

## **TERMS OF TRADE**

### **1) DEFINITIONS**

- a) Unless a contrary intention is clear, whenever appearing in these Terms of Trade
- b) "Customer" means a person whose order for the purchase of Goods is accepted by the Supplier.
- c) "Supplier" shall mean Service West Sydney Pty Ltd, trading as OPEN4 – Turnkey FF&E (ABN 61 136 948 813) (OPEN4)
- d) "Goods" shall include any transportation, warehousing, design, installation or other services provided to the Customer by the Supplier and includes all Goods, collectively and individually, components or part thereof supplied to the Customer by the Supplier and includes such Goods where they are fixed or incorporated into any of the Customer's articles or article of any third party.
- e) "Installation Site" shall mean the place notified on the original quotation for services and goods to be installed.
- f) "Installation Commencement Date" shall mean the calendar date for services and/or goods to be installed as quoted on original quotation.
- g) "Furniture Installation Date" shall mean the calendar date for goods to be installed as quoted on original quotation.
- h) "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Customer and includes all directors of the Customer where the Customer is a corporation and where the Customer is a trust all trustees of the trust and all directors of the trustee if there is a corporate trustee of the trust.
- i) "We", "Us" and "Our" includes our servants, agents, contractors, sub-contractors and representatives and all of our parent and subsidiary and any other company that is a related body corporate under the provisions of the Corporations Act (as amended). Invoices issued under these Terms of Trade may in our discretion be issued in the name of Service West Sydney Pty Ltd, trading as OPEN4 Turnkey FF&E (ABN 61 136 948 813)
- j) "Price" shall mean the cost of Goods as agreed between the Supplier and the Customer.

### **2) INTERPRETATION**

- a) The headings used in this agreement do not form any part of these terms and conditions and are for convenience only.

### **3) GENERAL**

- a) These terms and conditions of Trade replace any previous terms and conditions of Trade.
- b) Quotations are valid for a period of 30 days from the date of original quotation.
- c) The standard hours of work quoted will be performed between 7.00 am to 3.30 pm Monday to Friday excluding public holidays. If work is to be performed outside the standard hours this will attract a surcharge to cover the additional costs associated with working outside standard hours.
- d) It shall be understood and agreed that during the term of this agreement and for a period of 6 (six) months thereafter, the Customer will not directly nor indirectly recruit and/or hire any employees of the supplier, unless mutually agreed upon between Officers of the Customer and the Supplier. In the event that the recruitment of a Supplier Employee takes place, Service West will charge a recruitment placement fee equal to 3 months of the employees current Salary Package.

### **4) PAYMENT**

- a) Payments for Goods for Approved Account Customers is STRICTLY EOM + 14 Days from the date of invoice, unless otherwise agreed between the Customer and Supplier and stated on the original quotation / invoice.
- b) The Supplier may invoice Buyer a percentage of contract, on a weekly or monthly basis, until job completion.
- c) The Supplier will charge interest at the rate of 18% per annum (or the maximum rate permitted by law), as well as a \$50.00 Monthly Administration charge on all past due amounts. Interest invoices will be processed and mailed monthly.
- d) All prices quotes are nett and exclusive of Goods and Services Tax ("GST") unless otherwise specified on the invoice. GST, where applicable, will be charged at the appropriate rate ruling at the date of invoice.

- e) The Customer will be in breach of their contract with the Supplier and all monies become due immediately if the Customer commits any of the following:
  - a receiver (or any of your assets is appointed);
  - any act of bankruptcy;
  - a meeting of creditors is called;
  - a mortgagee or mortgagee's agent takes possession of any of the Customer's assets;
  - a petition to liquidate the Customer is issued or a Customer otherwise comes under any other form of external administration provided for in the Corporations Act.

