



record Automatic Doors Pty Ltd

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Terms and Conditions of Sale – record Automatic Doors Pty Ltd (ABN 58 601 122 874) (“Supplier”)

All orders accepted by Supplier are subject to the Terms and Conditions of Sale set out below

1. General

All orders for products (“Products”) or services (“Services”) will be accepted by Supplier subject to these terms and conditions. Any person or company or sole trader who places orders for Products or Services herewith (“Customer”) is bound by these terms and conditions. No other terms or conditions will apply to the supply of Products and Services by Supplier unless they are accepted in writing by Supplier. Supplier reserves the right to amend these terms and conditions at any time.

2. Prices

The prices of Products and Services as set out in any price list provided or as quoted, are current as at the date the price list or quotation. Supplier reserves the right to change the price of any Product or Service at any time.

All prices specified by Supplier in any price list or quotation exclude Goods and Services Tax (Act 1999) “GST” and the Customer must pay any applicable GST in addition to the price specified.

3. Ordering

Supplier reserves the right to decline to trade with any company or person. In addition, Supplier may decline to accept any order, whether or not payment has been received, by giving notice of non-acceptance to the Customer by facsimile, email or telephone. If Supplier declines to accept an order where payment has been received, Supplier will refund the payment. Supplier executes orders to the Customer’s requirements, and will not substitute an ordered Product for another Product unless the Customer has so requested or the ordered Product has been superseded. Written confirmation of telephone orders is required, unless the Customer collects an order direct from Supplier, in which case the Customer must complete a properly authorised, written order at that time. Any order placed by the customer is deemed to be an order incorporating these terms and conditions of sale, notwithstanding any inconsistencies which may be introduced in the customer’s order of acceptance unless expressly agreed to in writing by Supplier. Mail or facsimile orders will be treated as new orders unless clearly marked “confirmation”.

4. Delivery

Goods delivered to store or depot by Supplier will incur a delivery charge at the discretion of and as nominated by Supplier, unless otherwise stated in writing by Supplier. Where delivery charges are made to the customer’s account, they shall become payable by the customer, including any applicable GST, as part of the cost of the goods to which the same relates. Any delivery times quoted are estimates only and Supplier shall not be liable for any failure or delay in delivery of the goods. Supplier will not be responsible for loss or damage of goods in transit except when the goods are carried by Supplier vehicles or by contractors retained by Supplier to deliver such goods.

5. Inspection, Transit Delays and Non-delivery

The Customer must inspect all orders and Products supplied as soon as is reasonably possible after delivery and shall, **within 7 days of delivery**, give written notice to Supplier of the following:

- 5.1 Any defect in a Product that is apparent upon reasonable examination. In this case Supplier shall, at Supplier discretion, replace the Product or refund the purchase price in accordance with the Warranty condition. The Customer must refuse parcels delivered in a damaged condition.
- 5.2 Any shortfall in Products delivered. In this case Supplier shall, at its discretion, deliver the undelivered Products or refund the price of the undelivered Products.
- 5.3 Any delivery of Products not in accordance with the order. In this case Supplier shall, at Supplier discretion, replace the Products or refund the purchase price.

If the Customer fails to give any such notice, the Customer will be deemed to have accepted the relevant order as being delivered in accordance with the Customer’s instructions and to have accepted the Products as being free from all apparent defects.

The remedies set out above are the Customer’s exclusive remedies for non-delivery, late delivery or short delivery of Products, apparent defects in ordered Products, or delivery of Products not in accordance with the order. Supplier shall not be liable for any other losses, consequential or otherwise. In the event the Customer is unable or unwilling to accept delivery of the goods as ordered, then the Customer will be liable for all storage costs, charges, expenses and additional delivery charges.

6. Payment

If Supplier has not granted credit to the Customer, payment terms are cash with order. Credit terms (subject to satisfactory references and or Director Guarantees as may be required by Supplier) are available. If credit has been granted, the Customer must pay the full invoice price within the nominated time frame or by nominated date as specified by Supplier. Invoice date is date of dispatch by Supplier. The Customer may use electronic transfer, cash, cheques, postal orders and bank cheques and must be made payable to Supplier Pty Ltd and crossed.

If any sum is not paid on the due date for payment:

- 6.1 All sums then outstanding from the Customer will immediately become due and payable notwithstanding that such sums would not otherwise be due until a later date; and
- 6.2 The Customer indemnifies and will be liable to pay all expenses and legal costs incurred by Supplier in relation to obtaining or seeking to obtain an appropriate remedy.

