

Terms and Conditions of Trade

These terms and conditions apply (unless otherwise previously agreed in writing) to the supply of Goods by Doorpac to a Customer from time to time. Any supply of Goods by Doorpac to the Customer made after the date of acceptance of these terms is a supply pursuant to the Agreement as defined and any such supply does not give rise to a new or separate agreement.

1. Definitions and Interpretation

1.1. In this Agreement:

Agreement means the agreement between the Customer and Doorpac comprising the following documents:

- (a) The Order, accepted by Doorpac;
- (b) These Terms and Conditions of Sale; and
- (c) Any other document which is incorporated by reference in the Quotation or these terms and conditions of sale.

Australian Consumer Law has the meaning given to it in the *Competition and Consumer Act 2010 (Cth)*.

Commissioning Services means the service provided by Doorpac to the Customer associated with Commissioning the Goods.

Business Day means any day other than:

- (a) A Saturday, Sunday or public holiday in the whole State of New South Wales; or
- (b) 27, 28, 29, 30 or 31 December.

Construction Act means the *Building and Construction Industry Security of Payment Act 1999 (NSW)*.

Customer means the party to whom a Quotation is provided by Doorpac or by whom an Order is placed is placed with Doorpac for Goods.

Delivery Time means the date and time that the Goods are:

- (a) delivered by, or on behalf of, Doorpac to the Site or any other delivery location nominated by the Customer and agreed to by Doorpac; or
- (b) collected by, or on behalf of, the Customer or notified as being ready for collection from Doorpac's premises or any other location at which the Goods are situated; or
- (c) due to be delivered by Doorpac, but delivery is delayed at the request of the Customer or due to circumstances beyond the reasonable control of Doorpac.

Force Majeure Event means any event outside the reasonable control of Doorpac including acts of God, war, riots, strikes, lock outs, trade disputes, break downs, mechanical failures, interruptions of transport, Government action or any other cause whatsoever, whether or not of a like nature to those specified above.

Goods mean any product, item, equipment or materials sold or to be sold by to the Customer and includes any services provided by Doorpac to Customer.

GST means the tax imposed by *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Doorpac means *Doorpac ABN 93 747 024 859*

Invoice means the written invoice issued by Doorpac to the Customer upon acceptance of an Order setting out the Price and any delivery charges.

Order means a written order to purchase Goods placed by the Customer with Doorpac in such form as required by Doorpac.

PPSA means the *Personal Property Securities Act 2009 (Cth)*.

Price means the Price of Goods determined under clause 2.

Quotation means a written quotation issued by Doorpac for the sale of Goods to the Customer.

Reference Date means the date or dates on which Doorpac will be entitled to make claims for progress payments in accordance with clause 4.5, being:

- (a) such dates or milestones as stated on the Quotation; or
- (b) where no such dates or milestones are stated on the quotation, the 28th day of the month; or
- (c) where the 28th day of the month is not a Business day, the next Business Day following the 28th of the month.

Site means the location where the Goods are to be delivered, as stated in the Quotation or otherwise nominated by the Customer and agreed to by Doorpac.

Standard Specifications means Doorpac's standard specification for the Goods current at the time Goods are delivered to the Customer. Copies of the Standard Specifications are available upon request from Doorpac.

1.2. In this Agreement:

- (a) any reference to a party includes its successors and permitted assigns;
- (b) headings are for convenience only and have no legal effect;
- (c) the singular includes the plural and vice versa;
- (d) "including" and similar words do not imply any limitation;
- (e) a reference to \$ is to the Australian dollar;
- (f) a reference to legislation or a legislative provision includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (g) if the performance of an obligation under this Agreement falls due on a weekend or public holiday day it must be performed on the next Business Day.

