

## DESIGNER GATES TERMS AND CONDITIONS OF TRADE

### 1. DEFINITIONS

**1.1** "Seller" means Designer Gates Ltd. **1.2** "Customer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one customer is a reference to each customer jointly and severally. **1.3** "Goods and/or Services" shall mean all Goods and/or Services supplied by the seller to the customer. **1.4** "In writing" shall mean in email, or in written/printed hard copy. **1.5** "Works" means all work executed or to be executed by the seller. **1.6** "Site" means the land, buildings or other places made available by the customer to the seller for the purpose of carrying out the Works.

### 2. QUOTATION

**2.1** Quotations are based on the information provided by the Customer and/or information obtained on a site visit by the seller. Any changes to the specifications or additional items may result in a revised quotation. **2.2** Upon accepting the quote, the Customer acknowledges that although a timeframe may be given for completion, unforeseen circumstances may arise, leading to potential extensions.

### 3. ACCEPTANCE

**3.1** Acceptance is defined as any written communication from the customer to the seller stating they accept the quote. Examples of this, but not limited to, are "go ahead please", "can we get this started", "I'd like to accept" and "please proceed" or by clicking the accept button on the quote. **3.2** By accepting a quote, you are deemed to have accepted the Terms and Conditions. **3.3** Quotes are valid for 14 days from the date written on the quote. **3.4** Upon acceptance of the quotation, the Customer agrees to pay the deposit when requested by Designer Gates. **3.5** Any advice, recommendation, information, assistance or service provided by the Seller in relation to Goods or Services supplied is given in good faith, is based on the Sellers own knowledge and experience and shall be accepted without liability on the part of the Seller and it shall be the responsibility of the customer to confirm the accuracy and reliability of the same in light of the use to which the customer makes or intends to make of the Goods or Services. **3.6** The customer shall pay a deposit of 50% of the Quoted Sum on the acceptance of this Agreement. This secures your place in our workflow. Until this payment is made, no work or purchasing of materials will occur. Delay in payment of the deposit will delay the commencement and completion of the Works.

### 4. CONTRACT SUM AND PAYMENT

**4.1** The customer shall pay to the seller the Invoiced Sum in the manner, at the rate and at the times provided by the seller. **4.2** For Works that continue over more than one month the seller will invoice the customer mid month and end of month and upon completion (or as determined by the seller at its sole discretion) for amounts due under clause 5.1. **4.3** The customer shall pay the seller the amounts due under each invoice within 3 Business Days with day 1 counted as the day the invoice is issued. **4.4** The customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the customer by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute. Workmanship or warranty queries will be discussed and the processes in Section 11 will be followed only after the balance of invoice has been paid. **4.5** Accepted payment methods are; cash, on-line banking, eftpos or credit card (a surcharge of 1.5% per transaction applies and must be completed in person at our office.) **4.6** The Seller reserves the right to change the Price: (a) if a variation to the Goods/Services which are to be supplied is requested (including any applicable designs, plans and/or specifications), which must be made in writing prior to order placement of the Goods. Any variation once the order for the Goods has been processed shall not be accepted or shall be quoted and invoiced separately above and beyond any works already in action (at the sellers sole discretion); or (b) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, safety considerations, pre-existing structural integrity of the supporting framework to the installation site, prerequisite work by any third party not being completed or code compliant, which are only discovered on commencement of the Services. **4.7** Supply only goods collected from the seller require payment to clear into the sellers bank account before release. Payment receipt is not sufficient. **4.8** Trade accounts are payable on the 20th of the month following invoice. Trade accounts are only granted at the discretion of the seller and may be discontinued at any time at the sellers discretion. The due date will be noted at the top of all invoices; a monthly statement is not required to be sent. **4.9** Where any money owing under this Agreement is not paid by the due date, the customer shall pay: (a) Default interest on the amount outstanding calculated at 5% per calendar month or part thereof, and shall accrue until final payment is made. (b) All expenses, including collection costs from obtaining the services of a debt collection company and/or legal fees in relation to any overdue amount will be added to your account and you as the customer are liable for its payment. (c) Collection costs will be calculated with the default interest included. **4.10** If the seller for the purposes of the Works arranges or procures materials from a subseller or any other third party and the terms of the arrangements between the seller and the subseller or third party require payment by the seller, then the seller shall be entitled to request payment forthwith by the customer regardless of whether the work or materials are yet located on the Site. **4.11** All prices referred to in this Agreement are stated inclusive of GST. GST shall be payable at the then current rate applicable at the time of supply under the GST Act on each invoice and at the same time as the invoiced amount is due.

