

TERMS AND CONDITIONS OF TRADE: AMERIBUILD LIMITED

1. **GENERAL**
- 1.1 All window, door and related goods and products ("**Goods**") supplied by Ameribuild Limited and its employees, contractors and agents ("**Ameribuild**") to the customer ("**Customer**") are sold subject to these terms and conditions of trade ("**Terms**"), which may be changed by Ameribuild in any manner and at any time. The Customer acknowledges that by accepting a quotation for the Goods, or purchasing any Goods from Ameribuild, the Customer has read, understood and accepted the Terms and agrees to be bound by the Terms.
- 1.2 The Customer may request from Ameribuild copies of any technical documents, details, drawings or other information in relation to the Goods where such documents, details, drawings or information are required by a local council or similar territorial authority. Ameribuild reserves the right to request evidence of the request from the local council or similar territorial authority at its sole discretion.
2. **ORDERS**
- 2.1 The Customer may order Goods from Ameribuild by any manner that Ameribuild accepts.
- 2.2 Orders for Goods are subject to Ameribuild's approval and acceptance. All orders are subject to availability of the Goods.
- 2.3 The Customer acknowledges that Ameribuild does not keep the Goods readily available in stock and specifically orders the Goods from a third party manufacturer on the Customer's instruction. Accordingly, the Customer cannot cancel an order for Goods.
- 2.4 No change to an order is permitted once the order has been placed. If the Customer requires any changes to the placed order, a new quotation and order is required.
- 2.5 Ameribuild is entitled to:
 - (a) Discontinue supply of any of the Goods;
 - (b) Add to or substitute Goods; and
 - (c) Make such alterations as Ameribuild thinks fit to the specifications, manufacture, design or packaging of the Goods.
3. **PRICE**
- 3.1 The price payable for the Goods ordered shall be the price specified in Ameribuild's quotation.
- 3.2 All prices for the Goods shall be in NZD and shall be inclusive of GST (unless otherwise stated). Ameribuild may correct any clerical errors or omissions in any quotation, correspondence or invoice.
- 3.3 Where a quotation is given by Ameribuild to the Customer:
 - (a) Subject to clause 3.4 of these Terms, the quotation will be valid for 30 days from the date of issue and thereafter will be deemed to be withdrawn; and
 - (b) No change to the quotation is permitted unless Ameribuild has agreed in writing to the change.
- 3.4 Ameribuild reserves the right to withdraw or vary any quotation at any time before the Customer accepts the quotation.
- 3.5 All quotations are limited to the items described in the quote. Quotations do not include installation costs or any non-specified materials or hardware that may be required for installation.
- 3.6 Any delivery costs in a quotation will only cover delivery to the address specified by the Customer. Once a quotation has been accepted, any delivery location changes will require a new quotation.
- 3.7 It is the sole responsibility of the Customer to ensure that before accepting a quotation:
 - (a) All colours, materials and any other specifications or options for the Goods contained in the quotation are correct and accurate;
 - (b) Except where Ameribuild is providing installation services in respect of the Goods, all measurements for the Goods contained in the quotation are correct and accurate;
 - (c) The Goods are able to be installed at the relevant property or premises, and the Goods are suitable for the wind zone in which the property or premises is located; and
 - (d) The Goods are in compliance with any local council or similar territorial authority requirements where the Goods are to be installed.
- 3.8 Ameribuild strongly recommends that the Customer seek professional advice from an architect, builder or other appropriately qualified person to confirm the matters contained in clause 3.7 before accepting a quotation.
- 3.9 Ameribuild will not be liable for any loss or damage arising directly or indirectly as a result of the Customer failing to comply with clauses 3.7 or 3.8.
4. **TERMS OF PAYMENT**
- 4.1 The Customer will pay for the Goods and Services, and all expenses and disbursements, at the times and in the manner set out in these Terms.
