

Independent Roller Door Services Pty Ltd – Terms & Conditions of Trade

1.1	Definitions "Contractor" means Independent Roller Door Services Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Independent Roller Door Services Pty Ltd.	(b)	The Customer holds the benefit of the Customer's insurance of the Goods on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;	16.3	The Customer may not sell, dispose, or otherwise part with possession of the Goods other than to the Contractor and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand; the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so the Customer must ensure the resulting product is returned to the Contractor and must sell, dispose of or return the resulting product to the Contractor as it is so directed;
1.2	"Customer" means the person/s or any person acting on behalf of and with the authority of the Contractor requesting the Contractor to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and: (a) if there is more than one Customer, is a reference to each Customer jointly and severally, and if the Customer is a partnership, the partners, successors and permitted assigns; (b) "Goods" means all Goods or Services supplied by the Contractor to the Customer at the Customer's request for the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).	(c)	The Contractor irrevocably authorises the Contractor to enter any premises where the Contractor believes the Goods are kept and recover possession of the Goods;	16.4	The Contractor may recover possession of any Goods in transit whether or not delivery has occurred;
1.3	"Equipment" means all Equipment including any accessories supplied on hire by the Contractor to the Customer (and where the context so permits include any supply of Services). The Equipment shall be used only for the purposes of the Services, and for no other work or other work authorised from provided by the Contractor to the Customer.	(d)	The Contractor shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Contractor;	16.5	The Contractor may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer;
1.4	"Price" means the Price payable (plus any GST where applicable) for the Goods and/or Equipment hire as agreed between the Contractor and the Customer in accordance with clause 15 below.	(e)	Personal Property Securities Act 2009 ("PPSA") In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.	16.6	Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods/Equipment and/or collateral (account – (a) a consumer credit account and (b) a non-consumer credit account) that have previously been supplied and that will be supplied in the future by the Contractor to the Customer.
1.5	"GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).	(f)	The Customer undertakes to: (i) complete any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Contractor may reasonably require to: (ii) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register; (iii) register any other document required to be registered by the PPSA or (iv) correct a defect in a statement referred to in clause 11.3(a) or 11.3(a)(ii); and (v) contain and upon demand reimburse the Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods/Equipment charged thereby;	16.7	The Contractor may, in order to perfect its security interest, register a financing statement or financing change statement in relation to the Goods/Equipment and/or collateral (account) in favour of a third party without the consent of the Customer. The Contractor agrees to immediately advise the Contractor of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales. The Contractor and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the Goods/Equipment and the Contractor waives their rights as grantor and/or debtor under sections 124 and 143 of the PPSA.
1.6	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/Equipment.	(g)	Subject to any express provisions to the contrary (including those contained in this clause 11), the Contractor's sole intention is intended to have the effect of contracting out of any of the provisions of the PPSA.	16.8	The Contractor will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. If the Contractor is not satisfied with the resolution provided, the Customer may make a complaint to the Information Commissioner at www.oaic.gov.au .
1.7	These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or contract between the Customer and the Contractor.	(h)	Security and Charge In consideration of the Contractor agreeing to supply the Goods/Equipment, the Customer charges all of its rights, title and interest (whether or not several or in law) and 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).	16.9	The Contractor will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. If the Contractor is not satisfied with the resolution provided, the Customer may make a complaint to the Information Commissioner at www.oaic.gov.au .
1.8	Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with the requirements of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.	(i)	The Contractor agrees to indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.	17.0	Unpaid Seller's Rights If the Customer has left any item with the Contractor for repair, modification, exchange or other work, the Contractor may provide any other service in relation to the item and the Contractor has not received or been tendered the whole of any monies owing to it by the Customer, the Contractor shall have, until all monies owing to the Contractor are paid: (a) a lien on the item; (b) the right to repair or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods; (c) the right to charge the Customer for the cost of the Contractor's reasonable costs of storage, and (d) the right to charge the Customer for the cost of replacing the Equipment.
