

# TERMS & CONDITIONS OF SALE

These are the terms and conditions upon which HODGE SYSTEMS PTY LTD trading as TAMBORTECH, ALSERT DOORS and GLASSIC DOORS ABN 97 372 879 101 (“the Supplier”) supplies Goods and Services to customer (“the Customer”):-

## 1 INTERPRETATION

- 1.1 The headings used in these terms and conditions do not form part of these terms and conditions and are for convenience only.
- 1.2 Where the context admits or requires, words importing the singular shall include the plural, those denoting a given gender shall include all other genders and those denoting natural persons shall include corporations.
- 1.3 These terms and conditions shall apply mutatis mutandis as between the Customer and any subsidiary or related entity of the Supplier as those terms are defined in the Corporations Act 2001 except where:-
  - 1.3.1. there is a written credit agreement between the parties; or
  - 1.3.2. the resulting agreement constitutes a breach of any legislation.

## 2 GENERAL

- 2.1 Unless agreed to in writing by the Supplier, any variation of these terms and conditions, including any terms and conditions of the Customer's order deviating from or inconsistent with these terms and conditions, is rejected by the Supplier.
- 2.2 The Supplier may vary these terms and conditions at any time by a notice of variation in writing to the Customer which notice is deemed given if amended terms and conditions are uploaded to the Supplier's website. The Customer agrees that the purchase of any goods supplied or to be supplied by the Supplier to the Customer including goods manufactured or modified at the Customer's request (“Goods”) or services supplied or to be supplied by the Supplier to the Customer at the Customer's request (“Services”) after such variation will be deemed to be an acceptance of such varied terms and conditions by the Customer.
- 2.3 Should there be any variation to any of the information supplied by the Customer to the Supplier in the credit account application or in the structure or nature of the Customer's business (such as a conversion to or from a Company or trust) the Customer shall notify the Supplier in writing within 7 days of such variation.
- 2.4 These terms and conditions and all obligations hereunder shall be binding on the Customer's personal representatives, successors and assigns.
- 2.5 Where the Customer is comprised of the names of two or more persons then each person is jointly and severally liable to pay all monies owed by the Customer to the Supplier.
- 2.6 These terms and conditions and the terms of the order submitted by the Customer on the order form of the Supplier override and prevail over the terms of any other document submitted by the Customer with the order including any purchase order on the Customer's own stationery or the Customer's own terms and conditions of trade.
- 2.7 Where there is any inconsistency between these terms and conditions (including any updated versions of these terms and conditions) and any subsequent agreement with the Customer for the supply of Goods or Services by the Supplier, then such subsequent agreement shall only prevail to the extent that it is inconsistent with these terms and conditions (including any updated versions of these terms and conditions). A subsequent agreement is only such if expressly acknowledged or agreed in writing by the Supplier.
- 2.8 The waiver of any of these terms and conditions by the Supplier shall not be construed as a continuing waiver of that term or condition and the Supplier shall be entitled to require compliance with all of these terms and conditions at any time.
- 2.9 Reference to delivery in relation to Goods in these terms and conditions is a reference to delivery of Goods as defined under clause 14.1.

## 3 SUPPLY TERMS

- 3.1 The Supplier may in its absolute discretion refuse the Customer credit facilities or suspend or discontinue the supply of Goods and Services to the Customer or to increase or vary the Customer's credit limit at any time without any obligation to provide to the Customer a reason for such action.
- 3.2 For each project order or group of orders exceeding a quantity of 100 units of Goods:
  - 3.2.1 a deposit of 25% of the total order value must be paid prior to commencement of the manufacture of Goods, with the remainder of the order value accruing to the Customer's credit account; or
  - 3.2.2 personal guarantees signed by all Directors and/or Office Holders must be supplied prior to commencement of the manufacture of Goods.
- 3.3 All Goods or Services delivered to the Customer by the Supplier in any calendar month must be paid for in full by the Customer:
  - 3.3.1 in the case of orders for cash on delivery (COD) on or before delivery;

