

Evenglide Roller Doors Pty Ltd – Terms & Conditions of Trade

1. Definitions

EG means Evenglide Roller Doors Pty Ltd (ABN 67 015 455 822), its successors and assigns or any person acting on behalf of and with the authority of Evenglide Roller Doors Pty Ltd.

Client means the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by EG to the Client.

Goods means all products supplied by EG to the Client (and where the context so permits includes any supply of Services) as described on the invoices, quotation, work authorisation or any other forms as provided by EG to the Client.

Guarantor means that person (or persons) who agree in writing to be liable for the debts of the Client on a principal debtor basis.

Services means all services supplied by EG to the Client and includes any advice or recommendations (and where the context so permits will include any supply of Goods as defined above).

2. The Australian Consumer Law

Nothing in these terms and conditions is intended to have the effect of contracting out of any applicable provisions of the Australian Consumer Law (ACL) contained in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* except to the extent permitted by those Acts where applicable.

Where the Client buys Goods as a Consumer as defined in the ACL, these terms and conditions will be subject to any applicable statutory guarantees under the ACL, to the extent they cannot be excluded or modified.

3. Acceptance

Unless otherwise agreed in writing by EG, the Client agrees that it will be bound by these terms and conditions if the Client places an order with EG and it is accepted by EG. EG is not bound by any terms and conditions contained in any document issued by the Client.

Where more than one Client has entered into this agreement, the Clients are jointly and severally liable for all payments of the Price.

The Client will give EG not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client indemnifies EG for any loss incurred by EG as a result of the Client's failure to comply with this clause.

4. Orders, Quotations, Price and Payment

Once a quotation has been accepted by the Client, or EG receives a deposit, a purchase order, an email request or any other documentation ordering the Goods and Services, it cannot be cancelled by the Client. Once the Goods are in production no variation(s) to the specifications will be accepted by EG. The supply of Goods or Services is subject to availability. EG reserves the right to suspend or discontinue the supply of Goods or Services to the Client. If EG is unable to supply all of the Client's order, these terms and conditions continue to apply to any part of the order supplied. If EG is unable to supply any of the Goods or Services, it will repay any deposit for that order to the Client and will have no further liability to the Client for the failure to supply the Goods or Services.

The Price will be:

- (a) where a written quotation has been accepted by the Client, the price specified in the quotation, subject to any amendment pursuant to these terms and conditions;
- (b) where EG has issued a specified payment schedule pursuant to clause 4.6, the total price specified in the payment schedule together with any price variation due to any variations to the Goods or Services pursuant to clause 4.3; or
- (c) in any other case, the price specified in the invoice provided by EG to the Client.

EG reserves the right to vary the Price in the event of a variation to EG's quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to hidden or unidentifiable difficulties or as a result of increases to EG in the cost of materials and labour) will be charged for on the basis of EG's quotation. Payment for all variations must be made in full at their time of completion. The Client must accept any corrections to errors or omissions in invoicing and, where applicable, the Client must accept the amended pricing and pay the difference within the approved terms of trade.

At EG's sole discretion a non-refundable deposit may be required at the time the Client's order is placed.

Subject to clauses 4.3 and 4.4, unless otherwise agreed in writing by EG:

- (a) if the Client has an approved credit account with EG, the Client must pay for Goods or Services ordered by the Client and any surcharge pursuant to clause 4.7, within 30 days from the date of invoicing, or earlier if the approved credit limit is exceeded; and
- (b) where the Client does not have a credit account with EG, all Goods and Services and any administrative charge under this clause are to be paid for at or before the time of delivery.

Time is of the essence in respect of the Client's obligation to make payment for Goods or Services supplied by EG to the Client.

EG may submit detailed progress payment claims in accordance with EG's specified payment schedule. Such payment claims may include the reasonable value of authorised variations and the value of any materials delivered to the site but not yet installed.

Payment will be made by cash, cheque, credit card (which will incur a surcharge of up to 1.5% of the Price), direct credit, or by any other method agreed to in writing by EG.

GST and other taxes and duties that may be applicable will be added to the Price except when they are expressly included in the Price.

EG reserves the right to withdraw a quotation without obligation to the client.

5. Delivery of Goods and Services, Inspection and Acceptance

Unless otherwise agreed in writing by EG, delivery is at EG's premises when the Client or its carrier takes possession of the Goods. All freight from EG's premises to the Client is at the Client's expense. If EG arranges the carriage of the goods for delivery to the Client, EG will be deemed to contract as agent for the Client and the Client will bear all risks with respect to the Goods during carriage and will likewise be responsible for effecting any insurance of the Goods during carriage. EG may charge a reasonable handling fee for all orders delivered to the Client. The Client indemnifies EG for the cost of all transport arranged by EG on the Client's behalf.

