

DOMINATOR RODNEY (2018) LIMITED T/A DOMINATOR GARAGE DOORS RODNEY
TERMS OF TRADE

In these Terms of Trade we have used “we”, “us” and “our” to refer to Dominator Rodney (2018) Limited and “you” to refer to our customer. By ordering goods from us you agree to these Terms.

1. DELIVERY

- 1.1 Unless we agree otherwise, Goods must be collected from our premises.
- 1.2 If we have given you a time for collection or delivery of the Goods (or any part of them), such time is approximate only and is not deemed to be of the essence.
- 1.3 If you are not ready for the goods to be collected or delivered within 1 month from the goods being manufactured, the goods are deemed to have been delivered and payment is due in full.
- 1.4 If you are not ready for the goods to be collected or delivered within 2 months from the goods being manufactured, you will be charged a weekly storage fee of \$20.

2. TITLE AND RISK

- 2.1 We shall retain title to Goods we supply until they have been paid for in full and you have performed all your other obligations under these Terms.
- 2.2 Risk in all Goods passes to you when the Goods are collected or delivered. You shall insure Goods for their full price, and shall not sell, dispose or part with possession of them or do anything else inconsistent with our ownership of the Goods, from collection until title in them passes to you.

3. ORDERS

- 3.1 Where the goods are manufactured specifically to your specifications and/or other requirements, you may not cancel the order without prior approval from us.
- 3.2 Orders may be placed by the use of a purchase order, written confirmation including email or verbal confirmation either in person or via telephone. The order will be placed using the most recent information that you provide to us.
- 3.3 You are solely responsible for providing accurate information.
- 3.4 Any person employed by or acting on behalf of you is deemed to be authorised by you to place an order. We are under no obligation to inquire as to the authority of any person placing an order on your behalf

4. PRICE

- 4.1 All prices are plus GST and other taxes and duties, which shall be paid by you.
- 4.2 Our prices are subject to change without notice.
- 4.3 Unless we agree otherwise in writing, the amount you will be charged will be the price as at the date of collection or delivery.
- 4.4 If we provide a quotation to you, it is based on information available to us at that time and we may charge you more than the amount quoted if our costs (eg the amount we pay for the Goods or any part of them or the cost of transport, tax, exchange rates or other costs) or the specifications change. Unless otherwise agreed in writing, prices are quoted exclusive of GST.
- 4.5 We may charge you more than the quoted price where additional works are required due to the discovery of hidden or unidentifiable difficulties (including but not limited to, limitations to accessing the site, safety considerations, prerequisite work by you or any third party not being

completed, inaccurate measurements or information provided by you, non-standard fixings) which are discovered on commencement of the works.

- 4.6 If we provide a quotation to you, it is based on all Goods being delivered and installed at the same time.
- 4.7 If the delivery is staggered or, due to the site not meeting our requirements, we are unable to deliver Goods at the agreed installation time you will be charged a call back fee of \$165 (plus GST) + travel costs.

5. SITE REQUIREMENTS

- 5.1 You are solely responsible for ensuring the site is fully ready for the delivery and installation of the Goods. This includes but is not limited to the following:
 - (a) Ensuring the site complies with all occupational health and safety laws and any other relevant safety standards or legislation.
 - (b) Providing free and clear access to the work site.
 - (c) Providing us with accurate information as we require.
 - (d) Ensuring the work area is clear for the width of the door and 4 metres back (or more if advised).
 - (e) Ensuring the walls and the ceiling are lined prior to installation.
 - (f) Ensuring all paint and plaster is completely dry.
 - (g) Ensuring the inside wall is flush on the sides and above the door.
 - (h) Ensuring all wall and ceiling fixing is installed as per our framing instructions.
 - (i) Ensuring all framing alterations are completed as required and to the agreed sizes.
 - (j) Ensuring all minimum clearances are adhered to.
 - (k) Ensuring the work area is clear from any other persons or animals.
 - (l) Providing an area for the disposal of all waste associated with the Goods.
 - (m) Providing power on site for the delivery of the goods and a suitable power outlet for the goods

6. PAYMENT

- 6.1 At our sole discretion a deposit or payment in full may be required before the goods are manufactured or ordered. This is non-refundable.
- 6.2 You must pay for Goods on their collection or delivery, unless we decide otherwise.
- 6.3 We are under no obligation to supply Goods to you on credit. If we grant you credit, you agree to pay our invoices by the 20th of the month following the date of the invoice.
- 6.4 You agree to give any securities as we may from time to time require, in the form required by us, and to comply with all of your obligations under those securities.
- 6.5 We may notify you at any time that we are going to stop supplying Goods to you on credit. This shall be without prejudice to your obligation to pay amounts owing.
- 6.6 All payments shall be made without set-off or deduction. Receipt of a cheque, bill of exchange, or other negotiable instrument will not constitute payment and you remain liable for payment until payment is received by us.