- 3.3.2 in all other cases, on or before the Supplier's last trading day in the month following the month in which the Goods or Services were delivered, (in each case the “Due Date”).
- 3.4 If the customer fails to make full payment by the Due Date interest will be charged on a daily basis on monies owed by the Customer to the Supplier both before and (as a separate and independent obligation) after any judgment at a rate of 16% pa from the due date for payment until the actual date of payment. If the Customer has an account with the Supplier, the Supplier may debit the Customer's account monthly or at such other times it chooses for such interest.
- 3.5 The Customer will pay the Supplier for any and all of the Supplier's expenses including but not limited to any legal costs (on an indemnity basis), stamp duties and other expenses payable under these terms and conditions together with any collection costs or dishonoured cheque fees incurred in connection with the enforcement of, or the preservation of any rights under these terms and conditions. Such costs, duties and other expenses as well as interest payable pursuant to clause 3.4 may be recovered as a liquidated debt.
- 3.6 Any payments received by the Supplier from the Customer shall be applied first to any costs, duty, commission or other expenses referred to in clause 3.5 then to interest and then to the remainder of monies outstanding.
- 3.7 The Customer shall not deduct any amount from the amount due on any Supplier invoice or statement. The Customer shall not make any claim on the Supplier if any amounts are outstanding from the Customer to the Supplier. The Customer is not entitled to set off any amounts against its outstanding debts to the Supplier.

## 4 EVIDENCE OF MONIES PAYABLE

- 4.1 A statement in writing signed by any director, secretary, administration manager or credit manager of the Supplier stating the balance of the monies due to the Supplier by the Customer shall be prima facie evidence of the amount of indebtedness of the Customer to the Supplier at the date of that statement.

## 5 CREDIT LIMIT

- 5.1 Any credit limit is solely for the benefit of the Supplier. The obligation of the Customer under these terms and conditions remain unchanged if the credit limit is exceeded or not specified at any time.

## 6 DEFAULT

- 6.1 If there is any default by the Customer in making due payment to the Supplier of any monies owing by the Customer, or if an administrator, liquidator or provisional liquidator or receiver and manager or controller is appointed in respect of the Customer or the Customer goes into bankruptcy or commits any act of bankruptcy, or if there is a breach by the Customer of any of these terms and conditions then:-
  - 6.1.1 All monies payable by the Customer to the Supplier shall at the Supplier's election become immediately due and payable notwithstanding that the due date for payment of any of the monies shall not have expired;
  - 6.1.2 The Supplier may terminate these terms and conditions any order and/or the Customer's credit account (if any) forthwith.

## 7 SEVERANCE

- 7.1 In the event that the whole or any part or parts of any clause in these terms and conditions is found to be unenforceable by a Court then such clause or part thereof shall be to that extent severed from these terms and conditions without effect to the validity and enforceability of the remainder of these terms and conditions.

## 8 JURISDICTION

- 8.1 These terms and conditions shall be governed by and construed in accordance with the laws of the State of Queensland. The parties submit to the exclusive jurisdiction of the Courts in Brisbane.
- 8.2 The parties agree that proceedings may be commenced in any Court in Brisbane and consent to that Court having jurisdiction by virtue of this clause notwithstanding that the Court would not have such jurisdiction without this consent.

## 9 NOTICE

- 9.1 Notice required to be given by the Customer to the Supplier pursuant to these terms and conditions may be delivered personally or sent by post to the credit manager of the Supplier at the Supplier's postal address at PO BOX 3687, MT OMMANEY QLD 4074 and unless contrary is proved shall be taken as delivered when received by the Supplier. Notice to be given to the Customer by the Supplier may be delivered personally or sent by post to the Customer's last known

- address and shall be taken as delivered on the 5<sup>th</sup> business day following posting by ordinary post.
- 9.2 The Supplier's invoices and statements are deemed to be received by the Customer on the 5<sup>th</sup> business day after posting by ordinary post or at the time of sending if sent by email.

