

Total Door Systems Sales Terms and Conditions

All sales of goods by Total Door II, Inc. (d/b/a Total Door Systems) ("Seller") to the customer ("Customer") are subject to the terms and conditions set forth in this document.

1. Terms.

(a) Customer may submit orders to Seller electronically through Seller's web site and "DoorBuilder" or other online ordering system at prices quoted by Seller. Seller may accept or reject any order in its sole discretion. A binding contract will arise only when Seller confirms Customer's order or begins execution of Customer's order, as price quotations or other communications from Seller do not constitute offers.

(b) All sales by Seller to Customer are subject to the terms and conditions set forth in this document (the "Terms") and Customer's Distributor Agreement. These Terms, the Distributor Agreement and Seller's written order confirmation (or, if there is no written order confirmation, Seller's invoice) constitute the entire agreement between Seller and Customer (the "Agreement"). No Seller employee has the authority to change or amend the terms of the Agreement or to provide special discounts or rebates without specific written authorization signed by a corporate officer of Seller. Seller expressly objects to, and does not accept, any conflicting, modified or additional terms or conditions Customer provides, including any standard terms contained in Customer's purchase order or any other document. In case of conflict between these Terms and a Distributor Agreement or Sales Representative Agreement with Customer, these Terms will govern.

(c) All sales are final. If Customer desires to cancel or change any order after confirmation or issuance of an invoice, it will submit a request in writing to Seller, stating the reason for the change, and Seller may grant or deny the request in its discretion. If Seller grants permission to return goods already shipped, then it will provide credit only for goods that are returned in saleable condition.

(d) At Customer's request, Seller may (in its sole discretion) allow its personnel to enter customer orders into Seller's online ordering system, but Customer is solely responsible for the order, including for checking the order and for any errors in data entry.

2. Delivery and Risk of Loss.

(a) All sales are "FOB Seller's plant." This means that: (i) the risk of loss of all goods purchased by Customer passes to Customer when the goods are loaded on the truck at Seller's facility; (ii) Customer is responsible for and will pay for freight and insurance; and (iii) Customer is solely responsible for filing any claims for loss, damage or delay. For clarity, "FOB" is used as a commercial term does not refer to the Incoterms definition.

(b) Delivery dates or other times of performance are non-binding estimates and are based on Seller's timely receipt of accurate and complete orders and specifications from Customer and are subject to applicable lead times for the goods ordered.

(c) Partial deliveries are permitted.

(d) Once an order is accepted by Seller, Customer may request changes, but: (i) Seller may accept or reject the requested changes in its discretion, and (ii) Seller may condition its acceptance on an adjustment to the price, including to cover product differences and the effort and expense expended by Seller to accommodate the change.

3. Payment and Credit; Expenses. Customer will pay for all goods ordered on its behalf and delivered by Seller “net 30 days,” or, if different terms are included on the invoice or confirmation submitted by Seller, Customer will pay on those terms. Seller may establish the credit terms for Customer, and may change those terms, create or change credit limits or cease extending credit from time to time in its sole discretion. Customer will pay all costs for shipping and handling and any extra costs incurred by Seller as a result of special actions or requests by Customer.

4. Taxes. Prices quoted by Seller do not include (and Customer will pay) all taxes, tariffs, duties, or fees of any kind which may be levied or imposed on either party by federal, state, municipal, or other governmental authorities in connection with the sale of the goods (except income taxes of Seller due on the sale of the goods).

5. Late Payments: Consequences and Cost of Enforcement. If Customer fails to make a payment when due, this constitutes a material breach of the Agreement and: (a) all amounts outstanding to Seller will become due immediately; (b) Seller has the right to cancel any pending orders or to put any pending orders on hold until it receives full payment of all amounts outstanding; and (c) Customer will pay interest on all amounts outstanding to Seller at a rate equal to the lesser of 1½% per month or the highest rate permitted by applicable law, all without prejudice to any other rights Seller may have, including any right to claim actual damages. If Customer’s bank returns a Customer check for non-sufficient funds (“NSF”), Customer is required to repay the amount of the check and all additional charges, including, but not limited to, related NSF fees and other bank fees, immediately upon notice from Seller. Customer will pay all costs of collection of any amounts due to Seller, and all costs of collection, including court costs, reasonable fees and charges of attorneys and their firms and other expenses.

6. Customer’s Responsibilities. Customer will inform itself of the laws and building codes, and of the project and owner requirements, that apply to the intended use of the goods it orders, and is responsible for ensuring that the goods will satisfy Customer’s requirements. Customer will cause the installation of the goods to comply with applicable law and building codes, with Seller’s instructions and published procedures (as found on Seller’s web site from time to time), and with professional standards and customary instructions and good practices. Customer will cause the goods to be installed only by installers who have been certified by Seller to install its products.

7. Warranty; Limits on Warranties and Damages.

(a) Seller warrants that the goods will, at the time of shipment, be as described on the written order confirmation (or, if there is no written order confirmation, on the invoice) and the specifications on Seller’s website at the time of confirmation, subject to commercial tolerances and variations. Seller provides the limited warranty shown on Seller’s website from time to time.

