

Industrial Door Company of Chicago Inc.

Terms & General Conditions

- 1) The Buyer(s) agree to pay the total of this contract within 10 days of the date of Invoice. If payment is not made within said 10-day period, commencing with the 11th day, Interest shall be charged on the unpaid balance at the rate of 2% per month (24% annual rate). The Buyer(s) hereby agree that should this contract become subject of litigation the Buyer(s) shall be liable for all expenses of collection including attorney's fees of Seller in a sum equal to not less than 20% of the sum due Seller or \$100,00, which ever is greater. The Buyer(s) agree they are primarily responsible for payment to the Seller and no sums are subject to any pay if paid or 3rd party payment arrangements, restrictions, or other entanglements.
- 2) Seller shall carry Workmen's Compensation and Public Liability Insurance to cover the work. Seller shall not be liable to indemnify or to hold harmless or to protect in any way Buyer or any other party involved in the work, whether any employee of Seller or Buyer or any third party, except to the extent of the Workmen's Compensation and Public Liability insurance maintained by Seller and in effect at the time.
- 3) Buyer(s) shall not withhold any part of the contract amount, including any extra work, for which payment is due under the terms of this agreement as retention, and the total contract price including the charges for any extras shall be payable to Seller within 10 days of Seller's invoice as provided herein. Buyer(s) signature on Seller's Work Order or Estimate/Contract is not a requirement for payment of Seller's Invoice. Where applicable and by IDC interpretation, material and equipment cost definitions are per Federal Acquisition Regulations – Contracts with Commercial Organizations.
- 4) The giving and accepting of drafts, notes or trade acceptances to evidence the payment(s) due shall not constitute or be construed as payment until said drafts, notes or trade acceptances are paid in full in cash. The acceptance by Seller of drafts, notes or trade acceptances shall not be deemed to be a waiver of any of its rights to a Mechanics Lien upon the premises on which the work is performed. Buyer(s) hereby expressly waives any and all rights of Homestead Exemption against the unpaid claim of Seller, which Buyer(s) may have in the premises on which work is being performed by the Seller.
- 5) In the event the Buyer(s) shall terminate the contract prior to completion of the work herein specified, Buyer(s) shall pay Seller for all labor and materials furnished to date of termination, including fabricated material whether delivered or undelivered to the site as long as fabrication has been commenced or completed. Such payment to be prorated in accordance with the progress of the work at the price herein set forth in addition thereto a sum equal to 25% of the total contract price as liquidated damages and not as a penalty.
- 6) Buyer(s) shall obtain and pay for all necessary permits, licenses, bonds, tests, inspections, retroactive fines and related fees or surveillance of any type which may be imposed under the building or zoning ordinances or by Cities, Counties, States or other regulatory authorities and shall keep the premises upon which Seller's work is to be installed adequately insured in a sum of money to insure the premises against any and all losses to the Seller by reason of damage to its work by vandalism, fire, water, windstorm or any other occurrence during the term of this contract.
- 7) In performing the terms of this contract, the Seller acts as principal and is not the agent or representative of any person, firm, corporation or group.
- 8) By allowing work to start Buyer(s) shall be deemed to have assented to the work and the terms and conditions set forth herein.
- 9) In the event Seller places this account in the hands of an attorney for collection and a suit to confess judgment is not commenced, Buyer(s) shall pay all attorneys' fees incurred by Seller whether or not a lawsuit for collection is instituted and all other costs of litigation.
- 10) All promises, understandings, or agreements of any kind, to this agreement, not mentioned herein, are hereby expressly waived and void; and it is agreed that this instrument shall constitute the entire agreement between the parties, and shall not be modified in any manner, except in writing signed by both parties.
- 11) Seller's standard corporate coverage's and limits of insurance to apply - If additional coverage's are needed the Seller will attempt to secure those coverage's at additional cost to be added to the contract amount.
- 12) Seller's scope of work shall not include the identification, detection, abatement, encapsulation or removal of asbestos or any other hazardous substances and the Buyer(s) agree to pay the Seller for delays resulting from the abatement process and Buyer(s) agree to indemnify, defend and hold the Seller harmless from any and all claims, expenses and liability arising out of any allegations or occurrences.
- 13) It is expressly agreed between the parties that in the unlikely event of a dispute of any nature relating to this contract arising between them, other than the Buyer(s) failure to pay the amount due, that it will be submitted to the American Arbitration Association for binding arbitration, under the Construction Industry Rules. Laws of the State of Illinois to govern this contract.
- 14) The failure by Seller at any time to enforce or to require strict compliance of any provisions of this contract shall not constitute a present or future waiver of such provisions and shall not affect or impair in any way Seller's right at any time to enforce said provisions or to avail itself of such remedies as it may have for any breach thereof.
- 15) Buyer(s) agrees that it shall not, except with prior written consent of the seller, offer employment to, employ or otherwise solicit in any manner any person who is employed, engaged as a consultant, or otherwise engaged or retained by the Seller.