## 10 GST

- 10.1 In this clause the expressions "GST", "input tax credit", "tax invoice", "recipient" and "taxable supply" have the meanings given to those expressions in the New Tax System, (Goods and Services Tax) Act 1999.
- 10.2 With the exception of any amount payable under this clause 10, unless otherwise expressly stated all amounts stated to be payable by the Customer under these terms and conditions are exclusive of GST.
- 10.3 If GST is imposed on any supply made under or in accordance with these terms and conditions, the recipient of the taxable supply must pay to the Supplier an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this document, subject to the provision of a tax invoice.

## 11 TRUST AND TRUSTEES

- 11.1 Where the Customer is a trustee:-
- 11.1.1 The Customer agrees to produce a stamped copy of the trust deed (including all amendments) with these terms and conditions and also at any time in the future when requested by the Supplier in writing.
- 11.1.2 The Customer warrants that it has full power and authority to enter into these terms and conditions on behalf of the trust and that it shall be bound by the terms of these terms and conditions both personally and as trustee.

## 12 FORCE MAJEURE

- 12.1 The Supplier shall not be liable for any delay or for the consequences of any delay in performing or failure to perform any of its obligations under these terms and conditions if such delay is due in full or in part to any cause whatsoever beyond its reasonable control. Such delay or failure shall not constitute a breach of these terms and conditions and the Supplier shall be entitled at its option to either extend the time for delivery or performance for a reasonable period or to determine the contract without any recourse by the Customer to any claim for damages.

## 13 QUOTATION

- 13.1 Where the Supplier quotes for supply of Goods or Services to the Customer, the quotation is open for acceptance for 30 days unless a different period is stated in the quotation, after which the quotation becomes void.

## 14 DELIVERY

- 14.1 Delivery of Goods to the Customer occurs when they are delivered to the Customer at the address for delivery specified by the Customer and the Customer accepts the risk of the Goods from that time.
- 14.2 If the Customer arranges the delivery or freight of the Goods then delivery is made when the Goods are despatched from the Supplier's premises and the Customer accepts the risk of the Goods from that time.
- 14.3 Delivery dates are estimates only. The Customer must nominate an address where the Goods may be delivered during ordinary business hours. The Customer or the Customer's agent must sign an acknowledgement of receipt of Goods. Any person signing an acknowledgement of receipt of Goods is deemed to be authorized by the Customer. The Customer is liable for any additional expenses incurred by the Supplier due to non-delivery, including but not limited to expenses resulting from the Customer not having an authorized person to sign an acknowledgement of receipt of Goods.
- 14.4 Delivery may be made by installments. Each installment will be treated as a separate delivery.
- 14.5 Notwithstanding the delivery time, the Goods will be invoiced on the date the Goods leave the Supplier's premises and that date shall be the invoice date.

## 15 ACCEPTANCE

- 15.1 The Customer must within 7 working days after delivery inspect the Goods and give the Supplier written notice of defect, shortages or anything else not in accordance with the order.
- 15.2 The Customer agrees to keep Goods referred to in a notice given under this clause (and in the case of shortages the remainder of the Goods delivered) in the condition in which they were delivered until the Supplier (at its option) either has inspected the Goods or gives notice to the Customer that the Goods are to be returned.
- 15.3 Goods are taken to be accepted as delivered if:-
- 15.3.1 the Customer does not give the notice referred to in this clause; or
- 15.3.2 the Goods referred to in a notice are used or damaged after delivery.

- 15.4 If the Supplier delivers less than the full quantity of Goods the Customer may not reject those Goods delivered.
- 15.5 If the Supplier delivers extra or different Goods the Customer may reject only the extra or different Goods.

