

# AUSCO MODULAR STANDARD CONDITIONS OF QUOTATION AND SALE GOODS AND MINOR WORKS INSTALLATION

PAGE 1 of 4



## 1. Definitions

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**Accessories** means goods that have not been manufactured by Ausco but which are provided by Ausco for use by the Customer with the Goods.

**ASQ** means the sales Quotation prepared by Ausco for the Customer and which bears a quotation number.

**Ausco** means Ausco Modular Pty Ltd (A.B.N. 14 010 654 994).

**Building Specification** means the documents referred to in Annexure A to the ASQ.

**Contract Sum** means the total price provided for in the ASQ plus any variations and any additional costs, including transport costs that Ausco is entitled to under the Contract.

**Contract** means the terms and conditions in this Ausco's Standard Conditions of Quotation and Sale Goods and Minor Works Installation, the ASQ, and all attachments.

**Customer** means the party referred to in the ASQ.

**Date of Commencement** means the date that Ausco receives from the Customer a signed copy of the ASQ or such other date as may be advised by Ausco from time to time.

**Date of Practical Completion** means the date of the completion of the Sale Goods or Site works if applicable by Ausco as determined by Ausco at its discretion.

**Goods** mean goods manufactured and supplied by Ausco under the Contract.

**Non-Standard Goods** means goods which in Ausco's reasonable opinion (based on the frequency with which Ausco manufactured goods of a similar specification in the prior 12 month period) are non-standard goods irrespective of whether Ausco manufactures the non-standard goods or not.

**PPSR** means the Personal Property Securities Register.

**PPSI** means a purchase money security interest as defined in the PPSA.

**PPSA** means the Personal Property Securities Act 2009 and any other legislation and regulations in respect of it and the following words, and all related terms, in clause 17 and have the respective meanings given to them in the PPSA: "security interest", "security agreement", "financing statement", "financing change statement", "verification statement", "attached", "attachment" and "perfected".

**Sale Goods** means any new or used goods as forms part of the Works which always shall be subject to this Contract.

**Services** mean those services provided for in Annexure B Site Works to the ASQ.

**Site** means the Site or location provided for in the ASQ.

**Used Goods** means goods owned by Ausco that have been used and may have been modified by Ausco for the Contract.

**Works** means the Works, the Goods and the Services for which the ASQ relates.

## 2. Lapse of Quotation

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The ASQ shall lapse 14 days from the date of issue and may be withdrawn by Ausco at any time for any reason.

## 3. Placement of Order

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- 3.1 These terms and conditions shall prevail against any other conditions whatsoever, notwithstanding any conflicting terms contained in the Customer's purchase order. For the avoidance of doubt, you acknowledge and agree that any terms provided by you will not have any effect and these terms and conditions will prevail.

- 3.2 Ausco will only accept the Customer's order if satisfied with its creditworthiness. If the quotation and sale incorporate installation by Ausco, then clause 11 will apply but not otherwise.

## 4. Completion and Program

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- 4.1 It is expressly agreed and acknowledged that any advice given by Ausco, whether verbal or in writing, as to the completion or programming of the Works shall be a statement made in good faith based on Ausco's known manufacturing/project commitments and the availability of necessary supplies and materials at the time of the advice.
- 4.2 Ausco reserves the right to revise any commencement or any completion date for any activity whatsoever after undertaking a review of Ausco's manufacturing/project commitments and the availability of necessary supplies and materials prevailing at the date of the Customer's acceptance of the ASQ.
- 4.3 Ausco will advise the Customer of the program for the commencement and the completion of the Works.
- 4.4 The Works will be deemed to have reached Practical Completion if in the reasonable opinion of Ausco they are either complete ready for shipment, or in the case of manufacture and installation, fit for occupation and use. If the Works are delayed for any reason beyond the control of Ausco, then the completion date will be deemed extended for the period of delay.
- 4.5 If Ausco is delayed in achieving Practical Completion of the Works for any reason other than its act or omission, then Ausco will be entitled to be paid all reasonable costs of delay, including overhead recovery.
- 4.6 If the Customer directs Ausco to change its program for the performance of the Works, then Ausco will comply with any such reasonable direction. Ausco shall advise the Customer of the cost and time implications of the Customers direction. The Customer shall pay all of Ausco's reasonable costs, including overhead recovery incurred in following such Customers direction.
- 4.7 Notwithstanding anything to the contrary in this Contract, Ausco shall be granted an extension of time to any dates for Practical Completion if it suffers any delay or disruption to its supply chain whatsoever, regardless of whether such delay or disruption was foreseeable. Ausco will use commercially reasonable endeavors to mitigate the effects of such delay or disruption; however, where a delay can be mitigated by sourcing from an alternative supplier or by procuring an alternate item, the parties agree that Ausco will have no obligation to use such alternative supplier or item (as the case may be) unless and until both parties agree on a reasonable variation the Contract Sum for any increased cost and a reasonable extension of time for any time impacts. If no agreement is reached within a reasonable period, but no longer than five days, then the extension of time granted will continue until the original supplier or item is available to supply at the original price.