1.9	Contractual signatures shall be deemed to be accepted by either party providing that the parties have complied with the requirements of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.	(j)	The Contractor agrees to indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.	17.1	The Contractor shall continue despite the commencement of proceedings, or judgment against the Contractor owing to the Contractor having been obtained against the Contractor.
2.0	Errors and Omissions The Contractor acknowledges and accepts that the Contractor shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s) resulting from an inadvertent mistake made by the Contractor in the preparation and/or administration of this contract, and/or (a) the Contractor's omission of a signature (hard copy and/or electronic) supplied by the Contractor in respect of the Services; (b) in the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the material or fundamental misconduct of the Contractor, the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.	(k)	The Contractor agrees to indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.	17.2	The Contractor shall continue despite the commencement of proceedings, or judgment against the Contractor owing to the Contractor having been obtained against the Contractor.
2.1	Change in Control The Customer shall give the Contractor 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), change of trustees or business practice). The Customer shall be liable for any loss incurred by the Contractor as a result of the Customer's failure to comply with this clause.	(l)	The Contractor agrees to indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.	17.3	The Contractor shall continue despite the commencement of proceedings, or judgment against the Contractor owing to the Contractor having been obtained against the Contractor.
2.2	Price and Payment At the Contractor's sole discretion the Price shall be either: (a) as indicated in any invoice provided by the Contractor to the Customer; or (b) the Contractor's quoted price (subject to clause 5.3) which will be valid for the period stated in the quotation or otherwise for a period of fourteen (14) days. Unless stated otherwise the Price does not include: (a) the supply of custom lamer or ramfit seals (which stops drafts and gaps in brick work, etc.) to compensate for unlevelled floors, or crack or holes in floors; (b) the supply of fixing to hang doors, motors, parts and accessories – diagrams are available from the Contractor; (c) the supply of work (such as openings, which must be plumb and level) in order to accommodate the Goods; (d) building and council permits, and town planning consents and applications (etc.), which shall be the responsibility of the Customer; (e) scaffolding and/or scissor-lift equipment that may be required for the supply of Services by the Contractor, and any cost of hiring such equipment shall be charged additionally to the Customer; (f) all electrical wiring and connection to power units/points (including the setting of limit switches), which shall be the responsibility of the Customer; (g) additional site visits (including where the Contractor is requested to install guides, lock-up, set ins, etc.), which are not included in the Contractor's standard labour rates.	(m)	The Contractor agrees to indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.	17.4	The Contractor shall continue despite the commencement of proceedings, or judgment against the Contractor owing to the Contractor having been obtained against the Contractor.
2.3	The Contractor reserves the right to change the Price if a variation to the Contractor's quotation is requested (including the supply of any items specified in clause 5.2). Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional work required due to unforeseen circumstances such as plastering work by any third party not being completed, delays in accessing the site as per clause 8, or as a result of any increase to the cost of materials and labour) will be charged on a time and materials basis. The Contractor's quotation is valid for a period of 14 days. The Customer shall be required to respond to any variation submitted by the Contractor within ten (10) working days. Failure to do so will entitle the Contractor to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.	(n)	The Contractor agrees to indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.	17.5	The Contractor shall continue despite the commencement of proceedings, or judgment against the Contractor owing to the Contractor having been obtained against the Contractor.
2.4	At the Contractor's sole discretion, the Contractor may, at its option, invoice the Customer in advance of the Contractor's quotation for the Goods/Equipment being of the essence, the Price will be payable by the Customer on the date determined by the Contractor, which may be: (a) on delivery of the Goods/Equipment; (b) before delivery of the Goods/Equipment; (c) the date specified on any invoice or other form as being the date for payment; or (d) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Customer by the Contractor.	(o)	The Contractor agrees to indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.	17.6	The Contractor shall continue despite the commencement of proceedings, or judgment against the Contractor owing to the Contractor having been obtained against the Contractor.