## 16 SECURITY

- 16.1 Notwithstanding the Customer accepting risk in Goods supplied at the time of delivery, title in the Goods does not pass until full payment for the Goods is received by the Supplier.
- 16.2 In respect of Goods which the Customer has received and remain unpaid the Customer will hold any proceeds (as that term is defined in the *Personal Property Security Act 2009 (Cth)* ("PPSA")) of any resale, disposal or other dealing with the Goods or any product incorporating the Goods (including sale or supply to a party other than the Customer) in breach of this clause in trust for the Supplier and must pay the proceeds into a separate fiduciary account to be held in trust for the Supplier until accounted for to the Supplier at the demand of the Supplier
- 16.3 To secure payment of all moneys which are or may become payable by the Customer to the Supplier under these terms and conditions the Customer (or where the Customer is comprised of two or more persons then each person jointly and severally) hereby charges with the due payment of all of those moneys all of the Customer's interest in all property owned by the Customer including real property wherever located both present and future and the Customer consents to the Supplier lodging a security including a financing statement under the PPSA or a caveat or caveats over such property to protect its interest.
- 16.4 Upon demand by the Supplier, the Customer agrees to immediately execute a mortgage or other instrument in terms satisfactory to the Supplier to further secure the Customer's indebtedness to the Supplier.
- 16.5 Should the Customer fail within a reasonable time of such demand to execute such mortgage or other instrument then the Customer appoints irrevocably the credit manager or a duly authorised officer of the Supplier to be the Customer's lawful attorney to execute any such mortgage or other instrument.

## 17 PPSA

- 17.1 In this clause 17, words and phrases defined in the PPSA have the same meaning as defined in the PPSA.
- 17.2 It is the intention of the parties by clause 16.1 & 16.2 that there is created for the benefit of the Supplier a Purchase Money Security Interest in all unpaid Goods.
- 17.3 It is the intention of the parties by clause 16.3 that there is created for the benefit of the Supplier a general security interest in all present and after acquired property of the Customer.
- 17.4 The Customer agrees that the Supplier may register a financing statement of its Purchase Money Security Interest, its general security interest and any other security interest in the Goods created by these terms and conditions on the Personal Property Securities Register and the Customer waives its rights to receive a verification statement (as that term is defined in the PPSA) in respect of any financing statement or financing change statement (as those terms are defined in the PPSA) registered by the Supplier in respect of any personal property of the Customer.
- 17.5 The parties agree that, insofar as the provisions of Chapter 4 of the PPSA are for the benefit of the Customer or place an obligation on the Supplier, those provisions will apply only to the extent that they cannot be contracted out of or to the extent that the Supplier otherwise agrees in writing.

## 18 CANCELLATION

- 18.1 The Supplier will accept cancellations and changes to orders up to 24 hours after the making of the order.
- 18.2 Following this time, and unless otherwise agreed by the Supplier or stated in these terms and conditions, the Supplier is not bound to accept cancellation or variation of an order or the return of Goods from the Customer. All cancellations and variations of orders are at the Supplier's discretion.

## 19 LIABILITY OF THE SUPPLIER

- 19.1 If under the law, any terms which apply to the supply of Goods or Services under these terms and conditions cannot legally be excluded, restricted or modified then those terms apply to the extent required by that law.
- 19.2 All terms which would otherwise be implied are excluded except as stated in these terms and conditions.
- 19.3 In addition to any warranties implied by law, the Supplier provides the limited warranty displayed on the Supplier's website, being a warranty in respect of manufacturing defects for a period of:
- 19.3.1 5 years for Tambortech tambour doors; and
- 19.3.2 10 years for Alsert Doors and Glassic Doors;
- from the date of delivery and subject to the terms and conditions listed in the warranty. The benefits given to the Customer by this warranty are in addition to other rights and remedies of a Customer under a law in relation to the Goods to which this warranty relates.

- 19.4 To the extent otherwise required by law the Supplier's sole liability for any breach or default in the supply of Goods and Services to the Customer is limited:-
- 19.4.1 In the case of Goods supplied by the Supplier, to any one of the following as determined by the Supplier:-
- 19.4.1.1 The replacement of the Goods or supply of equivalent Goods;
- 19.4.1.2 The repair of the Goods;
- 19.4.1.3 The payment of the cost of replacing the Goods or acquiring equivalent Goods;
- 19.4.1.4 The payment of the cost of having the Goods repaired;
- 19.4.2 In the case of Services supplied by the Supplier, to any one of the following:-
- 19.4.2.1 The supplying of the Services again;
- 19.4.2.2 The payment of the cost of having the Services supplied again.
- The Supplier is not liable for consequential damages, economic loss or loss of profits whether direct, indirect, general, special.
- 19.5 The Customer does not rely on any representation, warranty or other term made by or on behalf of the Supplier which is not set out in these terms and conditions.