## 5. Payment and GST

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- 5.1 The Customer will pay the Contract Sum provided for in the ASQ plus any adjustments and all applicable GST and any imposed statutory or other charges whatsoever.
- 5.2 The Customer will pay any deposit and progress payments as provided for in the ASQ plus any necessary prescribed disbursements. Unless the ASQ provides otherwise, the deposit amount will be 50% of the Contract Sum. Deposits will be invoiced upon signing of the Contract and progress payments invoiced in accordance with the ASQ.
- 5.3 Where the Customer is responsible for its own installation of the Goods, then the Customer shall have access to inspect the Goods 24 hours before dispatch. Ausco is not required to release the Goods to the Customer unless and until all invoices issued to the Customer by Ausco have been paid.
- 5.4 All payments required to be made by the Customer to Ausco under the Contract will be made free of any set-off or counterclaim without

deduction or withholding whatsoever (unless agreed to by Ausco in advance in writing).

- 5.5 If delivery and/or installation is delayed at the Customer's request and such delay is for more than seven days then Ausco may issue invoices for the unpaid balance of the Contract Sum, in addition to any applicable storage costs or any other costs incurred by Ausco in connection with the delay. The Goods shall at all times be at the sole risk of the Customer.
- 5.6 The Customer will pay all invoices issued in connection with this Contract within 14 days of the date of the invoice ("**Due Date**").
- 5.7 If the Customer fails to pay the Contract Sum (plus GST) or any other sum payable under this Contract on or before the Due Date then without prejudice to our other remedies under this Contract, at law or otherwise:
- a) Ausco may stop or suspend the further supply of Goods and/or the performance of the Works, in this case the Customer is deemed to have granted Ausco an extension of time to complete its Works and/or Goods for a time period commensurate with the number of days between the Due Date and actual date of payment;
  - b) Ausco may terminate this Contract and/or repossess the Goods and sell them to apply the proceeds of sale towards the outstanding Contract Sum, for this purpose the Customer agrees that Ausco will have the right to enter the Customer's premises (or any premises where the Goods are stored) without liability of any type whatsoever, unless liability arises due to Ausco's negligence or wrongdoing;
  - c) Ausco may issue its invoices for any balance of the Contract Sum;
  - d) The Customer must pay Ausco interest on any sum owing after the Due Date at the rate of 12% per annum from the Due Date until such time that such sum is paid in full; and
  - e) The Customer will be liable for any expenses, disbursements and legal costs incurred by Ausco in the enforcement of any rights, or an attempted exercise of any of Ausco's rights in recovering any sum owing.

## **6. Supply chain cost escalations**

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- 6.1 If at any time after the date of issue in the ASQ there is, and each time there is, a demonstrated cost increase of greater than 2% in any subcontractor costs, supplier costs, material or component required for or incorporated into the Works under this Contract, the Contract Sum shall be adjusted by the amount of the cost increase via a deemed variation under the Contract.
- 6.2 If the parties agree to avoid or mitigate any supply chain cost increases by using available alternative materials or components, such changes in price and time of procuring alternate materials or components shall be adjusted by way of a variation to the Contract Sum and an extension of time under the Contract.

