

SUPREME LOCK & HARDWARE (1999) LIMITED
 Terms and Conditions of Trade

1. INTRODUCTION

- 1.1 These Terms and Conditions are to be read in conjunction with the Company's Account Form (or any other collateral written agreement entered into by the parties) and shall apply to and govern all sales of Goods and/or Services supplied by the Company to the Customer.
- 1.2 In consideration for the credit provided to the Customer at the request of the Guarantor the Guarantor guarantees the obligations of the Customer under the Account Form and these Terms and Conditions.
- 1.3 If there is any conflict or inconsistency between these Terms and Conditions and the terms of any Account Form, order submitted by the Customer or any price list, invoice or delivery docket issued by the Company, these Terms and Conditions shall prevail unless otherwise stated in writing by the Company.
- 1.4 These Terms and Conditions may only be varied in writing signed by a director of the Company and no other employee, agent or representative of the Company shall have any authority to amend, modify or add to these Terms and Conditions.
- 1.5 The Company reserves the right at any time and from time to time to amend, vary or add to these Terms and Conditions in the manner set out in clause 1.4 with effect from the date of notification to the Customer.

2. INTERPRETATION

- 2.1 These Terms and Conditions are entered into on behalf of and are to bind and be for the benefit of the Company and the Customer.
- 2.2 In these Terms and Conditions unless the context otherwise requires:
"Account Form" means trading account and terms and conditions of trade provided by the Company to the Customer to complete which outlines the Customer's details and the basic terms on which the Goods and/or Services are to be supplied to the Customer.
"CGA" means the Consumer Guarantees Act 1993;
"Company" means Supreme Lock & Hardware (1999) Limited or any of its subsidiaries, successors and/or assigns;
"Customer" means any person or company or other entity who places an order with the Company or to whom an Account Form is supplied and completed by the Customer;
"Goods" means all plant and equipment and other goods or personal property supplied by the Company to the Customer;

"GST" means goods and services tax pursuant to the Goods and Services Tax Act 1985;

"Guarantor" means each director of a company who has signed the Account Form or any other person who is named as a Guarantor in the Account Form.

"PPSA" means the Personal Property Securities Act 1999.

"Price" means the price for Goods and/or Services.

"Security Interest" has the meaning given to it in the PPSA.

"Services" means all advice, consultancy, assessments, site visits, support and maintenance or any other items, documents, physical or mental labour related to the provision of chargeable work including installation of Goods.

"Terms and Conditions" means these terms and conditions of trade.

2.3 If any part, term or provision of these Terms and Conditions is illegal, invalid or unenforceable, such part, term or provision is deemed deleted from these Terms and Conditions but such deletion shall not be deemed to affect any other term or provision in these Terms and Conditions.

3. PRICE

- 3.1 The Price is:
 (a) in case of Goods and/or Services in respect of which an Account Form has been completed, the quoted price;
 (b) in case of all other Goods and Services the price is as advised by the Company at the time of delivery based on the standard price charged by the Company prevailing at the date of acceptance of the Customer's order;
 (c) in the case that a rate schedule has been supplied to the Customer, as calculated using such rate schedule.

3.2 Unless otherwise stipulated, the Price does not include GST or any other taxes or duties payable in connection with the supply of Goods and/or Services under these Terms and Conditions, which shall be in addition to the Price.

4. QUOTATION

4.1 Acceptance of a quotation, placing of an order or the completion of an Account Form by the Customer is deemed to constitute acceptance of these Terms and Conditions by the Customer which shall become the sole basis of the agreement between the parties, superseding all prior communications.

4.2 The Price is subject to any fluctuation in the cost of labour and overheads, goods, materials, freight, insurance, customs duty and landing charges, subcontractors, manufacturers and

suppliers, the exchange rate, or any other factors affecting the cost of supply, production or delivery of the Goods and/or Services due to circumstances beyond the control of the Company.

4.3 Any quotation given by the Company is subject to final confirmation by the Company at the time of acceptance by the Customer.

4.4 A quotation is open for acceptance for the period stated and if no period is stated, then for a period of 30 days from the date of quotation.

4.5 The Company may withdraw any quotation at any time prior to acceptance.

5. PAYMENT

5.1 The Customer agrees to pay for the Goods and/or Services as quoted in accordance with the terms set out in the Account Form and these Terms and Conditions.

5.2 Payment of the Price for Goods is due on the date of dispatch of the Goods or the date of the invoice, whichever is the sooner, unless credit terms are extended to the Customer.

