



### Flexible Door Technology 2014 Limited

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Email: accounts@flexibledoors.co.nz

#### ACCOUNT APPLICATION FORM

**ENTITY DETAILS:**

APPLICANT'S FULL LEGAL NAME (i.e. not trading name): ..... ("the Customer")

(Please tick) Sole Trader  Individual  Partnership  Ltd Company  Other (please state): .....

Trading as: .....

Postal Address: .....

Physical Address: .....

Nature of Business: ..... Years in Business: .....

Accounts Email: .....

Accounts contact person: ..... Accounts phone: .....

Telephone: ..... Fax: .....

Contact Name & Position: .....

Contact Email: .....

Who do we contact to get order numbers:

Name: ..... Email: .....

Phone: .....

**OWNERSHIP** please insert Owner(s) / Directors Name(s) in full

1: ..... Address: .....

2: ..... Address: .....

IF LIMITED LIABILITY COMPANY - Address of Registered Office: .....

Date of Incorporation: ..... Incorporation No: .....

**FINANCIAL & PROFESSIONAL ADVISORS**

Shareholders Funds: ..... Paid Up: .....

Name of Accountant: ..... Solicitor: .....

Bank: ..... Branch: ..... Acct No: .....

Amount of Credit being applied for (including GST): .....

TRADE REFERENCES – Minimum of three required			
Company	Contact Name	Phone Number	Account open since

**General Description of Products and Services to be provided:** .....

I/We have read and agree to be bound by the terms and conditions of trade as printed overleaf or attached. I/We warrant to Flexible Door Technology 2014 Ltd that the above information is to the best of my/our knowledge, information and belief true and correct and that I/we am/are duly authorised to enter into this application and future contracts on behalf of the Customer. I/we also acknowledge that pursuant to the guarantee schedule accompanying the terms and conditions of trade that, where relevant, I/we am/are also signing this application form in my/our personal capacity.

Signed ..... Print Name ..... Designation .....

Dated this ..... day of ..... 20.....

**If the applicant is a company, then this application form must be signed by a company director of the company**

## Guarantee Schedule

1. In consideration for the Supplier agreeing to supply Products and Services to the Customer at the request of the Guarantor, the Guarantor unconditionally and irrevocably guarantees to the Supplier:
  - (a) the due and punctual payment by Customer of all amounts which the Customer is required to pay (whether present or future) to the Supplier pursuant to the terms of this Agreement (**Guaranteed Moneys**); and
  - (b) the due and proper performance by the Customer of all obligations (whether present or future but other than obligations to pay money) of the Customer to the Supplier pursuant to the terms of this Agreement (**Guaranteed Obligations**).
2. As between the Guarantor and the Supplier (but without affecting the obligations of the Customer) the Guarantor is liable under this Agreement as a principal obligor and not as a surety.
3. If the Customer fails to pay punctually any Guaranteed Moneys or fails to perform punctually and properly any of the Guaranteed Obligations, the Guarantor, immediately after receiving written notice from the Supplier to do so, shall pay the amount or perform the obligation (as the case may be) in terms of this Agreement.
4. The Supplier may require the Guarantor to execute and provide to the Supplier a separate deed recording the terms of the guarantee contained in this Guarantee Schedule. The form of such deed will be prepared by the Supplier's lawyer at the cost of the Supplier. The Guarantor must provide such duly executed deed to the Supplier within 5 Working Days of the deed being provided to the Guarantor.
5. Terms used in this Guarantee Schedule have the meanings given to those terms in the Terms and Conditions.

The Guarantor confirms that:

1. they are at least 18 years of age;
2. they have read and understood the Terms and Conditions; and
3. the Supplier has recommended they take independent advice and they have done so (or waived their right to do so).

### Signed by the Guarantor:

\_\_\_\_\_  
Signature of Guarantor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Guarantor

\_\_\_\_\_  
Address of Guarantor

In the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Occupation of Witness

\_\_\_\_\_  
Address of Witness

# Terms and Conditions

## 1. Application

- 1.1. These Terms and Conditions shall apply at all times to the supply of Products and Services by the Supplier to the Customer. The Customer shall be deemed to have confirmed its continued acceptance of these Terms and Conditions on making any order or giving any instructions to the Supplier for the supply of Products and Services.
- 1.2. No amendment to these Terms and Conditions is valid unless it is in writing and signed by the parties.
- 1.3. In the event of a conflict or inconsistency between these Terms and Conditions and any other contract, agreement or arrangement between the parties, these Terms and Conditions shall prevail.