### 5. RISK

**5.1** If the customer requests the Seller to leave Goods outside the Seller's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the customer's sole risk. **5.2** The customer acknowledges and agrees that whilst the Seller shall take all reasonable care during the performance of the Services, the customer agrees that the Seller shall not be held liable for any loss, damages, or costs howsoever resulting from drilling or fixing the Goods into any masonry or rendered surfaces during the installation process. **5.3** Designer Gates shall exercise reasonable care and skill in performing installation services but cannot otherwise accept responsibility should damage occur, without limitation, to the Customer's property, site, footpaths, driveways, paved or grass areas unless due to the negligence of Seller.

### 6. CUSTOMER'S RESPONSIBILITIES

**6.1** The customer acknowledges that:

- (a) The customer is the owner of the Site or is authorised by the owner of the Site to carry out the Works;
- (b) The customer has all necessary third party (such as mortgagees or tenants) consents for the completion of the Works;
- (c) The customer shall ensure the Seller has clear and free access to the property at all times to enable Delivery/Installation;
- (d) Fully disclose any information that may affect the Seller's installation;
- (e) (Except where agreed otherwise) the Site is or will be level and cleared of all debris prior to the Commencement Date;
- (f) The colour of the Goods are limited to those colours available from the Seller's suppliers at the time of order placement
- (g) And that the choice of colour is entirely the responsibility of the customer and as such commencement of manufacture of the Goods will not proceed without written confirmation of colour from the customer from the Seller's current available range.
- (h) Advise all amenity locations (including without limitation, water, gas, electricity, telephone or any other underground amenity) to the Seller prior to Delivery;
- (i) Remove from the work area any furniture, personal effects or other property likely to impede the Seller in order to minimise the risk of injury or damage.
- (j) Acknowledges that Goods (including but not limited to paint, timber and concrete) supplied may exhibit variations in shade, colour, texture, surface, finish, markings, and may contain natural fissures, occlusions, lines, indentations and may fade or change colour over time. Whilst the Seller will make every effort to match sales samples to the finished Goods, the Seller accepts no liability whatsoever where such samples differ to the finished Goods supplied;
- (k) And in the case of timber; may expand, contract or distort as a result of exposure to heat, cold or weather. The Seller will accept no responsibility for gaps that may appear during prolonged dry periods or marks or stains if exposed to certain substances.
- (l) The structure of the premises or equipment in or upon which the Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and the Seller shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.

**6.2** The customer acknowledges that if:

- (a) The seller is not given access or the Site is not level or clear of debris by the Commencement Date; and/or
- (b) Any necessary resource or building consents for the Works are not granted by the Commencement Date; and/or
- (c) Other sellers either interfere with the seller's performance under this Agreement or cause alterations or damage to the Works,

then the seller shall be entitled to a reasonable extension of time to complete the Works and/or to charge additional costs, having regard to the loss of time, interference or other costs or damage suffered.

**6.3** The customer shall be responsible for obtaining any necessary resource or building consents for the Works. **6.4** The seller may erect signage at appropriate locations on the Site advertising its involvement in the carrying out of the Works. Such signage must be of a professional standard and the size and in a location approved by the customer, such approval not to be unreasonably withheld. **6.5** The customer must inspect all Goods on delivery (or the Services on completion) and must within five (5) days of delivery (time being of the essence) notify the Seller in writing of any evident defect/damage, or failure to comply with the description on the quote. The customer must notify any other alleged defect in the Goods/Services as soon as reasonably possible after any such defect becomes evident. Upon such notification the customer must allow the Seller to first inspect the Goods or to review the Services provided. If the customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. **6.6** If the customer finds fault with the workmanship or finds defect/damage, the customer must allow the seller to be first to inspect the Works or to review the Services provided. In the event where the customer fails to comply with the right to the Seller to have first refusal to inspect any alleged claim and engages another third party to rectify, this will void any warranty previously offered. **6.7** The Customer understands and accepts that Designer Gates is not liable for any injuries, damages, or accidents resulting from misuse, neglect, or failure to follow safety guidelines outlined in the user manual and this disclaimer.

