

**BACKGROUND**

- A. Larnec Pty Ltd (ACN 114 605 006) trading as Larnec Doors & Systems (“Larnec”) supplies doors for commercial purposes.
- B. The Customer and Larnec agree that Larnec will supply the Products to the Customer on the following terms and conditions, effective as at 1 February 2025.

**1 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement unless the context requires otherwise:

**Agreement** means these terms and conditions, including the schedules.

**Application for Commercial Credit** means the application for commercial credit issued by Larnec to the Customer.

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

**Business Day** means Monday to Friday excluding public holidays in Victoria.

**Business Hours** means the period between 9.00am and 5.00pm on a Business Day.

**Claim** includes actions, proceedings, suits, causes of action, arbitrations, verdicts and judgments either at law or in equity or arising under a statute, debts, dues, demands, claims of any nature, costs and expenses.

**Confidential Information** means:

- (a) confidential financial information of whatever nature, including, without limitation, employee remuneration details, forecasts, business plans, product or corporate strategies, and customer lists;
- (b) trade secrets; and
- (c) confidential know-how,

of which a party becomes aware or generates (both before and after the day this Agreement is signed) in the course of, or in connection with, this Agreement, but does not include information which is in the public domain other than as a result of a breach, by any person, of an obligation of confidentiality owed under this Agreement.

**Consequential Loss** means any loss or damage suffered by a party or any other person which is indirect or consequential, including but not limited to loss of revenue, loss of income, loss of business, loss of profits, loss of goodwill or credit, loss of business reputation, loss of data or data use, future reputation or publicity, loss of use, loss of interest, damage to credit rating or loss or denial of opportunity.

**Consumer Guarantee** has the meaning given to it in the Australian Consumer Law or guidance provided by the Australian Competition and Consumer Commission.

**Customer** means the person identified as such in a Quotation or the Application for Commercial Credit.

**Delivery Date** is as specified in the Site Delivery Sheet or as otherwise agreed between the parties.

**Delivery Options** is as set out in schedule 1.

**Delivery Time** is as specified on the Site Delivery Sheet or as otherwise agreed between the parties in writing.

**Delivery Point** is as specified on the Site Delivery Sheet or as otherwise agreed between the parties in writing.

**Event of Default** means any of the following events:

- (a) the Customer fails to pay for the Products;
- (b) the Customer is in breach of this Agreement;
- (c) if the Customer is a company:
  - (i) an order is made or a resolution is effectively passed for winding up of the Customer;
  - (ii) a provisional liquidator or an administrator, or a receiver or provisional liquidator or an administrator is appointed to it, or, over its assets;
  - (iii) the Customer goes into liquidation or makes an assignment or an arrangement or composition with its creditors; or
  - (iv) the Customer stops payment or is deemed unable to pay its debts within the meaning of the *Corporations Act 2001*(Cth);

- (d) if the Customer is a natural person:
  - (v) an order is made for the Customer’s bankruptcy;
  - (vi) the Customer dies or becomes mentally or physically incapable of managing his or her affairs; or
  - (vii) an order is applied for or made to place the assets and affairs of the Customer under administration
- (e) the Customer ceases or threatens to cease carrying on business; or
- (f) Larnec forms an opinion, on a reasonable basis, that the Customer is in financial difficulty.

**Force Majeure** means an event or cause outside the reasonable control of the affected party (other than an obligation to pay money) and includes, but is not limited to:

- (a) act of God, lightning, storm, flood, fire, earthquake, explosion, cyclone, landslide or adverse weather conditions;
- (b) strike, lockout or other labour difficulty;
- (c) act of public enemy, war (declared or undeclared), sabotage, blockade, revolution, terrorism, cyber attack, riot, insurrection, civil commotion, epidemic, global pandemic;
- (d) the effect of any applicable laws, orders, rules or regulations of any government or other competent authority; and
- (e) embargo, inability to obtain any necessary materials, equipment, facilities or qualified employees, power or water shortage, lack of transportation.

**Loss** means any loss, Claim, liability, damage, charge, payment, cost or expense (whether direct or Consequential Loss and whether accrued or paid) including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**Price** means the price for the Products quoted by Larnec in a Quotation or, otherwise, as set out in Larnec’s then current price list.

**Products** means all goods and/or services supplied or to be supplied by Larnec to the Customer.

**Quotation** means the document issued by Larnec outlining the estimate of the cost for the provision of specific Products. .

**Site** is as specified on the Site Delivery Sheet or as otherwise agreed between the parties in writing.

**Site Delivery Sheet** means the site delivery sheet provided by Larnec to the Customer.

**Variation** means:

- (a) the inclusion of additional Products to be supplied by Larnec under an existing Quotation;
- (b) a change in the character or quality of the Products to be supplied by Larnec under a Quotation;
- (c) an increase or decrease in the quantity of Products to be supplied by Larnec under a Quotation;
- (d) a change to the Delivery Point specified in a Quotation; or
- (e) a change to the Delivery Date specified in a Quotation.