## 2. Price

- 2.1. Subject to clause 2.3, the Price shall be that price described on the Quote (which shall be valid for 30 days from the date of the Quote) except that the Price shall be that price indicated on invoices issued by the Supplier from time to time if:
  - (a) The Customer does not sign and return the Purchase Order within 30 days from the date of the Quote;
  - (b) No Quote has been provided by the Supplier in respect to the Products and Services; or
  - (c) The Products and Services described in the Quote differ in any respect (and for any reason) from the Products and Services ultimately supplied by the Supplier.
- 2.2. GST and other taxes and duties relating to the supply of the Products and Services to the Customer are not included in the Price and shall be immediately due and payable by the Customer on demand by the Supplier in addition to the Price at the rate(s) prevailing at the time.
- 2.3. The Supplier may vary the Price if a variation to the Products and Services is requested by the Customer or if the Supplier determines that:
  - (a) Additional work or a variation to the Products and Services is necessary or desirable; or
  - (b) The costs of supplying the Products and Services have changed,

due to circumstances beyond the reasonable control of the Supplier including, but not limited to, Delays, the discovery of difficulties or complexities, poor weather conditions, difficulties or restrictions accessing the Site, building defects, unusual safety considerations, the delay or defects in work being carried out by the Customer or a third party or any inaccuracy, error or omission in any Customer Provided Information.

## 3. Payment

- 3.1. The Supplier may from time to time issue an invoice for Products and Services supplied or partly supplied by the Supplier to the Customer (which may include any Products ordered by the Supplier but not yet Delivered and any Products to be ordered by the Supplier within 30 days of the date of the invoice). Unless otherwise agreed in writing by the parties, the amount specified in each invoice shall be due and payable 20<sup>th</sup> of the month following the date of the invoice.
- 3.2. For the purpose of the CC Act, each invoice shall constitute a Payment Claim and the corresponding Payment Schedule must be provided by the Customer within 7 days of the date of the Payment Claim.
- 3.3. All payments must be paid in cleared funds immediately available for disbursement and without any deduction or withholding on account of any other amount, whether by way of set-off, counterclaim or otherwise, to such bank account as the party entitled to payment nominates in writing.

3.4. If a Deposit is detailed in the Quote, the Customer must pay the Deposit when placing the Order.

#### 4. **Default**

4.1. An event of default (***Event of Default***) occurs if a party (***Defaulting Party***):

- (a) Breaches this Agreement (or some other contract, agreement or arrangement between the parties) and such breach is not remedied within 10 Working Days of the Defaulting Party receiving notice of the breach from the other party (***Non-Defaulting Party***);
- (b) Is declared bankrupt, or insolvent or is otherwise wound up (whether voluntarily or by Court order), or has a liquidator or receiver appointed over all or any part of its assets, or enters into a composition with its creditors; or
- (c) Fails to make payment of any amount which is due and payable pursuant to this Agreement.

4.2. Without prejudice to any other rights or remedies available to the parties, if an Event of Default occurs:

- (a) The Non-Defaulting Party may terminate this Agreement;
- (b) If the Supplier is the Non-Defaulting Party, the Supplier may:
  - (i) Enter the Site or any other premises where any Products and Services are located and take possession of and remove the Products (without being responsible for any damage caused in doing so);
  - (ii) Recover possession of any Products in transit; and/or
  - (iii) Suspend the supply of any Products and Services to the Customer,

in which case the Supplier will not be liable to the Customer for any loss, costs or damages incurred by the Customer due to the Supplier exercising its rights under this clause and all costs incurred by the Supplier in exercising its rights under this clause shall be immediately due and payable by the Customer upon demand by the Supplier.

4.3. On termination of this Agreement for whatever reason:

- (a) Without limiting the rights and remedies available to the Supplier, the Supplier shall be entitled to issue an invoice for Products and Services supplied by the Supplier at the date of termination (which may include any Products ordered by the Supplier but not yet Delivered) and such invoice shall be payable by the Customer in accordance with clause 3.1;
- (b) Such termination shall be without prejudice to the rights and remedies of any party in respect of any antecedent breach of this Agreement by the other party; and
- (c) Clauses 6 to 8 and 11 to 14 (all inclusive), and such other provisions which are incidental to, and required in order to give effect to those clauses, shall remain in full force and effect.

