

---

## STANDARD TERMS AND CONDITIONS

### 1. GENERAL

All orders placed by Customers with **FVS** (FVS Services Group Pty Ltd ABN 66 615 562 813 and its controlled entities) for Goods and/or Services shall only be accepted by **FVS** subject to these Standard Terms and Conditions of Supply and Sale of Goods and/or Services ("Goods and/or Services") set forth herein.

### 2. ORDERS

2.1 All Orders for Goods and/or Services will not be deemed accepted by **FVS** until either:

(a) **FVS** accepts same or a deposit for the Goods and/or Services ordered, or (b) By the delivery of the Goods and/or Services so ordered.

2.2 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods and/or Services.

2.3 These terms and conditions may only be amended with FVS' consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between FVS and the Customer.

### 3. CHANGE IN CONTROL

3.1 The Customer shall give FVS not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by **FVS** as a result of the Customer's failure to comply with this clause.

### 4. CANCELLATION

An order accepted by **FVS** shall not be canceled by the Customer without the written consent of **FVS**. Where a cancellation is so accepted by **FVS** the Customer shall pay to **FVS** all costs incurred by **FVS** in respect of any order up to the date of **FVS**'s acceptance of such cancellation.

### 5. PAYMENT

(a) The Customer must pay the purchase price for the Goods and/or Services within thirty (30) days from date of invoice.

(b) Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two and a half percent (2.5%) of the Price), or by any other method as agreed to between the Customer and FVS

(c) Goods available for delivery to the Customer shall be invoiced irrespective of whether the Customer is able to take delivery of such Goods. The Customer must pay the purchase price for these Goods in accordance with clause 5(a).

(d) Where Goods are available for delivery and the Customer is not in a position to take delivery of the Goods, **FVS** shall have the right to charge a warehousing fee at the rate of 5% per month until delivery of the Goods is accepted by the Customer.

(e) Programmed maintenance is invoiced monthly in arrears and is payable within thirty (30) days from date of invoice, unless otherwise agreed by **FVS**.

(f) In respect of any unpaid balance remaining owing after the due date for payment, **FVS** shall have the right to charge interest at the rate of 2% per month until payment is received in full.

(g) If the full purchase price for the Goods and/or Services is not received by **FVS** on the due date for payment, **FVS** shall have the right in addition to its other rights at law and under this document to retake possession of the Goods and/or Services and if the Customer has resold the Goods and/or Services, **FVS** shall be entitled to trace the proceeds of the sale of the Goods and/or Services by the Customer.

(h) The Customer grants **FVS** an irrevocable licence to enter upon any premises occupied by the Customer to recover any Goods and/or Services for which **FVS** has not received the full purchase price.

(i) **FVS** shall be entitled to recover from the Customer the reasonable costs of recovering any Goods and/or Services sold to the Customer but not paid for.

(j) Without prejudice to any other rights **FVS** may have under this Agreement or at law, **FVS** may withdraw credit facilities to the Customer at any time without notice. Without limiting **FVS'** rights to withdraw credit, **FVS** reserves the right to place the account and any supply on hold until the account is returned to the agreed trading terms, and **FVS** agrees to recommence supply. Where credit has not been extended to the Customer or is otherwise suspended or withdrawn, then the Customer must pay for all goods and services in full in cleared funds prior to **FVS** releasing those goods or services. The Customer will remain liable for payment of all amounts due under these Standard Terms and Conditions including any account service fee during any period of suspension.

## **6. PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA")**

6.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

6.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by **FVS** to the Customer.

6.3 The Customer undertakes to: (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which **FVS** may reasonably require to; (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register; (ii) register any other document required to be registered by the PPSA; or (iii) correct a defect in a statement referred to in clause 6.3(a)(i) or 6.3(a)(ii); (b) indemnify, and upon demand reimburse, **FVS** for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby; (c) not register a financing change statement in respect of a security interest without the prior written consent of **FVS**; (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of **FVS**; (e) immediately advise **FVS** of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

6.4 **FVS** and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

6.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA. 6.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

6.7 Unless otherwise agreed to in writing by **FVS**, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.

6.8 The Customer must unconditionally ratify any actions taken by **FVS** under clauses 5.3 to 5.5.

6.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA

## **7. INTELLECTUAL PROPERTY RIGHTS**

**7.1 FVS** retains all rights, title and interest subsisting in any design, documentation, diagrams, plans, or other information and materials supplied to the Customer in relation to this Agreement.