All payments must be made without any set-off, withholding, deduction or counterclaim.

7. Passing of Risk and Property

Risk of loss of or damage to ordered Products shall pass to the Customer at the time of delivery, however, title to and property in the Products shall not pass to the Customer until all sums due or owing to Supplier by the Customer on any account have been paid, and until payment, the following provisions shall apply:

- 7.1 Except where full payment is made in cash, the whole of the price shall not be treated as paid until any cheque or other instrument of payment given by the Customer has been met on presentation or otherwise honoured in accordance with its terms.
- 7.2 If the Customer defaults in the punctual payments of any sum owing to Supplier, then Supplier shall be entitled to the immediate return, at Customer’s expense, of all Products sold by Supplier to the Customer in which the property title has not passed to the Customer.
- 7.3 The Customer hereby irrevocably authorises Supplier and its employees and agents to recover the Products and to enter any premises of the Customer for that purpose and where the Supplier has cause to exercise any of their rights under Section 123 and/or 128 of the PPSA the Customer indemnifies record Automatic Doors from any claims made by any third party as a result of such exercise.
- 7.4 Demand for or recovery of the Products by Supplier shall not of itself discharge either the Customer’s liability to pay the whole of the price and take delivery of the Products or Supplier right to sue for the whole of the price.

- 7.5 In the event of the Customer reselling or assigning the Products to any third party prior to payment in full to Supplier for the Products, the Customer will advise the third party that title of the Products remains with Supplier and that they remain subject to these Terms and Conditions of sale until payment in full for the Products is made to Supplier.

8. Legal and Equitable Title

- 8.1 Ownership of the Products remains with Supplier until the Customer has paid all indebtedness on an all monies basis to Supplier on any account whatsoever.
- 8.2 The Customer agrees that it is in possession of the Products solely as a bailee for Supplier until all payments owing to Supplier have been made in full on an ongoing basis and until such payment:
- (i) shall be fully responsible for any loss or damage to the Products whatsoever and howsoever caused following delivery;
 - (ii) shall store the Products separately from its own goods and those of any other party and in a manner which clearly identifies the products, as the property of Supplier; and
 - (iii) shall maintain records of Products owned by Supplier identifying them as Supplier's property and allow Supplier to inspect those records and the Products upon request.
- 8.3 Supplier licenses the Customer to install the Products. If the Products are affixed to other materials, the totality thereof shall be the sole and exclusive property of Supplier until full payment has been made to Supplier.
- 8.4 Supplier reserves the right in relation to the Products that until all amounts owed by the Customer to Supplier are fully paid to enter the Customer's premises (or the premises where the Products are located) without liability for trespass or any resulting damage and retake possession of the Products.
- 8.5 The Customer shall be at liberty to sell the Products subject to the condition that until payment has been made to Supplier, the Customer shall sell as an agent and bailee for Supplier. If the Products are sold by the Customer, the Customer must hold in trust such part of the proceeds as represent the invoice price of the Product sold in a separate identifiable account as the beneficiary property of Supplier and must pay such amount to Supplier upon request. Supplier is entitled to maintain an action against the Customer for the purchase price of the Product.
- 8.6 Until ownership of the goods passes, the Customer waives its rights it would otherwise have under the Personal Property Securities Act 2009 ("PPSA"):
- (a) under Section 95 to receive notice of intention to remove an accession
 - (b) under section 118 to receive a notice that the supplier intends to enforce its security interest in accordance with land law.
 - (c) under section 121(4) to receive a notice of enforcement action against liquid assets
 - (d) under section 129 to receive a notice of disposal of goods by the Supplier purchasing the goods
 - (e) under section 130 to receive notice to dispose of goods
 - (f) under section 132(2) to receive a statement of account following disposal of goods
 - (g) under section 132(4) to receive a statement of account if no disposal of goods for each 6 month period
 - (h) under section 135 to receive notice of any proposal of the Supplier to retain goods
 - (i) under section 137(2) to object to any proposal of the Supplier to retain or dispose of goods
 - (j) under section 142 to redeem the goods
 - (k) under section 143 to reinstate the security agreement
 - (l) under section 157(1) and 157(3) to receive a notice of any verification statement
- 8.7 The Customer will, at the request of Supplier Pty Ltd, execute documents and do such further acts as may be required for Supplier to register the security interest granted under by the Customer under the PPSA and hereby consents to registration of this agreement on the Personal Property Securities Register ("PPSR") and agrees to do all things necessary and reasonably required to effect such registration. The Customer waives any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the PPSR.
- 8.8 The Customer further agrees that where we have rights in addition to those under part 4 of the PPSA, those rights will continue.
- 8.9 For the avoidance of doubt, Supplier interests constitute a 'purchase money security interest' pursuant to the PPSA where tangible property is supplied.

