

TERMS OF BUSINESS

1 Definitions

- (a) New Star Door Controls Limited are referred to hereinafter as "the Company".
(b) Any person or body of persons whether corporate or unincorporate entering into a contract with the Company for the purchase of goods and/or services is/are referred to hereinafter as "the Customer"

2 Formation of the Contract

- (a) Any quotation or estimate or price list given by the Company is an invitation to the Customer to make an offer only and no order of the Customer placed with the Company in pursuance of such quotation estimate or price list or otherwise shall be binding on the Company unless and until it is accepted by the Company in writing.
(b) Any Contract for the purchase of goods and/or services howsoever made between the Company and the Customer shall incorporate the Terms of Business contained herein.
(c) These Terms of Business supersede any terms or conditions applicable to previous dealing between the Company and any Customer and/or statement which may have previously been given to the Customer by the Company or its agents. The term "Goods" in these Terms of Business whenever the context so permits is deemed to include services provided by the Company.

3 Delivery and Risk

- (a) The risk in respect of all goods shall pass to the Customer at the time of delivery but notwithstanding such delivery, the property in and title to the goods shall not pass to the Customer except as provided in Condition 4. Except in the case of goods collected by the Customer, delivery of goods to the Customer will be made at the place agreed between the parties, but where the Company does not deliver on its own transport (and unless otherwise agreed in writing) the Company shall arrange for the delivery of the goods by carrier and in accordance with the provision of Section 32 of the Sale of Goods Act 1979 delivery to the carrier will in such circumstances constitute delivery to the Customer. If the Customer collects goods, delivery shall take place at the Company's place of business immediately prior to loading on to the Customer's transport.
(b) The Company shall be entitled to make delivery of goods by instalments and to invoice the Customer for each instalment despatched.

- (c) Discrepancies in the amount or description of goods supplied will be remedied free of charge in such manner as the Company considers appropriate provided that:

- (1) the Customer marks the Delivery Note "contents unexamined", and
- (2) the Customer gives written notice of such discrepancy with reasonable particulars thereof to the Company within 3 days of the receipt of the goods, and
- (3) the Customer (if requested by the Company) returns any incorrect goods to the Company's place of business within one month of receipt thereof.

4 Title

- (a) Title to and property in goods supplied by the Company shall remain in the Company notwithstanding the delivery of the goods and the passing of the risk in them to the Customer until:

- (1) the price of the goods; and
- (2) all other indebtedness of the Customer to the Company on any other account has been discharged or satisfied in full.

- (b) Until the title to and property in the goods pass to the Customer the following provisions shall apply:

- (1) The Company may at any time without prior notice to the Customer repossess and resell the goods if any of the events specified in Condition 5 occur or if any sum owed by the Customer to the Company under this or any other contract or any other account is not paid on the due date for payment. For the purpose of exercising its rights under this clause the Company, its employees or agents, together with all vehicles and equipment considered by the Company to be necessary shall be entitled at any time without prior notice to the Customer to free and unrestricted entry upon the Customer's premises and/or other locations where any of the goods are situated and the Customer shall ensure the same.

- (2) The Customer shall store the goods in a proper manner without charge to the Company and ensure that they are clearly identified as belonging to the Company. Without prejudice to sub-clause (b) (1) above the Company shall be entitled to examine the goods in storage at any time during normal business hours and upon giving the Customer reasonable notice of its intention to do so.

- (3) The rights and remedies conferred upon the Company by this clause are in addition to and shall not in any way prejudice, limit or restrict any other rights or remedies of the Company.