(b) All intellectual property rights in Customer Materials supplied by the Customer for the purposes of this Agreement remain the property of the Customer but the Customer grants **FVS** a perpetual, irrevocable, royalty free, non-exclusive licence to use, reproduce and modify the Customer's Materials for any purpose related to this Agreement.

(c) The Customer agrees to accept full responsibility for the Customer Materials and to indemnify **FVS** for any action, claim, liability, cost or expense arising out of any claim in relation to any intellectual property infringement arising out of **FVS'** use of the Customer Materials.

(d) The supply of Goods and/or Services hereunder shall not confer any right upon the Customer to use any **FVS** trademarks and at all times such trademark shall remain the property of **FVS**.

## **7. TITLE**

(a) The ownership of and property in the Goods and/or Services to be supplied by **FVS** shall only vest in and accrue to the Customer when full payment of the Goods and/or Services is received by **FVS**.

(b) The Customer will be liable to **FVS** for all damage and/or loss sustained to the Goods and/or Services after the date of delivery.

(c) Notwithstanding that title has not passed to the Customer, in the event of any destruction or damage to the Goods and/or Services or any of them the Customer shall be deemed at that time to have taken title to the Goods and/or Services and shall thereupon immediately make payment of the same to **FVS**.

## **8. WARRANTY**

(a) Any equipment supplied by **FVS** will be guaranteed in accordance with the Original Equipment Manufacturers (OEM) warranty period. Workmanship in relation equipment installed by **FVS** is guaranteed for a period of 12 months from the date of commissioning.

(b) **FVS** will at its discretion replace free of charge or repair defective Goods and/or Services so delivered except that **FVS** shall not be liable in the event of defects arising from fair wear and tear in use of the Goods and/or Services or from misuse or ill-treatment of the Goods and/or Services by the Customer or from the Customer tampering with the Goods and/or Services.

(c) All works carried out to repair defective Goods and/or Services whether under warranty or not performed outside normal working hours, normal working hours being 8am to 4pm Monday to Friday excluding Public Holidays, will see the Customer incur additional charges.

## **9. LIMITATION OF LIABILITY**

Subject to the provisions contained in any act or ordinance of Parliament which cannot be excluded contractually as the parties hereby do to the full extent permissible, **FVS** does not accept any liability whatsoever in respect of any loss or damage (including injury, death, loss of profits or repudiation, economic loss and consequential loss or damage) however caused which may be suffered or incurred or which may arise either directly or indirectly in respect of the use of the Goods and/or Services or

other Goods and/or Services used in connection with the Goods and/or Services or any act or omission, negligence or breach of contract on **FVS's** part or otherwise.

Notwithstanding anything else in this agreement, neither party will be liable to the other party for any indirect, consequential, special or economic loss, cost, liability damage or expense however so arising.

**FVS** will not be liable to the customer for any claims not notified in writing within 3 months of the completed works delivered by **FVS**

#### **10. COMPLAINT**

(a) Any complaint from the Customer to **FVS** that the Goods and/or Services delivered do not correspond with the Goods and/or Services ordered shall be made within 24 hours of delivery in writing, thereafter the Customer will be deemed to have accepted the Goods and/or Services.

(b) **FVS** shall inspect the Goods and/or Services and if satisfied that the defects are due to faulty workmanship or parts may at its option repair or replace such Goods and/or Services. Notwithstanding anything herein contained **FVS's** sole responsibility shall be the said repair or replacement of the Goods and/or Services and no claim shall be made against **FVS** for consequential loss or damage of any kind of nature whatsoever.

(c) No Goods and/or Services shall be returned to **FVS** for credit unless **FVS's** prior approval in writing has been obtained.

#### **11. DELIVERY**

**FVS** will use its best endeavours to deliver the Goods and/or Services (and install them if expressly agreed to) on the date agreed to with the Customer, or if no date is stated, within a reasonable time.

**FVS** shall not be liable for any loss sustained by the Customer through delay in delivering Goods and/or Services ordered whether such delay is within the control of **FVS** or not.

#### **12. IMPORTED CONTENT PRICE VARIATION**

Please note that **FVS** prices regarding imported goods may be subject to exchange rate variations from date of quotation until the date the imported content is cleared by customs. Any variation will be to the Customer's account. Alternatively, a price can be fixed on day of order at the prevailing exchange rate.