## **7. Insurance**

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- 7.1 If the Contract is for the supply of the Goods only, then the Customer at its own cost and expenses will be responsible for arranging its own insurance ex Ausco manufacturing works.
- 7.2 If Ausco arranges delivery at the Customer's cost, then Ausco will take out an insurance policy to cover the Goods in transit, and Ausco's liability to insure will cease immediately upon delivery of the Goods except when Ausco is installing the works. The Customer will only require Ausco to make good loss or damage to the amount obtained by Ausco from the insurer and Ausco shall not be liable to the Customer whatsoever for any other damages or consequential loss whatsoever.
- 7.3 Ausco shall take out insurance cover for the Works up to practical completion if it is carrying out the installation of the Works.
- 7.4 The Customer shall ensure that they have their own Public Liability Insurance for legal liabilities to third parties for bodily injury or property damage, in connection with any work carried out by them, their employees, agents and contractors concerning the Contract.

- 7.5 Ausco shall take out Public Liability insurance cover for the Works up to practical completion if it is carrying out the installation of the Works.
- 7.6 The Customer shall, to the extent of their negligence, indemnify Ausco, its agents, employees, successors and its permitted assigns and will keep them indemnified and forever held harmless against all loss, damages, claims and awards of any kind which may be imposed upon or awarded against either Ausco, its agents, employees, successors and/or its permitted assigns arising either directly or indirectly out of the Works and/or the Used Goods.

## **8. Delivery and Packaging**

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- 8.1 Unless otherwise provided for in the ASQ, the Customer shall pay all transport costs whatsoever.
- 8.2 For supply and deliver contracts where no installation is involved, delivery will be deemed complete if the Goods are delivered to the Site referred to in the ASQ irrespective of whether or not the Customer is in attendance for receipt of the delivery of the Goods but provided that Ausco had notified the Customer in advance of the anticipated time for delivery. All risk shall pass to the Customer on delivery of the Goods to the Customer.

## **9. Tie Downs**

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Ausco recommends that all transportable buildings be secured to the ground with tie-downs. The Contract Sum does not include the cost of tie-downs unless specifically provided for in writing in the ASQ.

## **10. Testing and Inspections**

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The Customer shall bear the cost of all tests and inspections that it directs or requires, whatsoever.

## **11. Site Conditions**

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- 11.1 Unless specified otherwise in the ASQ, the Customer, at its own cost, shall assume all responsibility for all site conditions above and below the surface, including all environmental matters as may apply to the Site. The Customer also warrants that it has sought and obtained all necessary approvals and shall be deemed to have made all necessary due inspections, made all inquiries of all matters about the Site and warrants that the Works are capable of being performed on the Site.
- 11.2 The Customer will always ensure that Ausco has sufficient access to the Site to do all things required to be done under the Contract. The Customer will provide adequate site facilities, including adequate vehicular offloading, adequate secure storage for Ausco's equipment and adequate facilities so that Ausco can perform the works safely.

## **12. Subcontracting**

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Ausco may subcontract any part of its obligations under this Contract.

## **13. Quality Assurance**

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- 13.1 Ausco's Quality Assurance program shall apply to this Contract.
- 13.2 The Customer will be provided with a copy of Ausco's Quality Assurance program on request and is deemed in any event to have read and understood its provisions.

## **14. Work Health and Safety**

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- 14.1 Ausco's Work Health and Safety policy shall apply to the Contract.
- 14.2 The Customer will be provided with a copy of Ausco's Work Health and Safety policy on request and is deemed in any event to have read and understood its provisions.

## **15. Variations**

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If either party instructs the other party of a variation in writing, or Ausco considers any instruction from the Customer verbal or written to be an instruction to perform a variation, then Ausco will perform the variation but only after the Customer has agreed to the price and associated progress payments in writing within 7 days of receipt by Ausco of the instruction. The agreed price of the variation under this clause 15 or the new price provided by Ausco under a variation under clause 6, will be added to or deducted from the Contract Sum. Reasonable extensions of time or reductions of time to the Contract shall be granted to Ausco for variations to the Works.