(b) Seller’s sole liability under warranty or contract, or on any other basis, is limited to either replacement of the goods or a refund of (or credit for) the purchase price actually paid by Customer, at Seller’s sole option. THE FOREGOING WARRANTIES STATE SELLER’S ENTIRE WARRANTY AND CUSTOMER’S SOLE AND EXCLUSIVE REMEDY

RELATED TO THE GOODS. EXCEPT AS EXPRESSLY SET FORTH ABOVE, SELLER MAKES NO WARRANTY OF ANY KIND WHATSOEVER, AND SELLER EXPRESSLY DISCLAIMS ANY WARRANTIES IMPLIED BY LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. No employee or agent of Seller has authority to change Seller's warranties without specific written authorization from a corporate officer of Seller addressed to Customer. Seller may give advice about its products, but advice from Seller does not constitute or create a warranty.

(c) Seller will have no liability for defects, whether hidden or apparent, resulting from the improper use, installation, processing or treatment of the goods, installation by anyone not certified by Seller, for abuse of or failure to maintain the goods once installed. Customer will be liable for any loss resulting from any failure to apply all professional standards, applicable building codes, customary instructions and written instructions from Seller, if any, in relation to the goods.

(d) Seller's sole obligation with respect to defective goods is to repair or correct the goods, or to replace them (FOB Seller's plant). SELLER WILL NOT BE LIABLE UNDER ANY THEORY OF RELIEF, INCLUDING, WITHOUT LIMITATION, BREACH OF WARRANTY, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OF OTHERWISE, ARISING OUT OF OR RELATED TO CUSTOMER'S ORDER OR SELLER'S ACTS OR OMISSIONS, FOR: (i) INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY NATURE, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, DAMAGE TO PROPERTY, INSTALLATION OR REMOVAL COST, OR LOSS OF USE; OR (ii) ANY DAMAGE OR LOSS IN EXCESS OF THE PURCHASE PRICE ACTUALLY PAID BY CUSTOMER. For example, Seller will not be liable for any work or costs of any other trades.

(e) Any action by Customer must be commenced within one year after the cause of action has accrued.

8. Inspection and Claims; Deadlines.

(a) Inspection on Delivery. Customer will inspect each delivery from Seller upon arrival, and will notify Seller of, and will note in writing on the bill of lading any discrepancies between the delivery and the bill of lading (including any damage), and will sign the note and have the driver sign the note, before the driver leaves Customer's premises; otherwise Seller will not be liable for any discrepancies.

(b) Detailed Inspection of the Goods. Customer will inspect all goods purchased by the end of the fifth business day after the day of delivery, and in any event before the goods are processed or installed,, including without limitation for defects, correctness of swing, size, wall conditions and type of opening. Customer will notify Seller of any claims in writing, including a description of the defect or problem in reasonable detail, by the end of the second business day after the inspection; otherwise, Seller will not be liable for any defects.

(c) Inspection by Seller. Customer will retain goods damaged in transit and defective goods for inspection by Seller for two weeks after notifying Seller of the damage or defect, or longer if so requested by Seller, and will return such goods to Seller at Seller's request and expense; otherwise, Seller will not be liable for any defects.

(d) Inspection at Customer's Request. If Customer requests a field inspection by a representative of

Seller, and if no defect or error on Seller's part is found, then Customer will reimburse Seller for the cost of the inspection.

(e) No Back Charges or Informal Claims; Claim Approval. Customer must make all claims in writing with a description of the defect or problem in reasonable detail, as required by this Section 8. Seller will not honor any back charges or informal claims. No sales representative, distributor or agent of Seller is authorized to approve a claim; claims can only be approved by an authorized officer of Seller at its headquarters.

9. Security Interest.

(a) Customer grants to Seller a security interest in all goods sold by Seller to Customer, and all proceeds and products thereof, to secure payment of the price of such goods and the interest and costs of collection described in Section 5 above. This security interest is a purchase money security interest. Customer authorizes Seller to file financing statements in connection with this security interest.

(b) Seller will be designated as a direct and intended third party beneficiary of any construction lien, mechanic's lien, or similar lien filed and/or recorded by Customer and/or claims made by Customer under any bond for labor, materials or services related to goods purchased pursuant to these Terms, and Seller will have a direct right in any proceeds paid relative to the lien, and a direct right of action to enforce the terms and conditions of such lien.

10. Waivers. Any waiver by either party of a default will not be considered a continuing waiver but applies only to the specific provision and specific occurrence identified in the waiver.

11. Indemnification by Customer.

(a) Customer agrees to indemnify, defend, and hold harmless Seller, its subsidiaries and affiliates, and each of their respective directors, officers, shareholders, agents and employees (each, an "Indemnified Person"), against any loss, liability, demand, damage, claim, action, suit, proceeding, deficiency, reasonable out-of-pocket costs (including, without limitation, reasonable legal and accounting fees), or expenses directly or indirectly relating to, arising from, or in connection with: (i) Customer's failure to comply with any of its obligations under the Agreement, including without limitation Customer's responsibilities set forth in Section 6; (ii) Customer's negligence or willful acts or omissions in relation to the goods or the Agreement; and (iii) Customer's improper use, installation, processing or treatment of the goods or integration of the goods with systems or components not supplied by Seller.