#### **13. CONTRACT PRICE**

The contract price for goods and services provided under the contract includes:

- (a) all taxes, duties and other imposts for which the contractor is liable;
- (b) all insurance and licencing costs;
- (c) all amounts payable for the use (whether in course of performance of the services or their enjoyment) of patents, copyright, registered designs, trademarks and other intellectual property rights;
- (d) all charges for performances of the services as listed in the scope of the contract;
- (e) **FVS** reserve the right to adjust the pricing of the maintenance contract on an annual basis by an amount in consideration of the Consumer Price Index , other Industrial employment agreements and/or conditions that impact on the costs of services being delivered under this agreement.
- (f) All variations to the contract price (excluding that list in 13.e), shall be by written agreement on both parties.

#### **14. GOODS AND SERVICES TAX**

14.1 If, and to the extent, any supply of the Goods under the Contract is a taxable supply within the meaning of the GST Law, the price for the Goods will be increased to

14.2 include GST payable by the Supplier in respect of the supply. All rebates, discounts or other reductions in price will be calculated on the GST exclusive price.

The parties agree that:

- a) the parties must be registered persons within the meaning of the GST Law;
- b) the Supplier must provide tax invoices and if applicable adjustment notes to the Purchaser in the form prescribed by or for the purposes of the GST Law; and
- c) costs required to be reimbursed or indemnified excludes any amount that represents GST for which an input tax credit within the meaning of the GST Law can be claimed.

## **15. TERMINATION**

If the Customer (under any applicable law):

- (a) enters into a deed of arrangement or commits an act for bankruptcy or compounds with his creditors or becomes insolvent, or has a trustee appointed to any of his/its assets or shall have a petition for winding up presented against it or if a receiver shall be appointed to the whole or any part of its undertaking; or
- (b) is in breach of any of the terms and/or conditions herein then, **FVS** may stop any Goods and/or Services in transit and suspend deliveries and any further performance of any agreement with the Customer without prejudice to any of its other rights or remedies.

## **16. WAIVER**

The failure by either the Customer or **FVS** to exercise or enforce any rights conferred hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

## **17. NOTICE**

Any notice required to be given hereunder in writing shall be deemed to have been duly given if sent by pre-paid post, recorded delivery, commercial courier, facsimile or e-mail addressed to the party concerned at its principle place of business or last known address.

## **18. GOVERNING LAW**

Any contract between **FVS** and the Customer shall be governed by and constructed and interpreted in accordance with the laws of Queensland. Any dispute shall be subject to the exclusive jurisdiction of the Queensland Courts.

## **19. PRIVACY ACT 1988**

19.1 The Customer agrees for **FVS** to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by **FVS**.

19.2 The Customer agrees that **FVS** may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes: (a) to assess an application by the Customer; and/or (b) to notify other credit providers of a default by the Customer; and/or (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or (d) to assess the creditworthiness of the Customer. The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

19.3 The Customer consents to **FVS** being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

19.4 The Customer agrees that personal credit information provided may be used and retained by **FVS** for the following purposes (and for other purposes as shall be agreed between the Customer and **FVS** or required by law from time to time): (a) the provision of Goods; and/or (b) the marketing of Goods by **FVS**, its agents or distributors; and/or (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.

19.5 **FVS** may give information about the Customer to a credit reporting agency for the following purposes: (a) to obtain a consumer credit report about the Customer; (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

19.6 The information given to the credit reporting agency may include: (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number); (b) details concerning the Customer's application for credit or commercial credit and the amount requested; (c) advice that **FVS** is a current credit provider to the Customer; (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started; (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed; (f) information that, in the opinion of **FVS**, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations); (g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once; (h) that credit provided to the Customer by **FVS** has been paid or otherwise discharged.

## **20. OTHER APPLICABLE LEGISLATION**

20.1 At **FVS**' sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 (New South Wales) and the Building and Construction Industry Payments Act 2004 (Queensland) may apply.

20.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the any of the Acts listed in clause 20.1 each as applicable, except to the extent permitted by the Act where applicable.

## **21. ACCESS**

21.1 The Customer shall ensure that **FVS** has clear and free access to the work site at all times to enable them to undertake the works.

21.2 **FVS** shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of **FVS**.

## **22. FORCE MAJEURE**

Neither party will be in breach of this Agreement if it fails to perform or is in delay in the performance of an obligation (other than an obligation to make payment) as a result of a Force Majeure Event.