2. Quotations and Orders

- 2.1. Quotations are valid for a period of 30 days from date of issue and may be amended or withdrawn at any time by Doorpac before an Order is placed by the Customer.
- 2.2. An order given to Doorpac is binding on Doorpac and the Customer, if:
 - (a) a written acceptance is signed for or on behalf of Doorpac; or
 - (b) the Goods are supplied by Doorpac in accordance with the Order.
- 2.3. Once accepted by Doorpac an Order constitutes a contract between Doorpac and the Customer on the terms and conditions contained in this Agreement and the terms of the Agreement will override any conditions contained in the Customer's Order.
- 2.3. Once accepted by Doorpac, orders cannot be cancelled by the Customer under any circumstances without Doorpac' prior written consent which it may refuse in its absolute discretion (which consent may include a requirement that the Customer indemnify Doorpac against any loss or expense suffered by it as a result of the cancelled Order).

3. Price

- 3.1. The Price for Goods is either;
 - (a) the price indicated in Doorpac' Quotation (or any subsequent Quotation if varied); or
 - (b) the price listed in any Doorpac price list current at the date an Order is placed.
- 3.2. The Price includes provision of the Commissioning Services should such Commissioning Services be specifically nominated on the Quotation.
- 3.3. Prices do not include applicable taxes or statutory charges (such as GST) or delivery charges. Delivery charges will be specified in Quotations and Invoices and charged in addition to the Price.

4. Payment

- 4.1. Doorpac, at its discretion, may require payment of a deposit for Goods on placing of an Order. Doorpac may also require that the Goods be paid for in instalments by the Customer.
- 4.2. Unless the Customer has a credit account in the Customer's name with Doorpac, the total amount of an invoice (less any deposit paid) and the delivery charges are payable by the Customer prior to or on delivery of the Goods.
- 4.3. If the Customer has an approved credit account, an invoice (less any deposit paid) and the delivery charges are payable by the Customer within 30 days after delivery of the Goods.
- 4.4. Where this Agreement constitutes a "construction contract" (as defined in the Construction Act) to which the Construction Act applies, clauses 4.5 to 4.8 will apply in relation to payment.
- 4.5. In respect of any Goods that have been supplied, Doorpac will be entitled to make claims for progress payments on the relevant Reference Date.
- 4.6. The amount of the progress payment will be calculated by reference to:
 - (a) the amounts or percentages stated on the Quotation; or

- (b) where no such amounts or percentages are stated on the Quotation, the value of the Goods supplied to the Customer by the relevant Reference Date as a proportion (expressed as a percentage) of the total Goods to be supplied under this Agreement.
- 4.7. Within 3 Business Days of receiving a claim for progress payment, the Customer may issue a payment schedule to Doorpac identifying the payment claim to which it relates and the amount of the payment that the Customer proposes to make (**Scheduled Amount**). Where the Scheduled Amount is less than the amount claimed, the payment schedule will not be valid unless it indicates why the Scheduled Amount is less and sets out the Customer's reasons for withholding payment.
- 4.8. Without prejudice to any other rights or remedies available to the parties under this Agreement or otherwise, within 5 Business Days of receiving a claim for progress payment, the Customer will pay Doorpac:
- (a) the amount claimed for progress payment; or
(b) where a payment schedule has been served in accordance with clause 4.7, the Scheduled Amount.
- 4.9. Payment must be made by cash, bank cheque, credit card (which may include provider surcharge), direct credit into Doorpac's bank account or by any other method agreed between the Customer and Doorpac. Receipt of any form of payment other than cash will not constitute payment until that form of payment has been honoured, cleared or recognised.
- 4.10. If the Customer issues a payment schedule in accordance with clauses 4.7 to 4.8, but fails to pay the Scheduled Amount, in accordance with this clause, then Doorpac may recover the unpaid portion of the Scheduled Amount as a debt due to Doorpac, in any court of competent jurisdiction.
- 4.11. Subject to clause 7, payment will constitute acceptance by the Customer of all Goods.
- 4.12. All amounts payable by the Customer under this Agreement must be paid without set-off or counter claim of any kind.
5. GST
- 5.1. If GST is imposed on any taxable supply under this Agreement, then the recipient of that taxable supply must pay the supplier an additional amount equal to the GST payable on the taxable supply at the same time as payment for the taxable supply is due.
6. Delivery
- 6.1. The Supplier will (unless otherwise agreed with Doorpac in writing) organise for delivery of the Goods / and or Services to the Site by the Delivery Time.
- 6.2. Doorpac will (unless otherwise agreed with the Customer) organise for delivery of the Goods to the Site by a carrier appointed by Doorpac. Delivery costs will be specified in the Quotation and are payable by the Customer at the same time an invoice or application for payment is payable.

