

# NOUS HOUSE PTY LTD - GENERAL TERMS AND CONDITIONS OF SALE

NOUS HOUSE PTY LTD (ABN: 73 146 369 593)

## 1. VALIDITY

Unless previously withdrawn all quotations are valid for thirty (30) days from the date shown thereon, but are not to be construed as an obligation to sell and no contractual relationship arises therefrom until the Purchaser's order has been accepted by the Company.

## 2. GOODS AND SERVICES TAX (GST)

Unless specifically stated to the contrary, all prices quoted do not include Goods and Services Tax (GST)

## 3. PRICE VARIATION

(a) Prices quoted are based on ruling award wages, charges currently made by the Company suppliers and current rates for freight, ordinary marine insurance, customs duties, landing, clearing and delivery charges and other taxes and duties in respect of the goods. In the event of there being changes in the said wages and/or charges and/or prices and/or rates after the date of the Quotation the Company reserves the right unless otherwise stated herein to increase the price by such an amount as it deems necessary to take account of such requirement.

(b) Prices quoted are based on the work in respect of the installation of the goods being carried out during normal working hours. If the Purchaser requires such work or any part thereof to be carried out outside normal working hours, the Company reserves the right unless otherwise stated herein, to increase the price by such an amount as it deems necessary to take account of such requirement.

(c) If the Company is subjected to increased costs attributable to delays caused by the failure of the Purchaser or contractors for whom the Purchaser is responsible to meet their respective obligations, it reserves the right unless otherwise stated herein to increase the price by such amount as it deems necessary to take account of such increased costs.

(d) Unless otherwise specified prices quoted in respect of any goods being purchased by the Company from an overseas supplier are based on the telegraphic transfer selling rate prevailing at the date of the Quotation between Australian currency and the currency in which payment is required to be made by the Company to the supplier of the goods described in the Quotation. The Purchaser hereby expressly agrees to indemnify the Company against any loss occasioned to the Company by a variation between such rate and the rate prevailing on the date when EITHER the Letter of Credit established by the Company with its bankers is actually drawn upon by the original vendor OR actual payment is made to the original vendor in some manner other than by Letter of Credit but otherwise in accordance with the terms of the contract between the Company and the original vendor.

## 4. VARIATION

In the event of any variation in the goods or to the work in respect of the installation of the goods or any additional goods or work in respect of the installation of such additional goods being requested by the Purchaser, notice of any such variation or addition must be given to the Company in writing as soon as possible showing full and detailed information thereof. Upon receipt of such information the Company will prepare a schedule of the variations so requested by the Purchaser, and submit in duplicate to the Purchaser the prices and terms and conditions for the variations concerned. No variation work in respect of installation of the goods will be commenced unless and until the Company receives a signed acknowledgement from the Purchaser of the terms and conditions and price or prices of such variations. The Company reserves the right to refuse any such request for variations.

## 5. DELIVERY OR COMPLETION PERIOD

If any delivery or completion period is quoted by the Company it shall be deemed to be given on the following basis:

(a) In the case of standard goods, the delivery or completion period stated in any Quotation made by the Company is subject to prior sale and/or confirmation of availability of goods by the Company's supplier;

(b) In the case of goods which are in part or all subject to special design, manufacture or other non standard requirements, the delivery or completion period stated in any Quotation made by the Company is subject to the Purchaser having given the Company full final and adequate instructions and/or drawings and having fulfilled any other requirement specified by the Company to enable the Company to proceed uninterruptedly with the supply and/or manufacture of the goods.

(c) Where the Company is required to install and/or commission the goods, the delivery or completion period stated in any Quotation made by the Company is subject to the Purchaser having fulfilled all requirements referred to in (b) above and further is subject to site availability as accepted by the Company and completion of all activities necessary to enable the Company to install and/or commission the goods. In all cases, the Company will use its best endeavours to meet the time quoted by the Company for delivery of goods or completion of the installation of goods. However the time so quoted is an indication only and shall not be considered as a binding commitment by the Company. The Company shall not be liable for any loss or damage suffered by the purchaser or otherwise arising out of the Company's failure to meet the times quoted.

## 6. PAYMENT

(a) Unless otherwise stated, the Purchaser shall pay to the Company the price quoted by the Company (including any variation) in case of presentation of invoice PROVIDED THAT the Company may require full or partial payment in advance of delivery or in some other manner as specified in the Quotation. Where the Company considers that the financial condition of the Purchaser so warrants, it may decline to deliver or install the goods or carry out the work unless the purchaser provides a satisfactory security for the purchase price. Should the Purchaser fail to comply with this provision the Company may cease deliveries and/or leave the site with any re-establishment or other costs thereby incurred to be borne entirely by the Purchaser.

(b) Should the Purchaser intend to arrange lease or hire purchase finance for the purchase of the goods or any part thereof, the Purchaser shall notify the Company of such intention and shall arrange for the lease of hire purchase documentation to be completed in sufficient time to permit settlement to be effected by the finance company on or before the date of delivery or installation.