The Client will make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then EG will be entitled to charge a reasonable fee for redelivery.

EG will not be responsible for any damage to the Goods or to any property (whether to electrical wiring, plumbing, masonry, rendered surfaces or otherwise) caused by or sustained during delivery or installation of the Goods. The Client indemnifies EG in respect of all liability, claims, loss, damage, costs and fines as a result of any such damage.

Any time or date given by EG to the Client is an estimate only and EG is not liable for any delay in delivery. Time is not of the essence in relation to delivery and the Client must accept delivery and pay for the Goods delivered, including transport costs if applicable, even if they are delivered after any specified delivery date. EG will not be liable for any loss or damage whatever due to failure to deliver the Goods (or any of them) promptly or not at all.

The Client must inspect the Goods or Services immediately following delivery or completion of the Services (as the case may be). The Client must within seven (7) days of delivery, notify EG in writing of any evident defect, damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods or Services as soon as reasonably possible after any such defect becomes evident. Where the Client makes any notification of defect, damage, shortage in quantity, or failure to comply with the description or quote, the Client must allow EG to inspect the Goods or Services as soon as reasonably practicable.

6. Client's Obligations

The Client is solely responsible for the accuracy of any designs, drawings, information or instruction provided for use by EG. Where EG has followed any designs, drawings, information or instruction furnished by or on behalf of the Client, the Client indemnifies and will keep EG indemnified against all claims, damages, losses, penalties, costs and expenses to which EG may become liable by reason of using or following the designs, drawings, information or instruction, including any infringement of any patent, registered design, trademark, copyright or any other right of a third party, including moral rights.

The Client shall be responsible for obtaining any permits that may be necessary for the Services quoted.

The Client shall be responsible for obtaining any permits that may be necessary for the Services quoted. Where EG is providing installation as part of the Services, at installation the Client must ensure that:

- (a) the site is easily and safely accessible for standard vehicles to within five (5) metres of the installation position;
- (b) there is access to a safe and clear work area; and
- (c) electric power is readily available. The Price will be increased by the reasonable cost of EG obtaining electric power or rescheduling the installation in accordance with Clause 4.2.

The Client acknowledges that:

- (a) clearances, including operational tolerances and gaps, between new and existing structures will exist;
- (b) the Client is responsible to cover and/or fill any such clearances; and
- (c) unless specified in the quotation or otherwise agreed in writing by EG, the Client is liable for (and agrees to pay in accordance with clause 4.4) the costs, as invoiced by EG, where EG is requested by the Client to cover/fill such clearances.