- 6.3. An estimated timeframe for delivery will be stated in the Quotation. Doorpac will use reasonable endeavours to meet the delivery timeframe but accepts no responsibility for costs or charges resulting from a delay in delivery due to factors outside its reasonable control. The Customer is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. Doorpac may change the estimated delivery time by written notice to the Customer. Doorpac reserves the right to deliver the Goods in instalments.
- 6.4. The Customer acknowledges that Goods do not need to be signed for when delivered and may be unloaded and left on any part of the Site that Doorpac or its carrier considers reasonable in the circumstances.
- 6.5. The Customer must provide full and clear access at the Site for delivery of the Goods and the provision by Doorpac of the Commissioning Services. The Customer will, at its cost, provide all reasonable assistance requested by Doorpac to unload and commission the Goods.

7. Defects and Returns

- 7.1. The Customer must inspect the Goods on delivery and notify Doorpac in writing within 7 days of delivery of any alleged defect, damage or failure of the Goods. If no notice is given within 7 days of delivery, the Customer will be deemed to have accepted the Goods.
- 7.2. If a notice of defect or damage is given the Customer must allow Doorpac access to inspect the Goods and determine whether or not that notice is valid. If Doorpac accepts that Goods are defective or damaged the parties acknowledge that the Customer has remedies available to it as a consumer under the Australian Consumer Law.
- 7.3. Doorpac will not be liable for any defects, damage or failure of Goods which have not been stored or used in a proper manner.
- 7.4. Doorpac may, at its sole discretion, accept the return of non-defective Goods for credit subject to a handling fee of 20% of the value of the returned Goods plus freight costs.
- 7.5. Goods will not be accepted for return in any circumstances other than those specified in this clause 7 or required by law.

8. Ownership and risk

- 8.1. Risk in the Goods passes to the Customer at the Delivery Time.
- 8.2. The parties agree that ownership of, and title to, the Goods does not pass to the Customer until the Customer has paid the total amount of any and all Invoices in respect of those Goods and met all of its other obligations to Doorpac in respect of all contracts or account it has with Doorpac.
- 8.3. The Customer must, from the date risk in the Goods passes to it until the date that title to the Goods passes to it, insure the Goods against all reasonably insurable risks for their full replacement value and, if required by Doorpac, store the Goods separately from any other

goods and in a way that enables the Goods to be clearly identifiable as the property of Doorpac.

9. Personal Property Securities Act 2009 (“PPSA”)

9.1. Capitalised terms used in this clause but not defined in clause 1 the meanings given to them in the PPSA.

9.2. The Customer acknowledges and agrees that;

- (a) this Agreement constitutes a Security Agreement in respect of the Goods;
- (b) the Goods are Collateral for the purpose of the PPSA;
- (c) Doorpac holds (as Secured Party) a Security Interest over all of the present and after acquired Goods supplied by Doorpac to the Customer and any Proceeds of the sale of those Goods;
- (d) that any purchase by the Customer on credit terms from Doorpac or retention of title under clause 8 will constitute a Purchase Money Security Interest;
- (e) the Purchase Money Security Interest granted will continue to apply to any Goods coming into existence or proceeds of sale of Goods coming into existence;
- (f) Doorpac will continue to hold a Security Interest in the Goods in accordance with, and subject to, the PPSA, notwithstanding that the Goods may be processed, co-mingled or become an accession with other goods.
- (g) any Doorpac’ Security Interest will be a continuing and subsisting interest in the Collateral with priority to the fullest extent permitted by law over all registered or unregistered Security Interests;
- (h) until title in the Goods passes to the Customer, it will keep all Goods supplied by Doorpac free of any charge, lien or Security Interest and not otherwise deal with the Goods in a way that will or may prejudice any rights of Doorpac under this Agreement or the PPSA; and
- (i) in addition to any other rights under this Agreement or otherwise arising, Doorpac may exercise any and all remedies afforded to it as a Secured Party under Chapter 4 of the PPSA, including entry into any building or premises owned, occupied or used by the Customer to search for and seize, dispose of or retain those Goods over which Doorpac holds a Security Interest.