- 4.2 Unless Ameribuild otherwise agrees in writing, all amounts payable by the Customer shall be paid in the following manner:
 - (a) Supply of Goods only:
 - (i) 50% of the total amount payable for the Goods (including any delivery costs and any other fees and expenses payable to Ameribuild) is to be paid to Ameribuild immediately upon placing an order for the Goods with Ameribuild and Ameribuild issuing a GST invoice to the Customer; and
 - (ii) The remaining 50% of the total amount payable for the Goods (including any delivery costs and any other fees and expenses payable to Ameribuild), shall be paid to Ameribuild prior to shipment of the Goods and upon Ameribuild issuing a GST invoice to the Customer. For the purposes of these Terms, prior to shipment shall mean before the Goods are shipped to New Zealand by a third party manufacturer.
 - (b) Provision of Services and supply of Goods:
 - (i) 50% of the total amount payable for the Goods and Services (including any delivery costs and any other fees and expenses payable to Ameribuild) is to be paid to Ameribuild immediately upon placing an order for the Goods and Services with Ameribuild and Ameribuild issuing a GST invoice to the Customer;
 - (ii) 30% of the total amount payable for the Goods and Services on or before the start date of the Services as advised by Ameribuild and Ameribuild issuing a GST invoice to the Customer; and
 - (iii) The final 20% of the total amount payable on completion of the Services and upon Ameribuild issuing a GST invoice to the Customer.
- 4.3 In the event that Ameribuild agrees in writing to alternative payment terms other than those contained in clause 4.2, Ameribuild reserves the right at any time to require payment in full for the Goods prior to shipment of the Goods.
- 4.4 Time for payment for the Goods is of the essence. The Customer must make all payments to Ameribuild without delay, counter-claim, abatement, deduction or set off.
- 4.5 Without prejudice to Ameribuild's other rights and remedies, if any amounts due to Ameribuild are not paid by the due date for payment or the Customer breaches any other of these Terms, Ameribuild may:
 - (a) Where payment or part-payment is required prior to shipment of the Goods, retain the Goods until full payment for the Goods has been received;
 - (b) Suspend or terminate the provision of Services until full payment for the Services has been received;
 - (c) Suspend or terminate any trade account the Customer holds with Ameribuild (if any), at which time all amounts the Customer owes to Ameribuild will become due and payable;
 - (d) Charge the Customer interest, payable on demand, on any overdue amounts at the rate of 12% per annum, calculated daily from the due date for payment and compounding monthly until payment is received in full; and
 - (e) Recover from the Customer all costs incurred by Ameribuild arising from any breach of these Terms including, without limitation, legal fees, service costs, and costs of recovering unpaid amounts.
- 4.6 Receipt by Ameribuild of any form of payment other than cash or direct credit as agreed shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then Ameribuild's ownership or rights in respect of the Goods, and this agreement, shall continue.
5. **RISK AND DELIVERY**
- 5.1 Risk passes to the Customer on delivery of the Goods.
- 5.2 Delivery shall be deemed complete when either Ameribuild gives possession of the Goods directly to the Customer, or on completion of the unloading of the Goods at the delivery address specified by the Customer in the quotation. The Customer does not need to be present at the time of unloading for delivery to occur.
- 5.3 The Customer is responsible for insuring all Goods from the time of delivery.
- 5.4 Where Ameribuild has accepted an order, Ameribuild will use its reasonable endeavours to arrange supply to the Customer the Goods by the delivery date agreed in writing between Ameribuild and the Customer.
- 5.5 Ameribuild is not liable to the Customer for any failure to deliver, or for any delay in the delivery of, the Goods, including, without limitation, in the following circumstances:
 - (a) Where payment for Goods by the Customer has not been received by Ameribuild on the due date for payment (where payment prior to shipment is required); or
 - (b) Those circumstances described in clause 11 of these terms.
6. **OWNERSHIP RESERVED**
- 6.1 Ameribuild retains ownership of and the legal and equitable title in all Goods supplied or agreed to be supplied by Ameribuild until the Customer has paid the full price for the Goods and any delivery costs and all other amounts owing by the Customer to Ameribuild.
7. **PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)**
- 7.1 The Customer grants to Ameribuild a purchase money security interest in the Goods and their proceeds as security for any amounts due and owing by the Customer to Ameribuild. The Goods subject to the security interest will be the Goods described in any:
 - (a) Quotation or tender given by Ameribuild to the Customer;
 - (b) Contract between Ameribuild and the Customer;
 - (c) Purchase order or any other order for Goods from the Customer; or
 - (d) Dispatch order, invoice, statement or remittance advice given by Ameribuild to the Customer.
