

1. Definitions

1.1. In these Terms:

Background IP means Intellectual Property owned, licensed or held by either of Us which is in existence at the date of these Terms, or comes into existence after the date of these Terms otherwise than in connection with these Terms.

Confidential Information means any information or data, whether or not in a material form, which is confidential to either of us, including confidential information acquired, collected or developed for the purpose of the Goods or Services or obtained under these Terms, whether disclosed before or after the date We commence providing the Goods or Services to You, except that information which is already in the public domain otherwise than as a result of a breach of these Terms.

Deliverables means the item(s) produced by Us in performing the Services and includes Intellectual Property rights in those deliverables.

Deposit means the deposit paid to Us by You in accordance with clause 4.

Fees means the amount set out in the Quote.

Goods means the goods, parts, materials or products provided to You by Us, as described in the Quote.

Improvements means any modification, enhancement, development, alteration or technical advance in or relating to Intellectual Property.

Intellectual Property includes all industrial and intellectual property rights including but not limited to: a) copyright, future copyright, patents, trade/business or company names, registered and unregistered trademarks, registered and registrable designs, trade secrets, know-how, rights in relation to circuit layouts and all other rights of intellectual property as recognised by the law in force in New South Wales; (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); (c) any Improvement to any of the rights referred to in paragraph (a); but for the avoidance of doubt excludes moral rights and similar non-assignable personal rights of any person.

Quote means either the written quotation issued by Us to You and titled "Quotation" or the verbal quote We provide You for the provision of the Goods or Services.

Services means the services as described in the Quote.

Terms means these terms and conditions.

We, Our and Us and words with a similar connotation mean Trail Holdings Pty Ltd ACN 147 756 367 as trustee for the Trail Holdings Trust ABN 51 519 565 838 trading under the business name 'PT Doors' and include our employees.

You and Your and words with a similar connotation mean You, Your company, Your employees, Your agents, Your Officers, Your contractors, Your administrators, successors and/or permitted assignees.

2. Incorporation

2.1. These Terms govern the provision of all our Goods and Services to You. All other terms and conditions, express or implied, are excluded to the fullest extent permitted by law including without limitation any of Your terms and conditions.

2.2. These Terms can only be amended in writing and signed by both of us. These Terms will prevail to the extent of any inconsistency between a Quote and these Terms.

3. Quotations and request for Services

3.1. The Quote is valid for thirty (30) days from the date We issue it to You and is subject to withdrawal or change by Us at any time. Any Quote provided to You is a mere invitation to treat and does not constitute a contractual offer.

3.2. You are deemed to accept and agree to these Terms in full when You do all or any of: accepting a Quote; providing further instructions to Us; making a payment to Us; or any other act by You that requires Us to commence providing the Goods or Services. You may accept the Quote by notice in writing (including email), by verbal acceptance or verbal notice, by providing further instructions or by payment of the Deposit or any other amount to Us.

3.3. You must confirm Your instructions in writing in relation to items such as the colour, pattern and finish of the Goods before We can place any order for the Goods.

3.4. Additional fees apply to any variations that You direct to the original scope of Services that are outside the Quote.

3.5. We may charge a reasonable handling fee for all orders delivered to You.

4. Deposit

4.1. A non-refundable deposit of 50% of the value of the Quote is required ("**Deposit**"). You agree to pay Us the Deposit as set out in the Quote or within a reasonable time frame and in any event, before We commence any work or order any Goods for You.

4.2. We will not start to provide the Goods or Services until We receive the Deposit as cleared funds.

5. Our Service

5.1. We agree to perform the Services (a) in a diligent manner and with all necessary skill and care expected in accordance with the provisions of such Services; (b) in accordance with all representations and warranties as to our experience and ability expressly or impliedly made by these Terms or by law; (c) in accordance with all applicable acts, ordinances, rules, regulations and by-laws; and (d) in accordance with the information and instructions You provide to Us.

5.2. Our Services are suitable to the limited circumstances in which they are provided and are not suitable to be applied by You to any future similar issue that You experience. We recommend that You seek further professional advice or services in other instances and for future similar issues. Our advice and Services are not designed to be reapplied by You to future issues.

5.3. Installations will only take place during our normal working hours, being between 8am - 4pm on Monday - Friday unless otherwise specified by Us.

