

Conditions of Sale and Contract

Definitions

1. In these Conditions of Sale:

- (a) Seller means SMART BUILDING SERVICES Pty Ltd A.B.N. 49 113 901 732,
- (b) Buyer means any person or company who:
 - (i) is the other party to a contract for the manufacture, sale or supply of goods;
 - (ii) is named in or receives a quotation or sales invoice for the manufacture or sale of goods or the provision of services or the carrying out of work by the seller;
 - (iii) purchases goods from the seller;
 - (iv) requests the Seller to provide designs or specifications or manufacturing proposals for the manufacture of a product;
 - (v) obtains a quotation from or contracts with the Seller for the carrying out of building or construction work and the supply of materials by the Seller.

Preliminary

- 2. (a) These Conditions of Sale apply in respect of all offers to sell, quotations, contracts and other commercial transactions for the supply of goods and services by the Seller.
- (b) These conditions of sale shall be coexistent with and be read in conjunction with any Special Conditions of Sale except where the latter specifically vary or override these General Conditions or any of them
- (c) Except as otherwise expressly agreed upon in writing between the parties, the terms and conditions contained herein shall apply notwithstanding any provisions to the contrary which may appear on the order form or other documents issued by the Buyer.

Quotations

- 3. (a) The Seller shall not be bound by any conditions attaching to the Buyer's order or acceptance of the quotation unless such conditions are accepted by the Seller in writing. If the Buyer accepts the quotation by delivery of an order form or document which stipulates or purports to impose conditions, such conditions shall not be applicable to the contract resulting from the quotation without such written acceptance.
- (b) Every quotation shall be subject to and conditional upon any necessary import or export or other License being obtained.

Permits and Approval

- 4. Unless otherwise stated it shall be the Buyer's responsibility to obtain and provide any access, services, facilities, permits, approvals or licenses as may be necessary or required for the performance of any work required to be carried out outside the Sellers premises.

Publications

- 5. Unless otherwise stated all specifications, drawings and particulars of weights, dimensions and performance characteristics submitted are approximate only and descriptions and illustrations contained in catalogues, price lists and other written material are intended merely to present a general idea of the goods described therein and none of these shall form part of the contract.

Delay

6. (a) Any delivery dates and/or times quoted are given in good faith but unless otherwise stated the Seller will not be held responsible for any delay arising from causes beyond its reasonable control. The Buyer's receipt of goods shall constitute a waiver of any claim for delay.

(b) Subject as hereinafter provided the Seller shall have no liability whatsoever for any direct, indirect or consequential damage or loss arising from non-delivery or any delays in delivery including off loading or misdirection in transit

Other Suppliers

7. It is contemplated by both the Seller and the Buyer that to satisfy a contract in whole or part the Seller may manufacture the goods or may purchase them outright or may order their manufacture or may purchase the rights of a third party who has contracted for the supply of goods of similar description or who may have already placed such order or so purchased.

Warranty

8. (a) All goods supplied are covered by such warranty as is specified by the manufacturer and supplied subject to the product standards detailed by the manufacturer which shall apply to the sale of the goods.

(b) The Buyer shall immediately notify the Seller in writing upon discovery of any defect in the goods. The Buyer shall not carry out any remedial work to alleged defective goods without first obtaining the written consent of the Seller so to do.

(c) The only conditions and warranties which are binding on the Seller in respect of the state, quality or condition of the goods supplied by it to the Buyer are those imposed and required to be binding by statute (including the *Trade Practices Act 1974* and the *Fair Trading Act 1989* and any amendment or re-enactment thereof) and to the extent permitted thereby, the liability, if any, of the Seller arising from the breach of such conditions or warranties shall at the Seller's option be limited to and completely discharged by

- (i) any remedy provided by such statute; or
- (ii) the replacement of the goods or re-supply of same by the Seller, - or
- (iii) the repair of the goods; or
- (iv) the payment of the cost of replacement of the goods; or
- (v) the payment of the cost of repair of the goods.

and otherwise all other conditions and warranties whether express or implied by Law in respect of the state, quality or condition of the said goods which may apart from this clause be binding upon the Seller are hereby expressly excluded and negated. (d) The Buyer expressly acknowledges and agrees that the Seller is not liable for any advice given by its agents or employees in relation to the suitability for any purpose of goods or materials supplied by the Seller and all such advice relied upon is at the Buyer's risk.

