



## TERMS & CONDITIONS OF SUPPLY

**1. Contract** All goods ("Goods") supplied and services ("Services") provided by Lotus Doors New Zealand Limited ("Lotus") to a person (jointly and severally if more than one) ("Customer") are sold on these terms and conditions ("Terms").

**2. Delivery, Risk of Loss and Receipt of Goods** Risk of loss or damage to the Goods will pass to the Customer on delivery to the destination specified by the Customer.

**3. Termination** Lotus has the right to immediately terminate these Terms should an Event of Default (defined in clause 11) occur.

**4. Payment and Credit** Payment terms are subject to Lotus's credit approval. Lotus may require payment of a deposit before Lotus starts manufacture. The balance must be paid prior to despatch or installation unless the Customer has provided credit references that are satisfactory to Lotus, in which case the balance must be paid within 30 days.

**5. Interest and costs** Lotus may charge interest, and the Customer must pay interest on any outstanding amounts owed to Lotus by the Customer calculated and compounded daily on the outstanding sum at the rate of 12% per annum. Lotus may also charge the Customer all enforcement costs (including legal costs and disbursements on a solicitor own client basis) incurred in connection with a breach of these Terms by the Customer.

**6. Retention of Title** Despite any other provision of this Contract, but subject to any compulsory law, full legal and equitable title to and property in the Goods does not pass to the Customer until Lotus has received payment in full in cleared funds for those particular Goods and payment in full of all other money owing by the Customer on any other account, whether or not that account relates to the sale of Goods, in either case including any applicable GST and interest. Despite any other provision of this Contract, risk in the Goods passes to the Customer immediately upon delivery and the Goods must be paid for notwithstanding their loss, destruction or damage however caused. If the Customer fails to comply with any of these Terms Lotus, without notice, may take possession of the Goods which were the subject of this reservation of title, or trace the proceeds of their sale (as applicable) and recover the full amount owing to Lotus together with any interest and costs. The Customer must, to the extent reasonably possible, hold the Goods supplied by Lotus separately from other Goods held by the Customer and marked in a way that makes it clear that they are Lotus' property pending payment in full of all monies herein mentioned. Lotus may, without prejudice to any of its other rights and without notice, retake and resume possession of any of the Goods which remain its property and for that purpose, by its employees or agents, enter the Customer's premises, or any other such place as the Goods may be, without liability for trespass or any resulting damage, if:

- (a) there is a breach of any contract between Lotus and the Customer;
- (b) any of the Events of Default mentioned in clause 11 occurs; or
- (c) the Customer parts with possession of any of the Goods except by way of sale to its own customers in the ordinary course of its business.

Lotus may recover the price of the Goods by action, and may apply to wind up or bankrupt the Customer, if the Goods are not paid for within Lotus' usual credit terms, even though property in the Goods has not passed to the Customer. Consistent with the Customer's intended use of the Goods, the Customer must keep the Goods in such condition as the Goods were in when supplied, or in such closest condition as can be reasonably maintained. The provisions of this clause 6 will apply irrespective of any arrangement under which Lotus provides the Customer with credit. These provisions apply to the extent of any inconsistency between the two.

**7. Security Interest** The Customer acknowledges that:

- (a) the retention of title contemplated in these Terms gives rise to a Security Interest under and for the purposes of the Personal Property Securities Act 1999 ("PPS Act") in respect of each supply of Goods by Lotus to the Customer;
- (b) Lotus may register a single Security Interest on the Personal Property Securities Register covering every supply of Goods under this Contract, or at its election, a Security Interest for each supply of Goods under this Contract, and the Customer consents to such registration and in such case the Security Interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time;
- (c) Lotus may register its Security Interest prior to the Attachment of Lotus' Security Interest to the Goods;

- (d) the Customer must do whatever is necessary in order to give a valid security interest over the Goods which is able to be registered by Lotus on the Personal Property Securities Register.