5.4. The supply of Goods or Services is subject to availability. We reserve the right to suspend or discontinue the supply of Goods or Services to You. If We are unable to supply all of the Goods for Your order, these Terms continue to apply to any part of the order or Goods supplied.

5.5. Unless otherwise agreed in writing by Us, the delivery of Goods and Services is at Your premises.

5.6. We are permitted to use contractors such as independent contractors or subcontractors to provide all or any of the Goods or Services to You, at our absolute and sole discretion.

6. Our Fees

6.1. You agree to pay for the following, over and above the Quote, if so requested by Us:

- (a) all goods and services tax payable not otherwise included in the Quote. We will issue a tax invoice to You for goods and services tax;
- (b) repeated or varied Services due to Your act or omission or a variation request by You;
- (c) interest accruing daily on the unpaid balance of the Fees or any amount payable, calculated daily from its due date until the date of payment at a rate of 10% per annum;
- (d) any additional costs or expenses incurred by Us because You give Us incorrect information;
- (e) Administration fee for payment made by You by credit card;
- (f) Reasonable handling fees, call out fees, storage fees, or transportation fees, if applicable.

7. Payment

7.1. You agree to make payment of the balance of the Fees on the earlier of:

- (a) fourteen (14) days of the date of the invoice issued to You by Us; or
- (b) delivery of the Goods to You or completion of the Services provided to You.