- 7.2 At Ameribuild's request, the Customer will promptly execute any documents and do anything else required by Ameribuild to ensure that any security interest created constitutes a perfected security interest over all Goods supplied by Ameribuild until all and any amounts owing by the Customer have been paid in full. This obligation extends to providing the information required by Ameribuild to enable Ameribuild to complete and register a financing statement or financing change statement. The Customer undertakes to give Ameribuild not less than 14 days' prior written notice of any proposed change to the Customer's name or details.
- 7.3 The Customer will not, without Ameribuild's prior written consent, allow any person (including the Customer) to file a financing statement over any Goods supplied by Ameribuild to the Customer.
- 7.4 If the Customer sells the Goods prior to payment to Ameribuild, the Customer undertakes to pay the proceeds derived from the sale into a separate bank account for the benefit and as trustee for Ameribuild so that those proceeds remain identifiable in connection with that sale of the Goods.
- 7.5 The Customer waives its right to receive a copy of a verification statement in respect of any financing statement or financing change statement registered by Ameribuild. Sections 114(1)(a), 133 and 134 of the PPSA will not apply and the Customer waives its rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA.
- 7.6 Any breach by the Customer of these Terms will constitute a default for the purposes of the PPSA. Without prejudice to Ameribuild's other rights and remedies, the Customer irrevocably grants to Ameribuild the right and licence to enter the Customer's premises, without notice and without any liability whatsoever to the Customer or any person or company claiming through the Customer, in order to repossess the Goods.
- 7.7 In this clause 7, the terms "security interest", "purchase money security interest", "perfect", "proceeds", "financing statement" and "financing change statement" have the meanings given to them in the PPSA.
8. **INSPECTION AND RETURNS POLICY**
- 8.1 The Customer will as soon as reasonably practicable after delivery, inspect the Goods and will, within three days of inspection, notify Ameribuild and the carrier of any alleged defect, shortage in quantity, damage or failure to comply with quotation or description.
- 8.2 The Customer shall afford Ameribuild an opportunity to inspect the Goods within a reasonable time of the Customer notifying Ameribuild and the carrier.
- 8.3 If the Customer does not notify Ameribuild and the carrier in writing within three days of inspecting the Goods in accordance with clause 8.1 above, then the Customer is deemed to have accepted the Goods.
- 8.4 Except to the extent required by law or as agreed by Ameribuild in writing, Ameribuild will not accept returns of Goods where Ameribuild has arranged for the Goods to be manufactured and supplied to a Customer's specifications.
- 8.5 Where Ameribuild has agreed in writing that the Customer is entitled to reject the Goods, Ameribuild will, at Ameribuild's election, repair the Goods, replace the Goods with goods of a similar type, or refund the price the Customer has paid for the Goods (excluding delivery costs) either, at Ameribuild's election, in the form of account credit or in cash. Ameribuild's liability is limited to either, at Ameribuild's election, the repair of the Goods, the replacement of the Goods or the price the Customer has paid for the Goods (excluding delivery costs) either, at Ameribuild's election, in the form of account credit or in cash.
- 8.6 Returns of Goods will only be accepted by Ameribuild if:
 - (a) The Customer has complied with the provisions of clause 8.1 and Ameribuild has agreed in writing to the return of the Goods;
 - (b) The Goods are returned at the Customer's cost within 14 days of the inspection of the Goods;
 - (c) The Goods are returned with the original invoice/packing slip (if any); and
 - (d) The Goods are returned in the condition in which they were delivered and in original packaging, complete with detachable accessories and instruction manuals (if any).
- 8.7 Returns of Goods pursuant to this clause 8 will be to a location within New Zealand, which shall be specified by Ameribuild to the Customer in writing at the time of the relevant return.
9. **EXCLUSIONS OF LIABILITY**
- 9.1 Where the Goods have the benefit of a warranty from a third party manufacturer, Ameribuild will, to the extent permitted by the third party manufacturer, pass the benefit of the warranty to the Customer but Ameribuild will not itself be liable under such warranty. Manufacturer warranty information relating to the Goods is available on Ameribuild's website.