### **5) INSTALLATION**

- a) Quotations for all installations are on the basis that free and clear access is available for the Supplier to the Installation Site at all times and from the agreed Installation Commencement Date stated on the quotation.
- b) The Installation Site must be clean, clear and free of debris prior to commencement of the furniture installation. All work contracted by other trades shall be completed prior to the scheduled Furniture Installation Date.
- c) There shall be adequate facilities and space provided for exclusive use by the Supplier for unloading, staging, moving, handling and storing of the required product on site.
- d) Unless specifically stated in the quotation, no allowance will be made for compliance with site specific allowances/payments. If the Supplier is required to comply with such site specific allowances/payments not previously allowed for in the quotation, these will be treated as a variation to the quotation and as such shall pass from the Supplier to the Customer for immediate payment.
- e) Variations to the agreed scope of works shall only be acted upon by the Supplier after receipt of an official written variation order from the Customer, accepting the additional costs and program changes associated with the variation order.
- f) The Supplier will take all precautions to protect the product being installed, however, the Supplier will not be responsible for nor liable to pay compensation for any damages for, any direct or indirect loss arising as a result of the loss (partial or total) of all goods being installed or any damage whatsoever and howsoever caused which may befall the goods.
- g) The Supplier will not insure the Goods to be installed. It will be the owner's responsibility to ensure that the Goods are insured for their full value and against all risks and perils which may result in the Goods being lost, stolen or damaged whilst on the Installation Site.
- h) All risk in connection with the Goods passes to the Customer on supply of the Goods to the Customer or their agents, servants or nominated representatives. Any claim concerning shortage of the Goods supplied on delivery or defects in the Goods supplied must be made within 24 hours of the delivery of the Goods.

### **6) TRANSPORT AND WAREHOUSING**

- a) The Supplier is not a common carrier and reserves the right to refuse to store or to transport any goods purchased by the Customer.
- b) The Supplier also reserves the right to engage sub-contractors to transport and/or store the goods. The benefits of these terms and conditions shall also apply to any sub-contractor engaged by the Supplier.
- c) The Supplier shall not be responsible for, nor liable to pay any compensation or damages for, any direct or indirect loss arising as a result of loss (partial or total) of the goods consigned or for any damages whatsoever and howsoever caused which may befall the goods.
- d) The Supplier will not provide insurance for the goods to be transported and/or warehoused, unless specifically stated as part of the quotation. It is the Customer's, or owner's/agent's responsibility to insure the goods for their full value against all risk and perils which may result in the goods being lost, stolen or damaged whilst the goods are being transported, handled and/or warehoused by the Supplier.
- e) Where the Customer advised the Supplier of its intention to cease Warehousing Services, the Supplier shall be entitled to receive a min 4 week chargeable notification period.

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**7) RETENTION OF TITLE**

- a) Property of the Goods will not pass to the Customer until all Goods and any amounts owing in connection with the Goods have been paid in full.
- b) The Customer must acknowledge that they are in possession of the Goods solely as bailee and that they hold the Goods on trust for the Supplier.
- c) The Customer's right to possession of the Goods will cease if payment for Goods is due but not paid. If that event arises the Supplier may enter any Premises where the Goods are or are reasonably thought to be and repossess them.
- d) If the Goods are incorporated into or fixed onto another article or property, including real property, which does not belong to the Supplier, and they can be removed from that article or property without causing irreparable damage to any of the structure or its other parts, the Supplier will be entitled to remove and repossess the Goods on the proviso that the Supplier will repair any damage caused to that article or property in the process.

**8) COSTS**

- a) The Customer must pay all costs (including legal costs on an indemnity basis and all other debt collection costs) incurred by the Supplier in connection with either the recovery of any sums overdue by the Customer under these Terms and Conditions or any default by the Customer under these Terms and Conditions.
- b) The Supplier is entitled at their discretion to charge the Customer an additional administration fee for all cheques given by the Customer to the Supplier that are dishonoured or returned by the bank with the notation "Present Again" or "Refer to Drawer" and all bank fees charged to us in connection with any such cheques.

**9) GENERAL LIEN**

- a) All goods which are the property of the Customer and which are received by us will be subject to a general lien for any moneys due by the Customer to the Supplier on any account whatsoever and whether owing under these Terms and Conditions or otherwise. The Customer acknowledges that the Supplier shall not be obliged to release such goods until the Supplier has been paid in full for all moneys due by the Customer.