4.4. If any amount falls overdue for payment by the Customer under this Agreement (or some other contract, agreement or arrangement between the parties), such late or nonpayment shall constitute a breach of this Agreement and the overdue amount shall (without prejudice to any other right or remedy of the parties) bear default interest from the date on which payment of that amount falls overdue until the date on which payment of the overdue amount is received in full. Default interest shall be calculated daily at the Default Interest Rate and shall be compounded monthly. Such default interest shall accrue before and after any judgment.

4.5. The Customer shall pay to the Supplier on demand all costs of and incidental to the enforcement or attempted enforcement of the Supplier's rights, remedies and powers under this Agreement (including costs on a solicitor and own client basis) in the event of a breach or threatened breach by the Customer.

## 5. **Delivery and Commissioning (Where applicable)**

- 5.1. Delivery of the Products shall be made in such manner as agreed in writing by the Supplier and the Customer, or if no such manner is agreed, in the manner determined by the Supplier.
- 5.2. Delivery of the Products shall be deemed to have occurred at the time the Products are delivered by the Supplier or the Supplier's nominated carrier to the Site or other delivery address nominated by the Customer (even if the Customer is not present at that address) except that, if the Customer fails or refuses, or indicates to the Supplier that it will fail or refuse to take delivery of any Products, delivery shall be deemed to have occurred at the time the Supplier was willing and able to dispatch the Products from its premises. Without prejudice to any other rights or remedies available to the Supplier, the Supplier may require the Customer to immediately on demand by the Supplier reimburse the Supplier for any storage expenses which the Supplier has incurred as a result of any failure or refusal, or any indication of a failure or refusal, by the Customer to take delivery.
- 5.3. The Customer shall ensure that at all times the Supplier has clear and free access to the Site for the purpose of supplying the Products and Services.
- 5.4. Unless otherwise agreed in writing by the Supplier, the Products must be commissioned by the Supplier at the time of installation. A variation will be sought if the products cannot be commissioned at the time of installation due to the site not being ready.

## 6. **Risk and Maintenance**

- 6.1. Risk of any loss, damage or deterioration of or to the Products shall pass to the Customer from the time the Products are Delivered (if the Supplier has agreed in writing to be responsible for the delivery of the Products) and from the time the Products are dispatched from the Supplier's premises (in all other circumstances).
- 6.2. From the time risk passes to the Customer until ownership and title in the Products passes to the Customer in accordance with clause 7.1, the Customer must insure the Products and provide reasonable evidence to the Supplier that such Products are insured on request by the Supplier.
- 6.3. From the date the Products are Delivered or the date the Customer (or any contractor or subcontractor to the Customer) takes possession of the Products (whichever is earlier), the Customer shall take responsibility for the care and maintenance of the Products and the Customer shall ensure that the Products are maintained regularly (maintenance inspections must be undertaken not less than every 6 months) by:
  - (a) The Supplier (in accordance with the terms of the Supplier's preventative maintenance agreement); or
  - (b) An authorized contractor approved in writing by the Supplier,and in accordance with any instructions, warranty or guarantee information provided by the Supplier or any installer, designer, supplier or subcontractor.
- 6.4. The Customer acknowledges that the Products could become a health and safety risk if they are not installed and commissioned by the Supplier or the Customer fails to ensure that the Products are maintained regularly and defects are promptly remedied. To the maximum extent permitted by law, the Customer will, immediately on demand by the Supplier, indemnify the Supplier (and its present and former officers, directors, members, employees, servants, subcontractors and agents) against any loss, liability or cost (including any consequential loss, liability or cost but excluding liability to pay a fine or an infringement fee under the HSWA) incurred as a direct or indirect result of:
  - (a) The Products being installed or commissioned by someone other than the Supplier or an agent of the Supplier;
  - (b) The Products not being maintained regularly (including, but not limited to, the failure of the Customer to comply with clause 6.3);

- (c) Defects in the Products not being promptly remedied; or
- (d) Any act or omission of the Customer (including its employees, contractors, invitees and visitors).