**1.2 Interpretation**

In this Agreement unless the context requires otherwise:

- (a) a reference to a person includes a corporation;
- (b) a reference to a person includes the permitted assigns of that person;
- (c) words importing the singular include the plural and vice versa;
- (d) no provision of this Agreement will be construed to the disadvantage of a party merely because that party was responsible for the preparation of the agreement or the inclusion of the provision in the agreement; and

- (e) if a word or phrase is defined cognate words and plurals have corresponding meaning.

## **2 SUPPLY OF PRODUCTS**

- 2.1 If the Customer wishes to purchase Products from Larnec it must complete and forward a Quotation to Larnec.
- 2.2 Larnec has sole discretion to accept or reject a Quotation. Larnec is under no obligation to provide any Products to a Customer unless it has accepted a Quotation in writing.
- 2.3 Acceptance of a Quotation may be in whole or in part, by delivery of the relevant Products or in such other manner communicated by Larnec to the Customer in writing.

## **3 VARIATION**

- 3.1 The Customer may, on giving reasonable notice to Larnec, issue a notice to vary an order acknowledgment or Quotation ("**Notice of Variation**") to Larnec requesting that Larnec perform a Variation.
- 3.2 Within 2 Business Days of receiving a Notice of Variation, Larnec will provide the Customer with a quote ("**Variation Order**") setting out details of:
- (a) any delay to the Delivery Time for the delivery of the Products;
- (b) the cost of the Variation; and
- (c) an adjusted Price.
- 3.3 The Customer must notify Larnec within 2 Business Days of receipt of the Variation Order of its acceptance or otherwise of the terms of the Variation Order. If the Customer fails to notify Larnec of receipt of the Variation Order within 2 Business Days of its acceptance or otherwise of the terms of the Variation Order, the Notice of Variation issued by the Customer under clause 3.1 will be deemed void and Larnec will continue to supply the Products to the Customer in accordance with the existing Quotation.
- 3.4 If the Customer accepts the Variation Order, Larnec must perform the Variation within the timeframe specified in the Quote and invoice the Customer for those costs in accordance with this Agreement.
- 3.5 For the avoidance of doubt, Larnec is under no obligation to accept a Variation Order and no Variation Order will be accepted by Larnec once production of the Product has commenced.

## **4 CANCELLATION**

- 4.1 A Quotation can only be cancelled where written request for cancellation has been made by the Customer and accepted by Larnec in writing.
- 4.2 Larnec may decline to accept any request for cancellation or make its acceptance conditional on such terms and conditions as it sees fit, including that the Customer pays all costs incurred by Larnec up to and including the date of cancellation of the Quotation including, without limitation, the costs of all orders placed by Larnec on other suppliers (whether those orders have been received or not).

## **5 DELIVERY**

- 5.1 Unless otherwise agreed in writing, Larnec will arrange for the delivery of the Products to the Customer in accordance with the Site Delivery Sheet.
- 5.2 Delivery of Products by or on behalf of Larnec to the Customer will be in accordance with the Delivery Options and as agreed in writing in the Site Delivery Sheet.
- 5.3 If, on delivery, Larnec determines in its sole discretion that the Customer has selected the incorrect Delivery Option or that the Customer has provided incorrect delivery information, Larnec reserves the right to adjust the Delivery Option and price as Larnec deems appropriate.
- 5.4 Delivery will be made within Business Hours and on Business Days.
- 5.5 The Customer acknowledges that the time of delivery on the Site Delivery Sheet is an estimate only.
- 5.6 Requests for proof of delivery may only be made within 30 days of the Delivery Date.
- 5.7 Where Products are left unattended, on a property or building site they may not be eligible for a return, repair, replacement, or refund as it cannot be determined how or when any damages may have occurred.
- 5.8 We require you to inspect the Products on taking delivery or at the maximum within 48 hours of delivery or collection and

immediately report any shortage, discrepancy, defect, wrong specification or similar problem to us as soon as you become aware of it. This inspection must be prior to installation otherwise we may not be liable for the issue. If the product is obviously damaged reject the delivery and take clear photos of the damage, including the consignment note number and call 1800 948 101 or email [orders@larnec.com.au](mailto:orders@larnec.com.au). For any deliveries where damage is suspected but not obvious, sign the proof of delivery ("**POD**") as damaged subject to check ("**STC**") before proceeding with inspection of the Products. Any orders in which Larnec can provide a clean carrier POD without a damaged STC notation, Larnec reserves the right to reject any damage claim made.