### 7. UNFORESEEN DIFFICULTIES

**7.1** Where the seller encounters unforeseen difficulties in respect of the Site, including such matters as hidden rock, underground services, fill or toxic materials (which could not previously be detected by the seller by a visual inspection of the Site), the seller shall immediately consult the customer and:

- (a) The parties may negotiate to determine the extent of the additional work and/or time required, and any resulting variation to the Agreement; and
- (b) Until agreement is reached, either party may immediately terminate the Agreement in accordance with clause 9.4.
- (c) Where a utility is not indicated or is not substantially in the position indicated by the customer, any extra work in physically locating its position or altering or protecting or offsetting or reinstating it shall be paid for by the customer.

**7.2** The seller shall take no responsibility for the health of plants or trees in the vicinity of Works completed. Where possible any issues with plants being near Works completed will be discussed with the customer and all care will be taken to protect any in the area but no guarantee for them will be made.

### 8. SITE SECURITY AND INSURANCE

**8.1** The seller shall maintain public liability insurance for an appropriate sum. **8.2** The customer shall be responsible for security of the Site and all completed Works at all times outside the hours during which the seller is present on the Site. If the customer requires the seller to provide security, stock and/or pest proof fencing, the seller shall pass on the cost of this to the customer. **8.3** The seller's liability under this Agreement shall not exceed the Contract Sum. The seller shall not be liable for any indirect or consequential damage or loss.

## 9. TERMINATION

**9.1** An event of default under these terms occurs if:

- The customer fails to pay the seller any amounts owing by the due date for payment;
- Either party breaches its obligations under these terms and, where that breach is capable of remedy, fail to remedy it within 5 Business Days of becoming aware of it; or
- Either party becomes insolvent, bankrupt or unable to pay its debts as they fall due,
- If the seller deems that the working relationship between the customer and seller to have become broken beyond repair, the seller may terminate this agreement by giving written notice to the customer. The seller shall not be liable for any loss or damage arising from such cancellation and may seek reimbursement under clause 9.4 of this agreement.

**9.2** If the seller commits an event of default, the customer may terminate the Agreement without prejudice to either party's rights and remedies under this Agreement.

**9.3** If the customer commits an event of default, the seller may, without prejudice to any other rights the seller may have, take any or all of the following actions:

- suspend the carrying out of Works until further notice;
- require the customer to pay the costs of remedying any breach of this Agreement;
- terminate this Agreement without prejudice to either party's rights and remedies under this Agreement; and/or
- require the customer to pay all costs and expenses incurred as a consequence of termination or suspension.

**9.4** If this Agreement is terminated prior to its full completion, including without limitation under clauses 9.1(b) or 3 then, in addition to any payments due and owing by the customer to the seller in terms of those provisions, the customer shall also reimburse the seller for:

- any out of pocket expenses or advance payments made by the seller for goods or services to third parties which are in respect of the Works carried out or to be carried out; and
- any of the seller's own costs for planning, designing or administering the Works which have not been paid and which relate to either works already carried out or yet to be carried out.

## 10. DELIVERY OF GOODS AND SERVICES

**10.1** Delivery shall be deemed to be completed upon receipt of the goods and services by the customer or upon leaving the goods for the customer. **10.2** The time agreed for the completion of Services or the delivery of Goods shall not be an essential term of this contract.

## 11. SUPPLY ONLY WORK

**11.1** If the Customer requests the seller to solely fabricate and supply items, with the intention of self-installation, it is crucial to note that once the goods are handed over to the customer, Designer Gates bears no responsibility for any damages or issues arising after the goods are handed to the customer. The customer assumes full responsibility for the proper installation and usage of the supplied goods upon receipt.

## 12. WARRANTY

**12.1** The Seller warrants that if any defect in the seller's workmanship becomes apparent and is reported to the Seller within twelve (12) months of the date of Installation then the seller will either (at the seller's sole discretion) remedy or replace the workmanship. **12.2** Any warranty claims in relation to the motor of an automatic gate, will lead to the customer notifying the seller in writing within 24 calendar months from installation. Beyond this period, will incur call out costs and any repairs, parts or costs in relation to the call out to be charged to the customer. Batteries and remotes carry 6 months warranty.