## 20 PRIVACY

- 20.1 The Supplier abides by its obligations with respect to privacy. The Customer and its guarantors, if any, may view the Supplier's privacy policies (APP Privacy Policy and Credit Reporting Privacy Policy) at [www.tambortech.com.au](http://www.tambortech.com.au) and [www.alsertdoors.com.au](http://www.alsertdoors.com.au) and [www.glassicdoors.com.au](http://www.glassicdoors.com.au)

- 20.2 The Customer and its guarantors, if any, understand that the personal information given herein or in any order, credit application or other document, is to be used by the Supplier for the purposes of assessing the Customer's credit worthiness. The Customer and its guarantors, if any, confirms that the information given by the Customer is accurate and complete. Furthermore, the Customer and its guarantors, if any, agrees to provide updated information, as and when further information is requested by the Supplier for the purpose of reviewing the credit history of the account, updating the Supplier's credit file on the Customer and its guarantors, if any, and/or reviewing credit limits.
- 20.3 The Customer acknowledges and agrees that:-
- 20.1.2 The Customer has read and understood the Privacy Act 1988 (Cth) Statement and Authority which is attached to these terms and conditions;
- 20.1.3 The Privacy Act 1988 (Cth) Statement and Authority is incorporated into and forms part of these terms and conditions.
- 20.1.4 For the purpose of assessing whether to accept the Customer for credit that the Supplier may obtain from a credit reporting agency a credit report containing information about the Customer.

**Our Goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure**

## PRIVACY ACT NOTIFICATIONS AND CONSENT

The undersigned acknowledge and understand that Hodge Systems Pty Ltd (Hodge Systems Pty Ltd) trading as Tambortech (Tambortech), Alsert Doors (Alsert Doors) and Glassic Doors (Glassic doors) abides by the *Privacy Act 1988* (the "Act"), including Part IIIA and the Credit Reporting Code in respect of the obligations of credit providers, and the Australian Privacy Principles. Hodge Systems Pty Ltd's Privacy Policies, including Hodge Systems Pty Ltd's Credit Reporting Privacy Policy, are available on its websites at: <http://www.tambortech.com.au> and <http://www.alsertdoors.com.au> and <http://www.glassicdoors.com.au> and I/we have had the opportunity to read that Credit Reporting Privacy Policy.

I/we acknowledge that I/we am/are informed of the following matters:

1. Hodge Systems Pty Ltd collects personal information about individuals if it is necessary for one or more of Hodge Systems Pty Ltd's functions or activities. In Hodge Systems Pty Ltd's activities as a credit provider Hodge Systems Pty Ltd collects credit-related information ("credit information") about individuals.
2. A detailed summary of the kinds of credit information that Hodge Systems Pty Ltd collects about individuals is set out in Hodge Systems Pty Ltd's Credit Reporting Privacy Policy available via its websites at: <http://www.tambortech.com.au> and <http://www.alsertdoors.com.au> and <http://www.glassicdoors.com.au> However, in short, credit information about an individual includes information about the individual's credit history and credit worthiness and is used by Hodge Systems Pty Ltd for the purposes detailed below.
3. With the consent of the individual, Hodge Systems Pty Ltd collects credit information (including credit eligibility information) about individuals from other credit providers for such purposes as: processing and assessing applications for commercial credit accounts; assessing the provision of credit and the amount of any credit; and the recovery of any overdue amounts.
4. If such credit information about individuals associated with the applicant is not collected by Hodge Systems Pty Ltd then Hodge Systems Pty Ltd cannot properly process or consider applications for credit accounts such that Hodge Systems Pty Ltd will not be able to process the application and decide to or not to grant a commercial credit account.
5. Hodge Systems Pty Ltd has a Credit Reporting Privacy Policy which is available at <http://www.tambortech.com.au> and <http://www.alsertdoors.com.au> and <http://www.glassicdoors.com.au> which contains information about the following:
  - how an individual may access the credit eligibility information about the individual held by Hodge Systems Pty Ltd;
  - how an individual may seek the correction of credit information or credit eligibility information about the individual that is held by Hodge Systems Pty Ltd;
  - how an individual may complain about a failure of Hodge Systems Pty Ltd to comply with its obligations under Part IIIA of the *Privacy Act* or the Credit Reporting Code and how Hodge Systems Pty Ltd will deal with such a complaint;
  - that Hodge Systems Pty Ltd is not likely to disclose credit information or credit eligibility information to any overseas entities that do not have an Australian link.