## 16. Retention of Title

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Notwithstanding that risk in part of the Works may pass to the Customer, property in and title to any part of the Works and the Goods comprised in the Works will not pass to the Customer until all of the Contract Sum and all other money payable by the Customer to Ausco has been paid in full and until such time the Customer will hold the Goods as a bailee of Ausco and a fiduciary relationship will exist between Ausco and the Customer.

## 17. PPSA

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17.1 If Ausco determines that this Contract (or a transaction in connection with it) is or contains a security interest for the PPS Law, acting reasonably, Customer agrees to do anything (including containing consents, completing, signing and producing documents and supplying information) which Ausco ask for and consider necessary for:

- a) ensuring that the security interest is enforceable, perfected and otherwise effective; and
- b) enabling Ausco to apply for any registration, complete any financing statement or give any notification in connection with the security interest; and
- c) enabling Ausco to exercise rights in connection with the security interest.

17.2 Ausco is not required to give any notice under the PPSA (including notice of verification statement) unless the notice is required by the PPSA to be given and cannot be waived. Customer must not:

- a) create any security interest or lien over any of Ausco Personal Property whatsoever (other than security interests granted in favour of Ausco);
- b) sell, lease or dispose of any interest in the Ausco Personal Property; or
- c) give possession of the Ausco Personal Property to another person except where Ausco expressly authorises the Customer to do so.

17.3 Neither Customer nor Ausco will disclose information of the kind mentioned in section 275(1) of the PPSA. The Customer will not authorise and ensure that no other party authorises the disclosure of such information. This clause does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

## 18. Liquidated Damages

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Notwithstanding that Ausco may fail to deliver the Sale Goods to any delivery point, have available for collection or, carry out any Site Works or perform and other obligation under this Contract by a specific date, Ausco is not liable to the Customer for any damages, whether liquidated or unliquidated, unless agreed otherwise in the ASQ.

## 19. Indemnity and Release

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The Customer shall use the Sale Goods at the risk of the Customer and releases and indemnifies Ausco from all actions, claims and liabilities in respect of damage to property or death of or injury to any person resulting directly or indirectly from the Sale Goods or their use or the services provided by Ausco to the Customer. This indemnity is reduced to the extent that such actions, claims or liabilities arose due to the actions or omissions of Ausco or Ausco's subcontractors under this Contract.

## 20. Liability of Ausco

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20.1 Not used.

20.2 Ausco's liability under or in connection with this Contract is limited to, at Ausco's discretion, the resupply of the Sale Goods, Goods, Non-Standard Goods, Used Goods or Works (as the case may be) or payment of an amount equal to the value of the same. The Customer's liability under or in connection with this Contract is limited to the Contract Sum (as may be varied under the terms of the Contract).

20.3 Subject to clause 24.2, there shall be no implied warranties applicable to this Contract.

20.4 Ausco will not be liable for any losses or damages suffered by the Customer as either a direct or indirect consequence of any regulatory non-compliance whatsoever resulting from any act or omission on the part of the Customer. The Customer warrants that it has made its independent inquiries from appropriate professionals on all statutory and regulatory compliance issues related to the Contract.

20.5 It is expressly agreed that the Customer will not pursue any claim against Ausco and will not hold Ausco liable for any losses or damages suffered by the Customer as either a direct or indirect consequence of any change to any statutory requirement or regulatory compliance that was not reasonably foreseeable at the time of entering into the Contract and that that occurs after the commencement of the Contract but prior to the Date of Practical Completion. In the event that a change in statutory requirements occurs prior to the Date of Practical Completion and requires a Contract variation the parties will negotiate in good faith to agree the necessary terms of the variation.

20.6 Ausco will have no liability in connection with any statutory changes of any type occurring after the Date of Practical Completion.

20.7 Ausco will have all rights and remedies set out in this Contract in addition to those otherwise available at law. All such rights and remedies are cumulative. The Customer must pay all costs and expenses paid or incurred by Ausco in enforcing its rights under or in connection with this Contract, the supply of the Sale Goods and the provision of Site Works (if applicable) including, without limitation, legal fees and court costs.