9.3. The Customer undertakes to:

- (a) sign any further documents and provide such information which Doorpac may reasonably require to register, amend or update a Financing Statement or a Financing Change Statement in relation to a Security Interest on the Personal Securities Register;
- (b) indemnify, and on demand reimburse, Doorpac for all expense incurred in registering a Finance Statement or Financing Change Statement on the Personal Property Securities Register or releasing any Security Interests;
- (c) not register or permit to be registered a Financing Change Statement in the Collateral without the prior written consent of Doorpac; and
- (d) provide Doorpac not less than 7 days prior written notice of any proposed change in the Customer’s name, address, contact numbers, business practice or other change in the Customer’s details registered on the Personal Property Securities Register to enable Doorpac to register a Financing Change Statement if required.

9.4. Doorpac and the Customer agree that sections 96, 125 and 132(3)(d) and 132(4) of the PPSA do not apply to the Security Agreement created under this Agreement.

9.5. The Customer waives its rights:

- (a) to receive notices under sections 95, 118 121(4), 130, 132(3)(d) and 132(4) of the PPSA; and
- (b) as a Grantor and / or a Debtor under sections 142 and 143 of the PPSA; and
- (c) to receive a Verification Statement in accordance with section 157 of the PPSA.

9.6. The Customer must unconditionally ratify any actions taken by Doorpac under this clause 9.

9.7. The Customer appoints and authorises Doorpac to be its attorney to sign in the Customer's name all documents which Doorpac reasonably considers necessary to protect, preserve and enforce its rights and powers under this Agreement and the PPSA.

10. Charge

10.1. The Customer charges in favour of Doorpac:

- (a) any land that the Customer owns (or subsequently acquires) as security for any and all moneys owing to Doorpac and authorises Doorpac to register a caveat over the land if the Customer defaults in making payment of any amount due to Doorpac; and
- (b) all the Customer's personal property including without limitation, all the stock, motor vehicles, plant and equipment and debtors that the Customer owns (or subsequently acquires) as security for any and all moneys owing to Doorpac and authorises Doorpac to register, with any competent authority, including the Personal Properties Security Register, the charge over the property if the Customer defaults in making payment of any amount due to Doorpac.

10.2. Nothing in this clause limits the rights of Doorpac under clause 9 in any way.

11. Performance of Commissioning Services

11.1. Where Commissioning Services are to be performed on Site the Customer;

- (a) warrants that all permits necessary for the installation of the Goods have been obtained and that the Site is safe; and
- (b) agrees to allow Doorpac (and any persons authorised by it) to access the Site to perform the Commissioning Services.

11.2. Doorpac will not be liable for (and the Customer releases and indemnifies Doorpac from and against all claims in relation to) any damage or destruction to the Site or any property located on the Site, except damage or destruction resulting from the gross negligence or wilful misconduct of Doorpac or any persons authorised by it.

12. Default and termination

12.1. In relation to any Invoice that has not been paid by the due date:

- (a) default interest will accrue daily at the rate of 2% per calendar month; and

(b) the Customer agrees to indemnify Doorpac from and against all costs and disbursements incurred by Doorpac in pursuing the debt (including legal costs on a solicitor and own client basis and collection agency costs).

12.2. In the event that the Customer's payment is dishonoured for any reason the Customer will be liable for any dishonour fees incurred by Doorpac.

12.3. If the Customer:

- (i) is in default of any payment obligation;
- (ii) fails to remedy a breach of any non-payment related obligation within 14 days of having been given a written notice to remedy the breach by Doorpac;
- (iii) becomes unable to pay its debts and when they fall due; or
- (iv) commits an act of bankruptcy or, being a company, enters into liquidation or provisional liquidation whether compulsory or voluntary or compounds with its creditors generally or has a receiver or receiver manager or administrator appointed over all or part of its assets or passes a resolution for winding-up or a petition is presented for its winding-up;

then Doorpac may, without prejudice to any other rights or remedies available to it under this Agreement or otherwise, by notice in writing to the Customer:

- (v) suspend further supply of the Goods and require payment in advance for any future supply;
- (vi) recover possession of any Goods for which payment has not been made;
- (vii) terminate all or any Orders which have been accepted by Doorpac;
- (viii) claim immediate payment of all moneys due by the Customer in respect of all Goods which will then be immediately due and payable notwithstanding the due date or dates for payment; and/or
- (ix) continue to enforce its rights against and recover from the Customer such payments and any other amounts owing as and when they fall due.