- 7.2. The time of payment is an essential term of these Terms and time is of the essence in respect of payment to Us by You. You indemnify Us on demand against all costs, Fees, expenses and legal costs (on a full indemnity basis) incurred by Us in recovering any outstanding unpaid amount from You.
- 7.3. Unless otherwise indicated, monetary references are to Australian dollars.
- 7.4. If any part of an invoice is in dispute, the balance will remain payable and must be paid when due. You have no right to set-off any claim against Us from moneys owing to Us.
- 8. Delay**
- 8.1. If either of us is delayed or prevented from performing any obligations under these Terms due to any cause or circumstance that is outside of our (respective) control, We agree to delay the performance of the affected obligations until the cause or circumstance is abated or until such time as mutually agreed between us.
- 8.2. If a delivery date is specified, that date is an estimate only and We are not liable for any delay in delivery of Goods or Services. Time is not of the essence in relation to delivery and You must accept delivery and pay for the Goods and/or Services delivered including transport costs, if applicable, even if they are delivered before or after any specified delivery date.
- 8.3. We are not responsible for any delay in providing the Goods or Services caused by a delay in receiving instructions from You.
- 9. Termination**
- 9.1. You may cancel Your request for Services.
- 9.2. If You cancel Your request for Services:
- (a) before all or any Goods are ordered pursuant to the Quote, there is no penalty except for a call out fee if applicable;
 - (b) at any time after all or any Goods are ordered pursuant to the Quote, You forfeit the Deposit You paid to Us;
 - (c) any time after the Goods or Services are provided or partially provided to You then You must pay the entire amount of Fees owed to Us.
- 9.3. We reserve the right to terminate or suspend our performance of the whole or any outstanding part of the request for Services without liability to You in all or any of the following circumstances:
- (a) where You breach these Terms;
 - (b) where You do not make payment to Us in accordance with clause 7;
 - (c) where You enter into bankruptcy, liquidation or a composition with Your creditors, have a receiver or manager appointed over all or any part of Your assets, enter into administration or become insolvent;
 - (d) where We notify You of having reasonable grounds for suspecting that an event in clause 9.3(c) has occurred or will occur, or You will not pay for the Goods Services on the due date;
 - (e) if You have been abusive or threatening to Us;
 - (f) if, in Our sole discretion, You do not provide Us with a safe working environment;
 - (g) You exceed Your credit limit at any time (if applicable).
- 9.4. In addition to clause 9.3, We may also do all or any of the following at Our absolute and sole discretion:
- (a) withdraw any approved credit limit and/or terms of trade;
 - (b) cancel any rebate, discount or allowance due or payable by Us;
 - (c) if applicable, lodge a caveat or other similar instrument over any of Your property, as these Terms give us a caveatable interest in real property or land owned by You; or
 - (d) institute any recovery process in Our absolute and sole discretion and recover any associated cost and expense from You.
- 9.5. Termination by Us in accordance with these Terms is without prejudice to Our other remedies and Our right to recover payment from You for any Goods or Services provided by Us up to and including the date of termination.
- 10. Your Agreements**
- 10.1. You agree that by accepting the Quote, You have first reviewed the Quote provided by Us and are satisfied with the scope of the Services outlined in the Quote and that the scope meets Your needs.
- 10.2. You acknowledge and agree that You have fully disclosed all relevant information to Us so that We may provide the Goods and Services to You.
- 10.3. You are not acting as an agent or on behalf of any other party. You are bound to these Terms. If You are acting in the capacity as an agent, You must advise Us of this in writing before accepting the Quote and provide the details of principle or third party. If you are acting as an agent or on behalf of a third party, we can refuse to proceed with the Quote and can discontinue the Goods or Services.
- 10.4. You authorise us to do all things necessary to provide the Goods and Services to You.
- 10.5. You agree You will provide Us with a safe work environment.
- 10.6. You acknowledge and agree to comply with all laws, acts ordinances, rules, regulations and by-laws, including specifically the *Fair Work Act*.
- 10.7. You agree that if We reasonably suspect that You have contravened the *Fair Work Act* or any other legislation, We may have an obligation to take steps including to change the nature of our Services or the scope of our Services at Your expense, to report the contravention or any other steps or action in our sole discretion.
- 10.8. You acknowledge and agree that some Goods are made from natural products and subject to unavoidable factors such as expansion of wood or knots in wood. The products will comply with Garage Door Industry Standards.
- 10.9. Goods supplied by Us to You are at Your risk immediately on the earlier of delivery to You or into Your custody, including Your carrier or forwarder. We are not liable for any damage or deterioration to the Goods after delivery and before installation.
- 10.10. You must inspect the Goods or Services immediately following delivery or completion of the Services (as the case may be). Subject to any of Your rights under any non-excludable statutory guarantees (if any), You may only return Goods with Our prior approval. The Goods must be in good condition and, where appropriate, in the original packaging. A reasonable handling fee for any returned Goods will be charged to You, unless the product is found to be faulty. Subject to any of Your rights under any statute (if any), any claim that the Goods or Services are not in accordance with these Terms must be made at the time of delivery/services provided or in writing to Us within 48 hours after delivery of the Goods/completion of the Services to You. If You fail to make a claim then, to the extent permitted by law, the Goods or Services are deemed to have been accepted by You and You must pay for the Goods or Services in accordance with these Terms. If works are undertaken by Us as to the installation of the product, We can charge you for our reasonable time.
- 11. Warranty for Goods**
- 11.1. For Goods not manufactured by Us, the warranty is the current warranty provided by the manufacturer of the Goods. We are not bound by nor responsible for any term, condition, representation or warranty other than which is given by the manufacturer of the Goods.
- 11.2. The conditions applicable to the warranty given by clause 11.1 are:
- (a) Warranty repairs will only be undertaken during Our standard work hours which are between the hours of 8am – 4pm, Monday to Friday;
 - (b) Warranty only applies to Goods installed by Us;
 - (c) The warranty will not cover any defect or damage which may be caused or partly caused by or arise through (i) failure on Your part to properly maintain any Goods; (ii) failure on Your part to follow any instructions or guidelines provided by Us; (ii) any use of any Goods otherwise than for any application specified on a Quote or order form; (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably

- prudent operator or user; or (v) fair wear and tear, any accident or act of God.
- 11.3. The warranty ceases and We will in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Our consent.
- 11.4. In respect of all claims, We are not liable to compensate You for any delay in either replacing or remedying the workmanship or in properly assessing Your Claim.
- 12. Ownership of Goods**
- 12.1. Ownership of the Goods supplied by Us to You does not pass to You until those Goods have been paid for in full. We may take repossession of, and You will return to Us, any Goods for which You have not paid Us for in full in accordance with these Terms. In the meantime, You take custody of the Goods and retain them only as fiduciary agent and bailee for Us until Goods have been paid for in full.
- 12.2. You acknowledge and agree that these Terms constitute a security agreement and We may register any security interest. You must do anything We ask and consider necessary for the purposes of ensuring that a security interest created under these Terms is registrable, enforceable, perfected and otherwise effective (such as providing information, obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed).
- 12.3. We need not give any notice under the Personal Property Securities Act 2009 ("PPSA") (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded. To the extent permitted by law, You waive Your right to notice as a grantor under section 157 of the PPSA; To the extent that they impose any obligation on Us or grant any right to You, and section 115(1) of the PPSA allows them to be excluded: sections 95, 118, 121(4), 125, 130, 132 (3), 132 (4), 135, 142, and 143 of the PPSA do not apply to these Terms or Our security interest in the Goods. To the extent that Part 4.3 of the PPSA imposes any obligation on Us or grants any right to You and section 115(7) permits, its application pursuant to section 116(2) is excluded. You may not exercise rights under section 143 (reinstatement of security interest) of the PPSA to the extent the law permits them to be excluded.
- 13. On-sale**
- 13.1. If You resell Goods or Services, then You and Your agents, officers, employees and/or contractors must:
- (a) provide to the purchaser (i) any instructions or information about the use or care of the Goods or Services; (ii) information about repairs; and (iii) any express warranties intended for the purchaser which are provided by Us to You for the purpose of being provided to the purchaser;
 - (b) not make any statement or representation about the Goods or Services which is not consistent with information provided by Us or make any representation on behalf of Us;
 - (c) not make any misleading or deceptive statements that disparage the Goods, Services or Us;
 - (d) perform all installation, maintenance and Services in accordance with any instructions and guidelines provided by Us;
 - (e) promptly notify Us of any claims that the Goods or Services do not comply with the mandatory guarantees under the Australian Consumer Law or which involve safety issues or serious injury or death, and then co-operate with Us in relation to the handling of those claims;
 - (f) Comply with your obligations under the Australian Consumer Law in relation to mandatory guarantees;
 - (g) Not tamper with, alter, obscure or remove any trade marks which appear on the goods or alter the labels or packaging in which they are intended to be offered to purchasers.
 - (h) insure the Goods for full replacement value from delivery of the Goods against such risks as are usual or common to insure against in a business of a similar nature You, until You pay Us in full for the Goods;
 - (i) to the extent possible, store the Goods in a manner that shows clearly they are Our property, maintain records relating to the Goods, secure the Goods from risk, damage and theft and ensure that the Goods are kept in good and serviceable condition;
- (j) sell the Goods, in the ordinary course of Your business, but only as fiduciary agent of Us. You must not represent to any third party that You are acting in any capacity for or on behalf of Us and You have no authority to bind Us to any contract or otherwise assume any liability for or on behalf of Us. We also have a security interest in all proceeds of the Goods, and You receive all proceeds in trust for Us and must keep the proceeds in a separate bank account (which is not subject to any security interest in favour of another person) until all liability to Us is discharged;
- (k) if You use the Goods in some manufacturing or construction process of Your own or of a third party, We also have a security interest in all proceeds of the Goods, and You must hold in trust for Us that part of the proceeds of the manufacturing or construction process as is equal to the amount owing by You to Us at the time of receipt of the proceeds.
- 14. Indemnities and Limitation of Liability**
- 14.1. To the extent permitted by law, We are not liable in any way to You for any form of loss, damage or injury sustained or incurred by You or any third party in consequence of, or resulting directly or indirectly out of the provision of Goods or Services, the use of our Goods or Services, or any breach by Us of any contract incorporating these Terms.
- 14.2. To the extent permitted by law, We are not liable for any indirect or consequential loss, loss of profit, loss of revenue, loss of contract, loss of goodwill or increased cost of workings arising out of or in connection with the supply of Goods or Services.
- 14.3. To the extent permitted by law, We are not liable in any way for the Goods whilst the Goods are in transit or in storage. This risk in the Goods during transit and storage is Yours.
- 14.4. For the avoidance of doubt, We provide guidance and Services to You but We are not liable to You for any misinterpretation of such guidance and Services or any failure by You to implement the guidance and Services in the manner or way in which We inform You. We are also not liable to You for any future application of the guidance or Services or the way in which You interpret or apply the guidance or Services We supply.
- 14.5. Should any law render any of these Terms void or ineffective, You agree that Our liability is limited, at Our sole discretion and option to:
- (a) the resupply of Services or Goods;
 - (b) the repair of Goods;
 - (c) the total Fees paid by You to Us for the Goods or Services under the single Quote;
 - (d) Payment of the cost of replacing or repairing the Goods or of acquiring equivalent Goods; or
 - (e) Payment of resupplying the Services.
- 14.6. We are not liable for failure to provide the Goods or Services for any reason whatsoever outside our reasonable control including, but not limited to, industrial action, riots or war, governmental action or regulation, inclement weather or an act of God. Any such failure does not affect Your obligation to pay for all or any Goods or Services previously supplied by Us to You.
- 14.7. We are not liable for any damage to Your premises or property where You have permitted Us to use Your premises or property in connection with providing the Goods or Services.
- 14.8. Whilst We take all reasonable steps necessary to prevent damage to Your property whilst providing the Goods and Services, We are not liable for any loss or damage whatsoever caused in respect of utilities and the existing structure at Your property including, but not limited to, wiring, pipes, brickwork, timber and/or render.
- 14.9. You indemnify and keep Us indemnified from all or any damages, costs (including without limitation, legal fees on a full indemnity basis), liabilities, expenses or losses which We may incur or sustain and from all actions, proceedings, claims and demands whatsoever which may be suffered or incurred by Us,