5.3 Payment of the Price for Services is due on the date of the invoice, unless credit terms are extended to the Customer.

5.4 Where credit is extended to the Customer or the Customer is required to make progress payments, such payments shall be overdue if not paid by the 20th day of the month following the invoice being issued, unless otherwise agreed in writing by the Company.

5.5 All payments due to the Company by the Customer must be made in full without deduction by way of set off, counterclaim or otherwise.

5.6 Disputed accounts are to be notified by the Customer to the Company within 48 hours following the date of invoice. If a portion of an account is disputed, that portion which is not in dispute is to be paid by the due date on the invoice.

5.7 If payment is not made to the Company by the due date, the Customer shall pay interest at the rate of 2.0% of the total outstanding per month, calculated from the due date until payment is made without prejudice to the Company's other rights and remedies under these Terms and Conditions or at law.

6. DELIVERY OF GOODS

6.1 Delivery shall be made at the address indicated in the Company's Account Form or, if no address is indicated, delivery shall be made at either the Customer's premises or work site.

6.2 Delivery shall be complete upon the earlier of the Customer or any agent or

carrier of the Customer taking possession of the Goods or the Goods being delivered to the Customer's premises or work site.

- 6.3 Time for delivery shall not be of the essence of any agreement between the Customer and the Company. The times given for delivery are estimates only and the Company will not be liable to the Customer for any failure or delay in delivery.
- 6.4 The Customer will not be relieved of any obligation to accept or pay for the Goods, due to late delivery.
- 6.5 The Company reserves the right to deliver the Goods by instalments and each instalment shall be governed by these Terms and Conditions. Should the Company fail to deliver or make effective delivery of one or more instalments this shall not entitle the Customer to repudiate these Terms and Conditions.
- 6.6 If the Customer fails or refuses to accept delivery, then the Goods are deemed to have been delivered when the Company was ready and able to deliver them. If the Customer fails or refuses to take or accept delivery, or indicates to the Company that it will do so at the time specified in writing or any other time, then without prejudice to any other rights and remedies which it may have the Company may charge storage and transportation costs.
- 6.7 Risk in the Goods shall pass to the Customer upon delivery to the Customer.
- 6.8 Property in the Goods shall not pass to the Customer until the Company has received payment of the full price for all of the Goods.
- 6.9 Until property in the Goods passes to the Customer, the Customer must insure the delivered Goods against any loss or damage with an insurance company of repute; and must store the delivered Goods separately or in some other way ensure they are readily identifiable as the property of the Company.
- 6.10 The Customer irrevocably authorises representatives of the Company to enter upon the Customer's premises where the delivered Goods are stored for the purpose of repossessing them and subsequently reselling them, or enforcing the Security Interest created pursuant to these Terms and Conditions and must keep the delivered Goods free from any Security Interest, charge, lien or other encumbrance.
- 6.11 If the Customer sells the Goods prior to the Company repossessing the Goods in accordance with clause 6.10, then it is deemed that any moneys the Purchaser receives for the Goods is held in trust for the Company and is due for payment to the Company on demand.
- 6.12 The Company reserves the right to withhold delivery of the Goods under a contract if the Customer is in default of

any of its obligations under any agreement or agreements with the Company.

7. DELIVERY OF SERVICES

- 7.1 The Company will provide the Services as agreed with the Customer.
- 7.2 The Company will use all reasonable commercial efforts to provide the Services in an efficient and timely manner.
- 7.3 The Company shall retain ownership of the copyright and all other intellectual property rights in the product of the Services, whether oral or tangible, unless otherwise agreed with the Customer in writing.
- 7.4 If the Customer requires the Company to transmit any document to it electronically, the Customer agrees to release the Company from any claim it may have as a result of any unauthorised copying, recording or reading and interference with that document and for any damage to the Customer's system or any files (including by any computer virus).

8. CREDIT TERMS

- 8.1 The Company reserves the right in its discretion to grant or decline to grant credit to any Customer and to suspend or cancel any credit entitlement with effect from the date of notification to the Customer. If the Customer's credit account is cancelled then all amounts outstanding shall become immediately due by the Customer to the Company.
- 8.2 The Company reserves the right to impose a credit limit which may be altered at the Company's discretion with effect from the date of notification to the Customer. If the credit limit is at any time exceeded that shall constitute a breach of these Terms and Conditions. The Company may, in addition to its other remedies, refuse to accept any further orders from the Customer and/or withhold delivery of any Goods ordered by the Customer under any contract until the breach is remedied to the satisfaction of the Company.
- 8.3 The Customer shall, if required by the Company, arrange for the Customer's liability to be guaranteed by third persons or secured by securities on terms satisfactory to the Company. This requirement may be imposed by the Company at any time and the Company may suspend the Customer's entitlement to credit and/or withhold delivery of any Goods ordered by the Customer under any contract pending its fulfilment to the satisfaction of the Company.