## 21. Default by Customer

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21.1 If the Customer defaults in any provision of the Contract or commits any act of insolvency or enters into a composition with its creditors, or goes into administration, receivership or liquidation, then Ausco shall be entitled to reclaim any of the Goods as remains the property of Ausco. Ausco may also set off any amounts owing by Ausco to the Customer as against any amounts owing by the Customer to Ausco and/or suspend or cancel any credit facilities granted to the Customer or suspend or cancel the Works or make a demand upon the Customer for security and any legal or other costs incurred by Ausco shall be recoverable by Ausco as against the Customer on a full indemnity and solicitor-client basis.

21.2 The Customer indemnifies and releases Ausco against all claims whatsoever arising out of the Contract due to or in connection with Ausco taking possession of the Goods in accordance with this Contract, except for claims arising due to Ausco's negligence or wrongdoing.

21.3 If Ausco repossesses the Goods from any Connected Location in accordance with the terms of this Contract, then the Customer shall fully indemnify Ausco for all costs and matters arising from there, except for costs and matters arising due to Ausco's negligence or wrongdoing.

## 22. No Assignment, Sale or Transfer

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The Customer must not, without the consent in writing of Ausco, assign its rights under the Contract or subcontract any part of the performance of the Contract. Ausco will not unreasonably withhold its consent.

## 23. Warranty

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23.1 Any claim made on warranty must be made per the manufacturer's requirements for making claims or within 12 months (or such period as provided for in the ASQ) after completion of the Works. Notification of any claim must be made in writing within 14 days of the defect becoming known to the Customer.

23.2 If any Goods are to be repaired for any reason whatsoever, other than due to the negligence, fault or wrongdoing of Ausco, then the Customer will be liable to bear all of the cost of the return and delivery of the Goods if onsite repair is impractical as determined by Ausco (acting reasonably in the circumstances).

23.3 This warranty shall not apply where the damage complained of was caused by an Act of God or any act, or omission, negligence or

contributory negligence of the Customer, its servants or agents or another.

- 23.4 In the case of Accessories, Ausco is not liable for any warranty and offers no warranty for Accessories but will endeavor to pass on the manufacturer's warranty. Ausco does not offer any extension on the manufacturer's warranty whatsoever for Accessories.
- 23.5 The sale of Used Goods, including any fixtures and fittings by Ausco to the Customer, shall be on an as-is-where-is basis without Ausco being liable to give any warranty whatsoever. The Customer acknowledges that the Used Goods may not comply with any existing Australian or other Standard, or any relevant building code, regulation or legislative requirement, including by-laws. The Customer acknowledges having inspected and satisfied itself about the condition of the Used Goods.
- 23.6 Customers are advised that sustained operation of air conditioners installed in the building on 'cool' may result in moisture ingress/condensation forming that may damage the building structure and affect occupant welfare. In high humidity conditions or where ponding of water under or adjacent to the buildings occurs, turn off the air conditioning periodically (3-4 hrs per day) or ensure the thermostat is set to a minimum of 25 degrees. The warranty will not apply where damage to the building results from a failure by the building occupier to follow these directions.
- 23.7 If the Customer is performing its own installation of the Goods, Ausco does not have sufficient knowledge of the site and installation requirements and as such is acting upon the directions of the Customer and:
- a) the Customer is fully responsible for obtaining required certificates of occupancy and compliance with applicable legislation, development approvals, building consents/approvals or permits of any type whatsoever including but not limited to the then current National Construction Code with respect to such installation ("Installation Requirements"); and
  - b) the Customer warrants that the agreed design for the Goods is suitable for use and installation on the site where the Goods will be installed and the Customer will be responsible for any additional works, at its sole cost, that may be required (whether with respect to the Goods or site or otherwise) to comply with the Installation Requirements.

