

# TERMS OF SALE

## 1. GENERAL

- 1.1 In these terms of sale, the following words have the following meanings:  
"Customer" means the person, company or other entity named as the "Customer";  
"Supplier" means NZ Investment & Trading Limited T/A Homerit all of its related companies and their respective successors and assigns;  
"Goods" means goods supplied or to be supplied by the Supplier, on these terms of sale;  
"Services" means work performed or to be performed by the Supplier, including (but not limited to) the delivery and installation of Goods, on these terms of sale;  
"Person" includes a corporation, association, firm, company, partnership or individual.
- 1.2 All quotations for Goods and Services are subjected to these terms of sale. Any Goods or Services supplied by the Supplier to the Customer will be supplied on these terms of sale only. The only circumstance where any variation to these terms of sale will apply is where the Supplier has expressly agreed in writing to such variation.
- 1.3 References to one gender include the other genders and references to the plural include the singular and vice versa.

## 2. QUOTATIONS

- 2.1 These Terms of Sale, and the Supplier's quotation ("the Quotation"), constitute the entire agreement between the parties which excludes (to the extent permitted by law) all representations, promises, undertakings and statutory conditions and warranties except those expressly confirmed by the Supplier in writing.
- 2.2 Unless expressly included in any quotation given by the Supplier, GST and any other taxes and duties relating to the supply of Goods or Services to the Customer are not included in the Price and shall be payable by the Customer in addition to the Price of the Goods or Services at the rate(s) prevailing at the date of delivery of the Goods or performance of the Services.
- 2.3 Unless otherwise stated in writing by the Supplier
- quotation will be open for acceptance for 60 days from the date of the quotation;
  - any drawings or details supplied by the Customer must be shown, and will be interpreted by the Supplier as, viewed from the outside;
  - where a quotation is based on measurements or specifications supplied by the Customer, any cost for additional work or Goods required as a result of any inaccuracy in those measurements or specifications will be for the Customer's account;
  - all drawings of details submitted by the Supplier with a quotation are for quotation purpose only and will not form part of any agreement;
  - if not specified liner and installation of liner are not included in the Quotation.
- 2.4 The Customer acknowledges that the Supplier has quoted for its standard hardware unless specified otherwise. Furthermore, the color(s) of handles, locks and hinges etc are the Supplier's standard color(s) unless specified otherwise.
- 2.5 Supplier may cancel delivery of Goods or Services at any time before the Goods or Services are delivered by giving written notice. On giving such notice the Supplier shall promptly repay the Customer any sums paid in respect of the Price for those Goods or Services. The Supplier shall not be liable for any loss or damage whatever arising from such cancellation

## 3. PRICE AND PAYMENT

- 3.1 If between the date a agreement is entered into, and the date of delivery of Goods or performance of Services pursuant to that agreement any item involved in the supply production and/or delivery of those Goods or the carrying out of those Services is increased in price due to circumstances beyond the Supplier's control the Price shall be increased to reflect those additional costs.
- 3.2 If the Supplier is to install the Goods, the Supplier may invoice each month in respect of the Goods delivered and/or installation work performed during the preceding monthly period.
- 3.3 The Customer may not deduct or withhold any amount of money (whether by way of set-off, counterclaim or otherwise) from any money owing to the Supplier. For the avoidance of doubt, if any amount is in dispute the Customer may not withhold payment of the disputed amount.
- 3.4 The Supplier may, at any time, require the Customer to pay for the Goods and/or Services by bank cheque or post dated cheque or secure payment for the Goods and/or Services by way of an assignment of debt, an instrument by way of security, a mortgage, agreement to a mortgage or in any other manner whatsoever. Where the Supplier requires the Customer to secure payment for the Goods and/or Services, it may suspend performance of its obligations under these terms of sale until sufficient security is provided.
- 3.5 If any payment (or instalment) is late then the discount (if any) will not apply. Where any amount payable is not paid upon the due date, it shall be considered as a breach of the Customer's obligations under these terms and the Supplier may in respect of such invoice, without prejudice to any other rights or remedies it may have, charge as liquidated damages interest thereon plus GST (if GST is applicable), on a daily basis, at the rate of 2.5% compounding per calendar month from the date the payment was due and until the payment is made in full.
- 3.6 The Customer shall be liable to pay all expenses and legal costs of the Supplier (including those calculated as between solicitor and client) in recovering any outstanding payment and interest. All amounts owing by the Customer to the Supplier shall be paid without any set off deduction for any reason whatsoever.
- 3.7 If any amount payable by the Customer to the Supplier is overdue, or the Customer becomes bankrupt, insolvent, has a receiver appointed of all or some of its assets, makes or is likely to make an arrangement with its creditors, has a liquidator (provisional or otherwise) appointed or is placed under statutory or official management, then:
- the Supplier may cancel or suspend any outstanding order with the Customer;
  - all amount owing to the Supplier will immediately become due and payable;
  - the Supplier may repossess and dispose for its own benefit any Goods in the Customer's possession or control and for such purpose the Supplier will be entitled to enter, directly or by its agent, upon any premises where it believes Goods which it has supplied may be stored, without, in any way, being liable to any person.
- 3.8 The Guarantor (if any) guarantees the payment of all amounts due by the Customer to the Supplier. This liability constitutes a principle obligation which shall not be released or prejudiced by any granting of time, failure to take security, waiver or forbearance to sue by the Supplier.
- 3.9 The Guarantor (if any) shall indemnify the Supplier against all losses, damages and expenses suffered or incurred by the Supplier arising out of the non payment of any amount by the Supplier or any breach of any of its obligations.