13. Warranties and limitation of liability

13.1. Doorpac warrants that the Goods When delivered to the Customer will comply with any description for the Goods contained in the Quotation and with the Standard Specification (if any) for the Goods.

13.2. Unless expressly provided in the Quotation or any other written document of Doorpac's, Doorpac gives no representations or Warranties for the Goods.

13.3. The Customer warrants that in placing its Order it has.

- (a) satisfied itself as to the description and condition of the Goods and their fitness for the purpose for which the Customer will use them; and
- (b) not relied on any statement, representation, warranty, guarantee, condition, advice, recommendation, information, assistance or service provided or given by Doorpac or anyone on Doorpac's behalf in respect of the Goods, other than those expressly contained in this Agreement, the Quotation or any other document that Doorpac has provided to the Customer.

13.4. Where the customer buys Goods as a consumer, this Agreement is subject to the Australian Consumer Law which governs the rights of consumers and nothing in this Agreement affects the Customer's statutory rights.

- 13.5. Doorpac's liability to the Customer is limited, to the extent permissible by law, and at Doorpac's option:
- (a) in relation to the Goods;
 - i. the replacement of the products or the supply of equivalent products
 - ii. the repair of the products
 - iii. the payment of the cost of replacing the products or of acquiring equivalent products;or
 - iv. The payment of the cost of having the products repaired
 - (b) Where the Goods are services:
 - i. the supply of service again; or
 - ii. the payment of the cost of having the services supplied again.
- 13.6. To the extent permitted at law, all other warranties whether implied or otherwise, not set out in these Terms are excluded and Doorpac is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate Customer for:
- (a) any increased costs or expenses;
 - (b) any loss of profit, revenue, business, contracts or anticipated savings;
 - (c) any loss or expense resulting from a claim by a third party; or
 - (d) any special, indirect or consequential loss or damage of any nature whatsoever caused by Company's failure to complete or delay in completing the order to deliver the Goods.

14. Indemnity

- 14.1. The Customer agrees to indemnify and keep indemnified Doorpac against all costs, claims, demands, expenses and liabilities of whatsoever nature (including claims of death, personal injury, damage to property and consequential loss (including loss of profit)), suffered or incurred by, or made against Doorpac as a result of a breach of this Agreement by the Customer, the Customer's use of the Goods, or any other conduct of the Customer, except where those costs, claims, demands, expenses or liabilities are directly and solely attributable to the gross negligence or wilful default of Doorpac or any of its duly authorised employees or agents.

15. Privacy

- 15.1. Where the Customer has made an application for credit with Doorpac the Customer consents to Doorpac giving information about the Customer to a credit reporting agency to obtain a credit report and obtaining that credit report containing personal credit information about the Customer.
- 15.2. The information given to the credit reporting agency may include personal particulars; details concerning the Customer's application for credit; the amount of credit requested; advice that Doorpac is a current credit provider to the Customer; advice on any overdue accounts, loan repayments, or any outstanding monies for which debt collection action has been started; advice that cheques drawn by the Customer one \$100 or more have been dishonoured more than once; information that, in the opinion of Doorpac, the Customer has committed a serious credit infringement; and advice that credit provided to the Customer by Doorpac has been paid.
- 15.3. The Customer agrees that Doorpac may exchange information about the Customer (including anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988

(Cth)) with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the purpose of:

- (a) assessing an application by the Customer;
- (b) notifying other credit providers of a default by the Customer;
- (c) exchanging information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers: and / or
- (d) assessing the creditworthiness of the Customer.