- 5.9 The cost of delivery is not included in the Price unless directly specified in the Quotation.
- 5.10 Larnec is entitled to charge a reasonable fee for storage and/or redelivery charges in the event the Customer does not, or is unable to, accept delivery of the Products.
- 5.11 The Customer accepts that Larnec may deliver Products by instalments and require payment for each separate instalment in accordance with this Agreement.
- 5.12 The Customer acknowledges and accepts that it is not relieved from any obligation arising under this Agreement by reason of any delay in delivery.
- 5.13 If the Customer cannot agree to a Delivery Option or if Larnec has attempted to deliver the Product to the Customer and the Delivery Option is unable to be satisfied:
- (a) the Customer must collect the Product from a depot collection site;
- (b) the depot collection will occur for the nearest possible freight depot location to the receiver;
- (c) a depot collect charge (reasonably determined by Larnec) will be applicable to any depot collections; and
- (d) should the depot collection be required after previous delivery attempts have been made, Larnec may not warrant any claim on damages to the Products.

## **6 PASSING OF TITLE AND RISK**

- 6.1 Risk of loss passes to the Customer on the earliest to occur of collection of the Products by the Customer at a Larnec branch or other specified location; delivery of the Products to the Customer or third party site designated by the Customer; or delivery of the Products by Larnec to a carrier for the purpose of delivering the Products to the Customer or third party site.
- 6.2 Title and ownership of the Products will not pass to the Customer until all moneys owing to Larnec have been paid in full.
- 6.3 Until payment of all such moneys, the Customer:
- (a) holds the Products as fiduciary bailee and agent for Larnec;
- (b) must keep the Products physically separate from all other goods of the Customer; and
- (c) clearly identified as owned by Larnec.
- 6.4 If an Event of Default occurs, then without prejudice to Larnec's other rights, Larnec may on providing 72 hours' notice to the Customer, enter any premises occupied by the Customer or any other place where the Products may be, and recover possession of them.
- 6.5 If the Products are on a third party site, the Customer must procure access rights for Larnec from the controller of the third party site such that Larnec may enter onto the site and recover and retake possession of them on reasonable notice.
- 6.6 If the Customer sells any of the Products while money is owed to Larnec, the Customer holds the proceeds on trust for Larnec. Such proceeds will be deemed to equal in dollar terms such corresponding part of the amount owed by the Customer to Larnec at the time of receipt.
- 6.7 If the Customer uses the Products in some manufacturing or construction process of its own or of some third party, then the Customer must hold such part of the proceeds of such manufacturing or construction process as relates to such Products in trust for Larnec. Such proceeds will be deemed to equal in dollar terms the corresponding amount owing by the Customer to Larnec at the time of receipt.
- 6.8 Until payment of all moneys owing on any account to Larnec, any proceeds referred to above received by the Customer must be held in a separate account and not mixed with any other funds.
- 6.9 The rights of Larnec under this clause 6 do not limit or exclude any other rights of Larnec against the Customer.

## **7 PRICING**

### **7.1 Prices**

All prices other than as set out in this clause 7 are as set out in a Quotation or as set out in Larnec's current price list. Prices for Products in a Quotation are open for the period of time specified in the quotation or 30 days, whichever is the lesser.

### **7.2 Prices variation**

- (a) Larnec may vary a Price in the event of a Variation.
- (b) Larnec may otherwise vary any Price in its price list by providing 30 days' written notice and such changes will not apply retrospectively. .

### **7.3 Other charges**

Larnec may charge the Customer reasonable delivery fees and storage fees for the Products. Any storage or handling fee charged by Larnec will be in addition to the Price.

## **8 INVOICING AND PAYMENT**

8.1 The Customer must pay for all Products supplied by Larnec:

- (a) prior to manufacture of the Products; or
- (b) prior to Delivery; or
- (c) within 30 days after the issue of the invoice relating to the Products or any credit period granted in writing by Larnec.

8.2 If the Customer disputes payment of an invoiced amount it must:

- (a) pay any undisputed amount whilst the dispute is being resolved; and
- (b) attempt to resolve the dispute in accordance with clause 23 of this Agreement.

8.3 If it is resolved by the parties that some or all of the amount in dispute ought to have been paid when due at the time it was invoiced, then the Customer will pay the amount finally resolved, together with interest on that amount in accordance with clauses 8 and 9.

## **9 INTEREST AND HANDLING FEE**

9.1 Larnec is entitled to charge the Customer interest on amounts not paid within the specified credit period at a rate equivalent to the reference rate charged by Larnec's principal bankers, from invoice date until payment of the overdue debt.

9.2 The customer agrees that Larnec is entitled to charge all costs associated with debt collection in addition to an administration fee of \$150.

## **10 GST**

### **10.1 Prices exclusive of Tax**

The Price is exclusive of all taxes, duties and charges levied in connection with the supply of the Products and the Customer is liable for such amounts (if any).

### **10.2 GST Act**

In this clause words that are defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning as their definition in that Act.

### **10.3 Exclusive of GST**

Each amount payable by the Customer under this Agreement and/ or a Quotation in respect of a Taxable Supply by Larnec is a GST exclusive amount and the Customer must, in addition to that amount and at the same time, pay the GST payable in respect of that supply.