- our servants or agents, arising out of or as a consequence of a breach of these Terms by You.
- 14.10. Our liability to You under these terms (if any) will be reduced proportionately to the extent that any unlawful, negligent or other act or omission by You contributed to the relevant liability, loss, damage, or expense.
- 14.11. You acknowledge and agree that We may plead this clause 14 as a bar to any claim or action to enforce any such claim, whether in contract, tort, or pursuant to a statute or otherwise.
- 14.12. You acknowledge and agree that the total amount of Our liability for any breach of these terms, under contract, in tort (including negligence) or otherwise in relation to any Goods or Services acquired under these Terms is limited to the amount paid by You to Us in respect of the Goods or Services at issue.
- 14.13. The application of the United Nations Convention on Contracts for the International Sale of Goods (known as the Vienna Sales Convention 1980) is excluded.
- 15. Corporate Guarantee**
- 15.1. If You are a company, then in consideration of Us contracting with a corporation, the guarantors, being the directors at the time the Quote is provided to You, guarantee the performance by You of all of Your obligations under the contract and indemnify Us against any cost or loss whatsoever arising as a result of a default by You in performing Your obligations under these Terms for whatever reason. We may seek to recover any loss from all or any of the guarantors before seeking recovery from You and any settlement or compromise with You will not release the guarantors from the obligation to pay any balance that may be owing to Us.
- 15.2. This guarantee is binding on the guarantors, their executors, administrators and assigns and the benefit of the guarantee is available to any assignee of the benefit of these Terms by Us.
- 15.3. A liability of the guarantors under these Terms is a joint liability of all of them and a several liability of each of them.
- 16. Intellectual Property**
- 16.1. Neither of us assigns any of our respective Background IP to the other party if that Background IP is used under these Terms.
- 16.2. We own all Intellectual Property in any Deliverables as part of the provision of Services or Goods. Where Your Background IP is incorporated into the Deliverables by Us, You hereby agree to provide Us with a royalty free, non-exclusive, perpetual licence for Us to use that Background IP in conjunction with the Deliverables.
- 17. Confidentiality**
- 17.1. Neither of us may disclose any Confidential Information to any person that is not a party to these Terms unless that disclosure: (a) is necessary for the purposes of performing its obligations under these Terms; or (b) is consented to by the other party's authorised delegate in writing; or (c) is required by law to be disclosed.
- 17.2. We must use the same degree of care towards the Confidential Information that each of us would use to protect our own Confidential Information of like nature, but no less than a reasonable degree of care.
- 17.3. We may keep copies of any materials that We produce for You and that may contain Confidential Information.
- 17.4. You acknowledge and agree that the materials We produce for You, including the Quote, constitute Confidential Information and You must not, for whatever reason, either for Yourself, for a third party or with the assistance of any third party, provide to any other person or party, appropriate, copy, memorise or in any manner reproduce (or reverse engineer) any of our Confidential Information.
- 18. Advertising Consent**
- 18.1. By accepting the Quote, You grant Us the right to generically refer to the nature of the Services carried out by Us for You, without Using Your name or any of Your personal information, for any lawful purpose, including advertising and marketing.
- 19. No employment or agency**
- 19.1. Neither of us may represent ourselves, and must ensure that our employees and agents do not represent themselves, as being employees or agents of the other party.
- 19.2. We are not by virtue of these Terms or for any purpose deemed to be Your employee or agent.
- 20. Dispute Resolution**