5 Insolvency and Breach of Contract

- If any of the following events occur, are threatened or in the opinion of the Company are reasonably likely to occur:

- (a) The Customer commits any breach of the contract whether or not such breach is only remediable in damages and shall fail to remedy such breach (if capable of remedy) within a period of 30 days from receipt of notice in writing from the Company, requesting such breach to be remedied; or
- (b) distress or execution is levied upon any of the goods or property of the Customer; or
- (c) the Customer (or where the Customer is a partnership any partner or partners thereof) offers to make or makes any arrangements with or for the benefit of its or his or her or their creditors or commits any act of bankruptcy; or
- (d) the Customer (being a limited company) has a Receiver appointed of the whole or any part of its undertaking property or assets or an order is made or a resolution is passed or analogous proceedings are taken for the winding up of the Customer. The Company shall be entitled (without prejudice to its other rights herein) forthwith to cease further performance of the contract (and of any other contract between the Company and the Customer). Notwithstanding such termination, the Customer shall pay the Company for all work done, materials used and goods delivered up to and including the date of termination and shall in addition indemnify the Company against any resulting loss, damage or expense incurred by the Company as a result of the fulfilment of the contract, including the cost of any material, plant or tools used or intended to be used therefore and the cost of labour and other overheads, including a percentage in respect of profit.

6 Prices

- Unless otherwise agreed in writing:

- (a) Goods are sold and will be invoiced at the prices ruling at the date of despatch (subject to a minimum charge of £10 per order) and the Company reserves the right to alter prices without notice in order to reflect increases in the cost of materials, labour, transport, energy and other costs which it has to incur in supplying goods;
- (b) Prices of goods are stated exclusive of Value Added Tax, which will be charged in addition at the rate applicable at the appropriate tax point;
- (c) For orders having a value net of Value Added Tax of £500 or more, the cost of carriage by post or normal road transport to the Customer in the United Kingdom will be paid by the Company. In any other case the cost of carriage shall be paid by the Customer;
- (d) The cost of any variation or modification in the design specification, materials or drawings of goods requested by the Customer shall be borne by the Customer;
- (e) Goods are boxed as indicated on the price list. If the Customer specifically requests boxes to be split, the Company reserves the right to surcharge the Customer to cover handling costs;
- (f) Unless otherwise specified, packing cases and packing materials will be charged extra, but where stated to be returnable, there will be credit in full on return to the Company's works carriage paid in good condition within one month of receipt by the Customer;
- (g) The Company uses its best endeavours to ensure where necessary the suitability of packing before despatch, but no claim will be accepted by the Company for breakage or damage in transit on the ground of alleged unsuitability of packing.

7 Performance

- (a) The Company will use its reasonable endeavours to comply with any date or dates for despatch or delivery of the goods requested by the Customer, but unless otherwise expressly agreed in writing, such date or dates shall not be binding. If the Company having used its reasonable endeavours fails to despatch or deliver the goods by such date or dates; its failure shall not constitute a breach of contract nor shall the Customer be entitled to repudiate or rescind the contract in whole or in part or claim compensation for such failure or for any consequential loss or damage resulting therefrom;
- (b) If the Company is prevented or hindered from performing the contract or any part thereof by any circumstances beyond its reasonable control (including but without limiting the generality of the foregoing strikes, lock-outs or other industrial action, inability to obtain materials or labour, power or machinery breakdown or failure, fire or other natural disasters,) further performance shall be suspended for so long as the Company is so prevented or hindered;
- (c) Where goods are delivered by instalments, each such instalment shall be deemed to be sold or supplied under a separate contract to which these Conditions shall apply (mutatis mutandis) and save as provided in Condition 11 (d) no default in respect of any one instalment shall affect or prejudice due performance of the contract as regards any other instalments;
- (d) If performance by the Company is suspended at the request of or delayed through default of the Customer (including, without prejudice to the generality of the foregoing, lack of, incomplete or incorrect instructions or refusal to collect or accept delivery of the goods) for a period of 78 days, the Company shall be entitled to payment for goods supplied or ordered and any other additional costs thereby incurred including storage insurance and interest provided that if the Customer fails to collect or accept delivery of the goods or any part thereof within 28 days of written notification from the Company that the goods are ready for collection or delivery, the Company shall be entitled (without prejudice to its other remedies for such breach) to sell the goods and apply the proceeds of sale towards payment of all sums then due by the Customer to the Company;
- (e) The Company shall be entitled without the prior approval of the Customer to assign, sub-contract or sub-let the contract or any part thereof, but the Customer shall not be so entitled without the prior approval of the Company in writing;
- (f) Goods offered "ex-stock" are offered for sale subject to them being unsold on receipt of the Customer's order.