## **11 CREDIT**

11.1 The Customer has applied for, and Larnec has agreed to provide credit on the terms and conditions of this Agreement and the deed of guarantee and indemnity.

11.2 The Customer will supply promptly on request of Larnec and, in any event no later than 5 days after such a request is made, certified copies of its most recent financial statements, tax returns and other financial information of the Customer requested by Larnec.

11.3 Larnec may, at any time, without the need to provide a reason and without any obligation on Larnec to notify the Customer, increase, decrease or withdraw any credit facilities granted to the Customer.

## **12 DISCOUNT**

12.1 In addition to all other rights of Larnec, if the Customer is in breach of any of its obligations under this Agreement, any discounts

provided to the Customer by Larnec are automatically revoked and the prices for Products will be adjusted upwards accordingly.

## **13 WARRANTIES**

### **13.1 Representations**

- (a) This clause 13.1 does not apply to a Customer who is a Consumer.
- (b) The Customer acknowledges and agrees that it has not relied on any representation made by Larnec which has not been expressly stated in this Agreement.
- (c) Larnec does not warrant and does not make any representation as to the suitability or fitness for purpose of any of the Products for any particular use and the Customer acknowledges and agrees that it has satisfied itself as to the appropriate use or application of the Products and that the Products are suitable for any particular purpose including circumstances where Larnec only supplies fire doors and not the frames for those doors.

### **13.2 Defects warranty and returns**

- (a) This clause does not apply to a Customer who is a consumer under the Australian Consumer Law. Otherwise, the Customer will have no claim for defects unless a written complaint is received by Larnec within 14 days of the delivery of the Product to the Customer. Larnec may, at its option, accept the return of, or give a credit for Products where:
  - (i) the Customer has complied with this sub-clause 13.2;
  - (ii) Larnec determines that the Customer has complied with the Care Instructions set out in schedule 2;
  - (iii) Larnec is satisfied as to the claim by the Customer; and
  - (iv) if Larnec elects to have the Products returned, the Products are returned to Larnec in the same condition as when first delivered to the Customer with the relevant invoice number and date of order.
- (b) Larnec may, at its sole discretion, accept the return of, or give credit for, Products that are not damaged or defective if requested by the Customer.
- (c) All Products returned are subject to a restocking fee of 50% of the invoiced price payable by the Customer, in addition to any freight or associated costs payable by the Customer, except in the case of defective Products or Products incorrectly supplied.
- (d) Larnec will not be held responsible for additional charges of hanging, painting or other charges arising from the replacement of doors.
- (e) Larnec will not recognise any Claim under this clause unless the Customer has made the claim within one month of the defect arising.
- (f) For the avoidance of doubt, Larnec is not liable, and assumes no responsibility, for door frames supplied to the Customer by third parties.

## **14 CHARGE OVER CUSTOMER'S PROPERTY**

As security for payment of all moneys payable to Larnec by the Customer, the Customer charges in favour of Larnec the whole of the Customer's undertaking, property and assets (including, without limitation, all of the Customer's interests both legal and beneficial in freehold and leasehold land) both current and later acquired. The Customer irrevocably appoints each director, secretary, manager and authorised representative of Larnec as its attorney to do all things necessary to register each such charge.

## **15 SECURITY INTEREST**

- 15.1 Terms that are defined in the *Personal Property Securities Act 2009* (Cth) ("**PPSA**") have the same meaning in this clause.
- 15.2 The Customer agrees and acknowledges that, for the purposes of the PPSA, Larnec has a security interest in the Products and in any right in relation to or derived from the Products and such other undertaking, property and assets of the Customer.
- 15.3 Larnec may register its security interests under this clause 15, including as a purchase money security interest.
- 15.4 The Customer waives the right to receive a verification statement under the PPSA.

- 15.5 The Customer agrees that, if Chapter 4 of the PPSA applies to the enforcement of Larnec's security interests, the following provisions of the PPSA will not apply to that enforcement:
- (a) section 95 to the extent that it requires Larnec to give a notice to the Customer;
  - (b) section 96;
  - (c) section 130, to the extent that it requires Larnec to give a notice to the Company;
  - (d) subsection 132(3)(d);
  - (e) subsection 132(4);
  - (f) section 135;
  - (g) section 142; and
  - (h) section 143.
- 15.6 The Customer agrees that Larnec may allocate any payment that it receives from the Customer in any manner Larnec determines (despite any purported allocation or appropriation by the Customer) including to satisfy obligations that are not secured; then to satisfy obligations that are secured, but are not secured by a purchase money security interest, in the order in which those obligations were incurred and then to satisfy any obligations secured by a purchase money security interest in the order in which those obligations were incurred.
- 15.7 Subject to subsection 275(7) of the PPSA, neither party may disclose information of the kind referred to in subsection 275(1) of the PPSA.