## **7. Ownership and Title**

- 7.1. Until the Customer has complied with all of its obligations and paid all amounts payable by the Customer to the Supplier pursuant to this Agreement or some other contract, agreement or arrangement between the parties (whether or not such obligations and payments of such amounts are due for performance or payment):
- (a) Ownership and title in the Products shall be retained by the Supplier and shall not pass to the Customer;
  - (b) The Customer shall be a bailee of the Products only and the Customer must promptly return the Products to the Supplier on request by the Supplier. To the extent reasonably practicable, the Customer shall store and identify the Products in such a way that the Products are clearly identified as the property of the Supplier;
  - (c) The Supplier may enter the Site or any other premises where any Products and Services are located to inspect the Products from time to time;
  - (d) The Customer declares that it holds the benefit of the Customer's insurance of the Products on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Products being lost, damaged or deteriorated. The production of these Terms and Conditions by the Supplier shall be sufficient evidence of the Supplier's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Supplier to make further enquiries;
  - (e) The Customer must not sell, dispose, or otherwise part with possession of the Products other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Products then the Customer declares that it holds the proceeds on trust for the Supplier and must immediately pay the proceeds to the Supplier on demand by the Supplier;
  - (f) The Customer must not convert, process or intermingle the Products but if the Customer does so then the Customer declares that it holds the resulting product on trust for the Supplier and must sell, dispose of or return the resulting product to the Supplier on demand by the Supplier; and
  - (g) The Client shall not charge or grant an encumbrance or other interest over or in the Products.

## **8. Personal Property Securities Act**

- 8.1. This Agreement constitutes a security agreement for the purposes of the PPSA and the Customer:
- (a) Agrees that the Supplier has a security interest (as that term is defined in the PPSA) in the Products and shall promptly do all things required by the Supplier to perfect its security interest;
  - (b) Agrees with the Supplier that sections 114(1)(a), 133 and 134 of the PPSA do not apply;
  - (c) Waives its rights under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA;
  - (d) Waives its right under section 148 of the PPSA to receive a verification statement associated with any financing statement registered by the Supplier; and
  - (e) Shall notify the Supplier at least 14 days before changing the Customer's name, trading name, address or contact person details.

## **9. Collection of Information**

- 9.1. The Customer irrevocably authorises:

- (a) Any person or corporation to provide the Supplier such information as the Supplier may require in response to any credit enquiry in relation to the Customer;
- (b) The Supplier to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing Products and Services to the Customer; and
- (c) The Supplier to disclose information about the Customer, whether collected by the Supplier from the Customer directly or obtained by the Supplier from any other source, to any third party for the purpose of providing or obtaining a credit reference, debt collection or notifying a breach by the Customer.

9.2. Where the Customer is an individual:

- (a) The authorities under clause 9.1 are authorities or consents for the purposes of the Privacy Act 1993; and
- (b) The Customer may request a copy of the information about the Customer held by the Supplier and require the Supplier to correct any incorrect information about the Customer held by the Supplier.

## 10. Customer Provided Information

10.1. The Customer warrants that all Customer Provided Information is true and correct. The Supplier is not required to verify the accuracy of any Customer Provided Information and the Supplier shall not be liable for any costs, loss or damage incurred or suffered by the Customer as a result of any inaccuracy, error or omission in any Customer Provided Information.

10.2. The Customer warrants that:

- (a) It is not aware of any information or circumstance which has not been disclosed in writing to the Supplier which might reasonably be expected to affect the Products and Services; and
- (b) The structure of the premises or equipment in or on which the Products are to be installed or erected is sound and will sustain the installation of the Products.

## 11. Intellectual Property

11.1. Unless otherwise agreed in writing by the parties, all Intellectual Property associated with the Products and Services shall be the sole property of the Supplier at all times and the Customer agrees not to contest or challenge the Supplier's ownership of, or other rights or interests in, such Intellectual Property.

11.2. The Customer must:

- (a) Take all reasonable steps to protect the Intellectual Property associated with the Products and Services and not cause or permit any damage to such Intellectual Property;
- (b) Promptly notify the Supplier of any infringement or threatened infringement of the Intellectual Property associated with the Products and Services; and
- (c) Co-operate with the Supplier to protect the Intellectual Property associated with the Products and Services against infringement or damage.

11.3. The Customer warrants that no Customer Provided Information will cause the Supplier to infringe any Intellectual Property of a third party and the Customer agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.

