

Dominator Citywide – Terms & Conditions of Trade

1. Definitions		Client written notice) where completion is delayed by an event beyond the Seller's control, including but not limited to any failure by	20. business and for market value. If the Client sells, disposes or	
1.1	"Seller" means SkyVig Garage Doors (Limited T/A Dominator Citywide) and/or any person to whom the Seller assigns or assigns	(a) make a selection; or	parts with possession of the Goods then the Client must hold	
1.2	"Client" means the person/s buying the Goods as specified in any invoice, document or order, and there is more than one Client is a reference to each Client jointly and severally.	(b) have the site ready for the Services; or	the proceeds of the sale of the Goods to the Seller and must	
1.3	"Goods" means all Goods or Services supplied by the Seller to the Client at the Client's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the Client).	(c) notify the Seller that the site is ready.	pay or deliver the proceeds to the Seller on demand.	
1.4	"Price" means the Price payable (plus any Goods and Services Tax (GST) where applicable) for the Goods as agreed between the Seller and the Client in accordance with clause 5 below.	The Seller may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.	(d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Seller and must dispose of or return the resulting product to the Seller as it so directs.	
2. Acceptance		Any time specified by the Seller for delivery of the Goods is an estimate only and the Seller will not be liable for any loss or damage incurred by the Client in respect of the Goods if the Client and both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that the Seller is unable to supply the Goods as agreed solely due to any action or inaction of the Client, the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.	(e) the Client irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and to use any possession or control of the Seller as it may require.	
2.1	The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.	Risk Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Client's agreement to insure the Goods without the need for any person dealing with the Seller to make further enquiries. If the Client requests the Seller to leave Goods outside the Seller's premises for collection or to deliver the Goods to an unattended location, then the Client agrees that they shall take all reasonable care during the performance of the Services, the Client agrees that the Seller shall not be held liable for any loss, damage or destruction of the Goods caused by the Client's actions or any masonry or rendered surfaces during the installation process.	(f) the Seller may recover possession of any Goods in transit whether or not delivery has occurred.	(g) the Client should not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Seller.
2.2	These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Seller.		(h) the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.	
2.3	Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 and any applicable provisions of that Act or any Regulations referred to in that Act.		13. Personal Property Securities Act 1999 ("PPSA") Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that: (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and (b) security of all Goods and/or collateral (account) – being a monetary obligation of the Client to the Seller for Services – that have previously been supplied and that will be supplied in the future by the Seller to the Client.	20.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the amount of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment. If the Client owes the Seller any money the Client shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's collection agency costs, and bank dishonour fees) under this contract. If a Client has made payment to the Seller and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Seller under this clause 20 where it can be proved that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement. Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if: (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Client will be unable to make a payment when it falls due; (b) the Client has exceeded any applicable credit limit provided by the Seller; (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
2.4	Any remote control keys the Seller is to supply with the Goods will only be released to the Client once full payment is received.		21. 21.1 The Client undertakes to provide any documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to register a financing statement or financing charge statement on the Personal Property Securities Register. (b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register. (c) not register, or permit to be registered, a financing statement or a financing charge statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Seller; and (d) not create or create or participate in any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales. The Seller and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions. In the event that the Client is a debtor under sections 116, 121(2), 121, 125, 126, 127, 128, 131 and 132 of the PPSA, the Client understands and agrees to in writing by the Seller, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA. The Client shall unconditionally ratify any actions taken by the Seller under clauses 13.1 to 13.5.	20.2 20.3 20.4
2.5	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 to the actual goods and services to be supplied. The Seller will not accept liability to the Client for quality of Goods which comply with accepted industry standards.		21.2 21.3 21.4	
2.6	Any advice, recommendation, information, assistance or service provided by the Seller in relation to Goods or Services supplied is given in good faith, based on the Seller's own knowledge and experience and shall be accepted without liability on the part of the Seller and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client may intend to use the Goods or Services.		21.5 21.6 21.7	
2.7	Notwithstanding the above clause, if the Seller offers advice or recommendation in regards to the choice of Goods and/or course of Services to be provided and the Client dismisses this or decides to order alternative Goods or different course of action, the Seller accepts that the Client's Services do not meet the Client's original plans or specifications.		21.8 21.9 22. 22.1	
2.8	The Client acknowledges and agrees that at the time of quotation the Seller and the Client will agree which party will take responsibility to provide scaffolding for the Client's Services to be undertaken (where in the Seller's opinion it is deemed necessary). It is also agreed that all scaffolding erected will comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary, hold a current certificate of competency and/or be fully licensed. In the event the Client is responsible and fails to provide the scaffolding and the responsibility then falls onto the Seller, the costs associated will be added as an extra in accordance with clause 5.2.		22.2 22.3 22.4	
3. Change in Control			22.5 22.6	
3.1	The Client shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to changes in name, address, contact phone or fax numbers, or business practice). The Client shall be liable for any loss incurred by the Seller as a result of the Client's failure to comply with this clause.		22.7 22.8	
4.1	The Client acknowledges and agrees that: (a) the Seller does not guarantee the website's performance or availability of any of its Goods; and (b) on-line ordering may be unavailable from time to time for reasons of server downtime, network outages or upgrades; and (c) there are inherent hazards in electronic distribution and as such the Seller cannot warrant against delays or errors in transmitting data between the Client and the Seller including orders, and you consent to the maximum extent permitted by law, the Seller will not be liable for any losses which the Client suffers as a result of online-ordering not being available or for delays or errors in transmitting orders.		22.9 22.10	
4.2	The Seller reserves the right to terminate your order if it learns that you have provided false information, intentionally misled others or the administration of the Seller's services, or violated these terms and conditions.		22.11	
5. Price and Payment			22.12	
5.1	(a) the Seller's quoted price, the Price shall be either: (i) as indicated on any invoice provided by the Seller to the Client; or (ii) the Seller's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days. The Seller 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) that requires the Seller to incur an additional charge for the Goods; any variation on the order for the Goods has been processed should 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 visits will be required for reasons such as site access, weather conditions or where the Client requires site visits unless otherwise agreed or shall be invoiced in accordance with this clause 5.2; or (c) where additional Services are required due to the discovery of hidden or undetectable conditions, but not limited to, poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, pre-existing structural integrity of the supporting framework to be installed 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 the Seller in the cost of labour or Goods (including but not limited to overseas freight charges that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond the Seller's control. At the Seller's sole discretion, a non-refundable deposit may be required. Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Seller, which may be: (a) on delivery of the Goods; (b) by way of instalments/progress payments in accordance with the Seller's payment schedule; (c) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for receipt of invoices, and (d) the date specified on any invoice or other form as being the date for payment; or (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Seller. Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, ePay, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Seller and the Client. The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute. Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other agreement for the sale of the Goods. The Client must pay to the Seller the amount of any tax set off at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price. 6.1 Delivery ("Delivery") of the Goods is taken to occur at the time that: (a) the Client or the Client's nominated carrier takes possession of the Goods at the Seller's address; or (b) the Client or the Client's nominated carrier delivers the Goods to the Client's nominated address even if the Client is not present at the address. At the Seller's sole discretion, the cost of delivery is in addition to the Price. Subject to clause 6.4 it is the Seller's responsibility to ensure that the Services start as soon as it is reasonably possible. The Services' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Seller claims an extension of time (by giving the	5.2		
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