9. Default

- 9.1 The Customer will be in default if:
- (i) the Customer breaches these terms and conditions or any other agreement with Supplier for the supply of products;
 - (ii) payment for the Products has not been received by Supplier by the due date of payment;
 - (i) the Customer, as an individual, commits an act of bankruptcy or becomes insolvent or its credit standing alters adversely;
 - (ii) the Customer being a body corporate ceases to carry on its business or becomes insolvent or an order is made, or a resolution passed for its winding up, whether voluntary or otherwise if a receiver, receiver and manager, or administrator is appointed to the whole, or any part of its assets
 - (iii) Supplier determines the Customer's credit worthiness.
- 9.2 If the Customer defaults, Supplier may;
- (i) treat the agreement with the Customer as repudiated and sue for breach of contract or other remedies available to the Supplier;
 - (ii) refuse to supply any Products to the Customer;
 - (iii) claim the return of any Products in the Customer's possession;
 - (iv) withdraw or vary any credit Supplier may have provided to the Customer; or
 - (v) make all monies owing to Supplier on any account immediately due and payable.

10. Product and Availability Information

Supplier reserves the right to discontinue any Product or to change its design at any time.

11. Warranty

For Products: Supplier warrants that if any Product is defective, it will, at its option, replace or repair the product or refund the purchase price. This warranty is subject to a claim being made in writing to Supplier within 12 months of the original date of dispatch of the Product, or such other longer period as may be indicated by Supplier for specific products from time to time. Installation address and owner details of goods to be covered by warranty must be supplied to Supplier to ensure warranty registration. Failure to provide such information may result in any warranty claim rejection.

For Services: (as referred to in clause 13): Supplier warrants that if any Service is defective, it will, at its option, either rectify the Service or supply to the Customer free of charge a substitute Product in place of the defectively serviced Product. This warranty is subject to a claim being made in writing to Supplier within 3 months of the date of the invoice, or such periods as may be indicated by Supplier for specific Products from time to time.

These warranties shall not apply to any defect which arises from improper use, failure to follow the product instructions, or any repair or modification made without the consent of Supplier. The Customer must return or dispose of the Products, or make them available for collection by Supplier, in accordance with Supplier' instructions. If returned they must be suitably packaged and, where relevant, returned in accordance with any particular instructions which Supplier may have notified to the Customer at the time of supply.

Returned Products or parts must be accompanied by an advice note stating the original invoice number in respect of the Products and the nature of any claimed defect, together with such further information as Supplier may at the time of supply have stipulated. Where the Customer returns Products otherwise than in accordance with these warranty provisions, Supplier may refuse such Products and return them to the Customer at the cost of the Customer.

Any Products or parts which are replaced by Supplier shall become the property of Supplier. Title to replacement Products shall pass to the Customer on delivery, and the period of the replacement Product's warranty shall be calculated from the date of dispatch of the defective Product.

The remedies set out above shall be Supplier' sole liability and the Customer's sole remedy for any breach of warranty. Save as expressly provided in these terms and conditions of sale, all implied warranties, terms and conditions (whether statutory or otherwise) are excluded to the fullest extent permitted by law. Supplier will not be liable to the Customer for any loss of any kind whatsoever which arises out of the breach of implied warranties, terms or conditions (statutory or otherwise) or breach of any other duty of any kind imposed on Supplier by operation of law. The Customer acknowledges that it is responsible for ensuring that the Products and Services it orders are fit for the purposes for which it intends to use them.

12. Liability

Decisions for the use of Products and Services remain the responsibility of the Customer and involve subjective knowledge, which the Customer acknowledges is not available to Supplier. The Customer also acknowledges that it has not relied on any information or advice given by Supplier in relation to any Products and Services and that Supplier is not liable for damage, loss or expense resulting from the failure to give advice or information or the giving of incorrect advice or information (including, without limitation, advice or information given or not given by or through the Supplier (Technical Support facility) whether or not due to Supplier' negligence or that of its employees, agents or sub-contractors.