Acceptance and Return of Goods

9. (a) The Buyer will be responsible for immediate examination of the goods after arrival at the place of delivery and the Seller shall except as may otherwise be required by law not be

liable for any claim for which it would otherwise be liable in respect of damaged goods including goods damaged in the course of transit unless particulars of such claim are notified to the Seller in writing within three (3) working days after arrival of the goods at the place of delivery.

(b) The Buyer shall be deemed to have accepted the goods to be of the description, quality and quantity ordered unless particulars of any claim are notified to the Seller in writing with forty-eight (48) hours after arrival of goods at the place of delivery.

(c) The Seller will not accept return of goods unless such return is authorised in writing by the Seller.

(d) A Re-stocking fee of up to 25% may be charged to the Buyer on all returnable items within the 30 days of the purchase date depending on their condition when returned. Smart Building Services Pty Ltd will only give a full refund less the re-stocking fee, where applicable, on goods that are in "Brand-New-In-Box" condition. A re-stocking fee will apply to goods specially programmed or setup for a Buyer.

(e) Products specially purchased, manufactured, machined and cut to size or to Buyer's specifications, are not returnable.

Liability

10 (a) Except as provided in the preceding clauses the Seller shall not be under any liability, whether in contract, tort or otherwise in respect of defects in goods delivered or for any injury, damage or loss resulting from such defect or from any work done in connection therewith except to the extent that any statute applicable to these conditions prevents the exclusion, restriction or modification of such conditions or warranties.

(b) Notwithstanding any other provisions of the contract the Seller shall not be liable to the Buyer for any loss of profit howsoever arising nor shall the Seller be under any liability whether in contract, tort or otherwise nor for any injury, damage or loss whether consequential or otherwise save as is expressly provided in these conditions.

(c) Where goods are manufactured to the Buyer's specification the Buyer indemnifies the Seller against any liability to or action by a third party for infringement or alleged infringement of a patent, registered design, trademark or copyright

(d) All goods are supplied in accordance with the normal industry standards applicable to them and the Seller will not be liable to the Buyer for the condition or quality of goods which comply with these standards.

G.S.T.

11. "G.S.T." and "Tax Invoice" are as defined in the "A New Tax System (Goods and Services Tax) Act 1999"

Extra Charges

12. Unless agreed to the contrary in writing, if the Seller prepays freight, insurance, customs and import duties (if any), landing and delivery charges and all other charges in connection with shipment and delivery of the goods, then any such charges shall be to the Buyer's account. The Seller shall have the right to nominate the means of delivery, unless agreed otherwise.

Risk

13. The point of delivery is as shown in the body of any quotation and if not shown therein shall, subject to any other agreement between the Buyer and the Seller evidenced by any document in writing, be 'Free on Transport at Supplier's Store'. The Seller accepts no responsibility for loss, damage, or any delay in transit beyond the point of delivery. The Seller without incurring responsibility will, if so desired by the Buyer, do whatever it reasonably can to arrange freight and/or other carriage and/or insurance beyond the point of delivery at the Buyer's risk and cost in all things.

Termination of Negotiation or Order

14. Where:

(a) A Buyer requests the Seller to provide designs or specifications or manufacturing proposals for the manufacture of a product or the carrying out of any works with or without the supply of product, or

(b) Any order resulting from the quotation be terminated for any just cause;

Without prejudice to any other rights the Seller may have the Buyer shall pay the Seller for all costs and expenses incurred and commitments made in connection with the performance of the order or the provision of designs or specifications or proposals plus a reasonable profit thereon.

Interest

15. The granting of credit to the Buyer shall be at the absolute discretion of the Seller. If payment is not made strictly within the terms attaching to the quotation interest may be charged from either date that goods are available for despatch, equipment is commissioned or date of invoice whichever occurs first and until all unpaid monies are received. Payment will be credited first against interest accrued. The rate of interest applicable shall be the rate as set from time to time by the Reserve Bank of Australia for overdrafts of \$100,000.00 or less plus one and one-half (1½) per centum per annum or if there be no such rate at the rate of fifteen (15) per centum per annum and such interest shall accrue and be calculated on a daily basis.