The Customer waives any rights to receive a copy of the verification statement under section 148 of the PPSA and agrees, to the extent permitted by law, and in respect of any arrangement between the Customer and Lotus:

- (a) the Customer has no rights under (or by reference to) sections 114(1), 116, 120(2), 121, 125, 127, 129, 133 and 134 of the PPSA;
- (b) the provisions of Part 9 of the PPSA which are for the benefit of the Customer or place obligations on Lotus apply only to the extent that they are mandatory or Lotus agrees to their application; and
- (c) where Lotus has rights in addition to those in Part 9 of the PPSA, those rights continue to apply.

The Customer must reimburse Lotus for all costs and expenses incurred or payable by Lotus in relation to registering, maintaining or releasing any financing statement in respect of any security interest under this clause 7.

The Customer must, forthwith upon the happening of any of the following relevant events, notify Lotus of any:

- (a) Statutory demand in respect of the Customer;
- (b) application to wind up the Customer whether on a voluntary or involuntary basis;
- (c) proposed resolution to wind up the Customer;
- (d) proposal to appoint an administrator to or to execute a scheme of arrangement (as that term is defined in the Companies Act 1993) in respect of the Customer;
- (e) issue of a Bankruptcy Notice under Section 29 of the Insolvency Act 2006 in respect of the Customer;
- (f) application for a Writ of Sequestration under Section 610 of the Judicature Act 1908 against the Customer;
- (g) presentation of a debtors application under Section 12 of the Insolvency Act 2006 by the Customer whether alone or jointly with another person or persons.

Terms used in clause 7 that are defined in the PPS Act have the same meaning as in the PPS Act.

**8. Warranty** Subject to clause 9 of these Terms, Lotus warrants that the Goods will conform to the Specifications and will be properly installed. If there is a defect in installation or non-conformance with the Specifications or non-compliance with a Consumer Guarantee (defined below) of which Lotus receives notification from the Customer within twelve months of installation, Lotus will at its discretion do one or more of the following: replace the affected Goods or supply equivalent Goods or Goods of an identical type; repair the affected Goods or pay the cost of having the affected Goods repaired; pay the cost of replacing the affected Goods or acquiring equivalent Goods; refund to the Customer any money paid by the Customer for the affected Goods and an amount equal to the value of any other consideration provided by the Customer for the affected Goods supply the Services again or pay for the reasonable cost of supplying the Services again. Lotus does not guarantee that facilities for the repair of and parts for the Goods will be available after twelve months of installation. The twelve month warranty period may be extended at Lotus' sole discretion if the Goods are serviced annually by Lotus (service costs are available on request).

The Consumer Guarantees Act 1993 ("CG Act") confers a number of mandatory guarantees in relation to certain agreements ("Consumer Guarantees") and provides a number of remedies in relation to non-compliance with Consumer Guarantees ("Consumer Remedies"). Nothing in this clause 8 excludes or limits the application of any Consumer Guarantee or Consumer Remedy where to do so:

- (a) would contravene the CG Act or any other law of a relevant jurisdiction; or
- (b) cause any part of this clause to be void.

The parties agree that where the Goods or Services supplied to the Customer under these Terms are supplied and acquired in trade the CG Act does not apply. The

parties agree that it is fair and reasonable that the parties are bound by this sub-clause.

Where the Customer sells any Goods to one of its own customers who is acquiring the goods for the purposes of a business in trade, and the CG Act would otherwise apply to that sale, the Customer will:

- (a) to the extent it is fair and reasonable to do so, have that customer agree in writing in the terms of sale that the CGA does not apply to that sale; and
- (b) indemnify Lotus for any liability arising from the Customer's default in complying with this sub-clause.

Subject to the above, the Customer hereby waives and Lotus disclaims, all other guarantees and warranties, whether written or oral, express or implied.

**9. Limitation of Liability and Remedies** Lotus's liability is limited to the extent described in clause 8 above. Notwithstanding clause 8 above in no event will Lotus be liable for any of the following: actual loss or direct damage that is not listed in clause 8 above, damage for loss relating to the Customer's procurement of substitute products, incidental, special, economic or consequential damages.