8 Acceptance

- Without prejudice to the Customer's rights under Condition 15, the Customer shall be deemed to have accepted the goods as

being in conformity with his order and shall be bound to pay for them unless written notice of rejection thereof is received by the Company within 14 days of delivery. Save in the circumstances referred to in Condition 15, goods accepted by the Customer cannot subsequently be returned and any claim which the Customer might otherwise have shall be deemed to have been waived;

9 Cancellations and Amendments

Once an order, verbal or otherwise, has been accepted by the Company, cancellation or amendment will only be accepted after written approval from the Company. The Company reserves the right to refuse to accept cancellation of or amendment to an order or alternatively at the Company's discretion to charge the Customer for materials, labour, overheads or other costs which can be attributed to work already completed on the order.

10 Return of Goods

Goods may only be returned for credit after agreement by the Company in writing and, if accompanied by an advice note. A handling charge will be made. Any offer of credit by the Company will be discretionary, subject to the condition and re-saleability of the goods on arrival back at the works. The invoice number and date relating to the purchase must be stated on the accompanying advice note.

11 Payment

- Unless otherwise agreed in writing:
- (a) Payment for goods supplied shall be made not later than 30 days after the end of the month of delivery;
 - (b) Where goods are delivered in instalments, the Customer shall be obliged to pay for each instalment upon the terms set out in this clause;
 - (c) The time stipulated for payment shall be of the essence of the contract and failure to pay within the period specified shall entitle the Company to suspend further performance by the Company pending and/or partially to cancel the contract or any other contract between the Company and the Customer without prejudice to any other remedy available to the Company;
 - (d) Unless otherwise agreed in writing the Customer shall not be entitled to set off against any monies due to the Company under the Contract any amount claimed by or due to the Customer from the Company whether pursuant to the contract or on any other account whatsoever;
 - (e) The Company reserves the right to charge interest at a rate 4% above the Barclays Bank PLC base rate from time to time on all balances due in respect of any contract incorporating these Terms of Business paid 30 days after delivery.

12 Drawings and Specifications

- (a) Unless otherwise expressly agreed in writing, all illustrations and dimensions shown in the Company's catalogues and other sales literature are approximate. The Company gives no guarantee or representation that the goods will in all cases be identical with the illustrations and dimensions specified in such catalogue and literature due to improvements and modifications to the goods or their specifications that may be made from time to time.
- (b) The Customer shall be solely responsible for satisfying itself that the goods are suitable for the particular purpose for which they are required. The Company gives no warranty that the goods will be suitable or fit for the specific purpose for which they are required and all implied conditions and warranties to this effect are excluded.

13 Samples and Display Materials

Samples for approval will be charged at normal selling price and credited in full upon return. Samples of special designs made to the requirement of the buyer will be charged at cost and are non-returnable. Showboards, mountings and displays will be supplied free of charge but all goods included will be charged for.

14 Repair Work

When Engineers or Representatives of the seller are requested to attend a location by the buyer for the purpose of carrying out an inspection, and it is found that no fault lies in the Company's products, then the Company reserves the right to charge the Customer for any expenses incurred as a result of a visit.

15 Warranty and Limitation of Liability

- (a) Where any goods are shown, to the reasonable satisfaction of the Company, to be defective by reason of faulty materials or workmanship (fair wear and tear excepted) the Company shall deliver replacement goods to the Customer free of charge; provided that:

- (1) the Customer notifies the Company within 14 days of becoming aware of any such defect; and
- (2) if so required by the Company all defective goods are first returned to the Company's premises carriage paid by the Customer;

(3) the goods have been properly and correctly stored, used and/or fitted;