## 4. SUPPLY AND DELIVERY

- 4.1 Unless otherwise agreed, the Supplier will arrange delivery of the Goods. The Supplier may at its discretion make delivery by instalments. Failure by the Supplier to deliver or defective delivery by the Supplier of any instalment shall not entitle the Customer to repudiate the agreement.
- 4.2 Unless otherwise agreed in writing, the Supplier will arrange the delivery of the Goods by the usual methods of transportation used by the Supplier, between the hours of 8:30am and 5:00pm Monday to Friday, excluding statutory holidays. The Supplier may, at the Customer's request, arrange

delivery by other means or at other times but will be entitled to charge the Customer for any additional costs the Supplier may incur. Delivery will be deemed to have been made when the Goods arrive at the delivery point agreed with the Customer whether or not the Customer is present at the time of delivery to acknowledge receipt.

- 4.3 The Customer is responsible for ensuring, at its own cost, that all agreed delivery points have unloading facilities together with labor and/or mechanical means to unload the Goods promptly and have suitable access and area for unloading and storing.
- 4.4 Where the cost of freight has not been included in the Price, and the Supplier undertakes the delivery of Goods, the price shall be increased by the cost of freight and handling incurred in delivery of those Goods.
- 4.5 If the Customer is to arrange delivery of the Goods, supply of the Goods or of any instalment of the Goods, shall complete immediately the Supplier notifies (by phone, post, email or fax) the Customer that the Goods are complete and available for collection. Upon uplifting the Goods, the Customer shall transport them to the installation premises and keep them there unless uplifted by the Supplier.
- 4.6 If the Customer fails within 5 days to make all arrangement necessary to take delivery or uplift the Goods, the Supplier may (without limiting any other rights it may have), at its sole discretion, store the Goods or transport them to the installation premises charging all associated storage and/or transportation costs to the Customer.
- 4.7 All claims for defective or short delivery, or Goods damaged in transit, must be made in writing to the Supplier within 48 hours of delivery. The Customer shall afford the Supplier an opportunity to inspect the Goods within a reasonable time following the delivery if the Customer believes the Goods are defective.

## 5. INSTALLATION

- 5.1 The Supplier may at its discretion to install the Goods at the Customer's requests.
- 5.2 Where the Customer interrupts or halts the installation for any reason, the Customer must pay any additional costs incurred to complete the delivery and installation.
- 5.3 Where the Supplier is to install the Goods, the Customer is responsible for ensuring, at its own cost, that:
- the structure is prepared to relevant industry standard;
  - The Customer must allow the installation to be performed unimpeded during office hours on any business day agreed between the Supplier and the Customer.
  - wrapping of framed opening is done according to DBH Acceptable Solution E2/AS1;
  - the structure is prepared for Goods being installed into the structure evenly and window/door flange can be fitted into the structure where applicable;
  - the Supplier can install the Goods efficiently without waiting for preparation and/or changing the structure;
  - the Supplier (and its employees and agreementors) has access to the structure;
  - The Customer has such facilities and equipment as the Supplier may reasonably require, which may include, without limitation, scaffolding, 230volt AC electric power, safe on-site storage for the Goods and means to lift the Goods.
  - The Customer complies with all applicable by-laws or government or local body requirements for completing the installation and the Supplier reserves its right to immediately discontinue the installation where compliance is an issue. The Customer remains liable for any outstanding costs otherwise payable.
- (i) Where the Supplier is to remove old Goods, it is the Customer's responsibility to fix any problem with the structure, eg uneven, leaking, rotten, short of structure member etc. If, in the reasonable opinion of the Supplier, the Customer fails to comply with Clause 5.3, the Supplier may (without limiting any other rights it may have) charge the Customer for any expenses or additional costs incurred by the Supplier as a result of such failure.
- 5.4 If required by the Supplier the Customer will supply, at its own cost, any accessories or materials that are not included in the Quotation to install the Goods including, but not limited to, head flashing, sill flashing, jamb flashing, detail tape, sill tape, sealant, timber and support brackets.
- 5.5 Where the Supplier is not installing the Goods, the Customer will comply, or will procure that the installer of the Goods complies, as the case may be, with all the installation drawings provided by the Supplier or downloaded from the Supplier's website.