- 20.1. If a dispute arises out of, or relates to the Services, Goods or these Terms, neither of us may commence any court proceedings relating to the dispute unless we have first complied with this clause 20, except where either of us seeks urgent interlocutory relief.
- 20.2. Whichever of us claims that a dispute ("Dispute") has arisen in relation to the Services, Goods or under these Terms, that claiming party must give written notice to the other party specifying the nature of the Dispute.
- 20.3. On receipt of that notice, we must endeavour to resolve the Dispute expeditiously using informal dispute resolution techniques such as discussion, series of discussions, mediation or determination or similar techniques agreed by us.
- 20.4. If we do not agree within five (5) business days of receipt of the notice referred to above (or such further period as agreed in writing by us) as to:
- (a) the dispute resolution technique and procedures to be adopted;
 - (b) the timetable for all steps in the technique; and
 - (c) the selection and compensation of the independent person required for such technique,
- then we must mediate the Dispute in accordance with the Mediation Rules of New South Wales, and the nominee of the President of the Law Society of New South Wales will select the mediator and determine the mediator's compensation.
- 21. Privacy Notice and Consent**
- 21.1. The information that you provide to Us may contain information or an opinion about an individual whose identity is apparent, or can reasonably be ascertained, from the information ("Personal Information"). By signing or accepting the Quote, You provide consent or, if the Personal Information is not information about You, You must obtain consent, to our collection, use and disclosure of the Personal Information in accordance with our privacy policy as set out at www.ptdoors.com.au and in particular, to the collection, use and disclosure of the Personal Information for the purposes as outlined in Our privacy policy.
- 22. General**
- 22.1. *Governing Law:* These Terms are governed by the laws of the State of New South Wales and we both submit to the jurisdiction of the courts of that state.
- 22.2. *Severability:* If any provision of these Terms is held to be invalid in any way or unenforceable, the remaining provisions are not in any way affected or impaired, and these Terms must be construed so as to give effect to our original intent.
- 22.3. *Waiver:* Waiver of any provision of or right under these Terms: (a) must be in writing signed by whichever of Us is entitled to the benefit of that provision or right; and (b) is effective only to the extent set out in any written waiver.
- 22.4. *Entire Agreement:* These Terms, the Quote and any attachments constitute the entire agreement between us with respect to its subject matter and supersede all prior agreements and understandings between us in connection with these Terms and/or in connection with the Goods or Services.
- 22.5. *Notices:* Notices under these Terms must be in writing, in English and delivered to the address for the relevant party as set out in the Quote or as otherwise advised to that party by the other party. A notice is taken to be received if hand delivered, on delivery; if sent by prepaid post, on the second business day after the date of posting; if sent by email at the time that would be the time of receipt under the *Electronic Transactions Act 1999*.
- 22.6. *Survival:* The following terms survive expiry or termination of these Terms: clause 10 (Your Agreements); clause 12 (Ownership of Goods); clause 13 (on-sale); clause 14 (indemnities and limitation of liability); clause 15 (corporate guarantee); clause 16 (intellectual property); clause 17

Terms and Conditions

(confidentiality); clause 20 (dispute resolution); clause 22.1 (governing law); and this clause 22.6 (survival).

You acknowledge and agree that:	
<input type="checkbox"/> You have received and read a copy of the Quote and these Terms.	
<input type="checkbox"/> You have had the opportunity to discuss any queries that you may have in relation to the Quote or these Terms with Us.	
<input type="checkbox"/> You understand and agree to the Quote and these Terms.	
Signature- Individual	
Name	
Date	
Signed by _____ in accordance with s127(1) of Corporations Act 2001 Director/Property Owner
Date Director/Property Owner
Signature - Guarantor	
Name	
Date	