- 6.4 The Client acknowledges that:
- (a) timber faced Goods must be properly prepared and sealed on both sides and all edges. It is the Client's responsibility to ensure that they are properly painted or otherwise sealed in a professional manner by the Client within 24 hours of installation or prior to the product being exposed to water or humidity;
 - (b) steel and timber components used in the provision of the Services are supplied unpainted. It is the Client's responsibility to ensure that they are properly painted or otherwise sealed in a professional manner within 24 hours of installation or prior to the product being exposed to water or humidity; and
 - (c) the Goods require regular maintenance by the Client and regular servicing by a professional. Service intervals must not exceed twelve (12) months (or sooner depending upon but not limited to application, product and usage). Service, maintenance and all associated costs are the responsibility of the Client. Maintenance instructions are available from EG and/or the manufacturer.
- 6.5 The Client is responsible for:
- (a) obtaining any permits that may be necessary for the provision of the Goods and Services;
 - (b) any electrical work including, but not limited to, the supply and installation of a power point to be used with any door opener; and
 - (c) where any underground work is involved (including but not limited to setting posts into concrete), the Client is responsible for taking all reasonable steps, including engaging the services of "Dial before you Dig" and other service providers to ensure that the area is clear of any potential underground services. Whilst EG will take all care to avoid damage to any underground services, the Client indemnifies EG in respect of all liability, claims, loss, damage, costs and fines as a result of damage to any underground services.
- 7. Special Conditions**
- 7.1 EG reserves the right to:
- (a) vary the design of the Goods to provide improvement in design, installation or use; and
 - (b) conduct repairs to any marks, scratches, dents, or imperfections (including the use of touch up or other paint).
- 7.2 Unless otherwise required under the ACL, any damage must be visible to the naked eye from a distance of no less than three (3) metres before EG will undertake any warranty repairs or replacement.
- 7.3 The Client accept that any Goods depicted on EG's website or in EG's brochures and promotional material is for illustrative purposes only and final product selection cannot be guaranteed to match what was depicted. While all efforts will be made by EG to ensure the Goods featured on EG's website or in EG's brochures and promotional material are as depicted, the Client accepts that the Goods may differ slightly from that depiction. EG reserves the right to amend, delete, discontinue or make any changes or improvements to the Goods, including without limitation prices, colours, designs or specifications without prior notice and without incurring any obligation to make similar changes or improvements to Goods previously ordered. You accept that any colours shown on our website or in our brochures and promotional material is for illustrative purposes only and the actual colours may differ somewhat.
- 7.4 Unless otherwise stated doors will be made to square to sizes computed and fitted to provide best appearance function as determined by EG.
- 8. Risk**
- 8.1 All risk in the Goods passes to the Client on delivery.
- 8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Client must still pay for the Goods and Services. The Client agrees that EG is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by EG is sufficient evidence of EG's rights to receive the insurance proceeds without the need for the Client's insurer to make further enquiries.
- 8.3 Where the Client expressly requests EG to leave Goods outside EG's premises for collection or to arrange delivery of the Goods to an unattended location, then the Goods will be left at the Client's sole risk and it will be the Client's responsibility to ensure the Goods are adequately insured.
- 9. Title**
- 9.1 Ownership of the Goods will not pass until:
- (a) the Client has paid EG all amounts owing for the particular Goods and associated Services; and
 - (b) the Client has paid EG all amounts owing in respect of all other contracts between EG and the Client.
- 9.2 Receipt by EG of any form of payment other than cash will not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then EG's ownership or rights in respect of the Goods will continue.
- 9.3 The Client further agrees that until EG has received payment of all amounts owing to it by the Client:
- (a) where practicable the Goods will be kept separate and identifiable;
 - (b) EG may give notice in writing to the Client to return the Goods or any of them to EG. Upon such notice the rights of the Client to obtain ownership or any other interest in those Goods will cease;
 - (c) EG has the right to stop the Goods in transit, whether or not delivery has been made;
 - (d) if the Client fails to return the Goods to EG then EG or EG's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods are situated, and take possession of the Goods;
 - (e) the Client is only a bailee of the Goods and the Client will hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to EG for the Goods, on trust for EG;
 - (f) the Client will not deal with the money that it holds in trust for EG in any way which may be adverse to EG;
 - (g) the Client will not charge the Goods in any way nor grant nor otherwise give any interest in the Goods (as defined in the *Personal Property Securities Act 2009 (Cth) (PPSA)*);
 - (h) EG can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and
 - (i) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that EG will be the owner of the end products.
- 10. Personal Property Securities Act 2009 (PPSA)**
- 10.1 In this clause:
- (a) financing statement has the meaning given to it by the PPSA;
 - (b) financing change statement has the meaning given to it by the PPSA;
 - (c) security agreement means the security agreement under the PPSA created between the Client and EG by these terms and conditions; and
 - (d) security interest has the meaning given to it by the PPSA.
- 10.2 The Client acknowledges and agrees that these terms and conditions:
- (a) constitute a security agreement for the purposes of the PPSA; and
 - (b) create a security interest in:
 - (i) all Goods previously supplied by EG to the Client (if any); and
 - (ii) all Goods that will be supplied in the future by EG to the Client.
- 10.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which EG may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; and
 - (iii) correct any defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, EG 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 charged thereby;
 - (c) not register a financing change statement in respect of a security interest arising under these terms and conditions without the prior written consent of EG;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of EG; and
 - (e) immediately advise EG of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 10.4 EG and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 10.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by EG, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Client will unconditionally ratify any actions taken by EG under clauses 10.3 to 10.5.
- 10.9 If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA will prevail to the extent of that inconsistency.
- 11. Security and Charge**
- 11.1 Despite anything to the contrary contained herein or any other rights which EG may have howsoever:
- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to EG or EG's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and