## 6. TITLE AND RISK

- 6.1 Until all amounts owing by the Customer or any of the Customer's Related Companies (as defined in the Companies Act 1993) to the Supplier, have been paid (and all cheques cleared):
- All property in the Goods shall remain with the Supplier.
  - The Customer (or its agreementor) may install the Goods only to a temporary and incomplete extent and so as to allow removal without any damage to the installation premises.
  - The Customer shall procure that the Supplier may enter the Installation Premises at any time and remove the Goods. The Customer indemnifies the Supplier against all liabilities, expenses and costs (including solicitor to client) arising from such entry.
- 6.2 Until property in and ownership of the Goods passes to the Customer:
- the Customer shall hold the Goods as Bailee for and agent on behalf of the Supplier and shall store them separately and clearly identify them as belonging to the Supplier;
  - subject to clauses 6.3, if the Customer wishes to resell any Goods before ownership passes, the Customer may do so only by way of bona fide sale in the ordinary courses of business and as the agent of the Supplier, but the Customer shall not represent to any other person that the Customer is acting for, or has any other authority to bind, the Supplier. The Customer shall hold to the Supplier for the proceeds of any sale of the Goods on a separate account not mixed with any other funds of the Customer.
- 6.3 The Customer's authority to sell the Goods is cancelled if:
- the Customer breaches any terms of this agreement;
  - the Supplier notifies the Customer in writing (whether or not the Customer breaches the agreement) that the Customer's authority to sell the Goods is cancelled.
- 6.4 If the Customer deals with any Goods before ownership passes in such a way that they become an integral part of other goods, ownership of those other goods will be vested in the Supplier in the same proportion that the value of the Goods supplied by the Supplier bears to the other goods.
- 6.5 Risk of any loss, damage or deterioration of or to the Goods will pass to the Customer on delivery of the Goods.
- 6.6 The Supplier has the right to allocate purchase moneys paid by the Customer to the Supplier under each agreement for the sale and purchase of Goods against any invoice that is outstanding for the supply of Goods to the Customer or to allocate any payment between several outstanding invoices.
- 6.7 The Supplier may bring an action for the price of the Goods whether or not ownership has passed to the Customer.
- 6.8 Upon cancellation of the Customer's authority to sell the Goods the Supplier may, without notice and at any time of the day or night enter the premises where the Goods are stored and remove them without being responsible for any damage in so doing.

