

1 INTERPRETATION

1.1 In these terms:

Buyer means any person or body of persons whether corporate or unincorporate entering into a Contract with the Seller for the purchase of Goods;

Contract means each binding agreement for the supply of Goods;

Financial Distress Event means where the Buyer receives any demand for repayment of lending facilities or the Seller concludes in its discretion that: (i) the financial position of the Buyer has deteriorated to such an extent that its ability to pay for the Goods or otherwise comply with the terms of any Contract is put in jeopardy; or (ii) the Buyer has no realistic prospect of avoiding an Insolvency Event;

Goods means the goods, and/or services described in the Contract or provided as ancillary to the sale of the goods;

Insolvency Event means any corporate action, application, order, proceeding or appointment or other step is taken or made by or in respect of the Buyer for any composition, compromise or arrangement with any of its creditors, any restructuring plan, any moratorium, its winding-up (other than for the purpose of a bona fide scheme of solvent reconstruction or amalgamation), dissolution, administration, receivership (administrative or otherwise) or bankruptcy, or if it is unable to pay its debts as they fall due, or if it ceases to trade or if a distress, execution or other legal process is levied against any of its assets which is not discharged or paid out in full within four days or if any event analogous to any of the foregoing shall occur in any jurisdiction in which the Buyer is incorporated, resident or carries on business;

Intellectual Property Rights means all intellectual and industrial property rights, including patents, rights in registered and unregistered trade marks (including domain names), rights in registered and unregistered designs, utility models, trade or business names, confidential information, know-how, database rights, topography rights, plant breeder varieties rights, passing-off rights, and copyright (including moral rights), performer protection rights or other industrial, intellectual or commercial rights (including rights in any invention, discovery or process), and applications for registration of any of the foregoing, and the right to apply therefore, in each case in any part of the world;

Seller means New Star Door Controls Limited, a company registered in England and Wales with company number 02602121 whose registered office is at Star House, Star Hill, Rochester, Kent, ME1 1UX;

Seller's Group means the Seller and its ultimate holding company and any direct or indirect subsidiary undertaking of such holding company;

Special Goods means Goods made or specifically adapted to the Buyer's designs or specifications;

and words defined in the Seller's quotation shall have the same meaning in these terms.

1.2 References to legislation shall be construed to include references to future re-enactments and modifications from time to time.

1.3 Headings to clauses shall not affect their meaning.

- 1.4 Words and phrases like “other”, “including” and “in particular” shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words.

2 **CONTRACT FORMATION**

- 2.1 These terms shall apply to all supplies of Goods by the Seller to the Buyer. Any quotation or estimate or price list given by the Seller is an invitation to the Buyer to make an offer only. No order of the Buyer shall be binding and no Contract shall arise until the Buyer’s order is accepted by the Seller expressly or by the Seller despatching any of the Goods. Each Contract shall incorporate these terms.
- 2.2 These terms supersede any terms or conditions applicable to previous dealing between the Seller and any Buyer and/or statement which may have been previously given to the Buyer by the Seller or its agents.

3 **PRICE AND PAYMENT**

- 3.1 Unless otherwise agreed in writing, the price of the Goods shall be the Seller’s published price list current at the date of despatch.
- 3.2 The Seller reserves the right to alter prices without notice to reflect increases in the Seller’s costs, including costs of materials, labour, transport, energy, and other costs which it has to incur in supplying the Goods.
- 3.3 The price and other sums payable shall be exclusive of any applicable VAT or other taxes and duties, which shall be payable in addition.
- 3.4 Where an order for Goods has a value net of VAT of more than £500, the price of the Goods are inclusive of the costs of carriage of the Goods to the Buyer in the UK. In any other case, costs of carriage shall be paid by the Buyer.
- 3.5 The prices are exclusive of packaging and insurance, which shall be paid by the Buyer. Where the packaging is stated to be returnable, the Seller will credit the Buyer for the price of the packaging provided that the packaging is returned in good condition at the Buyer’s cost to the Seller’s premises, within one month of receipt of the Goods by the Buyer .
- 3.6 The cost of any variation or modification in the design, specification, materials or drawings of the Goods, or packaging requested by the Buyer shall be borne by the Buyer.
- 3.7 The Seller will endeavour to ensure that the Goods are properly packed and secured in a manner to enable them to reach their destination in good condition but shall not be liable for any breakage or damage in transit.
- 3.8 Any invoices will be issued on the date of despatch. Payment shall be due without any set off, withholding, deduction, abatement or counter-claim and no later than 30 days from the end of the month following the date of the invoice despite ownership of the Goods not having passed to the Buyer.
- 3.9 The time of payment of the price shall be of the essence of the Contract.
- 3.10 Unless otherwise agreed in writing with the Buyer, the Seller is entitled to allocate payments received to settle (in full or in part) any sums due from the Buyer, whether under the Contract or any other Contract, in any order or manner the Seller determines, and in particular shall be entitled to apply any part payment to settle outstanding interest on overdue amounts, ahead of principal.