(c) If the Purchaser fails to pay the purchase price the Company shall be entitled (without prejudice to any other right hereunder or at law):

(i) to charge interest thereon from the date when due until payment is received by the Company at the rate of 2½% per cent per month.

(ii) where the Company still retains title, to retake possession of the goods and to give the Purchaser written notice that the Company intends to resell the goods after the expiry of seven (7) days from the date of the notice and if the Purchaser fails within that period to pay the purchase price with interest thereon then the Company shall be released from all obligations under the contract.

(iii) commence legal proceedings without notice and the purchaser shall pay the Company's costs as between solicitor and own client of any legal action instituted by the Company.

## 7. TERMS OF TRADE AND DELIVERY POINT

Unless specifically stated otherwise in writing the Company's terms of trade shall be ex-warehouse the Company, Sydney. All freight and delivery charges to the Purchaser's premises or other address specified by the Purchaser are for the account of the Purchaser.

## 8. RETURN OF EQUIPMENT

Except in the case of delivery of wrong goods by the Company, no goods shall be returned to the Company without the prior authorization of the Company. The Company, at its sole discretion, may or may not give such authorization and such authorization if given, shall be conditional upon:

(a) Where in the opinion of the Company goods are not returned in the condition in which they were supplied ("as supplied condition") any costs incurred by the Company in restoring goods to "as supplied condition" are for the account of the purchaser; In this agreement.

(b) The imposition of a special fee to be determined by the Company at its sole discretion to cover among other things, restocking charges and any loss the Company may incur in reselling such returned goods;

(c) Such other conditions as the Company may deem necessary.

## 9. INSTALLATION

Where the Company is not contracted to install the goods, the Company representatives may, if so required by the Purchaser, provide advice on the siting, installation (if appropriate) and operation of the goods. In providing this advice the representatives of the Company are expressing personal views derived from their experience in the industry but except as provided in clause 14, the Company shall have no liability whatsoever to the Purchaser in respect of any such advice given by any representative.

## 10. TITLE TO GOODS

(a) Property in each unit of the goods shall remain with the Company until all monies owing to the Company on any account whatsoever have been paid ("the Debts"). Until then the Purchaser must take custody of the goods and retain them as the Company's trustee, fiduciary agent and bailee and shall store the goods in such a manner that they are readily distinguishable from other goods owned by the Purchaser or other persons ("the Other Goods"). Pending resale or utilisation in any manufacturing or other process, the goods are to be kept separate from the *Other Goods* and properly marked, stored, protected and insured.

(b) The Purchaser must not combine the goods with any *Other Goods* unless the goods can be easily extricated from such combination at any time.

(c) The Purchaser grants a licence to the Company to:-

(i) dismantle any such combination and to enter any place where the goods or *Other Goods* are located in order to extricate the goods; and

(ii) enter any place where the goods may be located so the Company can retake possession of the goods.

(d) If the Purchaser is unable to grant the Company any such licence the Purchaser, on being requested by the Company so to do, shall immediately dismantle such combination extricate the goods and deliver them to the Company. The Company shall not be liable and is hereby indemnified by the Purchaser for

any damage caused by or costs incurred in dismantling the goods.

(e) The Purchaser may resell the goods, but only as fiduciary agent and trustee for The Company, by way of bona fide sale at full market value and in the ordinary course of its business.

(f) Until the *Debts* have been paid in full the Purchaser must hold such part of the money it receives from:-

(i) any sub-sale of the goods under the immediately preceding subclause; and

(ii) the proceeds of any sale of any products into which the goods have been mixed or converted by any process as equals the amount of the *Debts* at the time the money is received (*the Proceeds*) as bailee, fiduciary agent and trustee for The Company.

(g) The Purchaser expressly acknowledges that it is bound by such fiduciary obligation and acknowledges that:

(i) it must hold the *Proceeds* on trust for the Company.

(ii) it must place the whole of the *Proceeds* in an account separate from its own moneys (*the Proceeds Account*).

(iii) it must maintain the *Proceeds Account* separate from its own moneys at all times.

(iv) it must maintain proper records for the *Proceeds Account*.

(v) it must not assign or encumber the *Proceeds* or do any other act in derogation of the Company's legal or beneficial interests.

(vi) it must account to the Company on demand for all moneys standing to the credit of such account;

(vii) the Company may appropriate payments to such goods and accounts as it thinks fit, notwithstanding any contrary appropriation by the Purchaser;

(viii) for the purposes of identification of different consignments of the goods purchased from the Company and receipt of *Proceeds*, the Purchaser agrees that the principle of "Last In, First Out" shall be applied to any items which cannot be distinguished.

(ix) receipt by the Purchaser of payment for the sale of any products into which the goods have been mixed or converted by any process shall be treated as evidence that it has received *Proceeds*; and

(x) the Company may trace the *Precedes* in equity.

#### **11. POWER SUPPLY**

The Purchaser shall at its own expense provide power of a quality and at locations as specified by the Company. The Company shall be under no liability whatsoever should any loss be incurred and/or damage suffered including consequential loss or damage as a result of the required power not being continually available.