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## 7. WARRANTIES

- 7.1 The Customer acknowledges and accepts that the color or shade of the Goods may differ from any color or shade which may have been advertised to, or inspected or specified by the Customer.
- 7.2 Surface finish defects and blemishes which are readily apparent to naked eye at a distance of two meters are considered acceptable.
- 7.3 If the Customer is a consumer under the Consumer Guarantees Act (the "Act"):
- the Act will not apply between the Supplier and the Customer, in relation to the supply of Goods and/or Services, where the Customer is acquiring or holding itself out as acquiring the Goods and/or Services for a business purpose;
  - the Supplier does not undertake that facilities for repair and parts for the Goods will be available.
- 7.4 If the Customer is acquiring the Goods for the purpose of re-supplying them in trade, the Customer will:
- include in its terms of sale clause to the effect that the Act will not apply where a customer of the Customer acquires or holds itself out as acquiring the Goods for a business purpose;
  - notify its customers of the effect of clause 7.4(a);
  - take reasonable action to notify its customers at or before the time the Goods are supplied to such customers that the Supplier does not undertake that facilities for repair and parts for the Goods will be available;
  - not give to its customers an express guarantee (as defined in the Act) from the Supplier in respect of the Goods unless the Supplier has approved such guarantee in writing; and
  - indemnify the Supplier against all losses, costs, damages or liabilities which the Supplier may incur or be liable to pay arising out of the Customer's failure to take the action required by this clause 7.4.
- 7.5 Subject to clause 7.6:
- all warranties (other than any express warranty that may be given by the Supplier in writing to the Customer), descriptions, representations or conditions whether implied by law or otherwise are, and all other liability of the Supplier, whether in tort (including negligence), agreement or otherwise is, expressly excluded to the fullest extent permitted by law;
  - insofar as the Supplier may be liable notwithstanding clause 7.5(a), to the extent permitted by law, the total liability of the Supplier whether in agreement, tort or otherwise for any loss, damage or injury arising directly or indirectly from any defect in the Goods, any failure in respect of the Services or any breach of the Supplier's obligation to the Customer is limited to:
    - the price of the Goods or Services complained of; or
    - the cost of repairing or replacing the defective Goods or remedying the failure or breach;
    - the actual loss or damage suffered by the Customer;whichever is the lesser;
  - except where statute expressly requires otherwise, the Supplier is not liable in any event for any loss of profit or any consequential, indirect or special damage, loss or injury of any kind suffered by the Customer or any other person.
  - while the Supplier will make every effort to ensure the accuracy of any advice, recommendation, information, assistance or service provided by the Supplier in relation to the Goods supplied by it or their use or application, to the extent by law, the Supplier does not accept any liability or responsibility in respect of such advice etc.
- 7.6 Subject to clause 7.3, nothing in these terms of sale will affect any rights a person, who is a consumer, may have under the Act.

## 8. WARRANTY SERVICE EXEMPTIONS

- 8.1 The Customer shall pay travelling costs including accommodation for repairs in excess of one hour drive from the service agent's base.
- 8.2 The Customer will be responsible for, at its own cost, the cost of any scaffolding or other means of resolving access issues required for repair work.
- 8.3 Any consequent loss resulting from the failure or need for rectification of the product.
- 8.4 The warranty does not apply to defects or failures which are attributable to incorrect or improper installation (if not installed by the Supplier), adjustment and/or maintenance.

## 9. DEFAULT

- 9.1 The Supplier may, in addition to any other right of termination or remedy conferred on the Supplier under the agreement or by law, terminate the agreement at any time and with immediate effect by written notice given by the Supplier to the Customer if:
- the Customer (if the Customer is an individual) dies;
  - the Customer suspends, for ten Business days or longer, or ceases, its principal business activity;
  - the Customer fails to pay for the Goods or Services on the due date for payment;
  - the Customer defaults in performance of one or more of its other obligations to the Supplier under this agreement;
  - the Customer has committed a material breach of the agreement which is not reasonably capable of being remedied by the Customer within five business days, provided that the Supplier may not at any time give such a notice terminating this agreement if, at that time, the Supplier is in default under this agreement.
- 9.2 If any of the events referred to in clause 9.1 occur the Supplier may then:
- enter upon the premises where any Goods for which the Supplier has not been paid are situated and take possession of and remove those Goods without being responsible for any damage caused in so doing, and resell those Goods;
  - apply the proceeds towards the payment of all moneys owing to the Supplier by the Customer;
- and all costs incurred by the Supplier as a result of any such action shall be immediately payable by the Customer upon written demand from the Supplier.
- 9.3 Upon termination of this agreement for whatever reason:
- such termination shall be without prejudice to the rights and remedies of either party in respect of any antecedent breach of this agreement by the other party;
  - notwithstanding any contrary provision in this agreement any amount payable by the Customer to the Supplier under this agreement shall be deemed to have fallen due and become payable immediately prior to such termination occurring.

## 10. DELAY

- 10.1 The Supplier shall not be liable under any circumstances for any loss or damage (including any consequential loss) for late or non-delivery of the Goods or performance of Services.
- 10.2 If a time for delivery of the Goods or performance of Services is quoted by the Supplier the time shall be an approximate time only and shall not be deemed to be of the essence of the agreement.

## 11. PRIVACY

The Customer and the Guarantor/s (if separate to the Customer) hereby agrees and authorizes the Supplier to obtain information about the Customer from the Customer or to divulge any such information to any third party in the course of the Supplier's business activities including, but not limited to, any credit or debt collection agency for the purposes of credit assessment or debt collection and any direct marketing activities. The Customer will be provided with access to the information held by the Supplier for review or corrective purposes.