Erection Conditions

- 1) Seller assumes no responsibilities for failure of the installation or service or any resulting damage due to structural, electrical or mechanical deficiencies in or on the building or premises or surrounding areas including temporary, intermittent, or permanent power surges, fluctuations or other anomalies.
- 2) Buyer(s) shall provide electric current required for power tools, lighting and welding for the installation.
- 3) Buyer(s) is to furnish an authorized representative immediately upon completion of the installation or repair to sign Sellers work ticket, receive training, documentation, witness testing and otherwise to take control and responsibility for the apparatus. If Buyer(s) fails to provide an authorized representative immediately upon the completion of the work then the Buyer(s) forfeits any requirement for the Seller to produce a signed work ticket and the Buyer(s) will be responsible to contact the Seller's service department within (5) working days to schedule a chargeable return trip to observe, test, and receive training and Buyer(s) agree to indemnify, defend and hold the Seller harmless from any and all claims, expenses and liability arising out of any allegations or occurrences.
- 4) Approval from the Authority Having Jurisdiction for any and all wall/opening/building/door repairs, maintenance, or modification(s) including fire doors/systems is the sole responsibility of the Buyer. Some fire door repairs may not use the original manufacturer's parts, may not conform to the original manufacturer's specifications nor function as originally intended. The Authority Having Jurisdiction may approve repairs or modifications made to a fire door or fire door system including not using the original manufacturer's parts. The option in many cases is the replacement of the existing fire door/system. The Buyer bears the sole responsibility for obtaining the approval for any and all wall/opening/building/door repairs, maintenance, or modification(s) including fire doors/systems and fire door repairs or modifications from the Authority Having Jurisdiction and Buyer(s) agree to indemnify, defend and hold the Seller harmless from any and all claims, expenses and liability arising out of any allegations or occurrences.
- 5) Unless a maintenance agreement is purchased from IDC any and all routine inspection, testing and maintenance per the manufacturer's recommendations is the responsibility of the Buyer and Buyer(s) agree to indemnify, defend and hold the Seller harmless from any and all claims, expenses and liability arising out of any allegations or occurrences.
- 6) In all cases the Buyer is the designer of the process/business system and IDC is the installer/service provider of a component(s) in the Buyer's process/business system.
- 7) Seller shall be allowed uninterrupted and exclusive access to openings during Installation/Service of equipment - delays will be charged as an Extra at our standard rates in effect at the time.
- 8) Buyer(s) to furnish the required SDS sheets, keep the area of the work HAZARD FREE, furnish the necessary barricades, traffic control, lockouts, overhead crane safety precautions, overhead wires safety precautions, clean floors, clutter free work area, pedestrian routing, training and record keeping as required to meet Federal, State and Local requirements
- 9) Installation/Service dates are estimates only and Seller cannot guarantee commencement of work or completion thereof on any given date. Completion dates estimates cannot be given until Seller has been furnished with complete approved drawings and/or any additional information it may request. Seller shall not be liable for total or partial failure to complete or for any delay in delivering material or service under this order or for the suitability of the products or services supplied or rendered. Seller shall not be liable in any event for any special, liquidated or consequential damages on account of failure or delay in performance regardless of cause.