11.4. The Customer acknowledges that the covenants contained in this clause 11 are reasonable in the circumstances and are necessary to protect and maintain the proprietary and other legitimate business interests of the Supplier.

## 12. Confidentiality

12.1. Each party shall maintain as confidential all information (including, but not limited to, any financial or management information and any other material whether recorded in a tangible form or not) directly or indirectly concerning or relating to the business affairs of the other party and shall not at any time directly or indirectly:

- (a) Disclose or permit to be disclosed to any person; or
- (b) Use to the detriment of the other party,

any such information except:

- (i) To the extent required by law;
- (ii) As is already public knowledge without a breach of this clause by the party seeking to disclose or use such information;
- (iii) As authorised in writing by the other party; or
- (iv) In the case of a disclosure or use of information by the Supplier, as is reasonably necessary in order for the Supplier to supply the Products and Services.

## 13. Liability

13.1. The Supplier is not liable for any defect or breach of warranty and shall have no liability or obligation in relation to any defective Products and Services:

- (a) If, in the case of a defect in Products, the Customer fails to notify the Supplier in writing of the defect within 30 days of the date that the defective Products are Delivered;
- (b) If, in the case of a defect in Services, the Customer fails to notify the Supplier in writing of the defect within 30 days of the date that the Services are supplied;
- (c) If the Customer fails to provide reasonable access to the Supplier for the purpose of remedying the defect;
- (d) If the Supplier has not carried out the commissioning of the Products for any reason;
- (e) If the Products are used in any manner or for any purpose other than a manner and purpose advised in writing to the Supplier prior to the date of the Quote;
- (f) If the Customer has failed to carry out, or cause to be carried out, normal maintenance (including, but not limited to, the failure of the Customer to comply with clause 6.3);
- (g) If the Customer fails to carry out, or cause to be carried out, repairs as soon as practicable after the defect becomes apparent;
- (h) If any instructions or requirements given by the Supplier (or a related company) or any installer, designer, supplier or subcontractor from time to time are not complied with;
- (i) If the Products have not been properly installed (except where the Supplier has agreed in writing to be responsible for installation); or
- (j) To the extent that the defect or breach is caused directly or indirectly by any of the following that occurs during or after the Products and Services are Delivered and supplied:
  - (i) Fair wear and tear;



- (ii) A cause independent of human control;
- (iii) Any other product, equipment, structure or thing;
- (iv) Any act or omission, including accidental damage, by a person who is not the Supplier or a person for whom the Supplier is responsible in law; or
- (v) Any inaccuracy, error or omission in any Customer Provided Information.

13.2. The Supplier shall not be liable to the Customer for any:

- (a) Delay in supplying the Products and Services or non-performance of the obligations of the Supplier due directly or indirectly to circumstances beyond the control of the Supplier including, but not limited to, strikes, disputes with sub-contractors and/or workmen, accidents, civil commotion, epidemics, floods, bad weather, delays in transportation, shortage of labour and/or materials, difficulties with variations, acts of God, acts, demands or requirements of any government, Council or similar body, the failure of the Customer or other third party to complete any work or provide detailed instructions to the Supplier whenever the same may be required within a reasonable time (or within the time specifically allowed for the same by the Supplier) and any other delays as a result of any failure of the Customer insofar as the same are not reasonably attributable to the Supplier (**Delays**).
- (b) Costs, loss or damage incurred or suffered by the Customer as a result of the late, short or non-delivery of the Products and Services. Any time for delivery indicated by the Supplier shall be approximate only and shall not be of the essence of the contract between the parties.
- (c) if the Customer fails to notify the Supplier in writing of the defect within 30 days of the date that the defective Services or Products (as applicable) are supplied
- (d) to the extent that the defect or breach is caused directly or indirectly by any of the following that occurs during or after the Services or Products (as applicable) are supplied and supplied:
  - (i) a cause independent of human control;
  - (ii) any act or omission, including accidental damage, by a person who is not the Supplier or a person for whom the Supplier is responsible in law;
  - (iii) failure to carry out normal maintenance (other than maintenance which is the responsibility of the Supplier pursuant to this Agreement);
  - (iv) failure to carry out, or cause to be carried out, repairs as soon as practicable after the defect becomes apparent; or
- (a) (v) failure to comply with the instructions given by the Supplier or any installer, designer, supplier or subcontractor from time to time

13.3. To the fullest extent permitted by law, the liability of the Supplier arising from any cause (whether in contract, tort, any enactment, or otherwise), including the negligence of the Supplier or any of its employees, contractors or agents, is limited to the Price paid by the Customer in relation to the specific Products and Services giving rise to the claim against the Supplier.

