

## 1. Definitions

1.1 "Australian Consumer Law" means Schedule 2 of the Competition and Consumer Act 2010.

1.2 "Seller" shall mean the DREAM DOORS entity named on the order form and its successors and assigns.

1.3 "Buyer" shall mean the buyer or any person or Seller acting on behalf of and with the authority of the buyer.

1.4 "Guarantor" means that person (or persons), or entity identified as such on the order form.

1.5 "Goods" shall mean the goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services as hereinafter defined).

1.6 "Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).

1.7 "Price" shall mean the price of the Goods and Services as agreed between the Seller and the Buyer subject to clause 4 of this contract.

## 2. Acceptance

2.1 Any instructions received by the Seller from the Buyer for the supply of Goods/Services shall constitute acceptance of the terms and conditions contained herein. The Buyer may only rescind in accordance with clause 14 of these terms and conditions.

2.2 None of the Seller's agents or representative are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.

## 3. Goods

3.1 The Goods shall be as described on the order form, invoices, quotation, work authorisation or any other work commencement forms as provided by the Seller to the Buyer.

## 4. Price and Payment

4.1 The price of the Goods and Services shall be the Seller's quoted price which shall be binding upon the Seller provided that the Buyer accepts the Seller's quote within 28 days. Any variation from the plan of scheduled works or specification, or from measurements taken on site, will be at extra cost to the Buyer. The Seller will notify the Buyer of any additional costs associated with any variation. The Buyer will then have 28 days to accept the Seller's revised quote.

4.2 Time for payment for the Goods and Services shall be of the essence and will be stated on the invoice, quotation or any other order forms.

4.3 At the Seller's sole discretion a deposit may be required. The deposit shall be in accordance with the deposit schedule detailed in the quotation and shall be payable upon the Buyer and the Seller accepting the contract.

4.4 Payment will be made by cash, or by EFTPOS, or by bank cheque, or by direct credit or any other method as agreed to between the Buyer and the Seller.

4.5 The price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Seller.

## 5. Delivery of Goods

5.1 Subject to the express terms herein, if the Seller agrees to send the Goods to the Buyer at the expense of the Buyer then delivery of the Goods to a carrier,

either named by the Buyer or failing such naming to a carrier at the discretion of the Seller for the purpose of transmission to the Buyer, is deemed to be a delivery of the Goods to the Buyer.

5.2 The costs of carriage and any insurance which the Buyer reasonably directs the Seller to incur shall be reimbursed by the Buyer (without any set-off or other withholding whatever) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Buyer's agent.

5.3 When the Goods at the date of this agreement are in possession of a third person there is no delivery by the Seller to the Buyer unless and until such third person acknowledges to the Buyer that the Goods are being held on behalf of the Buyer subject to the issue or transfer by the Seller of documents of title to the Goods.

5.4 Where there is no agreement that the Seller shall send the Goods to the Buyer, delivery to a carrier at limited carrier's risk at the expense of the Buyer is deemed to be delivery to the Buyer.

5.5 The Seller may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoice and paid for in accordance with the provision in this contract of sale.

5.6 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.

## 6. Installation of Goods

6.1 The installation term, refers to the installation of the Goods ordered only.

6.2 Other trades involved in the installation of the Goods, are not covered in this agreement, and do not form part of nor come under the umbrella of this agreement.

6.3 All advertised installation time frame offers, are for new Goods being installed into an already prepared area and excludes any building alterations that may be required.

## 7. Risk

7.1 If any of the Goods are damaged or destroyed prior to title in them passing to the Buyer, the Seller is entitled, without prejudice, to any of its other rights or remedies under these terms and conditions (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable in respect of the Goods. This applies whether or not the price has become payable under these terms and conditions. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries. The Seller will apply the insurance proceeds as follows:

(i) first, in payment of the price of the Goods that are damaged or destroyed, if unpaid;

(ii) second, in payment of the outstanding price of any other Goods supplied to the Buyer by the Seller whether under these terms and conditions or otherwise;

(iii) third, in payment of any other sums payable to the Seller by the Buyer on any account,

(iv) fourth, any balance is to be paid to the Buyer.