- 3.11 The Seller reserves the right to charge interest at a rate of 4% above the Bank of England base rate from time to time on all balances due in respect of any contract incorporating these terms.
- 3.12 Where the Seller has undertaken to arrange for carriage it shall do so as agent for the Buyer and shall charge for delivery and any transit insurance.
- 3.13 Without prejudice to any other rights and remedies which the Seller may have, the Seller shall in respect of all debts of the Buyer to the Seller have a general lien on all tools, goods and other property belonging to the Buyer in the Seller's possession (whether worked on or not). The Seller shall be entitled, upon the expiration of 14 days' notice to the Buyer, 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.

4 DELIVERY AND RISK

- 4.1 Times for delivery or performance by the Seller are estimates only and, except by operation of law or as otherwise agreed, time shall not be of the essence.
- 4.2 The Seller may deliver the Goods by instalments, which may be invoiced and paid for separately in accordance with clause 3. Such instalments shall be separate obligations and no breach in respect of one or more of them shall entitle the Buyer to cancel any subsequent instalment or repudiate the Contract as a whole.
- 4.3 Unless agreed otherwise, delivery shall take place as follows:
 - 4.3.1 where the Seller agrees to transport the Goods to the Buyer, when they are despatched from the Seller's premises; or
 - 4.3.2 where the Seller arranges a carrier to transport the Goods to the Buyer, when the Seller hands over the Goods to the carrier; or
 - 4.3.3 where the Buyer is collecting the Goods from the Seller, delivery shall take place once the Seller notifies the Buyer that the Goods are ready for collection.
- 4.4 The Buyer shall be deemed to have accepted Goods 48 hours after their delivery. After acceptance the Buyer shall not be entitled to reject Goods which are not in accordance with the Contract.
- 4.5 Goods delivered to the Buyer that do not comply with the description or amount will be remedied by the Seller as the Seller deems appropriate, provided that:
 - 4.5.1 notice of rejection is given to the Seller setting out in reasonable detail any discrepancies within 48 hours of the receipt of the Goods; and
 - 4.5.2 if requested by the Seller, the Buyer returns such Goods to the Seller's place of business as soon as reasonably practicable, but in any event within one month of the Buyer's receipt of the Goods.
- 4.6 Risk of loss or damage to the Goods shall pass to the Buyer at the time of delivery of the Goods.
- 4.7 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery then, without prejudice to any other right or remedy available to the Seller, the Seller may:
 - 4.7.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - 4.7.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Buyer for any shortfall below the price under the Contract.

5 TITLE

- 5.1 Title in the Goods shall pass from the Seller to the Buyer only on receipt by the Seller in full of:
- 5.1.1 the price for those Goods and VAT thereon under the Contract; and
 - 5.1.2 all other sums due from the Buyer to the Seller under the Contract; and
 - 5.1.3 all sums due under any other contracts between the Buyer and Seller.
- 5.2 The Seller may attribute money received from the Buyer as being payment for any Goods as the Seller thinks fit, regardless of the circumstances.
- 5.3 While the Seller still owns any of the Goods, the Buyer:
- 5.3.1 will hold those Goods on a fiduciary basis as the Seller's bailee and shall store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;
 - 5.3.2 may use or resell those Goods on its own account in its ordinary course of trade, but this right will terminate immediately (without prejudice to the Seller's other rights) upon the occurrence of an Insolvency Event or during any period where payment is overdue;
 - 5.3.3 may not otherwise deal with, pledge, encumber, sell or dispose of those Goods.
- 5.4 If the Buyer suffers an Insolvency Event, suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business or is overdue in any payment due or a Financial Distress Event occurs, all sums shall become immediately due and payable and the Seller may, by immediate notice to the Buyer, terminate the Contract, suspend or cancel any deliveries and/or terminate the Buyer's right (if still subsisting) to use or resell the Goods still owned by the Seller, and the Seller shall be entitled upon demand to the immediate recovery of all those Goods. The Buyer irrevocably gives the Seller authority to enter any place to recover those Goods. Such recovery shall not cancel the Buyer's obligation to pay the price for those Goods, provided that the Seller shall make a fair allowance for the value of any Goods which the Seller has recovered.