13.4.

#### 14. **Consumer Guarantees Act and Fair Trading Act**

14.1. For the purposes of section 43 of the CG Act and section 5D of the FT Act, if the Products and Services are being supplied and acquired in trade (as that term is defined in section 2 of the CG Act), the parties agree that the provisions of the CG Act and sections 9, 12A, 13 and 14(1) of the FT Act have been contracted out of and do not apply to the supply of the Products and Services.

14.2. Nothing in these Terms and Conditions is intended to have the effect of contracting out of the provisions of the CG Act or the FT Act except to the extent permitted by law, and all provisions of these Terms and Conditions shall be read as modified to the extent necessary to give effect to that intention.

14.3. The parties agree that:

- (a) The parties have had an opportunity to consider, negotiate and obtain legal advice in respect to this Agreement; and
- (b) After taking into account all of the circumstances of the Agreement, it is fair and reasonable that the parties are bound by the provisions of this Agreement.

## 15. Trusts

15.1. If any person enters into this Agreement as trustee of a trust, then that person warrants that:

- (a) that person has the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any action of that person including entry into this Agreement; and
- (b) all of the persons who are trustees of the trust have approved entry into this Agreement

## 16. Preventative Maintenance Agreement Specific Terms (PMA Specific Terms)

- (a) If the customer and the supplier enter into a Preventative Maintenance Agreement, then these parties agree that:
- (b) **Contracting out:** Nothing in this Agreement is intended to have the effect of contracting out of the provisions of the Credit Contracts and Consumer Finance Act 2003, CGA or FTA except to the extent permitted by law, and the provisions of this Agreement shall be read as modified to the extent necessary to give effect to that intention.
- (c) **Application** These Terms and Conditions shall apply at all times to the supply of Services and Products by the Supplier to the Customer.
- (d) **Term:** Subject to clause 4. of this agreement, will commence on the start date specified in the Specific Terms of the PMA Specific Terms and continue until the later of:
  - (i) The expiry of the term specified in the Specific Terms of the PMA or
  - (ii) Such later date that either party gives notice to the other party terminating this agreement.

### (e) Price

- (i) GST and other taxes and duties relating to the supply of the Services and Products to the Customer are not included in the Price and shall be immediately due and payable by the Customer on demand by the Supplier in addition to the Price at the rate(s) prevailing at the time.
- (ii) The Supplier may vary the Price if a variation to the Services is requested by the Customer or if the Supplier determines that additional work or a variation to the Services is necessary or desirable due to circumstances beyond the reasonable control of the Supplier, the discovery of difficulties or complexities, poor weather conditions, difficulties or restrictions accessing the Site, building defects, onerous or unusual safety considerations or the delay or defects in work being carried out by the Customer or a third party.
- (iii) The Customer acknowledges that the Price does not include the supply of any Products (except for lubricants and cleaning materials that are required to carry out the Services) and the Customer will be required to pay, in addition to the Price, the price to the Supplier for any Products supplied by the Supplier to the Customer (such additional price shall be advised by the Supplier to the Customer at the time and must be paid in accordance with clause 5). The Supplier has pre-approval from the Customer to supply Products at or around the time of each service with an additional price up to that amount specified in the Specific Terms without being required to obtain any further approval from the Customer, and the Customer shall pay any such amount in accordance with clause 5

### (f) Access, Timing and Exclusivity

- (i) The Customer shall always ensure that the Supplier (and its employees, contractors and agents) has clear and free access to the Site for the purpose of supplying the Services and Products.
- (ii) Servicing of the Equipment will be carried out as near as practicable to the anniversary of the first service.
- (iii) To ensure consistency and quality of servicing on the Equipment, the Customer must ensure that no person (other than the Supplier) carries out servicing on the Equipment during the term of this Agreement without the prior written consent of the Supplier.

## 17. Miscellaneous

17.1. No waiver by any party of any breach or failure to enforce any provision of this Agreement shall in any way affect, limit or waive that party's right to subsequently enforce and compel strict compliance with this Agreement.