In no event shall any breach:

12.1 of these terms and conditions or any implied warranties, terms and conditions (whether statutory or otherwise); or

12.2 of any other duty of any kind imposed on Supplier by law arising out of or in relation to the sale of Products or Services, or

give rise to any liability for punitive damages, or damages for loss of revenue, loss of profits or expected future business, damage to reputation or goodwill, loss of any order or contract or any consequential or indirect loss or damage arising from any cause.

Supplier' liability (if any) to the Customer for all claims relating to breaches of these terms and conditions or any implied warranties, terms and conditions (whether statutory or otherwise), or any other duty of any kind imposed on Supplier by law arising out of or in relation to the supply of Products or Services or in respect of any defect in the Products or Services, shall be further limited in the aggregate to AU\$ nett invoice price of the goods or services.

13. Returns of Products Policy

The Customer may only return Products to Supplier, and receive a credit or refund, on the following conditions:

The Customer must return Products to Supplier in their original condition and in their original packaging within 14 days of the delivery date stated on the delivery documentation, and must specify the relevant invoice number. Assessment of the condition of Products will be strictly at the discretion of Supplier upon receipt of such Products.

13.1 The Customer must contact Supplier on 02 8811 4000 or 03 8339 2888 to obtain a Returns Number.

13.2 All items affixed or incorporated into the Product by the Customer must be removed from the Product prior to its return to Supplier.

13.3 All Products are returned to Supplier at the Customer's risk, and Supplier accepts no responsibility for any loss or damage to them or any items received by Supplier with them.

13.4 Products must be adequately packed and dispatched freight prepaid, clearly labelled, to record Automatic Doors at 30 Prince William Drive, Seven Hills NSW 2147 or 119 Metrolink Circuit, Campbellfield Victoria 3061 dependant upon original address of supply, or such other address as may be advised in writing by Supplier.

Products accepted for return will be credited at invoice value. Supplier, however, reserves the right to apply a handling charge of 20% of invoice value.

14. Order Cancellations

The Customer may not cancel orders once accepted by Supplier. Any cancellation (or part cancellation) of an order will only be accepted on Supplier'' written consent and the Customer must indemnify Supplier in respect of any expense incurred by Supplier relating to the cancellation of any order.

The Customer may only cancel or amend Scheduled Orders (i.e. orders for Products to be delivered periodically over an extended period of time and which are specifically sourced by Supplier for the Customer) if notice is received in writing at least 30 days prior to the agreed delivery date.

15. Services

Where Supplier offers the following Services in respect of the Products:

Installation, Commissioning, Service or Maintenance;

All responsible care will be taken by Supplier in relation to any work performed by Supplier or its Employees during installation commissioning, service or maintenance, but no liability will attach for any damaged occasion by any means whatsoever to electrical wiring, plumbing, masonry, rendered or painted surface, glass or adjoining materials of any kind, which may surround or adjoin the works as undertaken by Supplier.

16. Force Majeure

Supplier will not be in breach of its contract with the Customer for any delay in performing, or failure to perform, its obligations under these terms and conditions if that delay or failure was due to any cause or circumstance beyond Supplier' reasonable control or by its inability to procure Services, materials or articles required for the performance of its obligations under these terms and conditions except at enhanced prices. In these circumstances, Supplier may at its sole option delay the performance of, or cancel the whole or any part of, an order without liability to the Customer. In particular, although Supplier will use all reasonable endeavours to deliver back orders by the date stated by Supplier, Supplier shall not be held responsible for any delay in the delivery of, or inability to deliver such orders.

17. Privacy and Customer Information

Supplier may collect personal information about the Customer or its employees for the purpose of providing the services requested by the Customer and administering its relationship with the Customer. If this personal information is not provided then Supplier may not be able to provide the services requested. In addition, Supplier may disclose personal information where required or authorised by law or if the individual to whom the information relates consents.

18. Choice of Law and Jurisdiction

Any contract between Supplier and the Customer for the supply of Products or Services shall be governed by and interpreted in accordance with the law of Australia. Each party submits to the non-exclusive jurisdiction of the courts of Australia. However, Supplier may enforce the contract in any court of competent jurisdiction.

19. Notices

The Customer agrees to accept service of any document required to be served including any notice under this agreement or the PPSA or any originating process, by post and electronic address delivery at any address nominated in this application or any other address later notified to Supplier by the Customer or its' authorised agent.