9. REPOSSESSION

The Company may take possession of and sell the Goods where any event of default specified in clause 12 occurs or the Goods are at risk (as defined by section 109 of the PPSA and for that purpose it shall have the irrevocable right or licence by its agents servants and employees to enter the premises of the Customer or any other premises

where the Goods are situated (including any premises, land and buildings that the Customer may enter upon) without being liable in any way to the Customer, and the Customer shall indemnify the Company upon demand for all claims by any third party for any losses resulting from the Company effecting repossession.

10. COSTS

- 10.1 The Customer will upon demand pay all the Company's expenses and legal costs (on a solicitor/agent/client basis) in or in connection with the registration of a financing statement or financing change statement relating to the Security Interest created by these Terms and Conditions or obtaining an order under section 167 of the PPSA or the collection of overdue moneys or the exercise, enforcement or preservation of any right or interest under these Terms and Conditions or any other contract with the Customer.

11. DEMAND AND NOTICES

- 11.1 Demand may be made of, or notice given to, the Customer by the Company posting, faxing or emailing a letter or invoice to the Customer at the Customer's last known address, which shall be deemed to be received by the Customer two days after the date of posting of the letter or invoice.
- 11.2 Any notice or other document to be served by the Customer on the Company shall not be served or given by facsimile or electronic mail.

12. DEFAULT

- 12.1 Where there is an agreement between the Company and the Customer in accordance with clause 4.1 of these Terms and Conditions and the Customer does not complete the transaction for any reason (whether it is part way through the transaction or once the Goods and/or Services have been completed and are ready for delivery) the Customer shall be deemed to be in default under the agreement and the deposit and any other monies paid (if any) will be automatically be forfeited to the Company. The Company reserves its right to charge default interest in accordance with clause 5.7 of these Terms and Conditions. The Customer shall continue to remain liable for the full Price plus default interest (if any) until the Customer completes the purchase of the Goods and/or Services. In the case of Goods, if the Customer fails to complete the transaction and the Company is able to sell the Goods to a third party, the Company reserves the right to sue the Customer for damages and any shortfall and for all default interest (if any) and any storage costs accrued until the date of sale. Notwithstanding the Company's right to resell the Goods, the Company shall be under no obligation to take steps to sell such Goods or to mitigate the Customer's