**12.3** The conditions applicable to the warranty given by clause 13.1 and 13.2 are:

- The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
  - Failure on the part of the customer to properly maintain any Goods, follow any instructions or guidelines detailed in these Terms and Conditions or in product manuals; or
  - Any use of any Goods otherwise than for any application specified on a quote or order form or for what it was designed to do; or
  - The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
  - Fair wear and tear, or
  - Any accident or act of God; natural or manmade disasters such as fire, flood, wind, earthquake, or lightning etc
  - Damage incurred in shipping or handling - once dropped at or picked up by any depot, freight company, courier etc, all responsibility is transferred to the customer and/or their chosen freight/courier company.
  - Removal of or damage caused by working around structures/greenery etc already in place.
  - Damage due to causes beyond the control of Designer Gates such as excessive voltage or short circuiting, mechanical shock or water damage.
  - Damage caused by unauthorized attachment, alterations, modifications, or foreign objects or peripherals.
  - Damage by moisture, insects or animals or objects such as vehicles etc.
  - Defects caused by failure to provide a suitable installation environment for the products.
  - Damage from improper maintenance, abuse, mishandling, improper application of the products or animal urination.
- The warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Seller's consent.
- In respect of all claims the seller shall not be liable to compensate the customer for any delay in either replacing or remedying the workmanship or in properly assessing the customer's claim.

**12.4** For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The seller shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods. **12.5** Whilst we do our best to provide quality timber, it does warp, move, split and change colour and the seller takes no responsibility for this. **12.6** Powder Coating, if paid for by the customer, forms no part of the protective layer and is purely decorative. Any visible 'black' steel on installation is to be reported to the seller as per section 6.5, where the seller will provide touch ups. **We strongly advise customers to provide regular maintenance to their steel by purchasing zinc spray/spray paint from their local hardware store and spray any chips or blemishes to ensure that they are protected from the elements.** Alternatively, official Dulux touch up cans can be purchased from Designer Gates. **12.7** Powder Coating surface defects and blemishes which are readily apparent to the naked eye at a distance of up to 3 metres in indirect sunlight are considered normal and acceptable. **12.8** It is recommended by the motor manufacturer to have all automation parts maintained and serviced yearly. Lack of yearly servicing by an authorised installer like Designer Gates will void the warranty. Please request pricing from the team for your service. **12.9** Out of warranty repairs may be completed by the seller, where applicable, but will incur charges for labour and materials. **12.10** Where there are wireless signals, these may not reach the receiver under all circumstances which could include metal objects placed on or near the radio path, nearby electric fences, deliberate jamming or other inadvertent radio signal interference. This may cause disturbances or signal failures. All possible interferences must be kept out of the path of the signal to maintain a high signal and thus reliable usability.

## 13. CARE AND MAINTENANCE

**13.1** As part of the Designer Gates Warranty agreement, the Customer agrees to perform periodic inspections and maintenance tasks on their gate(s) and/or automation as follows:

- Regularly inspect your gate and/or automation and accessories for any signs of damage or looseness, such as cracks, bent components, or misaligned parts.
- Regularly lubricate all moving parts of your gate, such as hinges and latches. Be sure to use a high-quality lubricant.
- If the Customer has automation installed on their gate/s, we highly recommend you regularly check all electronic parts associated with the gate as insects can be a huge problem in Canterbury and can obstruct safety beams, destroy keypads and intercoms.
- Schedule a regular service of your gate by a professional gate installer (see service requirements below in 12.3).

**13.2** The Customer acknowledges their responsibility for regular maintenance checks by a qualified technician to ensure the proper functioning of the gate system and for safety reasons. And agrees that any issues must be addressed promptly.

## 14. AUTOMATION

**14.1** These Terms and Conditions are not exhaustive. It is the Customer's responsibility to ensure they have read the manufacturer's warranty and user manual thoroughly and comply with any rules or regulations provided in the documentation. **14.2** The Customer commits to exercising caution in adverse weather conditions and conducting additional maintenance checks following severe weather events, particularly instances of strong winds or earthquake tremors. **14.3** The Customer recognises the significance of supervising children and pets in the vicinity of the gate. It is advisable to contemplate additional safety precautions.

**14.4** The Customer acknowledges the importance of following the recommendations of;

- Only operate the gate when it is visible to prevent collisions with individuals, animals, vehicles, and any obstacles obstructing its path;
- Do not modify your automatic gate system;
- Do not tailgate another vehicle through the gate opening;
- Never stop in the path of an automatic gate.