The liability accepted by the Company under this paragraph (a) shall be accepted by the Customer in substitution for and to the exclusion of any other claims (whether in contract or in tort) for injury loss or damage which the Customer has or may have for defective goods or services;

- (b) The liability of the Company for any claims other than those falling within the paragraph (a) of this clause for injury, loss or damage made by the Customer against the Company whether in contract or in tort arising out of or in connection with any act, omission, neglect or default of the Company its servants or agents in the performance of the contract (including, without limiting the generality of the foregoing, breach of any condition or warranty whether express or implied by statute, common law or otherwise howsoever) shall not exceed a sum equal to 10% of the invoice value (net of Value Added Tax) of the goods supplied or to be supplied under the relevant contract;
- (c) The Company shall not be liable for any claims for economic loss, loss of production, loss of profit or loss of opportunity, loss of bargain or in connection with any such act, omission, neglect or default referred to in Paragraph (b) of this clause;
- (d) Nothing in these Terms of Business shall:

- (1) limit or exclude the liability of the Company in respect of death or personal injury resulting from the negligence of the Company, its employees or agents; or
- (2) exclude the conditions and warranties implied by Section 12 of the Sale of Goods Act 1979.

16 Special Goods

In respect of goods made or adapted specifically to the Customer's design and specifications ("Special Goods") -

- (a) The Company shall be entitled to reject any materials supplied or specified by the Customer which the Company in its judgement considers unsuitable. Additional costs incurred by the Company if such materials are judged by the Company to be unsuitable, will be charged to the Customer. Quantities of materials supplied by the Customer shall be adequate to cover normal spoilage;
- (b) The Company accepts no responsibility for the accuracy or suitability of patterns, designs, tools, drawings, particulars or specifications relating to Special Goods which are supplied by the Customer and the Company shall be entitled to accept the same as being without defect. The Company shall have no responsibility for the quality or fitness of Special Goods for any particular purpose whether or not such purpose is made known to the Company and all implied conditions and warranties as to suitability and/or fitness for purpose are excluded. The Customer undertakes to indemnify the Company and to keep the Company fully indemnified against all actions, proceedings, claims, costs, loss, damage or expense whatsoever whether arising in contract or in tort which the Company may suffer or incur as a result of any defect in Special Goods whether due to quality, design, fitness for purpose or in any other way whatsoever unless the same is due directly to the negligence of the Company, its employees or agents;
- (c) The Customer represents and warrants to the Company that neither the Special Goods nor the manufacture thereof by the Company will infringe any patent, copyright, registered design, trade mark or any other proprietary right of any third party and the Customer further undertakes to indemnify the Company and keep the Company fully indemnified against all actions, proceedings, claims, costs, loss, damage or expense whatsoever in respect of any infringement by the Company of any patent, copyright, registered design, trade mark or any other proprietary right which the Company may suffer or incur in connection with the execution and performance of the contract and such indemnity shall extend to any amount including costs paid by the Company (upon legal advice) in settlement of any claim out of Court.

17 Lien

- (1) Without prejudice to any other rights and remedies which the Company may have, the Company shall in respect of all debts of the Customer to the Company have a general lien on all tools, goods and other property belonging to the Customer in the Company's possession (whether worked or not).
- (2) The Company shall be entitled, upon the expiration of 14 days notice to the Customer, to dispose of such tools, goods or property as it thinks fit and to apply any proceeds of sale thereof towards payment of such debts.

18 Severance

If at any time any one or more of these Terms of Business (or any paragraph, sub-paragraph clause or any part thereof) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted herefrom and the validity and/or enforceability of the remaining provisions of these Terms of Business shall not in any way be affected or impaired thereby.

19 Waiver

The rights and remedies of the Company shall not be diminished waived or extinguished by the granting of any indulgence, forbearance or extension of time by the Company nor by any failure of or delay by the Company in asserting any such rights or remedies.

20 Law

These Conditions and each and every contract made pursuant thereto shall be governed by and construed in all respects in accordance with the Laws of England and the Company and the Customer irrevocably submit to the exclusive jurisdiction of the English Courts.