- loss as a result of the Customer's default.
- 12.2 The Company shall be entitled to suspend or cancel all or any part of the agreement recorded in these Terms and Conditions and/or any other agreement or agreements with the Customer, in addition to its other remedies, upon the happening of any of the following events of default:
- if any amounts payable by the Customer to the Company are overdue; or
 - if the Customer fails to meet any obligation under these Terms and Conditions or any other contract with the Company; or
 - if the Customer becomes insolvent; or
 - if a receiver is appointed in respect of the assets of the Customer; or
 - if an arrangement with the Customer's creditors is made or likely to be made; or
 - if the Customer ceases or threatens to cease carrying on business; or
 - if the ownership or effective control of the Customer is transferred, or the nature of the Customer's business is materially altered.
- 12.3 Upon cancellation of the agreement recorded in these Terms and Conditions all sums owing by the Customer to the Company shall become immediately due and payable.
- 12.4 Where any event of default occurs the Company may appoint a receiver in respect of all Goods (including their proceeds) supplied to the Customer and any such receiver may take possession of the Goods and sell them and otherwise exercise all rights and powers conferred on a receiver by law.
- 13. CLAIMS**
- 13.1 Where the CGA applies, the Customer shall have the benefit of all the guarantees and rights and remedies provided under the CGA, but no others. Where the Customer acquires, or holds itself out as acquiring, the Goods for business purposes, the CGA shall not apply and the following provisions shall govern the Company's liability in respect of any claims for Goods supplied to the Customer.
- 13.2 To the extent permitted by law:
- and subject to the extent of any express guarantees or warranties confirmed in writing by the Company, all warranties, descriptions and representations, and terms as to correspondence with description or sample, fitness, suitability for any purpose, tolerance to any terms, merchantability or otherwise are expressly excluded;
 - the maximum liability of the Company, whether in tort or contract, in respect of the supply of any Goods, or the performance or non-performance of any obligation under any contract relating thereto, shall be limited to the lesser of the price of the Goods supplied or the actual loss or damage suffered by the Customer; and
- the Company shall not be liable in any way whatsoever to the Customer or any third party, whether in tort or contract, for any indirect, special or consequential loss or damage howsoever arising.
- 13.3 Goods which do not comply with any guarantee or warranty referred to in this clause 13 or otherwise do not conform to the contract shall at the discretion of the Company be repaired or replaced or the price credited to the account of the Customer or refunded.
- 13.4 Any right which the Customer may have to make a claim in respect of incorrect or defective Goods shall only be effective if the Customer notifies the Company in writing specifying the details of the *discrepancy or fault or defect within 5 working days* of delivery or completion and the Company is given a reasonable opportunity to investigate the claim and to repair or replace any incorrect or defective Goods or rectify the Services. *Any claim must be in writing and delivered to the Company.*
- 13.5 The Company shall not be liable for any defect when the Goods have been modified, incorrectly stored, maintained, installed or used for purposes other than for which they were intended.
- 13.6 Where the Company elects to replace defective Goods, the replacement Goods shall be supplied on and subject to these Terms and Conditions.
- 13.7 If claims are not made before the Goods are altered or otherwise processed by the Customer or otherwise in accordance with the requirements of clause 13.3, the Customer shall be conclusively deemed to have accepted the Goods as conforming with the agreement in all respects and to have waived absolutely any claims for incorrectly delivered or defective Goods and the Company shall not have any liability in respect of those claims or otherwise in respect of the Goods.
- 13.8 the Company shall not be liable for any delay or failure in complying with any obligation imposed under these Terms and Conditions or for loss or damage (including indirect, special or consequential loss or damage), if the failure or delay arises from a cause that is unforeseeable or beyond the control of the Company (including but not limited to unavailability of Goods or failure of any supplier or subcontractor of the Company and even though the Goods and/or Services may be available from another source).
- 13.9 **Returns**
- All returns of Goods will only be accepted with the prior written approval of the Company, if such Goods are received within five (5) working days of the date of delivery and if accompanied with a credit request stating the purchase invoice number that the Goods were supplied on.
 - All stock products returned will be subject to a 10% surcharge.
- Non stock products i.e. purchased from a manufacturer especially for the Customer which need to be returned to that manufacturer will be subject to a 30% surcharge.
 - No Goods returned will be accepted in a damaged or incomplete condition.
 - No Goods returned will be accepted if they were specifically produced products or have a specified non standard finish.
- 13.10 **Credits for Returned Goods**
Credits will not be issued in the following circumstances:
- shop soiled items (defined as having the visual packaging removed, damaged or seals broken);
 - Goods shipped from the Company over 3 months prior to their return; and
 - any Goods bought as discontinued stock or specials.
- 13.11 **Guarantees/Warranties**
- All Goods are covered by a manufacturer's guarantee if printed on its packaging or in its advertising literature.
 - This guarantee does not cover the external finish, it only covers the internal workings of the product. All Goods supplied by the Company will be either repaired or replaced at no charge if the internal workings are found to be defective within 5 years of manufacture.
- 13.12 All guarantees and warranties specifically exclude the following: damage caused by accident, incorrect installation, neglect and use in the marine industry.
- 13.13 To the extent inconsistent with these Terms of Trade, the provisions of the Sale of Goods Act 1908 are hereby excluded and do not apply.
- 13.14 These Terms of Trade do not, and do not purport to, restrict or otherwise limit the application of relevant statutes to the subject matter herein other than to the extent that such restriction or limitation is lawfully permissible and is contained herein.
- 13.15 **Applications**
Unless otherwise specified, all Goods sold are for domestic use only. Only Goods under the heading "Architectural" or "Commercial Use" in the Company's price list or catalogue are suitable for commercial use.
- 14. HEALTH AND SAFETY**
- 14.1 The Customer agrees to comply with the provisions of the Health and Safety in Employment Act 1992 by taking all practical steps to ensure the health and safety of the Company's employees, agents and contractors when they are working on or visiting the Customer's site.
- 15. PPSA**
- 15.1 The Customer grants the Company a Security Interest in all present and after acquired property of the Company and a specific Security Interest in any Goods and their proceeds supplied by the Company as security for all moneys payable by the Customer to the