- 6.7 You agree to pay any fees associated with any payment method other than cash or internet banking.
- 6.8 We may apportion payments to outstanding accounts as we see fit.

7. DEFAULT

- 7.1 You will be in Default if:
- (a) you fail to pay an amount due under these Terms by the due date for payment; or
 - (b) you commit a breach of any of your other obligations under these Terms, the Security or the terms of any other contract you have entered into, or enter into in the future, with us or one of our related entities; or
 - (c) you become insolvent, are wound up, have a receiver appointed, enter into any composition or arrangement with your creditors, do any act which would render you liable to be placed in liquidation or have a receiver appointed over your property, commit an act of bankruptcy, cease to be of full legal capacity, or die;
 - (d) Goods that we have retained title to are at risk; or
 - (e) an event or a series of events (whether related or not) occurs which, in our opinion, may cause a material adverse change in your ability to meet your obligations to us.
- 7.2 If you are in Default then we may, at our option, do any one or more of the following:
- (a) charge an administration fee of \$150 to your account;
 - (b) charge you default interest at 17.5% per annum on any late payments calculated on a daily basis from the due date until the date payment is received;
 - (c) require you to remedy the default in the manner and within a period that we tell you;
 - (d) require you to pay to us all amounts you owe us immediately;
 - (e) suspend or terminate your account with us;
 - (f) enforce security interests created by these Terms;
 - (g) exercise any rights that we have under these Terms or that are available to us at law.
- 7.3 We may suspend or terminate your account with us at any time at our sole discretion. If your account is terminated, you must immediately pay us any amount you owe us. Termination will not affect any of our rights that have arisen before termination.

8. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")

- 8.1 Clause 2.1 creates a security interest in Goods we supply to you.
- 8.2 You shall not grant any other security interest or any lien over Goods that we have a security interest in.
- 8.3 At our request you shall promptly sign any documents and do anything else required by us to ensure our security interest constitutes a first ranking perfected security interest in the Goods.
- 8.4 We may at any time enter your premises and properties, or the premises and properties where the Goods are stored or installed, to uplift Goods that we have a security interest in. We shall exercise reasonable care in entering and removing the Goods, but shall not be liable for any damage caused by the use of reasonable force.
- 8.5 If Goods that we have a security interest in are processed, included or dealt with in any way causing them to become accessions, processed or commingled Goods, our security interest will continue in the whole in which they are included. You shall not grant any other security interest or any lien in either the Goods or in the whole.

- 8.6 You waive any rights you may have under sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133, and 134 of the PPSA.
- 8.7 You waive your right to receive a copy of any verification statement (as that term is defined in the PPSA).
- 8.8 You shall give us prior written notice of any proposed change of your name or address.

9. DEFECTS

- 9.1 You shall inspect the Goods on collection or delivery and shall within seven (7) days of collection or delivery notify us of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote.
- 9.2 You must supply the date and number of any invoice relating to the Goods; and
- 9.3 We must be given a reasonable opportunity to inspect the Goods.
- 9.4 If you fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage.

10. WARRANTIES

- 10.1 The Warranty shall be the current warranty provided by the manufacturer of the Goods. We shall not be liable whatsoever except for the express conditions as detailed and stipulated in the manufacturer's warranty.
- 10.2 The Consumer Guarantees Act 1993, the Fair Trading Act 1986, and other statutes may impose warranties, conditions or obligations upon us which cannot by law (or which can only to a limited extent by law) be excluded. Other than as expressly provided for in these Terms, we exclude all such imposed warranties, conditions or obligations to the extent permitted by law and exclude any warranty, condition or obligation imposed or implied under common law, equity or otherwise.
- 10.3 Where you acquire goods and/or services from us for the purposes of a business the parties acknowledge and agree that:
- (a) you are acquiring the goods and/or services covered by these Terms for the purposes of a business in terms of sections 2 and 43(2) of the Consumer Guarantees Act 1993;
 - (b) the goods and/or services are both supplied and acquired in trade for the purposes of the Fair Trading Act 1986 and the parties agree to contract out of sections 9 (Misleading and deceptive conduct generally), 12A (Unsubstantiated representations), and 13 (False or misleading representations); and
 - (c) you agree that all warranties, conditions, and other terms implied by the Consumer Guarantees Act 1993 or sections 9, 12A, and 13 of the Fair Trading Act 1986 are excluded from these Terms to the fullest extent permitted by law and the parties further acknowledge and agree that it is fair and reasonable that the parties are bound by this clause.