(b) Customer will promptly notify Seller if it becomes aware of any actual or potential claim against Seller.

(c) Seller will promptly notify Customer if it receives notice of a demand, claim, or lawsuit from a third party (a "Third Party Claim") that Seller believes is subject to indemnification under the Agreement. Seller will control the defense of any Third-Party claim except as provided in paragraph 10(d). Customer at its own expense may nevertheless participate with Seller in the defense of the Third-Party Claim and in settlement negotiations, and Seller will consult in good faith with Customer about any proposed settlement.

(d) If Customer gives Seller a written agreement, reasonably satisfactory to Seller's counsel, confirming its agreement to indemnify and save Seller harmless from all costs and liability arising from the Third Party Claim, together with security for the indemnity reasonably satisfactory to Seller, then Customer may at its own expense undertake full responsibility for the defense or prosecution of the Third Party Claim and may contest or settle it on such terms as it may choose (except that Customer may not agree to the entry of any injunction or other equitable remedy against Seller without Seller's advance written permission, which Seller may grant or deny in its discretion).

12. Bankruptcy or Change in Business. If Customer becomes insolvent, files a voluntary bankruptcy proceeding, or has an involuntary bankruptcy petition filed against it without obtaining discharge of that petition within 75 days, or has a receiver appointed over all or any of its assets, or ceases or announces its intention to substantially curtail its business or cease doing business, then Seller will have the right to terminate all orders and contracts by notifying Customer to that effect, without prejudice to Seller's right to payment of the price of delivered goods and any damages Seller might suffer.

13. Allocation and Force Majeure.

(a) If Seller is unable to supply the total requirements for the Products ordered by Customer, Seller may allocate its available supply of Products among any or all purchasers on such basis as Seller, in its reasonable discretion, may deem fair and practical.

(b) Force Majeure means occurrences beyond the control of the parties, such as acts of God, fire, flood, epidemic or pandemic, earthquake, tornado, explosions, riot, war, terrorism, strikes or lockouts at third parties or government acts, orders, and decrees. Any delay or failure by a party to fulfil its obligations under this Agreement (other than obligations to pay money) will not be deemed a breach to the extent that the failure or delay is caused by Force Majeure. However, neither party is obliged to pay costs that the other incurs as a result of a Force Majeure event.

14. Other Terms.

(a) Governing Law and Dispute Resolution. The Agreement will be governed by and construed and enforced in accordance with the laws of the State of Michigan. The parties select as the exclusive forum for any litigation related to this Agreement or any sales by Total Door to Distributor, and irrevocably consent to the exclusive jurisdiction and venue of, the courts of Oakland County, Michigan and the U. S. District Court for the Eastern District of Michigan.

(b) Entire Agreement; Amendment. The Agreement is the entire agreement of the parties; it replaces any prior agreements and understandings, oral or written relating the purchase and sale of the goods. The Agreement does not terminate or change any Confidentiality, Distributor or Sales Representative Agreement between the parties. This Agreement can be amended only by a written document signed by authorized representatives of both parties, and the parties specifically agree that no other statement or document can become part of the contract. No employee of Seller has authority to modify this Agreement without written approval of an authorized officer of Seller.

(c) Severability. The parties desire and intend that all of the provisions of the Agreement be enforceable to the fullest extent permitted by law. If any provision of the Agreement or its

application to any person or circumstances is, to any extent, construed to be illegal, invalid or unenforceable, in whole or in part, then the provision will be construed in a manner to permit its enforceability to the fullest extent permitted by law. In any case, the remaining terms of this Agreement or the application of any remaining terms to any person or circumstance other than those which have been held illegal, invalid or unenforceable will remain in full force and effect.

(d) Remedies and Rights; No Implied Waivers. The remedies provided for in this Agreement are cumulative and not exclusive. In the event of a breach, the non-breaching party will be entitled to all rights and remedies provided by this Agreement and by applicable law. Any waiver of a breach of this Agreement applies only to the specific breach that has occurred and does not mean that any future (or past) breaches are also waived. Any extension of time for performance of an obligation under this Agreement applies only to that specific obligation or action, and not to any other (past, present, or future) obligations or actions.

(e) No Third-Party Beneficiaries. There are no third-party beneficiaries to the Agreement.

(f) Notices. All notices under the Agreement must be in writing and must be (a) delivered in person, or (b) sent to the respective addresses of the parties set forth on Seller's order confirmation or invoice by (i) first class, priority or express mail, certified or registered, with return receipt requested and postage prepaid, or (ii) recognized overnight courier, with proof of delivery requested and charges prepaid. A party may change the address for notice by a written notice given as provided above.

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