- 9.2 Selected Goods sold by Ameribuild will have the benefit of a warranty provided by Ameribuild. Ameribuild's warranty information relating to the Goods is available on Ameribuild's website.
- 9.3 Where the Customer is in trade and acquires the Goods in trade, then Ameribuild and the Customer agree to contract out of the provisions of the Consumer Guarantees Act 1993 and accordingly the provisions of the Consumer Guarantees Act 1993 do not apply.
- 9.4 Except to the extent permitted by law, nothing in these Terms is intended to have the effect of contracting out of provisions of the Consumer Guarantees Act 1993 in respect of a Customer that is a consumer (as that term is defined in the Consumer Guarantees Act 1993) where that Customer is not in trade and these Terms are amended to the extent necessary to give effect to that intention. In these Terms, "in trade" has the meaning given to it in the Consumer Guarantees Act 1993.
- 9.5 Except as provided in the Consumer Guarantees Act 1993 (if applicable), or by any third party manufacturer's written warranty (if any), or by any written warranty provided by Ameribuild (if any), Ameribuild makes no representation, condition, warranty or promise, express or implied, in respect of Goods supplied to the Customer.

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- 9.6 Except as provided in the Consumer Guarantees Act 1993 (if applicable) and in clause 8 of these Terms, Ameribuild shall not be liable for any loss of any kind whatsoever suffered by the Customer arising under or in connection with these Terms, or by reason of any breach of any of Ameribuild's obligations regarding the supply of Goods or in tort (including negligence) or otherwise including, without limitation, for loss of production, loss of profit, loss of any contract, failure to realise expected profits or savings or for any indirect, special or consequential loss or damage that may be suffered by the Customer, nor shall Ameribuild be liable for any loss, damage or injury caused to the Customer's employees, agents, contractors, customers or other persons and the Customer will indemnify Ameribuild against any claim by such persons.
- 9.7 Where the Customer purchases Goods for a particular purpose, it is the Customer's sole responsibility to ensure that the Goods will be suitable for the Customer's purpose, and Ameribuild shall have no liability whatsoever in the event that the Goods are not fit for the Customer's purpose, notwithstanding any statements made to the Customer by Ameribuild or its officers or employees. The Customer and Ameribuild agree that section 137 of the Contract and Commercial Law Act 2017 does not apply.
- 10. CUSTOMER'S LIABILITY AND INDEMNITY**
- 10.1 The Customer warrants that it has the full authority to order the Goods and the Customer shall be bound by all such orders. Where the Customer has ordered Goods, the Customer indemnifies Ameribuild against any claim by any third party following delivery of the Goods.
- 10.2 The Customer indemnifies Ameribuild from and against any and all damages, claims, losses, demands, liabilities (including vicarious liability), injuries, suits, actions, judgments, costs and expenses of any kind whatsoever (including, without limitation, legal fees, service costs and costs of recovering unpaid amounts) arising out of or in any way connected with the Customer's breach of these Terms.
- 11. FORCE MAJEURE**
- 11.1 Ameribuild shall not be liable for any breach of these Terms in the event of any unforeseen circumstances, being any failure, delay or breach caused by strike, industrial dispute or disturbances, natural disaster, shortage or unavailability of stocks of Goods or raw materials, failure of any of Ameribuild's suppliers to supply Goods, delay by any of Ameribuild's suppliers in supplying Goods, delay in transit, import or export restrictions, legislative, governmental or other prohibition or restrictions, fire, flood, disease, hostilities, commotions or any other causes whatsoever (whether similar to the foregoing or not) which is beyond Ameribuild's reasonable control ("**Force Majeure Event**").
- 11.2 If Ameribuild considers that a Force Majeure Event has occurred and is unable to perform its obligations as a result of a Force Majeure Event, it will promptly notify the Customer of that fact and may suspend its obligations under the Terms. Any suspension of performance by Ameribuild under these Terms will be limited to the period during which the relevant event continues.
- 11.3 Where Ameribuild's obligations have been suspended pursuant to clause 11.2 for a period of 30 consecutive days or more, Ameribuild may terminate these Terms by giving written notice to the Customer.
