the Works is based. All costs and expenses incurred by MIL as a result of such suspension and recommencement shall be payable by the Customer as if they were a variation.
- 24.2 If pursuant to any right conferred by this Contract, MIL suspends the Works and the default that led to that suspension continues un-remedied subject to clause 23.1 for at least ten (10) working days, MIL shall be entitled to terminate the Contract, in accordance with clause 23.

### 25. Privacy Policy

- 25.1 All emails, documents, images or other recorded information including Personally Identifiable Information (PII) as defined and referred to in clause 25.4 held or used by MIL is considered confidential. MIL acknowledges its obligation in relation to the handling, use, disclosure and processing of PII pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 8 of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). MIL acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers PII, held by MIL that may result in serious harm to the Customer, MIL will notify the Customer in accordance with the Act and/or the GDPR. Any release of such PII must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 25.2 Notwithstanding clause 25.1, privacy limitations will extend to MIL in respect of Cookies where transactions for purchases/orders transpire directly from MIL's website. MIL agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection the Customers Personal Information such as:
- IP address, browser, email Customer type and other similar details;
  - tracking website usage and traffic;
  - reports which are available to MIL when MIL sends an email to the Customer; so MIL may collect and review that information (collectively "PII")
- 25.3 If the Customer consents to the Contractor's use of Cookies on the Contractor's website and later wish to withdraw that consent, the Customer may manage and control the Contractor's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 25.4 The Customer authorises MIL or MIL's agent to:
- access, collect, retain and use any information about the Customer;
    - (including, name, address, D.O.B, occupation, driver's license details, electronic contact (e.g. email, Facebook or Twitter details), or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or

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- (ii) for the purpose of marketing products and services to the Customer.
- (b) disclose information about the Customer, whether collected by MIL from the Customer directly or obtained by MIL 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 Customer.

25.5 Where the Customer is an individual the authorities under clause 25.4 are authorities or consents for the purposes of the Privacy Act 2020.

25.6 The Customer shall have the right to request MIL for a copy of the PII about the Customer retained by MIL and the right to request MIL to correct any incorrect PII about the Customer held by MIL.

### 26. Service of Notices

26.1 Any written notice given under this Contract shall be deemed to have been given and received:

- (a) by handing the notice to the other party, in person; or
- (b) by leaving it at the address of the other party as stated in this Contract; or
- (c) by sending it by registered post to the address of the other party as stated in this Contract; or
- (d) if sent by email to the other party's last known email address.

26.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

### 27. Trusts

27.1 If the Customer at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not MIL may have notice of the Trust, the Customer covenants with MIL as follows:

- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund; and
- (b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity; and
- (c) the Customer will not without consent in writing of MIL (MIL will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
  - (i) the removal, replacement or retirement of the Customer as trustee of the Trust; or
  - (ii) any alteration to or variation of the terms of the Trust; or
  - (iii) any advancement or distribution of capital of the Trust; or
  - (iv) any resettlement of the trust property.

### 28. General

28.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).

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

28.3 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 Auckland courts of New Zealand.

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

28.5 MIL may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.

28.6 The Customer cannot licence or assign without the written approval of MIL.

28.7 MIL may elect to subcontract out any part of the Goods but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of MIL's sub-contractors without the authority of MIL.

28.8 The Customer agrees that MIL may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for MIL to provide Goods to the Customer.

28.9 Neither party shall be liable for any default due to any act of God, war, terrorism, pandemic, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party (referenced as Force-Majeure).

28.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.