For the purposes of processing of this application for a commercial credit account, assessing the ongoing provision of credit and/or the recovery of any overdue account, whether or not in connection with any guarantee I/we hereby expressly give my/our consent to Hodge Systems Pty Ltd, its successors and/or assigns to:

- (a) obtain credit information and credit eligibility information about me/us and/or the applicant from any other credit provider;
- (b) use, disclose or exchange with other credit providers credit eligibility information about me/us and/or the applicant.

I/we further agree that if Hodge Systems Pty Ltd approves this application, this consent remains in force until all rights under any credit facility granted as a result of this application cease.



and



and



## Application for Credit Account – Confidential

Sole Trader  Partnership  Public Company  Private Company  Trust  Other \_\_\_\_\_

Legal Name \_\_\_\_\_

ABN No \_\_\_\_\_ ACN No \_\_\_\_\_

Trading Name \_\_\_\_\_

Delivery Address \_\_\_\_\_

Postal Address \_\_\_\_\_

Registered Office \_\_\_\_\_

Telephone ( ) \_\_\_\_\_ FAX ( ) \_\_\_\_\_ Mobile No \_\_\_\_\_

Type of Business \_\_\_\_\_ Date established \_\_\_/\_\_\_/\_\_\_ E-mail \_\_\_\_\_  
[cabinetmaker, etc]

### Trade References:

1 \_\_\_\_\_ Phone \_\_\_\_\_ Fax \_\_\_\_\_

2 \_\_\_\_\_ Phone \_\_\_\_\_ Fax \_\_\_\_\_

Trade references must be suppliers that trade with you on a monthly credit basis.  
Be aware that the Laminex Group, Lincoln Sentry and Wilson & Bradley will not supply references.

Pursuant to clause 3.2 of the Terms & Conditions of Sale, for each project order or group of orders exceeding a quantity of 100 units of Goods, a deposit of 25% of the order value must be paid prior to commencement of the manufacture of Goods, with the remainder of the order value accruing to your credit account or, alternatively, personal guarantees signed by all Principles and/or Office Holders must be supplied prior to commencement of the manufacture of Goods.

Contact person for accounts \_\_\_\_\_ Email \_\_\_\_\_

### Details of all Directors and/or Office Holders

I/We hereby acknowledge affirm and agree that I/We have read the Monthly Credit Account Terms and Conditions of Agreement and the Privacy Act Notification and Consent, and fully understand and comprehend same and certify that the information supplied as the basis of the Supplier's decision to grant credit is true and correct.

1 Full Name \_\_\_\_\_ Date of Birth \_\_\_/\_\_\_/\_\_\_ Home Phone \_\_\_\_\_

Home Address \_\_\_\_\_

Signature \_\_\_\_\_ Position \_\_\_\_\_ Date \_\_\_\_\_

2 Full Name \_\_\_\_\_ Date of Birth \_\_\_/\_\_\_/\_\_\_ Home Phone \_\_\_\_\_

Home Address \_\_\_\_\_

Signature \_\_\_\_\_ Position \_\_\_\_\_ Date \_\_\_\_\_

3 Full Name \_\_\_\_\_ Date of Birth \_\_\_/\_\_\_/\_\_\_ Home Phone \_\_\_\_\_

Home Address \_\_\_\_\_

Signature \_\_\_\_\_ Position \_\_\_\_\_ Date \_\_\_\_\_

4 Full Name \_\_\_\_\_ Date of Birth \_\_\_/\_\_\_/\_\_\_ Home Phone \_\_\_\_\_

Home Address \_\_\_\_\_

Signature \_\_\_\_\_ Position \_\_\_\_\_ Date \_\_\_\_\_