#### **24. Warranty Design Fitness for Purpose**

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- 24.1 Ausco offers no warranty whatsoever that the Sale Goods are fit for the Customer's intended purpose.
- 24.2 No provision of the Contract shall be read as modifying any rights or liabilities implied by the Competition and Consumer Act 2010 or any equivalent State legislation which cannot be excluded or modified.
- 24.3 Ausco will not be required to define or prescribe the fitness for purpose criteria for the Works. This will always be the Customer's responsibility.
- 24.4 Ausco's designs for Sale Goods will be fit for the ordinary and usual purposes for which such Sale Goods are normally used.

#### **25. Design for Non-Standard Goods**

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- 25.1 If the Customer requires Non-Standard Goods, then the Customer must provide Ausco with all information required by Ausco to manufacture the Non-Standard Goods. Ausco shall not under any circumstances whatsoever be deemed sufficient to know the intended use or purpose of any of the Non-Standard Goods.
- 25.2 In the case of Non-Standard Goods, the Customer assumes all responsibility whatsoever for the fitness for the Non-Standard Goods and does not seek from Ausco, nor does Ausco offer any warranty whatsoever as to the fitness for purpose for Non-Standard Goods.
- 25.3 If The Customer provides design information, including working drawings, briefs and any other design documentation that may be necessary for Ausco to construct the Non-Standard Goods, then the Customer is deemed and will be accepted as having warranted the accuracy and completeness of any documents provided by either the Customer or the Customer's agents to Ausco as relates to the Non-Standard Goods.

25.4 The Customer warrants that all of the works described in any of the design documents that the Customer has supplied complies in all respects with the provisions of the Building Code of Australia and all applicable codes, standards, rules, regulations and laws whatsoever.

25.5 The Customer shall be responsible for prescribing the fitness for purpose for the design for Non-Standard Goods.

25.6 The Customer acknowledges that Ausco will rely on the provisions of this clause 25 in its manufacture and/or procurement of Non-Standard Goods.

#### **26. Buyback Option and Sale of Used Buildings**

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26.1 If the Customer decides to resell part or all of the Goods under the Contract, then the Customer shall first offer the Goods for sale to Ausco at a price and on terms stipulated by the Customer.

26.2 If Ausco elects to purchase the Goods from the Customer, the Customer shall warrant that it has title in the Goods, free of all encumbrances, charges or other security interest or claims and that there are no impediments for the completion of such sale whatsoever.

26.3 If Ausco elects not to purchase the Goods, then the Customer may sell the Goods to any third party provided that the terms and price of such sale are not more favorable to the third party than those offered to Ausco unless Ausco consents in writing to the contrary.

#### **27. Confidential Information, Specifications and Drawings**

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27.1 The Customer will not disclose any documents disclosed by Ausco to the Customer marked or are to be treated as confidential by the Customer to any third party without Ausco's written consent and Ausco will not disclose any documents disclosed by the Customer to Ausco marked as confidential to any third party without the Customer's written consent.

27.2 Ausco retains all copyright and intellectual property rights whatsoever in all materials it uses or provides to the Customer relating to the performance of the Works.

27.3 If the Customer provides Ausco with any drawings or other material or documents, then the Customer warrants that it is entitled to use those documents and indemnifies and holds harmless Ausco from any claims that may be brought against Ausco about it.

#### **28. Industrial Relations**

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28.1 The Customer shall bear the costs of all industrial relations matters applicable to the Contract outside of Ausco's reasonable control. The Customer shall reimburse Ausco for all reasonable costs incurred by Ausco because of any changes to any award or applicable site conditions after the date of this Contract.

#### **29. Jurisdiction**

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This Contract between Ausco and the Customer shall be subject to the laws of the State of Queensland, and the Customer agrees to submit to the nonexclusive jurisdiction of the Courts of Queensland and the Federal Court of Australia.

#### **30. Waiver**

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A party's failure or delay in exercising a power or right does not operate as a waiver of the power or right. A waiver is not effective unless in writing.

#### **31. Disputes**

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If the dispute is not resolved by negotiation within 28 days of receiving an invitation to negotiate, the parties will attempt to resolve in good faith through an Alternative Disputes Resolution procedure (ADR). If this is unsuccessful, then either party can refer the matter to arbitration.