6 CANCELLATION

- 6.1 The Buyer may amend or cancel an order for Goods with the prior written consent of the Seller, and subject to the Buyer paying a restocking charge. If the Seller consents to amendment or cancellation, the Buyer shall be liable to pay all costs reasonably incurred by the Seller in fulfilling the order up until the date of deemed receipt of the amendment or cancellation.
- 6.2 The Buyer may return Goods with the prior written consent of the Seller. Credit for such Goods shall be at the discretion of the Seller, subject to the Goods being returned in substantially the same condition as when delivered. The invoice number and date of order must be stated in a document accompanying the return.

7 PERFORMANCE

- 7.1 The Seller warrants that the Goods:
- 7.1.1 are on delivery reasonably free from defects in materials and workmanship;
 - 7.1.2 are suitable for their usual purposes;
 - 7.1.3 comply with any description applied to them by the Seller.
- 7.2 All illustrations and dimensions contained within the Seller's catalogues or other sales literature are approximate. The Seller does not warrant, represent, or undertake that the

Goods will be identical with the illustrations and dimensions provided in such materials due to improvements and modifications which may be made from time to time.

- 7.3 The Buyer is solely responsible for ensuring the Goods are suitable for the particular use for which they are required.
- 7.4 If any of the Goods do not conform to any applicable statutory or other warranties or other terms, the Seller may at its option, repair or replace those Goods or make, so far as is fair, a refund of all or a part of the price provided that:
- 7.4.1 the Buyer notifies the Seller within 14 days of becoming aware of such defect; and
- 7.4.2 if required by the Seller, the defective Goods are returned to the Seller's premises, carriage paid by the Buyer; and
- 7.4.3 the Goods have been properly and correctly stored, used and/or fitted.
- 7.5 If the Seller complies with its obligation in clause 7.4 above, it shall have no further liability in respect of, or arising from, such non-conformity.

8 REPAIR

- 8.1 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 Goods, then the Seller reserves the right to charge the Buyer for any expenses incurred as a result of a visit.

9 LIABILITY

- 9.1 Subject to clause 9.5, the Seller's total liability to the Buyer however arising shall not exceed 100% of the invoice value (net of VAT) of the Goods supplied under the Contract.
- 9.2 Notwithstanding any other provision of the Contract, but subject to clause 9.5, the Seller shall have no liability however arising out of or in connection with the Contract and/or the supply of the Goods for any:
- 9.2.1 direct or indirect loss of or damage to:
- (a) profit;
 - (b) revenue;
 - (c) business;
 - (d) contract;
 - (e) opportunities;
 - (f) anticipated savings;
 - (g) data;
 - (h) goodwill;
 - (i) reputation;
 - (j) use;
- 9.2.2 indirect or consequential loss or damage;
- 9.2.3 claim or allegation arising out of or in connection with a claim against the Buyer by a third party; or
- 9.2.4 claim or allegation arising out of or in connection with any Intellectual Property Rights.
- 9.3 The parties agree that each of the sub-clauses in clause 9.2 and each of the sub-paragraphs 9.2.1(a) to 9.2.1(j) in sub-clause 9.2.1 constitute separate terms and the introductory wording of clause 9.2 shall be applied to each of them separately. If there is any claim or finding that

any such individual sub-clause or sub-paragraph is unenforceable for any reason, such unenforceability shall not affect any other provision within clause 9.2 or otherwise.