- 11.4 In event of termination pursuant to clause 11.3, Ameribuild will refund the price that the Customer has paid to Ameribuild for the Goods as at the date of termination, less any amounts as may be required to cover Ameribuild's reasonable costs and expenses.
- 12. PRIVACY ACT**
- 12.1 If the Customer or the Guarantor are natural persons, the Customer or the Guarantor (as applicable) (each an "**Individual**") irrevocably authorise:
- (a) Ameribuild to collect, retain and use such information about that Individual as Ameribuild may necessarily require for the purposes of:
- (i) Carrying out credit checks, (including any overdue fines balance information held by the Ministry of Justice) assessing the Customer's credit worthiness or responding to any credit enquiry about the Customer;
 - (ii) Processing, creating and otherwise administering an account, including any application;
 - (iii) Supplying Goods to the Customer;
 - (iv) Dealing with requests, enquiries or complaints and other customer care related activities and all other general administrative and business purposes;
 - (v) Marketing any products or services to the Customer and carrying out market and product analysis and research;
 - (vi) Enforcing Ameribuild's rights under these terms and conditions;
 - (vii) Carrying out any activity in connection with any legal, governmental or regulatory requirements that Ameribuild is subject to or in connection with legal proceedings, crime or fraud prevention, detection or prosecution; and
 - (viii) Any other purpose as consented to by that Individual in writing from time to time, (collectively referred to as the "**Purposes**").
- (b) Any person or entity to provide Ameribuild such information as Ameribuild may necessarily require about that Individual for the Purposes;
- (c) Ameribuild to disclose information about that Individual as necessarily required for the Purposes, or as otherwise authorised by that Individual, including to:
- (i) Third parties who provide products or services related to the Goods that Ameribuild provides, such as dealers, suppliers and third party installers;
 - (ii) Credit reference agencies;
 - (iii) Third parties to whom Ameribuild may be required to disclose information by reason of legal, governmental or regulatory authority or where Ameribuild believes in good faith that disclosure is necessary to protect or enforce Ameribuild's rights or the rights, property or safety of others;
 - (iv) Any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer;
 - (v) Trusted third parties to provide services or perform functions on Ameribuild's behalf; and
 - (vi) To any other third party where that Individual has given its express consent for Ameribuild to do so.
- 12.2 In addition to clause 12.1, Ameribuild shall be entitled to collect, use and disclose information about an Individual in accordance with any applicable New Zealand privacy legislation.
- 12.3 An Individual is entitled to request access to and correction of any such information held about them by Ameribuild.
- 12.4 Ameribuild will maintain reasonable security safeguards to protect an Individual's information and take reasonable steps to ensure that Individual's information is not disclosed to an unauthorised person or entity.
- 12.5 Ameribuild will retain an Individual's information for so long as is reasonably necessary to fulfil the Purposes for which it was collected, including for the purposes of satisfying any legal, regulatory, tax or accounting requirements.
- 12.6 If an Individual fails to provide any information that is reasonably requested by Ameribuild, that Individual acknowledges that Ameribuild may not be able to set up an account for the Customer, or otherwise provide the Goods to the Customer.
- 12.7 Any information about an Individual that is collected by Ameribuild will be held by Ameribuild. Ameribuild's address is 57/7 Tunnel Grove, Lower Hutt 5010.
- 13. INTELLECTUAL PROPERTY**
- 13.1 Any sale of the Goods will not operate so as to transfer or vest in the Customer any trade mark, patent, copyright or other intellectual property. All intellectual property rights in respect of the Goods remain Ameribuild's or the applicable manufacturer's property and the Customer may not use, reverse engineer, interfere with or alter the intellectual property in any way.
- 13.2 All intellectual property on Ameribuild's website is owned by Ameribuild and/or its content suppliers. Unless agreed by Ameribuild in writing, no part of Ameribuild's website may be distributed or copied for any commercial purpose, nor incorporated in any other work or publication whether in hard copy, electronic or any other form.