## 12. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)

- 12.1 As security for payment of the purchase money due by the Customer to the Supplier under each agreement for the sale and purchase of Goods, the Customer, for value received, grants the Supplier a security interest in those Goods.
- 12.2 The Customer waives the Customer's right to receive a verification statement under the PPSA.

## 13. CANCELLATION SCHEDULE

Before fabrication cancellation fee is 25% of total charges of the Goods and Services. Once fabrication is arranged cancellation fee is 100% of total charges of the Goods and Services.

## 14. LIABILITY

- 14.1 The Supplier will replace Goods supplied in a defective state but shall have no other liability in respect of defective Goods.
- 14.2 The Supplier shall not be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind suffered by the Customer arising directly or indirectly from any:
- breach of any of the Supplier's obligations under or cancellation of the agreement;
  - negligence, misrepresentation or other act or omission on the part of the Supplier or its employees or agent.
- 14.3 When doing onsite measurement for installation, windows and/or doors replacement, architraves and other items may need to be removed. The Supplier will not be responsible for any damage caused to the architraves, liners or other items.
- 14.4 Notwithstanding any other provision contained in the agreement the liability of the Supplier whether in agreement or pursuant to any cancellation of the agreement or in tort or otherwise in respect of all claims or loss, damage or injury, however arising shall not in aggregate exceed the Price.

## 15. DISPOSAL

- 15.1 After the delivery or installation, the Customer will be responsible for, at its own cost:
- disposing all materials used in packaging or delivery of the Goods and removing all unwanted materials, items, and waste;
  - all relevant tidying (if applicable).
- 15.2 The Supplier may at its discretion dispose the materials at the request of the Customer. The Supplier reserves the right to charge additional cost on the price for the disposal.
- 15.3 Where the Supplier is to remove unwanted items the Customer will be responsible for arranging, at its own cost, rubbish bin or other means of disposal. The Supplier will not be liable for any damage to the material being disposed and its surroundings during the disposal process.

## 16. APPRAISAL

- 16.1 Homerit Premium Series PVC-U windows and doors have been appraised by BRANZ as window and door joinery units for use in residential and commercial building. Scope of use can be found in BRANZ appraisal certificate and product technical literature.
- 16.2 Homerit Lifestyle Series ASA-PVC coextruded windows and doors have not been appraised.

## 17. CONSENTS

The Customer will be responsible for designing and/or building consent, at the Customer's cost, where applicable. If the Good and Services requires permits or consents issued by the government, this agreement is conditional upon the Supplier obtaining all relevant permits or consents from the government on or before the date of delivery or installation. This condition is inserted for the benefit of the Supplier and may be waived by the Supplier at any time prior to satisfaction.

## 18. GENERAL

- 18.1 If at any time the Supplier does not enforce any of these terms of sale or grants the Customer time or other indulgence, the Supplier will not be construed as having waived that term or its rights to later enforce that or any other term.
- 18.2 Where any provision of these terms of sale (including, without limitation, any provision in clause 6 is rendered void, unenforceable or otherwise ineffective by operation of law, that shall not affect the enforceability or effectiveness of any other provision of these terms of sale.
- 18.3 All the Goods and Services are provided under New Zealand law. The Customer may take legal action against the Supplier only in a New Zealand court.
- 18.4 The Customer shall be responsible for all costs and/or expenses incurred by the Supplier in instructing a solicitor and/or debt collecting agency to recover any amount overdue for payment and such costs and expenses shall bear interest at the default penalty rate then being charged by the Supplier pursuant to clause 5.2 above from the date upon which they are paid or incurred by the Supplier to and including the date upon which the Customer shall pay or reimburse the Supplier.
- 18.5 The Customer may not assign any of his rights or obligations under these terms and conditions without the prior written consent of the Supplier, which consent may be withheld at the Supplier's sole discretion.
- 18.6 If there is any inconsistency between these terms and conditions and any order submitted by the Customer (whether in writing, verbally or by electronic data interchange) or any other arrangement between the parties, these terms prevail unless otherwise agreed in writing by the parties.
- 18.7 If, due to any circumstance beyond its reasonable control the Supplier is unable, either wholly or partly, to carry out any obligations under these terms and conditions, that obligation shall be suspended so far as it is affected by and during the continuance of that circumstance.