## **16 INSURANCE**

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- 16.1 The Customer must keep the Products insured against all risks for Products of that kind from the time the risk in the Products passes to the Customer until the time that title in the Products passes to the Customer under clause 6.
- 16.2 The Customer holds the proceeds of that insurance on trust for Larnec up to the amount it owes Larnec in respect of the Products, and must keep such proceeds in a separate account until the liability to Larnec is discharged and must immediately pay that amount to Larnec.

## **17 GST**

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### **17.1 GST Act**

In this clause words that are defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning as their definition in that Act.

### **17.2 Exclusive of GST**

Each amount payable by the Customer under this Agreement and/or a Quotation in respect of a Taxable Supply by Larnec is a GST exclusive amount and the Customer must, in addition to that amount and at the same time, pay the GST payable in respect of that supply.

## **18 CONFIDENTIALITY**

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### **18.1 Confidentiality security and reproduction**

Each party must:

- (a) keep confidential;
- (b) take reasonable steps to ensure that the party's employees do not disclose to a third party;
- (c) maintain proper and secure custody of; and
- (d) not use or reproduce in any form

any Confidential Information belonging to the other party save where disclosure of any Confidential Information is made with the written prior consent of the other party or as required by law.

### **18.2 Delivery or destruction of Confidential Information**

A party must immediately on receipt of a request from the other party in accordance with the other party's rights under this Agreement:

- (a) deliver all Confidential Information belonging to the other party and all changes to, reproductions of, extracts from and notes regarding that Confidential Information, in any form; or
- (b) destroy the Confidential Information and, if it is the form of computer software, by erasing it from the magnetic media on which it is stored so that the Confidential Information is incapable of being revived provided that a party may retain such confidential information if and to the extent it is legally required to do so; and

- (c) provide a statutory declaration to the other party that all Confidential Information has been delivered or destroyed in accordance with this clause.

## **19 LIABILITY**

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- 19.1 To the fullest extent permitted by law, Larnec excludes all liability for any Loss whatsoever suffered by the Customer as a result of any act, omission or statement made by Larnec, its employees, contractors or agents whether negligent or not, except that nothing in this Agreement limits any liability imposed by any statute unless or to the extent that it is lawful to do so.
- 19.2 All Consumer Guarantees and any other implied statutory conditions or warranties are excluded to the fullest extent permitted by law and Larnec's only obligation resulting from a breach of a Consumer Guarantee is limited, at Larnec's option, to:
- (a) where the Product is a consumer good under Australian Consumer Law:
    - i. replacement of the Product or supply of equivalent Product;
    - ii. repair of the Product;
    - iii. payment of the cost of replacing the Product or acquiring equivalent Product; or
    - iv. payment of the cost of having the Product repaired.
  - (b) where the Product is a consumer service under Australian Consumer Law:
    - i. supplying the services again; or
    - ii. payment of the cost of having the services supplied again.

- 19.3 Notwithstanding any other provision of this Agreement, the total cumulative liability of Larnec for any Loss suffered by the Customer due to any act or omission of Larnec under or in connection with this Agreement (whether in tort (including negligence) for breach of contract (including under any warranty or indemnity) or or breach of statute or otherwise) is limited to the maximum aggregate amount actually paid to Larnec by the Customer in the 12 months preceding a Claim being made.

- 19.4 Under no circumstances will either party to this Agreement be liable to the other for (i) any loss of opportunity business, revenue, income, profits, credit rating, goodwill, use, data, anticipated savings whether arising directly or indirectly, or (ii) for any indirect, punitive, special, incidental or consequential damages.

- 19.5 This clause will survive the termination or expiry of this Agreement.

## **20 INDEMNITY**

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- 20.1 The Customer must fully indemnify, and keep indemnified, Larnec from and against any Loss or Claims, including any third party Claims, arising out of or in connection with:

- (a) a breach of these terms and conditions by the Customer or anyone else authorised to represent the Customer;
- (b) the Customer's use of the Product, including any wrongful, intentional or negligent act or omission by the Customer; or
- (c) the Customer's communications or interactions with Larnec.

- 20.2 The total liability of the Customer to Larnec, except in relation to a Claim made by Larnec pursuant to clause 20.1, is limited to the amount paid to Larnec by the Customer in the 12 months preceding a Claim being made.

- 20.3 This clause will survive the termination or expiry of this Agreement.

## **21 FORCE MAJEURE**

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- 21.1 If a party is unable to perform an obligation under this Agreement due to circumstances beyond its reasonable control, that party is excused from performing that obligation while those circumstances continue.
- 21.2 If those circumstances continue for an unreasonable period of time or if the delay in the party's performance of its obligation has a material adverse effect on the other party, then the party adversely affected may terminate this Agreement on giving written notice to the other party.
- 21.3 The parties agree that the inability of a party to pay any amounts owing under this Agreement is not a force majeure event and this clause will not apply in that circumstance.

## 22 TERMINATION

### 22.1 Immediate Termination

Notwithstanding any other provision of this Agreement, Larnec may terminate this Agreement immediately on giving written notice to the Customer, without compensation, if the Customer commits an Event of Default.