- 9.4 The term “however arising” when used or referred to in clause 9 covers all causes and actions giving rise to the liability of the Seller arising out of or in connection with the Contract and/or the Goods including (i) whether arising by reason of any misrepresentation (whether made prior to and/or in the Contract) negligence, breach of statutory duty, other tort, repudiation, renunciation or other breach of contract, restitution or otherwise; (ii) whether arising under any indemnity; or (iii) whether caused by any total or partial failure or delay in supply of the Seller or defective Goods.
- 9.5 The exclusions and limitations of liability contained in these terms and in the Contract shall apply regardless of whether the loss or damage was foreseeable or whether the Buyer notifies the Seller of the possibility of any greater loss or damage, but shall not apply to the extent prohibited or limited by law and, in particular, nothing in the Contract shall affect liability for death or personal injury caused by negligence or for fraudulent misrepresentation or other fraud.
- 9.6 The Seller shall not be liable to the Buyer for any claim unless made with reasonable details in writing to the Seller without unreasonable delay and in any event no later than 3 months, or such longer period as may be reasonable in the circumstances, after the date the claimable event first came (or ought reasonably to have come) to the Buyer’s notice.
- 9.7 The Buyer should consider taking out its own insurance; and the Buyer acknowledges that it had the opportunity to negotiate variations to the exclusions and limitations, upon the agreement of a higher price.
- 9.8 All warranties, conditions, terms and liabilities express or implied, statutory or otherwise, on the part of the Seller, in respect of compliance with descriptions, the quality or the fitness for purpose of the Goods which are not expressly set out in the Contract are excluded except to the extent such exclusion is prohibited or limited by law.

10 **SAMPLE AND DISPLAY MATERIALS**

- 10.1 Samples are charged at normal selling prices and, provided they are not samples of special designs and are in substantially the same condition as when delivered, will be credited in full upon return by the Buyer (such return shall be at the Buyer’s cost).
- 10.2 Samples of special designs made to the requirement of the Buyer will be charged at cost and are non-returnable.
- 10.3 Contracts shall not be regarded as sales by sample even if the Seller has provided a sample to the Buyer.
- 10.4 Show boards, mountings and displays will be supplied free of charge, but all Goods included will be charged for.

11 **SPECIAL GOODS**

- 11.1 The Buyer’s specification and proposed materials shall be subject to agreement by the Seller. The Seller accepts no responsibility for the accuracy or suitability of patterns, designs, tools, drawings, particulars or specification in relation to the Special Goods. The Seller 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 Seller and all implied conditions and warranties as to suitability and/or fitness for purpose are excluded. Furthermore, the Buyer shall indemnify the

Seller at all times against all claims, demands, costs (including legal costs on a full indemnity basis) expenses, losses and liabilities incurred by the Seller as a result of any Special Goods, except where the loss is due directly to the negligence of the Seller.

- 11.2 The Buyer shall indemnify the Seller at all times against all claims, demands, costs (including legal costs on a full indemnity basis), expenses, losses and liabilities incurred by the Seller as a result of any claim against the Seller for actual or alleged infringement of any rights of any third parties, including any Intellectual Property Rights in connection with the Special Goods.

12 **TERMINATION**

- 12.1 Without affecting any other rights and remedies it might have, the Seller shall be entitled to terminate the Contract and/or suspend its performance at any time without liability to the Buyer by giving written notice to the Buyer at any time if:

12.1.1 the Buyer is in breach of any provision of, or purports to cancel, the Contract;

12.1.2 an Insolvency Event occurs;

12.1.3 a Financial Distress Event occurs;

12.1.4 payment of any amount due from the Buyer is overdue;

and in any other circumstances provided for in these terms and/or the Contract.

- 12.2 Any termination however caused shall not affect:

12.2.1 any right or liabilities which have accrued prior to the time of termination;

12.2.2 the continuance in force of any provision of the Contract which expressly or by implication is intended to come into or continue in force after termination including clauses 9 (limitations on liability) and 14 (confidentiality).

13 **INTELLECTUAL PROPERTY RIGHTS**

- 13.1 All Intellectual Property Rights in the Goods and their specification, design, packaging, labelling, and other materials supplied with or in connection with any of the Goods shall as between the parties remain at all times vested in the Seller. No Intellectual Property Rights of the Seller are transferred to the Buyer and no licences to use any Intellectual Property Rights of the Seller are granted to the Buyer except as may be necessary for the usual use of the Goods supplied.

- 13.2 If notwithstanding clause 13.1, the Buyer acquires any Intellectual Property Rights, the Buyer hereby assigns all such Intellectual Property Rights to the Seller.

- 13.3 The Buyer shall not remove, obscure, or otherwise alter or interfere with any of the logos, marks or branding appearing on any of the Goods or their packaging.

