

**1. Definitions**

**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 these terms being Ausco's Standard Conditions of Quotation and Sale Goods and Minor Works Installation, the ASQ and all attachments to it.

**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 opinion are non-standard goods irrespective of whether Ausco manufactures the non-standard goods or not.

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

**PPMSI** 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 which have been used and which may have been modified by Ausco for the purposes of the Contract.

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

**2. Lapse of Quotation**

2.1 The ASQ shall lapse 30 days from the date of issue and may be withdrawn by Ausco at any time for any reason.

**3. Placement of Order**

3.1 These terms and conditions shall prevail against any other conditions whatsoever notwithstanding any conflicting terms contained in the Customer's purchase order.

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 the provisions of clause 11 will apply but not otherwise.

**4. Completion and Program**

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 or project commitments 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 or project commitments 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 Customer's direction. The Customer shall pay all of Ausco's reasonable costs, including overhead recovery incurred in following such Customer's 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 in connection with COVID-19, regardless of whether such delay or disruption was foreseeable. Ausco will use commercially reasonable endeavours 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 for any cost and time impacts. If no agreement is reached within a reasonable period, but no longer than 5 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**

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 as provided for in the ASQ on the placement of the order plus any necessary prescribed disbursements.

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 and shall pay the balance of the Contract Sum before the Goods are dispatched.

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 and without deduction or withholding whatsoever.

5.5 If delivery is delayed at the request of the Customer and such delay is for more than 7 days then payment of the balance of the Contract Sum shall become immediately due and payable to Ausco including any applicable storage costs, and the Goods shall at all times be at the sole risk of the Customer.

5.6 If Ausco agrees to allow the Customer to make monthly progress payments for the Goods and / or installation, then Ausco will make a monthly progress claim on the last Friday of each month, and the Customer shall pay the amount of the progress claim within 14 days of the date of the progress claim without any deduction whatsoever.

5.7 If the installation is to be completed by Ausco, then the balance of the cost of the Works excluding the cost of installation will be paid by the Customer before dispatch from Ausco's manufacturing facility. The cost of installation will be paid by the Customer to Ausco within seven (7) days from the date of handover of the Works by Ausco to the Customer or upon the Customer taking occupancy or possession of the Works, whichever is the sooner.

**6. Escalation**

6.1 If the date of commencement of manufacturing is more than 3 months after the ASQ date, Ausco may apply escalation to the Contract Sum. The escalation formula will be based on the rise and fall of input costs and will be determined by Ausco unless otherwise agreed between the parties.

**7. Insurance**

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.
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- 8. Delivery and Packaging**
- 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. All risk shall pass to the Customer on delivery of the Goods.
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- 9. Tie Downs**
- 9.1 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.
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- 10. Testing and Inspections**
- 10.1 The Customer shall bear the cost of all tests and inspections whatsoever.
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- 11. Site Conditions**
- 11.1 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 pertaining to 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.
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- 12. Subcontracting**
- 12.1 Ausco may subcontract any part of its obligations under this Contract.
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- 13. Quality Assurance**
- 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.
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- 14. Work Health and Safety**
- 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.
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- 15. Variations**
- 15.1 If the Customer instructs Ausco 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 in writing within 7 days of receipt by Ausco of the instruction. The agreed price of the variation 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.
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- 16. Retention of Title**
- 16.1 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.
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- 17. PPSA**
- 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, 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 are 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 and the Customer will not authorise and will 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.
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- 18. Liquidated Damages**
- 18.1 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.
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- 19. Indemnity and Release**
- 19.1 The Customer shall use the Sale Goods at the risk of the Customer and releases, indemnifies and forever holds harmless 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.
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- 20. Liability of Ausco**
- 20.1 Ausco will not be liable to the Customer, or any third party, for any loss or damage (including but not limited to consequential loss) howsoever caused by the Sale Goods, the provision of the Site Works or the Customer use of the Sale Goods.
- 20.2 Ausco's liability under or in connection with this Contract is limited to, at Ausco's discretion, the resupply of the Goods or Works (as the case may be) or payment of an amount equal to the Goods.
- 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 as relates 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 issue whatsoever that occurs after the commencement of the Contract
- 20.6 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.
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- 21. Default by Customer**

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 as a result of or in connection with Ausco taking possession of the Goods.

21.3 If Ausco repossesses the Goods from any Connected Location, then the Customer shall fully indemnify Ausco for all costs and matters arising from there.

21.4 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.

## **22. No Assignment, Sale or Transfer**

22.1 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.

## **23. Warranty**

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 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.

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 endeavour 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 result in damage to the building structure and may 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.

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

24.1 Ausco offers no warranty whatsoever that the Sale Goods are fit for the intended purpose of the Customer.

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, and this will always be the responsibility of the Customer.

24.4 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. Design for Non-Standard Goods**

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, and Ausco shall not under any circumstances whatsoever be deemed to have sufficient knowledge of the intended use or purpose of any of the Non-Standard Goods.

25.2 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.

25.3 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.

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

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

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 then in such case 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 favourable to the third party than those offered to Ausco unless Ausco consents in writing to the contrary.

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

27.1 The Customer will not disclose any documents whatsoever disclosed by Ausco to the Customer and which are marked or are to be treated as confidential by the Customer to any third party without Ausco'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**

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**

29.1 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 non-exclusive jurisdiction of the Courts of Queensland and the Federal Court of Australia.

## **30. Waiver**

30.1 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**

31.1 If the dispute is not resolved by negotiation within 28 days of receipt of 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.