15.4. The Customer agrees that certain personal credit information provided may be used and retained by Doorpac in relation to the provision of the Goods; the marketing of the Goods by Doorpac, its agents or distributors; analysing, verifying or checking the Customer's credit, payment or status in relation to the provision of Goods; processing any payment instructions, direct debit facilities or credit facilities requested by the Customer; enabling the daily operation of the Customer's account and the collection of amounts outstanding in the Customer's account in relation to the Goods; and / or for any other purposes agreed between the parties or required by law from time to time.

15.5. We take reasonable steps to protect your personal information from loss, misuse or unauthorised access by restricting access to the information in electronic format and by appropriate physical and communications security. If a substantial data breach has or may have occurred (for example, your personal information was shared with unauthorised persons) we will notify you as soon as is practicable.

15.6. We acknowledge that you have a general right of access to information concerning you, and to have inaccurate information corrected. You are able to access the personal information we hold about you by contacting our office.

16. Force Majeure

16.1. Doorpac will not be liable for the consequences of any failure or delay in performing any of its obligations under this Agreement to the extent that such failure or delay is due directly or indirectly to any Force Majeure Event.

16.2. If a Force Majeure Event arises, Doorpac will notify the Customer in writing of the Force Majeure Event and the likely impact it will have on Doorpac's performance under this Agreement. If the Force Majeure Event affects the capacity of Doorpac to complete its material obligations under this Agreement in a timely manner, Doorpac may by notice to the Customer terminate this Agreement without any liability whatsoever on its part arising from that termination.

17. Confidentiality

17.1. The Customer shall treat as confidential all information, data, drawings, specifications, samples and documentation supplied by Doorpac under or in connection with this Agreement, and will not disclose them to any third party without the prior written consent of Doorpac.

18. Dispute Resolution

18.1. If there is a dispute in relation to any aspect of the supply of the Goods either party may notify the other in writing of the dispute.

- 18.2. Following any such notification, there will be a period of 30 days during which both parties must participate in good faith in any negotiations or discussions regarding the dispute which Doorpac requests the Customer to participate in.
- 18.3. If the dispute has not been resolved by the end of the 30 day period, Doorpac may require that the dispute be submitted to mediation in accordance with, and subject to, the Institute of Arbitrators and Mediators Australia and its applicable rules.
- 18.4. Subject to clause 18.5 neither party is permitted to commence any court proceedings or other similar actions relating to a dispute unless it has complied with the procedure set out in this clause.
- 18.5. This clause does not prevent a party from exercising any rights it has under the Construction Act or from commencing legal proceedings for urgent interlocutory relief.

19. General provisions

- 19.1. The Customer must not assign or otherwise deal with any of its rights or obligations under this Agreement without the prior written consent of Doorpac.
- 19.2. Doorpac may assign or deal with any of its rights or obligations under this Agreement at any time and without any requirement to notify the Customer. Doorpac reserves the right to subcontract the performance of any of its obligations under this Agreement to any other person it so determines.
- 19.3. Doorpac may vary this Agreement from time to time and any variation takes effect in relation to subsequent Orders place after the Customer has received written notice of the variation from Doorpac.
- 19.4. No failure to exercise or delay in exercising any right under this Agreement constitutes a waiver and any right may be exercised in the future. A waiver of any right under this Agreement must be in writing and is only effective to the extent set out in that written waiver.
- 19.5. If any provision of this Agreement is void, unenforceable or illegal and would not be so if words were omitted, then those words are to be severed and if this cannot be done, the relevant sub-clause is to be severed from this Agreement and if this cannot be done, then the entire relevant clause is to be severed from this Agreement, in each case, without affecting the validity or enforceability of the remaining provisions.
- 19.6. This Agreement (including the Quotation, Order and Invoice) constitutes the entire Agreement between the parties in respect of the sale of Goods and supersedes all previous communications, representations understandings or agreements.
- 19.7. This Agreement is governed by the laws in force in New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.
- 19.8. Any notice to be given to a party must be in writing.
- 19.9. Clauses 5, 7, 9, 13, 14, 15, 17 and 18 survive termination or completion of this Agreement.
- 19.10. Any intellectual property rights in the Goods and any instructions relating to them remain with Doorpac and do not pass to the Customer. Doorpac grants to the Customer a non-exclusive, royalty free license to use Doorpac's intellectual property to the extent such materials form part of, or are integral to, the Goods.