### 22.2 Termination for breach

Either party may terminate this Agreement by written notice if the other party commits a breach of this Agreement:

- (a) where the breach is incapable of remedy; or
- (b) where the breach is capable of remedy but the other party fails to rectify the breach within 14 days of a request to do so from the non-defaulting party.

### 22.3 Payment for Products

Within 30 days of termination of this Agreement, the Customer will pay Larnec for all Products ordered by the Customer in respect to which Larnec has not received payment in full.

## 23 DISPUTE RESOLUTION

23.1 A party must not start court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this Agreement unless that party has complied with this clause 23.

23.2 A party claiming that a dispute has arisen in respect of this Agreement must notify the other party's representative.

23.3 During the 10-day period after notice is given under clause 23 (or such longer period as agreed to in writing by the key contacts) the parties must use all reasonable endeavours to resolve the dispute.

23.4 A party who has complied with clause 23 may terminate the dispute resolution process with immediate effect by giving notice to the other party, and on such termination, may institute such legal proceedings as the party deems appropriate.

## 24 NOTICES

24.1 A notice given by a party to the other party under this Agreement must be in writing and:

- (a) delivered personally;
- (b) sent by post; or
- (c) sent by e-mail,

to that party's address or email address set out in this Agreement or as last notified by the intended recipient.

24.2 A notice given in accordance with clause 24.1 above is deemed to be received if:

- (a) personally delivered, on delivery;
- (b) mailed within Australia, on the expiration of 2 Business Days after posting; or
- (c) sent by e-mail, on delivery.

## 25 PROMOTIONS

By purchasing a Product from Larnec the Customer agrees that they will automatically be entered by Larnec (exercising its sole discretion as to the Customer's eligibility) into any promotion run by Larnec and such entry will be subject to the relevant terms and

conditions, which can be viewed here: [Promotions Terms and conditions](#).

## 26 MISCELLANEOUS

### 26.1 Severance

If it is held by a court of competent jurisdiction that:

- (a) any part of this Agreement is void, voidable, illegal or unenforceable; or
- (b) this Agreement would be void, voidable, illegal or unenforceable unless any part of this Agreement was severed,

then that part will be severable from and will not affect or denigrate from the enforceability or validity of the parties' rights or obligations or the continued operation of the rest of this Agreement.

### 26.2 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

### 26.3 Further Assurances

Each party will do, sign, execute and deliver and will procure that each of their employees and agents does, signs, executes and delivers, all deeds, documents, instruments and acts reasonably required of it by notice from another party to effectively carry out and give full effect to this Agreement and the rights and obligations of the parties under it.

### 26.4 Governing Law

This Agreement will be governed and construed in accordance with the laws of Victoria, Australia and the parties agree to submit to the exclusive jurisdiction of the courts of Victoria, Australia.

### 26.5 Assignment

No party may assign or transfer any of its rights or obligations under this document without the prior written consent of all other parties, which must not be unreasonably withheld.

### 26.6 Changes

Larnec reserves the right to vary this Agreement at its reasonable discretion by publishing the revised terms on its website. Larnec will endeavour to provide you with 30 days' notice of material changes before such changes become effective, unless an immediate change is required, for reasons outside of Larnec's control. If a change is not material, Larnec may not notify you but will publish the updated version of this Agreement on its website ([www.larnec.com.au](http://www.larnec.com.au)).

### 26.7 Expenses

The Customer must pay to Larnec any costs, charges and expenses (including legal fees calculated on a full indemnity basis) incurred by Larnec in connection with the exercise or attempted exercise of any power, right or remedy under this Agreement, and the failure of the Customer to comply with this Agreement.

## **SCHEDULE 1 – DELIVERY OPTIONS**

### **1. Commercial Deliveries - With Forklift**

- (a) The surface for this service must be firm, level, and solid ground to allow vehicle access. Grass or other soft surfaces, uneven or steep inclines/declines will not be permissible.
- (b) Delivery can occur between 8am and 5pm Monday to Friday and someone is required to be present to accept delivery.
- (c) It is the receiver's responsibility to advise us at the time of order if they are not open or present between 8am and 5pm so that we can make note on their consignment and avoid additional charges being applied for re delivery.
- (d) Any change of address or redirection of order requested by the customer will have the additional freight charges applied.
- (e) Larnec may not warrant any claim on damages for goods that have been redirect or re delivered.