## 8. Defects

8.1 The Buyer shall inspect the Goods/Services on delivery and/or installation and shall within a reasonable period following delivery and/or installation notify



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the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods/Services within a reasonable time following installation/delivery.

## 9. General Limitation of Seller's Liability

9.1 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to the mandatory remedies provided by the provisions of the Australian Consumer Law.

## 10. Warranty

10.1 If at the Seller's discretion there appears to be a defect with the Goods and/or Services and they are not up to a suitable standard then the Seller may repair or replace or refund the Goods and/or Services in accordance with its obligations under the Australian Consumer Law.

## 11. Default and Consequences of Default

11.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2% per calendar month and shall accrue at such a rate after as well as before any judgement.

11.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all the Seller's costs and disbursements including on a solicitor and client basis.

11.3 If any account remains unpaid at the end of the second month after supply of the Goods or Services the following shall apply: An immediate amount equivalent to 10% of the amount overdue levied for administration fees which sum shall become immediately due and payable.

11.4 In the event that:

(a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due, or;

(b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors, or;

(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer, then;

(d) the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and

(e) all amount owing to the Seller shall, whether or not due for payment, immediately become payable.

## 12. Title

12.1 It is the intention of the Seller and agreed by the Buyer that property in the Goods shall not pass until:

(a) The buyer has paid all amounts owing for the particular Goods, and

(b) The buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts

between the Seller and the Buyer, and that the Goods, or proceeds of the sale of the Goods, shall be kept separate until the Seller shall have received payment and all other obligations of the Buyer are met.

12.2 It is further agreed that:

(a) The Buyer shall not deal with the money of the Seller in any way which may be adverse to the Seller.

(b) Until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease.

(c) If the Buyer fails to return the Goods to the Seller then the Seller or its agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the Goods are situated and take possession of the Goods, without being responsible for any damage caused.

(d) The Buyer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller.

(e) The Seller may require payment of the Price or the balance of the Price due together with any other amounts due from the Buyer to the Seller arising out of these terms and conditions and the Seller may take any lawful steps to require payment of the amount due and the Price.

(f) The Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer.

## 13. Personal Property Securities Act

13.1 Upon assenting to these terms and conditions the Buyer acknowledges and agrees that these terms and conditions constitute a security agreement under the Personal Property Securities Act 2009 ("PPSA").

13.2 The Buyer agrees to sign any further 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 the Seller's security interest under this Agreement on the Personal Property Securities Register.

## 14. Cancellation

14.1 The Seller may cancel these terms and conditions or cancel delivery of Goods and Services at any time before the Goods are delivered by giving written notice.

14.2 The Seller shall not be liable for any loss or damage whatever arising from such cancellation.

14.3 The Buyer shall not have the right to cancel this contract after the Seller has accepted and commenced the works or otherwise incurred any cost in connection with the works as all Goods are made to measure.

## 15. Privacy Laws

15.1 The Buyer and the Guarantor/s (if separate to the Buyer) authorises the Seller to collect, retain and use any information about the Buyer, for the

purpose of the Seller providing the Goods and Services under this agreement.

15.2 The Buyer authorises the Seller to disclose any information obtained to any person for the purposes set out in clause 15.1.

15.4 The Buyer's personal information will be dealt with by the Seller in accordance with any applicable privacy laws.

## 16. Unpaid Sellers Rights to Dispose of Goods

16.1 In the event that:

(a) the Seller retains possession or control of the Goods; and

(b) payment of the Price is due to the Seller; and

(c) the Seller has made demand in writing of the Buyer for payment of the Price in terms of this contract; and

(d) the Seller has not received the Price of the Goods, then, whether the property in the Goods has passed to the Buyer or has remained with the Seller, the Seller may dispose of the Goods and may claim from the Buyer the loss to the Seller on such disposal.