2.5	Payment may be made by cash, cheque, bank cheque, electronic/in bank, or by any other method as agreed to between the Customer and the Contractor.	(p)	The Contractor agrees to indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.	17.7	The Contractor shall continue despite the commencement of proceedings, or judgment against the Contractor owing to the Contractor having been obtained against the Contractor.
2.6	No allowance has been made in the Price for the deduction of retentions. In the event that retention is made, the Contractor reserves the right to treat all retentions as placing the Customer's account into default.	(q)	The Contractor agrees to indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.	17.8	The Contractor shall continue despite the commencement of proceedings, or judgment against the Contractor owing to the Contractor having been obtained against the Contractor.
2.7	The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Contractor by the Contractor nor to withhold payment of any monies becoming payable to the Contractor.	(r)	The Contractor agrees to indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.	17.9	The Contractor shall continue despite the commencement of proceedings, or judgment against the Contractor owing to the Contractor having been obtained against the Contractor.
2.8	Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply of Goods/Equipment. The Contractor will supply 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 specified in the Contractor's quotation.	(s)	The Contractor agrees to indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.	18.0	The Contractor shall continue despite the commencement of proceedings, or judgment against the Contractor owing to the Contractor having been obtained against the Contractor.
2.9	Delivery of Goods/Equipment Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that the Contractor (or the Contractor's authorised agent) delivers the Goods/Equipment to the Customer's nominated address even if the Customer is not present at the address.	(t)	The Contractor agrees to indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.	18.1	The Contractor shall continue despite the commencement of proceedings, or judgment against the Contractor owing to the Contractor having been obtained against the Contractor.
2.10	At the Contractor's sole discretion the cost of delivery is either included or is in addition to the Price.	(u)	The Contractor agrees to indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.	18.2	The Contractor shall continue despite the commencement of proceedings, or judgment against the Contractor owing to the Contractor having been obtained against the Contractor.
2.11	The Contractor may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.	(v)	The Contractor agrees to indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.	18.3	The Contractor shall continue despite the commencement of proceedings, or judgment against the Contractor owing to the Contractor having been obtained against the Contractor.
2.12	Any time specified by the Contractor for delivery of the Goods/Equipment is an estimate only and the Contractor will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Goods/Equipment to be delivered at the time and place as was arranged between both parties and that the Contractor will endeavour to deliver the Goods/Equipment as agreed solely due to any action or inaction of the Customer, then the Contractor shall be entitled to charge a reasonable fee for redelivery and/or storage.	(w)	The Contractor agrees to indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.	18.4	The Contractor shall continue despite the commencement of proceedings, or judgment against the Contractor owing to the Contractor having been obtained against the Contractor.
2.13	Risk 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.	(x)	The Contractor agrees to indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.	18.5	The Contractor shall continue despite the commencement of proceedings, or judgment against the Contractor owing to the Contractor having been obtained against the Contractor.
2.14	If any of the Goods are damaged or destroyed following delivery prior to ownership passing to the Customer, the Contractor is entitled to receive all insurance proceeds payable to the Customer. The Contractor will not be liable for any loss or damage to the Goods if there is sufficient evidence of the Contractor's rights to receive the insurance proceeds without the need for any person dealing with the Contractor to make further enquiries.	(y)	The Contractor agrees to indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.	18.6	The Contractor shall continue despite the commencement of proceedings, or judgment against the Contractor owing to the Contractor having been obtained against the Contractor.
2.15	If the Customer requires the Contractor to deliver the Contractor'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.	(z)	The Contractor agrees to indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.	18.7	The Contractor shall continue despite the commencement of proceedings, or judgment against the Contractor owing to the Contractor having been obtained against the Contractor.
2.16	Where the Customer is to supply the Contractor with any design specifications (including but not limited to CAD drawings) the Customer must be responsible for providing accurate data. The Contractor shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate data being supplied by the Customer.	(aa)	The Contractor agrees to indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.	18.8	The Contractor shall continue despite the commencement of proceedings, or judgment against the Contractor owing to the Contractor having been obtained against the Contractor.
