

## TERMS & CONDITIONS OF SUPPLY

**1. Contract** All Goods supplied and services provided by Lotus Folding Walls & Doors Pty Ltd ("Lotus") 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 Customer's proposed destination.

**3. Termination** Both Parties have the right to immediately terminate these Terms should an Event of Default 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 at the penalty interest rate fixed by the Attorney General from time to time under the Penalty Interest Rates Act 1983 (Vic) plus 2% per annum on any outstanding amounts owed to it by the Customer. 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** Property in the Goods does not pass to the Customer until Lotus has received payment 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. 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 the Schedule 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. Consistently 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 7 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. Warranty** Subject to clause 14 of these Terms, Lotus warrants that the Goods will conform to the Specifications and will be properly installed. If Lotus receives notice of a defect in installation or non-conformance with the Specifications within twelve months of installation, it will replace the affected Goods or supply equivalent

Goods, repair the affected Goods, pay any reasonable cost of replacement of the affected Goods, pay any reasonable cost of repairing the Goods, provide the services again or pay for the reasonable cost of provision of the services, the choice of which is at its option. The twelve month warranty period may be extended if the Goods are serviced annually by Lotus (service costs are available on request).

The Trade Practices Act 1974 and corresponding legislation in other jurisdictions in certain circumstances imply mandatory conditions and warranties into agreements ("Consumer Warranties"). This clause does not exclude or limit the application of any Consumer Warranties or other warranties where to do so:

- i. would contravene the law of the relevant jurisdiction; or
- ii. cause any part of this clause to be void.

The Customer hereby waives and Lotus disclaims, all other warranties, whether written or oral, express or implied, including but not limited to the Consumer Warranties.

**8. Limitation of Liability and Remedies** Lotus's liability is limited to the extent described in Section 7 above. Notwithstanding Section 7 above in no event will Lotus be liable for any of the following: actual loss or direct damage that is not listed in 7 above, damage for loss relating to the Customer's procurement of substitute products, incidental, special, economic or consequential damages.

**9. 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) a notice of deregistration of defaulting party under section 601AA(5) or 601AB(5) of the Corporations Act is given to or in respect of a party; 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.

**10. 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 the Customer, is a company and an application is made to wind up the Customer or a Receiver, Receiver and Manager, Official Manager, Agent for Mortgagee or an Administrator is appointed in respect of any part of the Customer's property, or an Inspector is appointed to investigate any of its affairs; or makes an arrangement or composition with its creditors or proposes to do so; or is unable to pay its debts as they fall due; or ceases or threatens to cease to carry on its business; or has execution levied against any of its assets; or has a mortgagee enter, or seek to enter into possession of any of its assets.

**11. Severance** If any provision of this Agreement 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 this Agreement shall be construed so as to most nearly give effect to the parties' intention when it was originally executed.