## 17. Lien & Stoppage in Transit

17.1 Where the Seller has not received or been tendered the whole of the Price, the Seller shall have:

(a) a lien on the Goods;

(b) the right to retain them for the Price while the Seller is in possession of them;

(c) a right of stopping the Goods in transit whether or not delivery has been made; and

(d) a right of resale;

(e) the foregoing right of disposal, provided that the lien of the Seller shall continue despite the commencement of proceedings or judgment for the Price having been obtained.

## 18. General

18.1 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity of existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

18.2 All Goods and Services supplied by the Seller are subject to the laws of Australia and the Seller takes no responsibility for changes in the law which affect the Goods or Services supplied.

18.3 The Buyer shall not set off against the Price amounts due from the Seller.

18.4 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.

18.5 Neither party shall be liable for any default due to any act of god, war, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

18.7 Should the Seller not immediately enforce any of these terms & conditions then this action or omission does not in any way constitute a waiver of those terms and your obligations remain unchanged.

## 20. Renovation of Existing Kitchens

20.1 In accordance with the Dream Doors Renovation Method, the Buyer agrees to the Seller removing the old kitchen parts and making alterations to the remaining parts of the kitchen as necessary to supply the Good and Services.

## 21. Completion Certificate

21.1 On completion of the installation the buyer will be presented with a completion certificate to sign off, certifying that the kitchen has been completed in accordance with this

agreement.

21.2 Execution of the Completion Certificate shall trigger all outstanding balances including any extras to be payable immediately.

21.3 The buyer shall not unreasonably refuse to sign the said completion certificate. However if in good faith the buyer believes he/she has genuine grounds for refusing to sign the Completion Certificate the buyer shall be entitled to withhold up to a maximum of 10% of the contract price payable to the seller, until such time as the seller remedies the outstanding issues.

## 22. Guarantee and Indemnity

22.1 Each Guarantor under this Agreement has requested the Seller to enter into this Agreement with the Buyer and the Seller does so in consideration of this guarantee and indemnity.

22.2 The Guarantor unconditionally and irrevocably guarantees, by way of indemnity and principal obligation to the Seller prompt performance of all of the obligations of the Buyer contained or implied in this Agreement. If the obligation is to pay money, the Seller may recover the money from the Guarantor as a liquidated debt.

22.3 The Guarantor indemnifies the Seller and agrees to hold it harmless in respect of any failure by the Buyer to perform any of its obligations under this Agreement including any obligation to pay money to the Seller.

22.4 The Guarantor's liability is not affected by:

(a) The granting of time, forbearance or other concession by the Seller to the Buyer or any Guarantor;

(b) An absolute or partial release of the Buyer or any Guarantor or a compromise with the Buyer or any Guarantor;

(c) A variation of this Agreement;

(d) An assignment of this Agreement by the Buyer;

(e) The termination of this Agreement;

(f) Any disputes or differences between the Buyer and the Seller;

(g) The fact that this Agreement is wholly or partially void, voidable or unenforceable;

(h) The non-execution of this Agreement by one or more of the persons named as Guarantor or the unenforceability of the guarantee or indemnity against one or more of the Guarantors; or

(i) The exercise or purported exercise by the Seller of its rights under this Agreement.

22.5 The Guarantor's liability is not discharged by a payment to the Seller which is later avoided by law. If that happens, the parties are restored to their respective rights and obligations as if the payment had not been made.

22.6 If a liquidator or trustee in bankruptcy disclaims this Agreement, the Guarantor indemnifies the Seller against any resulting loss.

22.7 Until the Seller has received all money payable to it by the Buyer, the Guarantor must not prove or claim in any liquidation, bankruptcy, composition, arrangement or assignment for the benefit of creditors; and hold any claim it has and any dividend it receives on trust for the Seller.

22.8 If the Seller assigns its rights under this Agreement, the benefit of the guarantee and indemnity in this clause extends to the assignee and continues concurrently for the benefit of the Seller regardless of the assignment unless the Seller releases the Guarantor in writing.