In the absence of a receiver not having a forklift available to unload the goods the following will apply:

### **2. Tailgate Service**

- (a) Tailgate Service are only applicable to commercial locations that do not fall under the definition of a Site Delivery in Section 4
- (b) Goods cannot exceed 2.35M in any direction for this service. Items that are larger than this will require a hand unload
- (c) Tailgate services will be attempted whenever there is suitable tailgate equipment available. This may not always be possible even if your product fits within the 2.35m length and width requirements due to the vehicle's tailgate configuration. The in-ability to deliver via a Tailgate may not be known at point of sale or until the freight has reached its destination at which point the freight will then need to be hand-unloaded and is subject to the Hand-Unload terms & conditions set out in section 3 below.
- (d) Tailgate services are based on the product being left within 3m of the vehicle.
- (e) The surface for this service must be firm, level, and solid ground to allow vehicle access. Grass or other soft surfaces, uneven or steep inclines/declines will not be permissible.
- (f) Should it be requested to move the goods more than 3m from the vehicle, then a site delivery fee will be charged in place of the tailgate fee.
- (g) Delivery can occur between 8am and 5pm Monday to Friday and someone is required to be present to accept delivery. It is the receiver's responsibility to advise us at the time of order if they are not open or present between 8am and 5pm so that we can make note on their consignment and avoid additional charges being applied for re delivery.
- (h) Any change of address or redirection of order requested by the customer will have the additional freight charges applied. Larnec may not warrant any claim on damages for goods that have been re-directed or re-delivered.
- (i) If at the request of the customer they give Authority to Leave (ATL) and the driver deems it is safe to unload and do so, Larnec will not warrant any claim on damages or loss of goods.

### **3. Hand-unloads**

- (a) Hand-unloads are only applicable to commercial locations that do not fall under the definition of a Site Delivery in Section 4
- (b) Hand-unloads will require the receiver to be available to assist with hand-unloading as the driver will not perform this on their own. The driver has the right to refuse to hand-unload the goods if they deem it is unsafe for them to do so. We should avoid hand-unloads as an option as this can only

lend itself to damages and the risk of injury to person or property.

- (c) Larnec may not warrant any claim on damages for good that have been hand-unloaded.
- (d) Hand-unloaded items cannot be crated due to weight and the issues that arise from trying to break down a crate on the vehicle.
- (e) Any futile or redelivery charges incurred as no one was available to assist the driver to unload will be charged accordingly.
- (f) The name and correct phone number of the receiver must be provided to allow contact to be made to arrange delivery so that someone is there to receive the goods as we do not recommend Authority to Leave goods (ATL).
- (g) Delivery can occur between 8am and 5pm Monday to Friday and someone is required to be present to accept delivery. It is the receive's responsibility to advise us at the time of order if they are not open or present between 8am and 5pm so that we can make note on their consignment and avoid additional charges being applied for re delivery.
- (h) Any change of address or redirection of order requested by the customer will be subject to the additional freight charges. Larnec may not warrant any claim on damages for goods that have been re-directed or re-delivered.
- (i) If at the request of the customer they give Authority to Leave (ATL) and the driver deems its safe to unload and do so, Larnec will not warrant any claim on damages or loss of goods.

### **4. Site deliveries**

- (a) Site deliveries are any location that is deemed to be a home/residential address, building or construction site.
- (b) The surface for this service must be firm, level, and solid ground to allow vehicle access. Grass or other soft surfaces, uneven or steep inclines/declines will not be permissible.
- (c) Site deliveries will require the receiver to be available to assist with hand unloading as the driver will not perform this on their own. The driver has the right to refuse to site deliver the goods if they deem it is unsafe for them to do so. We should avoid site delivered as an option as this can only lend itself to damages and the risk of injury to person or property.
- (d) Larnec may not warrant any claim on damages for goods that have been site delivered.
- (e) Site delivered items that require a tailgate or hand-unload will not be crated due to weight and the issues that arise from trying to break down a crate on the vehicle. If a forklift unload is available, then crating the order for site delivery is preferred.
- (f) Double Doors will only be delivered to site within a crate, therefore double doors can only be included in a site delivery if a forklift unload is available.
- (g) Any futile or redelivery charges incurred as no one was available to assist the driver to unload will be charged accordingly.
- (h) The name and correct phone number of the receiver must be provided to allow contact to be made to arrange delivery so that someone is there to receive the goods as we do not recommend Authority to Leave goods (ATL)
- (i) Delivery can occur between 8am and 5pm Monday to Friday and someone is required to be present to accept delivery. It is the receiver's responsibility to advise us at the time of order if they are not open or present between 8am and 5pm so that we can make note on their consignment and avoid additional charges being incurred for re delivery.
- (j) Any change of address or redirection of order requested by the customer will have the additional freight charges applied. Larnec may not warrant any claim on damages for good that have been redirect or re delivered.

- (k) If at the request of the customer they would like an ATL to occur and the driver deems its safe to unload and do so, Larnec may not warrant any claim on damages for goods that have been hand-unloaded.

**5. Depot Collection**

- (a) In the event that any of the above Larnec Delivery options cannot be entertained by the customer, a depot collection will apply.
- (b) Depot collection will occur for the nearest possible freight depot location to the receiver.

- (c) A \$20.00 depot collect charge will be applicable to any depot collections.

- (d) Should the depot collection be required after previous delivery attempts have been made Larnec may not warrant any claim on damages to the goods.