- 13.3 For the purposes of this clause 13 "intellectual property" includes the design of, and all content appearing on a website, and any trade marks (including logos), designs, images, patents, drawings or specifications, marketing materials, technical documentation, domain names, copyright, rights in computer software, databases and lists, confidential information, know-how and trade secrets and manuals, whether registered or unregistered.
- 14. TERMINATION**
- 14.1 Either party may terminate these Terms with immediate effect if the other party:
- (a) Is in material breach of these Terms and does not, or is unable to, remedy the breach within 10 working days of receiving notice from the other party of the relevant breach; or
 - (b) Becomes insolvent, fails to pay its debts as they fall due, ceases to carry on business, a resolution is passed or proceedings have commenced to have the party wound up, or a receiver, statutory manager, liquidator or any other administrator is appointed in respect of that party or any of its assets.
- 14.2 In the event of termination of these Terms pursuant to clause 14.1 by Ameribuild, the Customer shall immediately pay Ameribuild all amounts due and owing by the Customer to Ameribuild.
- 14.3 Ameribuild may terminate these Terms at any time by written notice to the Customer. In the event that Ameribuild terminates pursuant to this clause and the Goods have not been supplied to the Customer, Ameribuild will refund the price that the Customer has paid to Ameribuild for the Goods as at the date of termination, less any amounts as may be required to cover Ameribuild's reasonable costs and expenses.
- 14.4 Termination shall not prejudice or affect the accrued rights or claims of either party.
- 15. DISPUTE RESOLUTION**
- 15.1 If any dispute arises in connection with the Goods or these Terms, directors or other senior representatives of the parties or individuals with authority to settle the dispute will, within 5 working days of a written request from one party to the other, meet in a good faith effort to resolve the dispute. If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation. To initiate the mediation a party must give notice in writing ("**ADR notice**") to the other party to the dispute requesting mediation. The mediation will start not later than 20 working days after the date of the ADR notice. No party may commence any court proceedings in relation to any dispute arising out of these Terms until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation. Nothing in this clause will prevent a party from obtaining urgent interlocutory relief in respect of a breach or suspected breach of these Terms.
- 16. GENERAL**
- 16.1 These Terms shall be governed by and construed in accordance with the laws of New Zealand and the parties irrevocably submit to the exclusive jurisdiction of courts of New Zealand.
- 16.2 The Customer agrees to, at all times, comply fully with all relevant laws, ordinances, rules, regulations and orders of all relevant regulatory bodies in the country it resides in.
- 16.3 Ameribuild reserves the right to amend these Terms in any manner and at any time. Ameribuild will notify the Customer of any amendments to these Terms either in writing or by uploading the amended Terms to Ameribuild's website. By continuing to use Ameribuild's website or order Goods from Ameribuild after any such amendment, the Customer is deemed to have agreed to the amended Terms.
- 16.4 These Terms set out the entire agreement and understanding between the parties and merges all prior discussions between them. No party will be bound by any conditions, warranties or representations except as expressly provided in these Terms.
- 16.5 Any waiver, delay or failure to execute any rights by Ameribuild shall not be deemed a waiver of that right or any further or other right of Ameribuild. No waiver is effective unless it is in writing.
- 16.6 If any provision of these Terms is declared or adjudged to be invalid, void or unenforceable, such provision shall be severable and deemed deleted from these Terms and shall not affect the validity, existence, legality or enforceability of the remaining provisions.
- 16.7 Notices in writing must be addressed to the other party and delivered by hand or by receipted delivery system.
- 16.8 The Customer must not assign its rights and obligations under these Terms without Ameribuild's prior written consent. Ameribuild may assign its rights and obligations under these Terms at any time without the prior written consent of the Customer.
- 17. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES**
- 17.1 If the Customer is a company or trust, then in consideration of Ameribuild agreeing to supply Goods and (if applicable) grant credit to the Customer, the director(s) or trustee(s) entering into these Terms on behalf of the company or trust (each a "**Guarantor**"), also enter into these Terms in their personal capacity and jointly and severally personally undertake as principal debtors to Ameribuild the payment of any and all money now or in the future owed by the Customer to Ameribuild and indemnify Ameribuild against non-payment by the Customer. Any personal liability of a signatory shall not exclude the Customer in any way from the liabilities and obligations contained in these Terms.