**10. Customer Acknowledgement:** the Customer acknowledges that the Goods and Services are purchased relying solely on the Customer's skill and judgement and not on Lotus' representations or other conduct. The purpose of this clause 10 is to expressly contract out of the Fair Trading Act 1986 to the maximum extent possible and the parties agree that it is fair and reasonable to do so.

**11. Termination** Lotus may immediately terminate these Terms if an Event of Default occurs.

An Event of Default occurs if:

- (a) the Customer fails to pay any monies due and that failure is not remedied within 14 days after receiving a notice from Lotus requesting the breach to be remedied; or
- (b) the Customer breaches any other Term and does not remedy that breach within 14 days after receiving a notice from the non-defaulting party requesting the breach to be remedied; or
- (c) the Customer becomes insolvent or bankrupt; or
- (d) an application is made to wind up the Customer, where on a voluntary or involuntary basis; or
- (e) a petition has been presented against the Customer, an order made, a resolution passed or a meeting summoned or convened to consider a resolution for its winding up.

In the event that the Customer purports to terminate an Order after acceptance of Lotus' Quote, Lotus shall be entitled to accept that purported termination as a repudiation of the Order and shall be entitled to retain or charge to the Customer twenty five percent (25%) of the purchase price being a reasonable pre-estimate of its loss and damage plus a reasonable amount for work already undertaken.

**12. Acceleration of Payment** All money which the Customer owes Lotus for Goods (including amounts which would not otherwise be payable until a later date) will become immediately due and payable if:

- (a) the Customer is a body corporate and an application is made to wind up the Customer; or

- (b) a Liquidator, Receiver, Receiver and Manager, Official Assignee, Agent for Mortgagee or an Administrator is appointed in respect of any part of the Customer's property; or
- (c) an Inspector is appointed to investigate any of its affairs; or
- (d) the Customer makes an arrangement or composition with its creditors or proposes to do so; or
- (e) the Customer is unable to pay its debts as they fall due; or
- (f) the Customer ceases or threatens to cease to carry on its business; or
- (g) the Customer has execution levied against any of its assets; or
- (h) the Customer has a mortgagee enter, or seek to enter into possession of any of its assets.

**13. Privacy** Where Lotus collects information that is Personal Information (as defined in the Privacy Act 1993 (*Privacy Act*)), Lotus will only use that Personal Information for the purpose for which it is provided, including for the purposes of supplying Goods and Services, carrying out credit checks and debt collection and providing the Customer information about Goods or Services Lotus thinks might be of interest to the Customer.

If the Customer does not provide information requested by Lotus, then the Customer's application for credit cannot be properly assessed and is likely to be rejected by Lotus.

The Customer acknowledges and agrees that Lotus may, subject to the Privacy Act:

- (a) disclose information about the Customer (including without limitation, the Customer's credit application and account information) to obtain and maintain a credit information file about the Customer, and to another credit provider or a collection agent to collect overdue payments owed by the Customer and notify defaults by the Customer;
- (b) use and disclose Customer's personal information for marketing, profiling, research, product development, planning and customer servicing purposes. The Customer acknowledges it should direct any request to opt out from marketing communications, or to access, update or correct personal information to Lotus; and
- (c) obtain and use information about the Customer's credit worthiness, credit standing, credit history and credit capacity (including a consumer or commercial credit report) from a credit reporting agency, credit provider or other similar business.

The Customer has the right to access Personal Information that Lotus holds about the Customer and to request correction of it if the Personal Information is incorrect.

The Customer must comply with the Privacy Act in connection with any Personal Information (as defined in the Privacy Act) supplied to it in connection with these Terms.

**14. Severance** If any provision of these Terms shall be held to be invalid or in any way unenforceable, it shall be severed and the remaining provisions shall not in any way be affected or impaired and these Terms shall be construed so as to most nearly give effect to the parties' intention when it was originally executed.

**15. Jurisdiction** These Terms will be governed by, take effect and be construed in accordance with the laws of New Zealand, and the parties submit to the exclusive jurisdiction of the Courts New Zealand.