2.17	The Contractor accepts full responsibility for, and shall keep the Contractor indemnified against, all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of incorrect, inadequate and/or faulty fixing by the Customer or any third party, and whether or not arising from any negligence, failure or omission of the Contractor or any other persons.	(ab)	The Contractor agrees to indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.	18.9	The Contractor shall continue despite the commencement of proceedings, or judgment against the Contractor owing to the Contractor having been obtained against the Contractor.
2.18	Whilst the Contractor will take all due care, the Contractor will not accept responsibility for any damage to existing plastered, painted, marble, granite, glass, ceramic, and/or mirrored surfaces during installation of the Goods (including where the drilling of holes is required to suit removable Mullions, locking devices or single guides, etc.), or the servicing thereof.	(ac)	The Contractor agrees to indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.	19.0	The Contractor shall continue despite the commencement of proceedings, or judgment against the Contractor owing to the Contractor having been obtained against the Contractor.
2.19	The Contractor takes no responsibility for wind damage to any Goods and the Customer acknowledges that ratings therefor are available from the Contractor upon request.	(ad)	The Contractor agrees to indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.	19.1	The Contractor shall continue despite the commencement of proceedings, or judgment against the Contractor owing to the Contractor having been obtained against the Contractor.
2.20	Access The Customer shall ensure that the Contractor has clear and free access to the work site (and in particular the garage) at all times to enable them to undertake the works, and that such access allows for the unimpeded movement of equipment and plant around the site. The Contractor shall be entitled to enter the site to carry out the Services in the event of any delay in accessing the site due to impeded access or unsafe work conditions and any such delay (and/or additional work or special equipment that may be required in order to supply the Services) shall be deemed to be an extension of the Contractor's time for completion of any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete) or paved or grassed areas) unless due to the negligence of the Contractor.	(ae)	The Contractor agrees to indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.	19.2	The Contractor shall continue despite the commencement of proceedings, or judgment against the Contractor owing to the Contractor having been obtained against the Contractor.
2.21	Service Locations Prior to the Contractor commencing any work the Customer must advise the Contractor of the precise location of all services on the site and clearly mark the same. The marks & services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.	(af)	The Contractor agrees to indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.	19.3	The Contractor shall continue despite the commencement of proceedings, or judgment against the Contractor owing to the Contractor having been obtained against the Contractor.
2.22	Whilst the Contractor will take all care to avoid damage to any underground services the Customer agrees in respect of any damage to such services that the Contractor shall not be liable for any damage, costs and fines as a result of damage to services not precisely located and notified as per clause 9.1.	(ag)	The Contractor agrees to indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.	19.4	The Contractor shall continue despite the commencement of proceedings, or judgment against the Contractor owing to the Contractor having been obtained against the Contractor.
2.23	Title to Goods The Contractor and the Customer agree that ownership of the Goods shall not pass until: (a) the Customer has paid the Contractor all amounts owing to the Contractor; and (b) the Customer has met all of its other obligations to the Contractor.	(ah)	The Contractor agrees to indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.	19.5	The Contractor shall continue despite the commencement of proceedings, or judgment against the Contractor owing to the Contractor having been obtained against the Contractor.
2.24	Receipt by the Contractor of any form of payment other than cash shall not be deemed to be payment until the form of payment has been honoured, cleared or recognised.	(ai)	The Contractor agrees to indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.	19.6	The Contractor shall continue despite the commencement of proceedings, or judgment against the Contractor owing to the Contractor having been obtained against the Contractor.
2.25	It is further agreed that until ownership of the Goods passes to the Customer in accordance with clause 10.1: (a) the Customer is only a bailee of the Goods and must return the Goods to the Contractor on request;	(aj)	The Contractor agrees to indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.	19.7	The Contractor shall continue despite the commencement of proceedings, or judgment against the Contractor owing to the Contractor having been obtained against the Contractor.
2.26		(ak)	The Contractor agrees to indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.	19.8	The Contractor shall continue despite the commencement of proceedings, or judgment against the Contractor owing to the Contractor having been obtained against the Contractor.