- Company (whether under these Terms and Conditions or otherwise).
- 15.2 The Customer will, when requested by the Company, promptly execute any documents and do anything else required by the Company to ensure that any Security Interest created under these Terms and Conditions constitutes a first ranking perfected Security Interest over the Customer's property and/or the Goods and their proceeds, including any information the Company reasonably requires to complete a Financing Statement or a Financing Change Statement.
- 15.3 The Customer waives any right to receive a copy of a Verification Statement under the PPSA.
- 15.4 The Customer will pay to the Company all costs, expenses and other charges incurred, expended or payable by the Company in relation to the filing of a Financing Statement or a Financial Change Statement in connection with these Terms and Conditions.
- 15.5 The Customer agrees that nothing in section 114(1) (a), 117(1) (c), 133 and 134 of the PPSA shall apply to these Terms and Conditions.
- 15.6 The Customer agrees that the rights of the Customer as debtor in section 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA shall not apply to these Terms and Conditions.
- 15.7 The Customer acknowledges that these Terms and Conditions constitute a "security agreement" for the purposes of the PPSA.
- 15.8 The Customer acknowledges that the Company has the sole and absolute discretion to appropriate all amounts received in relation to Goods in any manner it determines.
- 15.9 The Customer will not allow a Security Interest to be created or registered over the Goods in priority to the Security Interest held by the Company.
- 15.10 The Customer will on demand, pay all costs and expenses of, or incurred by, the Company as a result of enforcing any of its rights under these Terms and Conditions.
- 15.11 The Customer must not change its name without first notifying the Company of the new name not less than 7 days before the change takes effect.
- 16. INTELLECTUAL PROPERTY**
- 16.1 All intellectual property rights including (but not limited to) patent rights, registered designs, copyright, and all drawings, specifications and other technical information, contained within any quotation, the Account Form or any other document produced by the Company, or arising out of performance of any contract by the Company, remain vested in the Company.
- 16.2 If Goods are to be manufactured to the Customer's specifications, the Customer warrants that the manufacture and supply of the Goods under this contract will not infringe any patent, copyright of any other right of any other person.
- 17. NON-SOLICITATION**
- 17.1 Unless otherwise agreed in writing by the Company, the Customer and/or its employees or agents shall not at any time, directly or indirectly in any capacity canvass, solicit, entice or engage, or offer, or cause to be offered, employment or any other role to any person who is employed by or contracted to the Company.
- 18. FORCE MAJEURE**
- The Company is not liable for any delay in delivery of the Goods and/or Services or any failure to perform any other obligation caused or contributed by any circumstance beyond its reasonable control including acts of God, labour disputes, severe economic dislocation, failure of manufacturers or suppliers, war, terrorism, strikes, lock-outs, perils of the sea, fire or any other unforeseeable cause whatsoever.
- 19. DISPUTE RESOLUTION**
- Any difference or dispute arising out of these Terms and Conditions (save for where the default by the Customer is not in doubt) shall be settled by an arbitrator to be appointed by the parties. Failing agreement as to the appointment of an arbitrator then an arbitrator shall be appointed by the president for the time being of the New Zealand Law Society or the nominee of that president. The appointment of an arbitrator shall be deemed to be a submission to arbitration in accordance with the provisions of the Arbitration Act 1996 or any replacement legislation.
- 20. GOVERNING LAW AND JURISDICTION**
- These Terms and Conditions and all aspects of the supply of Goods and/or Services are governed by and construed in accordance with the Laws applicable in New Zealand. Both parties agree to irrevocably submit any disputes arising under these Terms and Conditions to the exclusive jurisdiction of the Courts of New Zealand.
- 21. PRIVACY**
- 21.1 The Customer authorises the Company to collect any information it reasonably regards as necessary for its credit inquiry and for approval and control purposes, from any reputable credit/debit collection agency and/or from any other person or organisation as it considers appropriate.
- 21.2 The Customer authorises any reputable credit agency and/or debit collection agency and/or any other person or organisation to provide the Company with any information which may reasonably be regarded as necessary for the Company's creditor inquiry and/or assessment purposes.
- 21.3 The Customer authorises the Company to provide, to any reputable credit agency and/or debt collection agency and/or any person or organisation, in response to any credit inquiries by them, details of this credit application and of any dealings following on from it.
- 21.4 The Customer acknowledges that the Customer does not have to provide the Company with any information, but that if the Customer does not, it may affect the Company's decision whether or not to give or continue giving the Customer supply on credit terms. The Customer understands that they have certain rights under the Privacy Act 1993, to access and correct any information the Company holds about them.
- 21.5 Unless the Customer notifies the Company in writing the Company may send the Customer promotional material.