**14.5** If the Customer has a G-speak or GSM installed it is the customer's responsibility to ensure they top up the SIM card annually. Otherwise, the network will cancel the card and therefore shutdown your access. **14.6** Our gate automation has a battery backup safety feature for instances of power outage. The battery backup activates promptly when power is lost, enabling the gate to continue its operation seamlessly. This however is not an unlimited supply so should be reserved as much as possible and the gate switched to manual mode when the battery runs out. Batteries should also be replaced on average every 2-3 years to ensure that they will operate when needed. This is a service that Designer Gates can provide. Please request pricing. **14.7** To maintain all warranties; gate automation for residential use requires the first service to be within the first 12 months after installation and then 12 monthly thereafter. For commercial use requires the first service to be within the first 6 months and then 6-12 monthly thereafter. And with high use requires the first service to be within the first 3 months and then 3-6 monthly thereafter. **14.8** It is the customers responsibility to request servicing in a timely manner. Designer Gates may issue reminders periodically but responsibility is with the customer to uphold their own servicing calendar. **14.9** Identifying the root cause of an issue with automation is not always a simple task, as our focus is on addressing the actual problem rather than

just its symptoms. Troubleshooting, particularly in cases of intermittent problems, can be time-consuming and may require multiple visits to pinpoint and recognise the genuine cause. If under warranty these will be at the seller's expense. If not under warranty or the cause is later recognised to be of a non warranty cause, an invoice will be sent to the customer for time and materials.

#### **15. CONSUMER GUARANTEES ACT 1993**

**15.1** If the customer is acquiring Goods for the purposes of a trade or business, the customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Seller to the customer. **15.2** Nothing in these terms and conditions is intended to limit or exclude the Customer's rights under the Consumer Guarantees Act 1993.

#### **16. PRIVACY ACT 1993**

**16.1** The customer authorises the Seller or the Seller's agent to:

- (a) access, collect, retain and use any information about the customer (including and overdue fines balance information held by the Ministry of Justice):
  - (i) For the purposes of assessing the customer's creditworthiness; or
  - (ii) For the purpose of marketing products and services to the customer.
- (b) disclose information about the customer, whether collected by the Seller from the customer directly or obtained by the Seller from any other source, to 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.

**16.2** Where the customer is an individual the authorities under clause 12.1 are authorities or consents for the purposes of the Privacy

Act 1993. **16.3** The customer shall have the right to request the Seller for a copy of the information about the customer retained by the Seller and the right to request the Seller to correct any incorrect information about the customer held by the Seller. **16.4** Without disclosing the customer's full name or the Site's full address, the seller may publish any designs, photographs or other images in respect of the Works.

#### **17. CONSTRUCTION CONTRACTS ACT 2002**

**17.1** The customer hereby expressly acknowledges that:

- (a) the Seller has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the customer, and:
  - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the customer; or
  - (ii) a scheduled amount stated in a payment schedule issued by the customer in relation to the payment claim is not paid in full by the due date for its payment; or
  - (iii) the customer has not complied with an adjudicator's notice that the customer must pay an amount to the Seller by a particular date; and
  - (iv) the Seller has given written notice to the customer of its intention to suspend the carrying out of construction work under the construction contract.
- (b) if the Seller suspends work, it:
  - (i) is not in breach of contract; and
  - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the customer or by any person claiming through the customer; and
  - (iii) is entitled to an extension of time to complete the contract; and
  - (iv) keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
- (c) if the Seller exercises the right to suspend work, the exercise of that right does not:
  - (i) affect any rights that would otherwise have been available to the Seller under the Contractual Remedies Act 1979; or
  - (ii) enable the customer to exercise any rights that may otherwise have been available to the customer under that Act as a direct consequence of the Seller suspending work under this provision.

#### **18. TITLE**

**18.1** The seller retains legal and equitable title to any Goods supplied to the customer or Works completed until full payment is made to the seller (even if the customer incorporates the Goods with other items or the Goods become part of or an accession or accessory to any other objects, products or mass). **18.2** The Customer gives irrevocable authority to the seller to enter any premises occupied by the Customer or on which Goods and Services are situated at any reasonable time after default by the Customer to remove and repossess any Goods and Services and any other property to which Goods and Services are attached or in which Goods and Services are incorporated. Designer Gates shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. Designer Gates may either resell any repossessed Goods and Services and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and Services and credit the Customer's account with the invoice value thereof less such sum as Designer Gates reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs. **18.3** Where Goods and Services are retained by Designer Gates pursuant to clause 19.2 the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA. **18.4** All materials placed on the Site by the seller and not incorporated within construction of the works shall remain the seller's property. Upon completion of Works, the seller will remove all such materials together with any rubbish and debris associated with or caused by the works unless stated. **18.5** Any items removed from site during demolition of existing structures will become property of Designer Gates and may be repurposed, recycled, dumped or sold at the sole discretion of Designer Gates.

Updated: 05/03/2025