Guarantees and Warrantees

- 1) Service Limited Guarantee: New parts and associated labor are guaranteed for 90 days
- 2) Electronics, controls and devices are guaranteed by the manufacturer and its limited guarantee supplied with the apparatus shall apply.
- 3) Parts Limited Warranty: Parts are guaranteed for 90 days from the date of installation and will be replaced for a service charge only. Note Par 7 below!
- 4) Service Charges: Are a two hour minimum at the rates in effect at the time
- 5) NO GUARANTEE OR WARRANTY WILL BE HONORED IF THE ACCOUNT HAS NOT BEEN PAID in full together with applicable service charges.
- 6) No Warrantees are made or will be deemed to have been made by either the Seller or Manufacturer of the equipment, parts or accessories sold to Buyer(s) under the terms of this contract except the following Limited Warrantee: Claims for apparent defects must be made in writing to Seller at its place of business indicated on the contract within ten (10) days after the installation/service and absent such notification the work shall be deemed to have been completed in a satisfactory manner. Furthermore Buyer(s) must notify the Seller in writing at its place of business indicated on the contract within two (2) days of learning of any problem before any progress or final payment is withheld or reduced in value. No materials may be returned without the prior written consent of the Seller. Notice of Latent Defects must be given to Seller in writing within ten (10) days of the discovery thereof in the same manner as provided herein for notice to Seller of apparent defects with respect to latent or apparent defects. Seller shall at its option repair or replace any materials which when installed may prove defective under normal and proper operation and maintenance within the time limits set forth above to the satisfaction of the Seller after inspection by the Seller. Seller shall not be liable for losses, damages (liquidated, consequential or otherwise), delays, labor costs or expenses directly or indirectly arising from the use of the material; the Sellers liability being expressly limited to the replacement or repair of defective goods or an allowance of credit therefore; the responsibility of the Seller being limited to the cost of the defective part only. This express limited warrantee is in lieu of, and excludes all other warrantees expressed or implied including, without limitations, merchantability or fitness for a particular purpose. This limited warrantee shall be void (a) if Buyer modifies, repairs or in any way alters the materials delivered by Seller without the prior written consent of Seller or (b) if notice of any claim has not been given to Seller in writing within the above terms or (c) if there are any open invoices from the Seller to the Buyer(s), or (d) if Buyer(s) has not followed manufacturer's instructions
- 7) Material(s) furnished by Seller is designed to be installed/serviced by knowledgeable, experienced door and operator installers, equipped to do the work. If materials furnished by Seller are installed by others, Seller is not responsible for installation, proper adjustment, safety, training, testing, serviceability, suitability, or operation thereof and Buyer(s) agree to indemnify, defend and hold the Seller harmless from any and all claims, expenses and liability arising out of any allegations or occurrences.
- 8) Service on this equipment by UNTRAINED technicians is EXTREMELY DANGEROUS and under NO CIRCUMSTANCES is Seller or Manufacturer liable for any damages or injuries (including death) caused by such service by any UNTRAINED PERSON or work performed on said equipment by anyone other than Seller's AUTHORIZED AGENTS and Buyer(s) agree to indemnify, defend and hold the Seller harmless from any and all claims, expenses and liability arising out of any allegations or occurrences.
- 9) In the event Seller shall not be able to deliver all or any of the material specified herein by reason of the discontinuance or availability of the manufacturer thereof or the items thereof by the supplied named herein, then Seller may substitute a product equal to the specified herein, manufactured by another.
- 10) Buyer(s) agree to comply with all OSHA Standards, Federal, State and Local laws and ordinances and take full responsibility for their failure to act and/or authorize Seller to act in accordance with same.
- 11) Buyer(s) acknowledges and certifies that by signing the contract, allowing the work to begin or otherwise authorizing the work, Buyer(s) is authorized to sign contracts or otherwise authorize the work obligating Buyer's company and Buyer's company is obligated to pay the Seller by Buyer's signature or otherwise authorizing the work and has determined the code requirements and/or received authorization from the Authority Having Jurisdiction.
- 12) The door and operator system are meant for vehicular traffic only ie: automobiles and similar vehicles. The reversing/safety controls may not be fail-safe /self-monitoring in design, do not meet residential standards and should not be used with pedestrian traffic including strollers, bicycles, scooters, motor cycles, golf carts, etc. Seller is not responsible for the design, implementation, suitability, maintenance, serviceability, proper adjustment, operation, coordination, training, safety and/or integration of the door and operator system and safety controls into the Buyers systems and processes. Buyer(s) is responsible for the design, implementation, suitability, maintenance, serviceability, proper adjustment, operation, coordination, training, safety and /or integration of the door and operator system and safety controls into the Buyers systems and processes with Seller installing only a component(s) in the Buyer's process/system and Buyer(s) agree to indemnify, defend and hold the Seller harmless from any and all claims, expenses and liability arising out of any allegations or occurrences. Buyer agrees that all work and services provided by IDC will not be considered or interpreted to be Professional, Architectural, Engineering or Design services.
- 13) Doors, dock products, gates, operable walls, partitions, and other products sold and/or serviced by Seller can cause serious injury or death. The Buyer(s) agrees to provide, to anyone using such products or in the areas affected by such products, proper training and to provide signage, service, and maintenance per the manufacturer's instructions, including daily operational checks and proper record keeping, and to remove suspect equipment from service and Buyer(s) agree to indemnify, defend and hold the Seller harmless from any and all claims, expenses and liability arising out of any allegations or occurrences.
- 14) Spring Adjustment Notice: New springs sometimes require an adjustment shortly after they go into service. This is a metallurgical issue and beyond our control. A follow-up spring adjustment service call is not covered under warrantee as we did not charge for it during the installation because we do not know ahead of time which springs will require the follow-up adjustment.

Progress Payments

It is hereby mutually agreed between the parties' hereto that Seller shall be entitled to progress payments on a monthly basis as the job progresses until such time as a final billing is rendered by the Seller. It is further agreed that where a portion of the equipment or all of the equipment has been delivered to Sellers warehouse, the jobsite or stored in a mutually agreed upon location, a partial billing and payment request will be made at the time for an amount not to exceed seventy five (75%) per cent of the contract price. Progress payments shall be paid under the Seller's regular billing terms and non-receipt of progress payments shall be cause for immediate stoppage of work until such time as said payment is received at its office.