

Glideaway Door Systems – Terms & Conditions of Trade

1.	Definitions	
1.1	"Supplier" means Glideaway Garage Doors Ltd T/A Glideaway Door Systems, its successors and assigns or any person acting on behalf of and with the authority of Glideaway Garage Doors Ltd T/A Glideaway Door Systems.	15.4
1.2	"Customer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.	
1.3	"Goods" means all Goods or Services supplied by the Supplier to the Customer at the Customer's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).	16.
1.4	"Price" means the Price payable for the Goods as agreed between the Supplier and the Customer in accordance with clause 4 below.	16.1
2.	Acceptance	16.2
2.1	The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.	16.3
2.2	These terms and conditions may only be amended with the Supplier's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Supplier.	16.4
3.	Change in Control	16.5
3.1	The Customer shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by the Supplier as a result of the Customer's failure to comply with this clause.	16.6
4.	Price and Payment	16.7
4.1	At the Supplier's sole discretion the Price shall be either: (a) as indicated on any invoice provided by the Supplier to the Customer; or (b) the Price as at the date of delivery of the Goods according to the Supplier's current price list; or (c) the Supplier's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.	16.8
4.2	The Supplier reserves the right to change the Price if a variation to the Supplier's quotation is requested. Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to, any variation as a result of fluctuations in currency exchange rates or increases to the Supplier in the cost of taxes, levies, materials and labour or as a result of errors and omissions or incorrect data and/or plans provided by the Customer) will be charged for on the basis of the Supplier's quotation and will be shown as variations on the invoice.	16.9
4.3	At the Supplier's sole discretion a deposit may be required.	16.10
4.4	Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by the Supplier, which may be: (a) on delivery of the Goods; (b) by way of instalments/progress payments in accordance with the Supplier's payment schedule; (c) for certain approved Customers, due twenty (20) days following the end of the month in which a statement is posted/mailed to the Customer's address or address for notices; (d) the date specified on any invoice or other form as being the date for payment; or (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Supplier.	16.11
4.5	Payment may be made by cash, cheque, bank cheque, electronic-line banking, or by any other method as agreed to between the Customer and the Supplier.	16.12
4.6	Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.	16.13
5.	Delivery of Goods	16.14
5.1	Delivery ("Delivery") of the Goods is taken to occur at the time that the Supplier (or the Supplier's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.	16.15
5.2	At the Supplier's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.	16.16
5.3	The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.	16.17
5.4	The Supplier may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.	16.18
5.5	Any time or date given by the Supplier to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and the Supplier will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.	16.19
6.	Risk	16.20
6.1	Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.	16.21
6.2	If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.	16.22
6.3	If the Customer requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.	16.23
7.	Accuracy of Customers plans	16.24
7.1	The Supplier shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, the Supplier accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.	16.25
8.	Accuracy of measurements for orders	16.26
8.1	In the event the Customer gives information relating to measurements and quantities of the Goods required to complete the services, it is the Customer's responsibility to verify the accuracy of the measurements and quantities, before the Customer or Supplier places an order based on these measurements and quantities. The Supplier accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause.	16.27
9.	Title	16.28
9.1	The Supplier and the Customer agree that ownership of the Goods shall not pass until: (a) the Customer has paid the Supplier all amounts owing to the Supplier; and (b) the Customer has met all of its other obligations to the Supplier.	16.29
9.2	Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.	16.30
9.3	It is further agreed that: (a) until ownership of the Goods passes to the Customer in accordance with clause 9.1 that the Customer is only a bailee of the Goods and must return the Goods to the Supplier on request. (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed. (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If	16.31
10.	Personal Property Securities Act 1999 ("PPSA")	16.32
10.1	Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that: (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and (b) a security interest is taken in all Goods previously supplied by the Supplier to the Customer (if any) and all Goods that will be supplied in the future by the Supplier to the Customer.	16.33
10.2	The Customer undertakes to: (a) 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 Supplier may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register; (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby; (c) not register a financing change statement or a change demand without the prior written consent of the Supplier; and (d) immediately advise the Supplier of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.	16.34
10.3	The Supplier and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.	16.35
10.4	The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.	16.36
10.5	Unless otherwise agreed to in writing by the Supplier, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.	16.37
10.6	The Customer shall unconditionally ratify any actions taken by the Supplier under clauses 10.1 to 10.5.	16.38
11.	Security and Charge	16.39
11.1	In consideration of the Supplier agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).	16.40
11.2	The Customer indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising the Supplier's rights under this clause.	16.41
11.3	The Customer irrevocably appoints the Supplier and each director of the Supplier as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.	16.42
12.	Customer's Disclaimer	16.43
12.1	The Customer hereby disclaims any right to rescind, or cancel any contract with the Supplier or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by the Supplier and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.	16.44
13.	Defects	16.45
13.1	The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Supplier an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Supplier has agreed in writing that the Customer is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) replacing the Goods or repairing the Goods.	16.46
14.	Returns	16.47
14.1	Returns will only be accepted provided that: (a) the Customer has complied with the provisions of clause 13.1; and (b) the Supplier has agreed in writing to accept the return of the Goods; and (c) the Goods are returned at the Customer's cost within fourteen (14) days of the delivery date; and (d) the Supplier will not be liable for Goods which have not been stored or used in a proper manner; and (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.	16.48
14.2	The Supplier may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of fifteen percent (15%) of the value of the returned Goods plus any freight.	16.49
14.3	Returned Goods may (at the Supplier's sole discretion), incur restocking and handling fees.	16.50
15.	Warranty	16.51
15.1	Subject to the conditions of warranty set out in clause 15.2 the Supplier warrants that if any defect in any workmanship of the Supplier becomes apparent and is reported to the Supplier within twelve (12) months of the date of delivery (time being of the essence) then the Supplier will either (at the Supplier's sole discretion) replace or remedy the workmanship.	16.52
15.2	The conditions applicable to the warranty given by clause 15.1 are: (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through: (i) failure on the part of the Customer to properly maintain any Goods; or (ii) failure on the part of the Customer to follow any instructions or guidelines provided by the Supplier; or (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or (v) fair wear and tear, any accident or act of God. (b) the warranty shall cease and the Supplier shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Supplier's consent. (c) in respect of all claims the Supplier shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.	16.53
15.3	For Goods not manufactured by the Supplier, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Supplier shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.	16.54
16.	Consumer Guarantees Act 1993	16.55
16.1	If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Supplier to the Customer.	16.56
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16.7	Intellectual Property	16.62
16.8	Where the Supplier has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Supplier.	16.63
16.9	The Customer warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.	16.64
16.10	The Customer agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Supplier has created for the Customer.	16.65
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