11. LIMITATION OF LIABILITY

- 11.1 Except as expressly otherwise provided by clauses 10.1, 10.2 or 10.3, we shall not be liable for any loss or damage or liability of any kind whatsoever (including consequential loss or lost profit or business) whether suffered or incurred by you or another person and whether in contract, or tort, or otherwise and whether such loss or damage arises directly or indirectly from Goods provided by us to you.
- 11.2 To the extent that we are liable for any reason for any loss suffered or liability incurred by you arising from any breach of these Terms or for any other reason, such liability is limited to

the amount of the price of the Goods concerned. If Goods are returned by you, or if you make a claim in writing to us in relation to Goods provided, we may, in our discretion, repair or replace the Goods, or refund the price of those Goods to you, provided that:

- (a) you have complied with the defects clauses 9.1, 9.2, 9.3 and 9.4.
- (b) the Goods must be returned or the claim must be made in writing to us within 1 calendar month(s) of collection; and
- (c) you must supply the date and number of any invoice relating to the Goods; and
- (d) we must be given a reasonable opportunity to inspect the Goods.

12. PRIVACY OF INFORMATION

12.1 You authorise us:

- (a) to collect, retain and use information about you from any person for the purpose of assessing your creditworthiness;
- (b) to collect, retain and use information about you for the purposes of our marketing;
- (c) to disclose information about you:
 - (i) to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to your obligations to us;
 - (ii) to such persons as may be necessary or desirable to enable us to exercise any power or enforce or attempt to enforce any of our rights, remedies and powers under these Terms.

13. NOTICES

13.1 Any notice may be given by phone, in person, posted, or sent by facsimile or email to you or where you are a company, to any of your directors.

14. CONFIDENTIALITY

14.1 You shall at all times treat as confidential all non-public information and material received from us and shall not publish, release, or disclose the same without our prior written consent. For clarity, confidential information includes any new Intellectual Property and prices.

15. COSTS

15.1 You must pay our costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of our rights, remedies and powers under these Terms.

16. CREDIT INFORMATION

16.1 You consent to us, or any financier or credit-rating agency, making enquiries of and obtaining any information about your financial standing and credit worthiness.

17. JURISDICTION

17.1 These Terms are governed by the laws of New Zealand and, subject to clause 18, the parties submit to the exclusive jurisdiction of the Courts of New Zealand in respect of any dispute arising out of or in connection with these Terms.

18. DISPUTES

18.1 Any claim or dispute arising under these Terms shall be determined by arbitration under the Arbitration Act 1996 if the parties are unable to resolve such dispute themselves within one (1) month of the dispute arising. However, nothing

in this clause prevents either party from taking immediate steps to seek any equitable relief before the New Zealand courts.

19. FORCE MAJEURE

19.1 We shall not be liable for delay or failure to perform our obligations under these Terms if the cause of delay or failure is beyond our reasonable control.

20. GENERAL

20.1 These Terms replace any earlier representations, warranties, understandings and agreements (whether oral or written), and together with your Credit Application constitute the entire agreement between us and you relating to their subject matter.

20.2 You shall not transfer or assign your rights, powers or obligations under these Terms without our prior written consent.

20.3 If you have entered into these Terms as the trustee of a trust and you have no right to or interest in any of the assets of the trust except in your capacity as trustee of the trust, your liability shall be limited to the value of the assets of the trust which now or in the future are (or, but for your wilful neglect or default, would be) in the hands of the trustees for the time being of the trust. This clause does not limit any liability you have to us as a personal guarantor.

20.4 No failure or delay by us in insisting upon the strict performance of these Terms or exercising any right under these Terms will operate as a waiver of those matters.

20.5 We may change these Terms at any time. Any change applies from when it is published on our website <https://dominatorrodney.co.nz/terms>

21. DEFINITIONS

21.1 In these Terms unless the context otherwise requires:

“Default” has the meaning set out in clause 5.1.

“Goods” shall include any associated services that we supply.

“Intellectual Property” means all intellectual property rights including, without limitation, copyright, patent and design rights, drawings, documents, data, ideas, procedures, calculations and all other statutory and common law rights and interests.

“Security” means all existing and future security held by us that secures your obligations under these Terms.

21.2 The rule of construction known as the contra proferentem rule does not apply to these Terms.

21.3 Words importing the singular include the plural and vice versa.

21.4 Headings are for convenience only and do not form part of, or affect the interpretation of, these Terms.

21.5 References to a party include that party's successors, personal representatives, executors, administrators and permitted assigns.

21.6 References to a statute include references to:

- (a) regulations, orders, rules or notices made pursuant to that statute;
- (b) all amendments to that statute and those regulations, orders, rules or notices, whether by subsequent statute or otherwise; and
- (c) any statute passed in substitution of that statute.