**6. Larnec delivery charges**

At time of delivery, should it be determined that the incorrect Larnec delivery option had been selected and accepted by the customer, Larnec reserves the right to re-apply the correct delivery charges applicable.

## **SCHEDULE 2**

### **1 PRODUCT CARE INSTRUCTIONS**

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- 1.1 Sentry Metal Clad Doors are not warranted within 500 metres of the coastal edge. Sentry Ultra Metal Clad Doors are warranted within 300 metres of the coastal edge.
- 1.2 This Warranty does not apply to damage or deterioration to your Sentry Metal Clad Door which is caused by any of the following:
  - (a) Impact or contact with objects or substances which fall or are precipitated onto or are applied to or are in any way brought into proximity with the door as a result of direct or indirect human intervention.
  - (b) Collapse or movement of the structure on which the door is mounted or any removal or weakening of the doors supports or foundations.
  - (c) Deliberate or careless acts or omissions on your part or on the part of paint suppliers, metal producers, roll-formers, fabricators, builders, subcontractors, architects, specifiers, or any other party excluding Larnec.
  - (d) Exposure to abnormally corrosive environments or conditions including marine environments, coastal areas, polluted or toxic atmospheres, or areas where chemical wastes or acidic substances are present. Information on systems available for use in these environments is available from us on request.
  - (e) Failure to handle, store, install or maintain the doors in accordance with Larnec published recommendations (available from us on request) and normal prudent trade practice.
  - (f) Failure to wash your Sentry Metal Clad Door using a soft brush and fresh clean water at least once every two months.
  - (g) The periodic build-up or accumulation of water or moisture-containing materials on or near the affected part of the door.
  - (h) Contact with copper or similar corrosive substances.
  - (i) Incorporation into or use in connection with door materials manufactured by someone other than Larnec.
  - (j) Any abnormal natural phenomenon such as earthquakes, fires, floods, lightning, abnormally strong winds, abnormally heavy hail, or the build-up of snow or other natural substances.
- 1.3 No downgraded doors will be covered by the warranty.
- 1.4 In the event that Larnec Doors & Systems does replace any defective doors or parts or repaint any part of your door cladding in accordance with the above warranty, you should note that there are likely to be colour and texture differences between the new and the old portions of the cladding. Over a period of time and as a result of the normal action of the elements your Sentry Door cladding, like any other cladding, will inevitably chalk or fade to some degree.
- 1.5 If any doors are replaced or repainted in satisfaction of this warranty obligation, the above warranty will apply to those replacement or repainted doors but only for the unexpired portion of the original warranty.
- 1.6 Colorbond colours like Woodland Grey, Monument, Ironstone, Deep Ocean, Jasper, Terrain, Cottage Green, Basalt, Manor Red & Night Sky attract the heat more than lighter colours and can be susceptible to expansion and contraction – this can result in visibility of the core components at certain times of the day when
- 1.7 The door panel and door frame finishes although the same colour, are slightly different textures and can reflect light differently which
- 1.8 Colorbond MATT has been matched to the closest matt powder finish however these are different textures and any claim for mismatch will not be covered by this warranty.
- 1.9 Sentry Metal Clad Doors 100 & 200 Series range should be covered by a veranda to protect from direct sunlight. Claims for product defect may not be covered by this warranty if cause of defect is deemed to be in reference to point 1.6 where natural expansion and contraction will occur.
- 1.10 Sentry Metal Clad Doors in the 100 & 200 Series range must have door hardware fitted at time of installation to prevent exposed lock holes from getting moisture inside – moisture ingress will result in core components swelling and failure of the door functionality – claims may not be covered by this warranty if this is deemed to be the case by Larnec.
- 1.11 Plastic Corstrip protection on door faces are to be removed within 5 days after installation – any claim for difficulty in removing plastic Corstrip after 5 days will not be covered under this warranty.
- 1.12 No variation, addition to or deletion from this warranty will be valid or binding unless recorded in writing and signed by Larnec Official Warranty Manager or one of his or her authorised deputies.
- 1.13 Glazing – All glazing procedures in accordance with AS1288.
- 1.14 Sentry Metal Clad Doors with glazed viewing panels are only warranted with a door closer installed – broken glass viewing panels as a result of poor handling in windy conditions or sudden movement will not be covered by this warranty.
- 1.15 Door hardware is warranted in accordance with the supplier/manufacturer warranty statements. Warranty period can vary from supplier to supplier. These warranty statements are available on request.

### **2 CARE AND MAINTENANCE**

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- 2.1 Regular maintenance must be provided to prevent deterioration of a Product.
- 2.2 Clean doors using a soft brush and fresh clean water and dry with a soft cloth, at least once every two months.
- 2.3 Keep all stones and any loose objects free from obstructing the underneath of the door, whether in opening or closing of the door.
- 2.4 Clean glass with soft cloth and any recommended glass cleaner.
- 2.5 Check door furniture and hinges for any wear or failure to operate correctly at least once every two months.
- 2.6 Maintenance programs can be obtained from Larnec.