- 13.4 In the event of a claim or allegation against the Buyer by a third party in relation to any Intellectual Property Rights, the Buyer shall:

13.4.1 promptly notify the Seller of any actual, potential or threatened claim;

13.4.2 make no admission as to liability nor agree to any settlement of any claim without the Seller's prior written consent;

13.4.3 if the Seller so requests, give the Seller sole conduct and control of (including sole authority to defend or settle) any claim.

14 **CONFIDENTIALITY**

- 14.1 Neither party shall without the prior written consent of the other party (during and after termination of the Contract) use (other than in the performance of the Contract) or disclose to any other person any confidential information of the other party, except that any obligations contained in this clause shall not prevent any disclosure of confidential information which is required by law, court order or any legal or regulatory authority, which is required to comply with the rules of any relevant stock exchange, or disclosure to a party's professional advisors, acting in their capacity as such.
- 14.2 For the avoidance of doubt, any information that would be regarded as confidential by a reasonable business person including any specifications, processes, product information, know-how, designs, trade secrets or information developed by the parties in the course of carrying out this Contract is confidential information for the purposes of clause 14.1.
- 14.3 The Buyer shall not publicise or disclose the existence or content of any quotation or Contract, nor its relationship with the Seller, without the prior written agreement of the Seller.

15 **FORCE MAJEURE**

If the Seller is prevented or hindered from performing the Contract or any part thereof by any circumstances beyond its reasonable control, including strikes, lock-outs or other industrial action, inability to obtain materials or labour, power or machinery breakdown or failure, fire or other natural disasters, war (or other action of military forces), terrorism, riot, civil commotion, sabotage, vandalism, accident, epidemics, pandemics, civil emergencies, legislative or administrative interference or national crisis, the Seller shall have the right to suspend delivery and/or cancel or reduce the volume of the Goods to be supplied and shall not be liable in any way for loss, damage or expense arising directly or indirectly from this, or any other failure or delay in the Seller's performance of the Contract.

16 **TRANSFERS**

- 16.1 The Seller may perform any of its obligations or exercise any of its rights under the Contract itself or through any other member of the Seller's Group.
- 16.2 The Seller may at any time assign, transfer, charge or deal in any other manner with any of its rights hereunder, and may sub-contract any or all of its obligations under the Contract.
- 16.3 The Buyer shall not assign, transfer, charge, hold on trust for another or deal in any other manner with any of its rights or obligations under the Contract without the prior written consent of the Seller.

17 **ENTIRE AGREEMENT**

- 17.1 The Contract constitutes the entire agreement between the parties, and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to its subject matter.
- 17.2 The Buyer acknowledges that it does not rely on, and shall have no remedy in respect of, any representation, whether negligent or not, of any person which is not expressly set out in the Contract, and it shall not have any claim for innocent or negligent misrepresentation or

negligent misstatement based on any statement, representation, warranty or other term which is expressly set out in the Contract.

18 **EXPORT CONTROL**

The Buyer shall not export, directly or indirectly, any Goods (or any products, incorporating, or technical information relating to, any such Goods ("Related Materials")) in breach of any applicable laws or regulations (including export control laws) of any country and where applicable, shall first obtain an export licence or other governmental approval before exporting any Goods or Related Materials.

19 **GENERAL**

- 19.1 Any notice to be given shall be in writing and may be served by leaving it at, or by sending it by pre-paid first-class post or recorded delivery to, the intended recipient's address. The address of a party for service of notices is the address set out in the Contract or such other address as a party may designate by notice given in accordance with this clause. A notice is deemed to be received when left at the recipient's address or, if sent by pre-paid first-class post or recorded delivery, 48 hours from the date of posting. If such deemed receipt is not within business hours (being between 9.00 am and 5.00 pm Monday to Friday on a day that is not a public holiday in the place of receipt), the notice is deemed to be received when business hours next commence.
- 19.2 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Contract.
- 19.3 Any failure to exercise or delay by the Seller in exercising a right or remedy arising in connection with the Contract shall not constitute a waiver of such right or remedy or of any other rights or remedies.
- 19.4 The rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

20 **GOVERNING LAW AND JURISDICTION**

- 20.1 The Contract shall be construed in accordance with the law of England and Wales. The parties submit to the exclusive jurisdiction of the Courts of England and Wales.