Currency

16. All quotations and all payment made for goods and services must be in Australian currency.

Progressive Delivery

17. The Seller may deliver any of the goods progressively and shall then be entitled to payment progressively for the items of goods delivered in such amounts as the Seller shall reasonably determine. If the Buyer fails to make a progressive payment within seven days of delivery of any invoice by the Seller then the Seller shall be entitled to withhold construction or a delivery of the remainder of the goods without incurring liability for such delay.

Cancellation after Default

18. In case of death, incapacity, bankruptcy, liquidation, suspension of payment or the entering into any arrangement with its Creditors on the part of the Buyer or of any failure to make any payment or to meet any draft under this or any other contract or obligation to the Seller or should a Receiver be appointed in respect of the Buyer's business or affairs, the Seller may without prejudice to any other rights or remedies open to it cancel this or any contract

or suspend or continue the carrying out of works or delivery hereunder at the Seller's option always reserving to the Seller all rights to recover any loss consequent upon any such loss cancellation or suspension

Intellectual Property

19.(a) All drawings, illustrations, specifications and other literature and materials for or relating to the goods and whether or not supplied by or on behalf of the Seller to the Buyer shall remain the exclusive property of the Seller and shall not be transferred to any other party without the previous written consent of the Seller- The Buyer shall out use, reproduce or impart any information contained therein to any third party without the previous written consent of the Seller except for the purpose of implementing the contract in respect of which they are supplied and except in the case of standard descriptive illustrations, drawings or specifications, they are to be returned to the Seller either on completion of the contract or earlier, at the Seller's request

(b)Where the seller has followed a design, sample or instruction furnished or given by the Buyer, the Buyer shall indemnify the Seller against all damage; penalties, costs and expenses to which it may become liable through any work required to be done in accordance with those instructions involving an infringement of a patent, trademark, registered design, copyright or common law right

Property in Goods

20. (a) Unless the supplier shall otherwise specify in writing all goods sold by the Seller, to the Buyer shall be and remain the property of the Seller until the Buyer has paid all that is owing to the Seller. (b) Until the date of payment the Buyer is required to store the said goods in such a way that it is clearly the property of the Seller. (c) Should the Buyer default in payment the Seller may enter the Buyer's premises and retake possession of and permanently retain any goods for which full payment has not been received by the Seller and revoke all liability of the Seller to the Buyer on the contract of sale and delivery of such goods. (d) If any of the goods are incorporated into or used as material for any other goods before such payment the property in the whole of such goods shall be and remain with the, Seller and the Buyer is to keep such goods as fiduciary owner, until such payment has been made. (c) In the event of a resale of the goods, including any mixed goods, by the Buyer to a third person, all goods are sold as agents of the Seller and the Buyer shall account to the Seller for any money received.

Right Removal

21. The Buyer irrevocably grants to the Seller its agents and servants an unrestricted right and license, without notice, to enter premises occupied by the Buyer to identify and *remove any* of the goods to the property of the Seller in terms of these conditions an aforesaid without in any way being liable to the Buyer or any person claiming through the Buyer. The Seller shall have the right to sell or dispose of any of such goods so removed or otherwise in its sole discretion and shall not be responsible for any loss occasioned thereby.

Payment

22. Payment for any goods sold shall become immediately due upon default by the Buyer in payment for any of the goods which the Seller has sold to the Buyer and the Seller shall be entitled to suspend the supply of further goods to the Buyer.

Rise and fall

23. Any quotation for the manufacture by the Seller is made on the basis of costs existing as at the date of the quotation of materials, parts, equipment required to be purchased as component parts, goods transport and labour and any increase incurred by the Seller in any such item after the date of quotation and before delivery will be added to the price and any and every contract is entered into subject to such condition. Without limiting the generality of the term 'cost of labour, includes any increase in any statute, regulation, award, or determination by which rates of pay are increased or by which hours of work are reduced for holidays, sick leave or any benefit or amenity is increased and in any such case there shall be deemed to be an increase in the cost of labour.

Credit Enquiries:

24. The Buyer hereby gives the Seller the authority to make inquiries from credit reporting agencies as to the credit and financial responsibility of the Buyer and or its Partners or Directors as required by the Seller from time to time.

Submission to Jurisdiction

25. The Contract shall in all respects be construed to operate as an Australian contract and in conformity with State and or Federal laws applicable to the contract any clause headings hereto shall not affect the construction hereof. If any of the provisions of the contract are unlawful or invalid under any applicable statute or rule of law, they are to that extent to be deemed omitted.