#### **32. Changes in Global Economic Conditions**

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- 32.1 In addition to the other provisions of this Contract, the parties acknowledge that Ausco's ability to perform the Works or supply the Goods and/or Services may be affected by circumstances beyond our reasonable control, including:
- (a) disruption to global or domestic supply chains;

- (b) shortages or unavailability of materials, components, labour or transport;
  - (c) increases in the cost of fuel (including diesel and petrol) or transport services;
  - (d) acts of government or regulatory authorities affecting the movement of goods, plant or personnel; and
  - (e) geopolitical events, trade restrictions or market disruptions,
- (together, **Supply Chain Disruption Events**).

32.2 Notwithstanding anything to the contrary in this Contract:

- (a) Where Ausco incurs an increase in the cost of materials, services, fuel or transport required to perform this Contract as a result of a Supply Chain Disruption Event, and Ausco provides reasonable evidence of such increase, Ausco is entitled to an adjustment to the Price to reflect that increase.
- (b) Without limiting the above, fuel-related increases may be determined by reference to a published fuel price index (including, where applicable, the Australian Institute of Petroleum (AIP) terminal gate price or retail diesel price index or any equivalent replacement index). Any adjustment will be calculated by reference to movements in the applicable index between the Base Date and the date of supply or delivery.
- (c) Ausco is not required to source alternative suppliers where it is not commercially reasonable to do so.

32.3 Where:

- (a) Ausco has incurred or are required to incur costs in preparation for manufacture, procurement, delivery, mobilisation or allocation of Goods, plant or equipment for the purposes of this Contract; and
- (b) the Customer delays the commencement, suspends, cancels or terminates the Contract (in whole or in part) prior to commencement of the manufacture or within the first 3 months of the manufacture,
- (c) the Customer must pay Ausco all reasonable costs and expenses incurred or are to be incurred, which become immediately due and payable.

32.4 The Customer acknowledges that Supply Chain Disruption Events are a foreseeable risk at the time of entering into this Contract and agree that they are not entitled to suspend, defer or reduce any payment obligations under this Contract as a result of such events.

32.5 Ausco will use reasonable commercial endeavours to perform our obligations. However, to the extent that a Supply Chain Disruption Event:

- (a) delays or prevents performance; or
- (b) impacts the availability of materials, transport or resources, Ausco:
  - A. are entitled to a reasonable extension of time; and
  - B. will not be liable for any delay, failure to perform or inability to supply, to the extent caused or contributed to by that event.

32.6 While Ausco will use all reasonable commercial efforts to fulfil the order (except for having to engage additional third-party assistance), due to the exceptional circumstances, Ausco may not be able to fulfil the order on time, or at all. If that happens, Ausco will not have any liability to the Customer whatsoever, and Ausco will not be in breach of this Contract.

### **33. Transport, Installation and Demobilisation**

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33.1 If the Customer is responsible for transport, installation or demobilisation of the Good, the Customer must ensure the works are undertaken and performed in a professional and safe manner which are reasonably expected of a competent builder undertaking such works in order to ensure no damage to the building, structure or contents occurs.

33.2 If the Customer is responsible for undertaking transport, installation or demobilisation the Customer will be solely responsible for:

- (a) all problems, issues, damages or concerns arising from the transportation, installation or demobilisation of the buildings, which includes but is not limited to all leaks on modular joins;
- (b) ensuring adequate ventilation (and where reasonably required ensuring dehumidification occurs) is provided between ground level and the building floor level. All joins are to be sealed at the roof and floor joins to prevent condensation. Any condensation issues arising from ineffective seals on the joins or inadequate space beneath the floor level are the sole responsibility of the Customer and Ausco will have no liability whatsoever;
- (c) ensuring that all roads (whether sealed or unsealed) are suitable for the transportation of modular buildings prior to dispatch. Any damage whatsoever to the modules from road conditions are the responsibility of the Customer and Ausco will have no liability whatsoever. If Ausco is responsible for the transportation of the buildings and the Customer requests, Ausco will arrange for a joint inspection to occur upon arrival to site;
- (d) ensuring buildings are appropriately prepared, packed, loaded and tied down for transport in order to prevent any damage.