- 17.2. The Customer may not transfer or assign any of its liabilities or rights under this Agreement to any other party without the prior written consent of the Supplier (which may be withheld at the Supplier's sole discretion). The Supplier may assign its liabilities and rights under this Agreement to any other party at any time without being required to obtain the Customer's consent.
- 17.3. If any provision of this Agreement is or becomes invalid or unenforceable, that provision shall be deemed deleted from this Agreement and such invalidity or unenforceability shall not affect the other provisions of this Agreement, all of which shall remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provisions.
- 17.4. This Agreement is governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Agreement.
- 17.5. This Agreement records the entire arrangement between the Supplier and the Customer relating to the matters dealt with in this Agreement and supersedes all previous arrangements, whether written, oral or both, relating to such matters.
- 17.6. Any facsimile or electronic copy of this Agreement (including any facsimile or electronic copy of any document evidencing the execution of this Agreement by either party) may be relied upon by the other party as though it were an original copy.
- 17.7. Neither party shall be liable for any breach due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of that party.

18. **Definitions:** In this Agreement, unless the context requires otherwise:

**Agreement** means the Purchase Order, Guarantee Schedule (if a guarantee is required by the Supplier) and these Terms and Conditions;

**CC Act** means the Construction Contracts Act 2002;

**CG Act** means the Consumer Guarantees Act 1993;

**Customer** means the customer detailed in the Purchase Order;

**Customer Provided Information** means any information, specifications, instructions, measurements, quantities or designs provided by the Customer or any third party who has been engaged by the Customer;

**Default Interest Rate** means a rate of interest which is 3% per annum above the highest interest rate, as certified by the bank manager of the Supplier, which is payable (or which would be payable) by the Supplier for overdraft facilities during the period of default;

**Delays** has the meaning given to that term in clause 13.2(a);

**Delivered** means the point in time when delivery is deemed to have occurred in accordance with clause 5.2;

**Equipment** means the equipment described in the PMA Specific Terms

**FT Act** means the Fair Trading Act 1986;

**GST** means any goods and services tax or other similar tax which applies to the supply of the Products and Services (or any of the Products and Services) pursuant to the laws of New Zealand or any other country;

**Guarantor** means the guarantor detailed in the Guarantee Schedule;

**HSWA** means the Health and Safety at Work Act 2015 (or any other current health and safety legislation) including any associated regulations;

**Intellectual Property** means all intellectual property rights including, but not limited to, trade marks, design

rights, service marks, trade and business names, rights and designs, patents, copyright, patterns, database rights, moral rights and other rights, and know-how, and any other intellectual property rights of any nature whatsoever throughout the world whether registered or unregistered and including all applications and rights to apply for any of the same;

**Payment Claim** has the meaning given to that term in section 20 of the CC Act;

**Payment Schedule** has the meaning given to that term in section 21 of the CC Act;

**PPSA** means the Personal Property Securities Act 1999;

**Price** means the price of the Products and Services determined in accordance with clause 2.1;

**Products** means all products, parts and goods supplied by the Supplier to the Customer from time to time;

**Purchase Order** means the purchase order associated with the Products and Services;

**Services** means all services and advice provided by the Supplier to the Customer from time to time;

**Site** means each site where the Products and Services are to be supplied or installed;

**Supplier** means Flexible Door Technology 2014 Limited or its assignee;

**Quote** means the quote with the reference number detailed in the Purchase Order;

**Working Day** has the meaning given to that term in section 4 of the Property Law Act 2007.

19. **Interpretation:** In this Agreement, unless the context otherwise requires:

- (a) Where the context permits, the singular includes the plural and vice versa.
- (b) Where the Customer and/or Guarantor comprise two or more persons, an obligation to be performed by the Customer or Guarantor (as applicable) binds those persons jointly and severally.
- (c) References to any "party" mean a party to this Agreement and include the successors, executors, administrators and permitted assignees (as the case may be) of that party.
- (d) All references to legislation are (unless stated otherwise) references to New Zealand legislation and include all subordinate legislation, any reenactment of, or amendment to, that legislation and all legislation passed in substitution for that legislation.
- (e) A reference to the work "include" or "including" is to be interpreted without limitation.
- (f) References to a "person" include an individual firm, company, corporation or unincorporated body of person, any public, territorial or regional authority, any government and any agency of any government or of any such authority.