#### **12. LICENCES AND CONSENTS**

If it is necessary for the lawful fulfilment of the contract:

(a) For the Purchaser to hold or obtain import, export, currency or other licence, consent or authority the Purchaser shall be obliged to obtain the same.

(b) For the Company to hold or obtain any such licence consent or authority the Company shall apply for the same, but if the same is refused this contract shall forthwith come to an end, and neither the Company nor the Purchaser shall be under any liability in respect thereof.

Where required by the Company, the Purchaser shall execute and deliver to the Company prior to delivery of the goods, an end user operating system licence or other software licence in a form required by the Company or the supplier of the goods to the Company.

#### **13. MAINTENANCE**

If any repairs to or maintenance of the goods (other than those covered by the Company's normal warranty provisions) are to be carried out by the Company and the Purchaser does not have a current Maintenance Agreement with the Company, then the cost of such work shall be charged to the Purchaser at the Company's normal rates for such work.

#### **14. WARRANTY**

(a) Except where the Purchaser is a "Consumer" for the purpose of the Trade Practices Act, 1974, the Company

(i) unless otherwise agreed in writing with the Purchaser, makes no warranty of any kind as to the goods supplied or to work done in respect of the installation of the goods pursuant to this Agreement and all terms, conditions and warranties and whether express or implied other than contained in this Agreement are hereby expressly negated and excluded,

(ii) shall not be liable to compensate the Purchaser for any loss (including but not limited to loss of profits and consequential loss) or from damage to person or property or for death or injury caused by an act or omission of the Company, its employees or agents including loss or damage arising out of the installation of the goods or from failure of the goods.

(b) In connection with the supply by the Company to the Purchaser of any goods or services within the meaning of the Trade Practices Act, 1974 other than goods or services of a kind ordinarily acquired for personal domestic or household use or consumption, the liability of the Company in the event of a breach of a condition or warranty implied by that Act (other than a condition or warranty implied by Section 69) shall be limited to one of the following as determined by the Company:

(i) in the case of goods, to any one or more of the following:

(aa) the replacement of the goods or the supply of equivalent goods;

(bb) the repair of the goods;

(cc) payment of the cost of replacing the goods or acquiring equivalent goods;

(dd) the payment of the cost of having the goods repaired; or

(ii) in the case of services:

(aa) to the supplying of the services again;

(bb) to payment of the cost of having the services supplied again.

#### **15. FORCE MAJEURE**

The Company shall not be liable for failure to perform its obligations if the failure arises from circumstances beyond its reasonable control, including but not limited to fire, explosion, strikes, lock-outs or any other industrial disputes, failure or refusal of its supplier to supply the goods, inclement weather, acts of God, Governmental action, in no such event shall the Purchaser be entitled to damages of any kind for late performance or failure to perform.

#### **16. ASSIGNMENT**

The Purchaser shall not assign its obligations hereunder without the Company's written consent.

#### **17. WAIVER AND VARIATION**

A provision of or a right created under these terms in favour of the Company may not be waived or varied except in writing signed by the Company. The Company may elect not to exercise its rights arising from a breach of any provision of these terms and such election, even if the breaches are continuous and multiple shall not create any estoppel or presumption against the Company.

#### **18. APPLICABLE LAW**

The Quotation, any contract or agreement of which it shall form the basis, shall be interpreted and enforced in accordance with the laws for the time being in force in the State of New South Wales and the Purchaser agrees to submit to the jurisdiction of the Courts therein.

#### **19. SEVERANCE**

Should any term hereof be affected by any illegality, unenforceability or invalidity, that term shall be considered to the extent of such illegality, unenforceability or invalidity independently of and severable from any other term contained herein and shall not affect the enforceability of any other term hereof in any way whatsoever.

#### **20. STORAGE**

If, by reason of any act or omission of the Purchaser, the Company is unable to deliver the goods within 14 days of having notified the Purchaser of its intention to do so, delivery shall be deemed to have been effected for the purpose of clause 6 hereon and the Company may, in addition, charge storage fees to the Purchaser.

#### **21. RISK**

Risk in the goods shall pass to the Purchaser at the date of delivery and the Purchaser will insure all goods that are at his risk.

#### **22. CONSIGNMENT/LOAN STOCK**

From time to time the Company may lend the Purchaser equipment for demonstration and evaluation purposes prior to the Purchaser issuing a firm order for same, in such case the following clauses apply in addition to those above:

(a) The Purchaser shall be responsible for ensuring the prompt return of the goods to the Company within 7 days (or alternative period of time specifically agreed in writing).

(b) The purchaser shall be responsible for all damage to the goods incurred while the goods are in the Purchaser's possession, and undertakes to reimburse the Company for the goods replacement costs or repair costs at the Company's discretion.

#### **23. INTERPRETATION**

(a) "the Company" means NOUS HOUSE PTY LTD Pty Limited ABN 73 146 369 593 and all of its present and future assigns or successors in title and each corporation (within the meaning of that term in Section 9 of the Corporations Law) which now or hereafter is or shall be deemed to be related to the Company (within the meaning of section 50 of the Corporations Law).

(b) "the Purchaser" is the person, firm or company who or which is giving the order or to whom or to which the Company's quotation is addressed.