- agree that EG (or EG's nominee) will be entitled to lodge where appropriate a caveat, which caveat will be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- (b) should EG elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor will indemnify EG from and against all EG's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint EG or EG's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 11.1.
- 12. Liability, Warranties and Returns**
- 12.1 Except as expressly set out in these terms and conditions EG makes no warranties or other representations and to the extent permitted by law these terms and conditions exclude all other conditions, guarantees, warranties, liabilities or representations in relation to the Goods and/or Services.
- 12.2 Where legislation implies into these terms and conditions any guarantee, condition or warranty that cannot be excluded or modified, to the extent permitted by law the liability of EG for a breach any such guarantee, condition or warranty is limited at EG's option to any one or more of the following:
- (a) In the case of Goods:
- (i) replacement of the Goods or the supply of equivalent goods;
- (i) payment of the cost of replacing the Goods or of acquiring equivalent goods, by credit to the Client's account, in cash or by cheque at EG's discretion; or
- (i) repayment of any part of the purchase price of the Goods which has been paid by the Client, by credit to the Client's account, in cash or by cheque at EG's discretion.
- (b) In the case of advice, recommendations, information or other Sservices, by supplying the advice, recommendations, information or other Sservices again.
- 12.3 Subject to clause 12.2, EG is not liable for any loss or damage of any kind whatsoever and howsoever arising out of or in connection with the supply of the Goods or Services, including (without limitation) any loss of profit, loss of revenue, loss of contract, loss of goodwill or increased cost of workings, or indirect or consequential loss or damage arising out of or in connection with the supply of the Goods or Services, even if due to the negligence of EG or any of its employees or agents.
- 12.4 Subject to clause 12.2, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 5.5;
- (b) EG's has agreed that the Goods are defective;
- (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
- (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 12.5 EG will not be liable for any defect or damage to the Goods which is caused by or arises as a result of:
- (a) the Client failing to properly maintain or store any Goods;
- (b) the Client using the Goods for any purpose other than that for which they were designed;
- (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) the Client failing to follow any instructions or guidelines provided by EG's or the manufacturer of the Goods; or
- (e) fair wear and tear, any accident, or an Act of God.
- 12.6 Notwithstanding anything contained in this clause if EG is required by a law to accept a return then EG will only accept a return on the conditions imposed by that law.
- 12.7 Where site attendance is required to inspect or rectify an issue covered by warranty, these attendances will take place during normal business hours at a reasonable lead time. Attendances outside of business hours are neither included nor implied in the terms of the warranty. Where the client requests after hours or weekend attendance, standard emergency call out rates will apply and must be paid prior to attendance by the client.
- 13. Intellectual Property**
- 13.1 Where EG has designed, drawn or written Goods or Services for the Client, then the ownership of the copyright or other intellectual property rights in those designs, drawings and documents will remain vested in EG notwithstanding payment by the Client for the Goods or Services. The Client may only use the copyright or other intellectual property in accordance with any direction of EG and only for the purposes of using the Goods.
- 13.2 The Client warrants that all designs, drawings, documents and instructions it provides to EG will not infringe, or cause EG to infringe in the execution of the Client's order, any third party's patent, registered design or trademark. The Client will indemnify EG against all liability, claims, loss, damage, costs and fines in connection with any action taken by a third party against EG in respect of any such infringement.
- 13.3 The Client agrees that EG may use any documents, designs, drawings, images or Goods created by EG for the purposes of advertising, marketing, or entry into any competition.
- 14. Default and Consequences of Default**
- 14.1 Interest on overdue invoices will accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at EG's sole discretion such interest will compound monthly at such a rate) after as well as before any judgment.
- 14.2 In the event that the Client's payment is dishonoured for any reason the Client will be liable for any dishonour fees incurred by EG.
- 14.3 If the Client defaults in payment of any invoice when due, the Client will indemnify EG from and against all costs and disbursements incurred by EG in pursuing the debt, including legal costs on a solicitor and own client basis and EG's collection agency costs.
- 14.4 Without prejudice to any other remedies EG may have, if at any time the Client is in breach of any obligation (including those relating to payment) EG may suspend or terminate the supply of Goods to the Client and any of its other obligations under these terms and conditions. EG will not be liable to the Client for any loss or damage the Client suffers because EG has exercised its rights under this clause.
- 14.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of fifty dollars (\$50.00)) will be levied for administration fees which sum will become immediately due and payable.
- 14.6 Without prejudice to EG's other remedies at law EG will be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to EG will, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to EG becomes overdue, or in EG's opinion the Client will be unable to meet its payments as they fall due;
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 15. Building and Construction Industry Security of Payment Act 2002**
- 15.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of Victoria, except to the extent permitted by the Act where applicable.
- 16. General**
- 16.1 If any provision of these terms and conditions is invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.
- 16.2 These terms and conditions and any contract to which they apply will be governed by the laws of Victoria and are subject to the exclusive jurisdiction of the courts of Victoria.
- 16.3 The Client is not entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by EG, nor to withhold payment of any invoice because part of that invoice is in dispute.
- 16.4 EG may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 16.5 The Client agrees that EG may amend these terms and conditions at any time. The amended terms and conditions will only apply to any orders for Goods or Services placed by the Client after EG has provided written notification of the amendment.
- 16.6 Neither party will be liable for any default due to any Act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of the party.
- 16.7 The failure by EG to enforce any provision of these terms and conditions will not be treated as a waiver of that provision, nor will it affect EG's right to subsequently enforce that provision. Any waiver by EG must be in writing and will not affect EG's rights under these terms and conditions at any future time.