**10) EXCLUSION OF LIABILITY**

- a) In the case of any fault in the Goods supplied, the Supplier may at their discretion choose to either repair or replace the faulty Goods and, to the maximum extent permitted by law, any liability on the Supplier's part will be strictly limited to such repair or replacement of faulty Goods.
- b) The Supplier will not be liable to the Customer for any economic or consequential loss or damage or for any loss of profit, production or business or for any other loss or expenses whatsoever suffered by the Customer in connection with or as a consequence of any fault or defect in the goods or any act or omission on the Supplier's part (including a negligent act or omission).
- c) All warranties, guarantees and other terms described by legislation or created by common law or equity that are deemed to form part of these Terms of Sale of Goods by the Supplier to the Customer are hereby excluded to the extent they are capable of being excluded at law.

**11) JOINT AND SEVERAL LIABILITY**

- a) If an order is placed for goods by a representative acting on behalf of the Customer, the Customer and that representative will be jointly and severally bound by these terms and conditions.

**12) APPLICABLE OR EXCLUSIVITY OF JURISDICTION**

- a) Unless otherwise agreed in writing by the Supplier, the Customer irrevocably waives any objection to the venue selected by us in relation to any legal proceedings concerning these Terms and Conditions. The law of the State of New South Wales will govern these terms and conditions.

**13) SEVERANCE**

- a) Every provision of the Terms and Conditions is independent of one another.
- b) Any provision of these Terms and Conditions or any part thereof which is prohibited or unenforceable will be ineffective only to the extent of such prohibition or unenforceability, and the remainder of these Terms and Conditions will remain in force.

**14) PRIVACY**

- a) The Supplier will collect all personal information contained in this document and the other personal information related or incidental to that for the purposes of:
  - administering the customer's account;
  - providing goods;
  - collecting payment for goods;
  - assessing and monitoring the customer's credit worthiness including that of the directors or partners.
- b) The Supplier may collect additional personal information about the Customer (or its directors or partners) from and disclose such personal information to credit providers or credit reporting agencies.
- c) The Customer acknowledges their consent to the use of personal information referred to for such purposes and any other related purposes which may be reasonably expected in maintaining and monitoring the credit worthiness of the customer.
- d) The *Privacy Act 1988* gives individuals a right to access any personal information held about them "subject to certain exceptions".
- e) Any request for access to information or queries regarding Supplier's privacy policy should be directed to the Privacy Officer on (02) 9905 9966.

**16) NOTICES**

- a) Notice to be given by the Customer to the Supplier may be delivered personally or sent to the Supplier at its current business address at:
 

Unit D  
5 Jubilee Ave  
Warriewood NSW 2102
- b) Notices to be given to the Customer by the Supplier may be delivered personally, or sent to the Customer's last known address.
- c) Notice to the Customer from the Supplier shall be taken as delivered to the Customer on the second business day following posting.

**17) GUARANTEE**

- a) In consideration of the Supplier agreeing to grant credit facilities to the Customer, the Guarantor hereby jointly and severally guarantees the due and punctual payment by the Customer of all moneys which are now payable or which hereinafter become payable by the Customer to the Supplier in respect of the credit facility made available by the Supplier to the Customer herein ("the Moneys Owing").
- b) The Guarantor will on demand made by the Supplier from time to time pay and satisfy the Moneys Owing at such address as may be specified by the Supplier from time to time.
- c) This guarantee shall be a principal obligation and shall not be treated as ancillary or collateral to any obligation howsoever created arising and in particular shall be independent of and in no way affected by other security which the Supplier now holds or obtains or hereinafter may obtain or hold for any indebtedness or liability (whether present or future, direct or contingent, joint or several) of the Customer or the Guarantor or of any co-surety or any other person to the Supplier to the extent that this guarantee shall be enforceable.
- d) A Guarantor shall not be discharged from liability by:
  - i) the administration in insolvency of the Customer or the Guarantor or any of them ("administration in insolvency" includes any bankruptcy, receivership, or receivership and management, any winding up (voluntary or compulsory) and any official management or composition arrangement with or Assignment for the benefit of creditors in the administration in equity or otherwise of the estate or assets in whole or in part of the Customer or Guarantor as the case may be;
  - ii) any variation, modification or novation in the terms of supply or of the obligations of the Customer to the Supplier or of other aspects of the relationship between the Supplier and the Customer;
  - iii) the Supplier's act, neglect, omission, delay or default by which the whole or part of the liability of any Guarantor or all or any part of the liabilities guaranteed would but for this provision have been affected or discharged;
  - iv) the release of the Customer and or one or more Guarantors by operation of law or otherwise.