

Prohome Sydney

Standard Terms and Conditions of Business (“Terms”)

For the purpose of these conditions, the “Company” means Howlee Pty Ltd t/as Prohome Sydney ABN 29 630 360 904; “the Client” means any person, company or entity that accepts the quotation relating to the “Products” and “Services” via the Company’s online quotation portal or otherwise proceeds to instruct and work with the Company. “Products” means Security Screens, Weather Screens, Fire Attenuation Screens and/or other products (as set out in the initial quotation); and “Services” means the performance and supply by the Company of the agreed scope of design, manufacture and installation of the Products as set out in the initial quotation (as may be updated and notified in writing by the Company to the Client from time to time (the “Quotation”).

1. Application

These Terms and the Quotation shall govern the conditions upon which the Company agrees to provide the Products and Services to the Client. These Terms shall prevail to the extent of any inconsistency with any other term, condition or conduct (express or implied) unless specifically agreed to in writing by the Company.

2. Estimate, Acceptance, Fees and Costs

Whilst the Company shall use all reasonable efforts to ensure that the amount of the Quotation is as accurate as possible, any fee or cost estimate for the Products and Services is indicative only. The Company reserves the right to amend an estimate at any time by written notice to the Client. The Company may require payment of any increased estimate in full as a condition of the Company continuing to provide the Products and/or Services. Without limitation, the Company may charge additional fees and expenses where:

- (a) the scope of work (including timeframe for completion of the Services or delivery of the Products) has changed;
- (b) for any additional work required due to a break in the continuity of the provision of the Services;
- (c) for additional time the Company needs to spend that was not estimated as a result of changes in the Client’s instruction; or
- (d) due to any other reason beyond the control of the Company including any unforeseen complications that may arise or in circumstances attributable to third parties (eg third party suppliers increase their costs, foreign currency fluctuations or transportation costs increase).

Unless specifically agreed otherwise, delivery times are best estimates only and time shall not be of the essence. The Company will undertake all reasonable efforts to provide the Services and deliver the Products by the estimated delivery time. The Company reserves the right to change delivery dates for Products in accordance with available delivery options. Any expected delays in the delivery will be notified to the Client.

3. Payment

Payment by the Client for the Products and Services shall be made as follows:

- (a) 30% of the price set out in the Quotation is payable immediately by way of deposit upon acceptance of the Quotation, and prior to commencement of the manufacture of the Products and/or provision of the Services;
- (b) 40% of the price set out in the Quotation is payable within 1 business day of receipt of notice of the completion of the manufacture of the Products; and
- (c) the balance of the price set out in the Quotation is payable within 1 business day of completion of the installation of the Products as notified by the Company.

Any upfront payment (such as the deposit or second payment referred to in paragraphs (a) or (b) above) shall not be refundable to the Client if the Client cancels its order (for any reason whatsoever) or seeks to terminate any contract entered into between the Client and the Company (for any reason other than due to a fundamental breach of an essential term of these Terms and/or the Quotation by the Company due to an act or omission that was directly within its control) after the relevant payment is made.

If the Quotation sets out additional fees and expenses beyond for the provision of the Services and/or the Products (such as with respect to third party products or services), payment of all other such amounts to the Company must be made as set out in the Quotation.

If payment is not made by any applicable due date the Company reserves the right to charge interest at the rate of 5% per annum on the amount of the delayed payment for the period of the delay.

The Company shall not be obligated to:

- (d) commence any Services (including the manufacture of the Product) unless and until the deposit referred to in paragraph (a) above is paid in full; or
- (e) dispatch any Products ordered by the Client or continue to provide any further Services, unless and until the Company has received payment in full of the relevant amount referred to in paragraph (b) above and/or otherwise obtained all licenses, authorizations and other approvals required by law.

4. Client’s Instructions

The Client must promptly provide the Company with such information and promptly make such decisions as are necessary for the efficient and proper performance of the Services.

5. Third Parties – goods and services

To the extent that any part of the Services involves the Company ordering goods or services – other than the ‘InvisiGuard’ Product from a third party on behalf of the Client (“Principal”), the Company acts only as an agent for the Principal, with any resulting contract arising directly between the Client and Principal. Accordingly, the Client agrees that the Company shall have no liability to the Client in connection with the provision of any such goods and services, including for any delays, damage or faults in respect of the goods or services so ordered or any insolvency of the Principal.

Once the Company has ordered goods and/or services from a third party, the Client shall have no right to cancel or terminate such order or seek a refund of monies paid (in whole or part) for same. Without imposing any requirement upon the Company to do so, it will if requested by the Client and the Company considers it possible, use its reasonable endeavours to cancel, vary or rectify any such order provided the Client agrees to pay for any costs incurred by the Company and/or Principal in relation to this.

7. Inspection of Goods

The Client shall inspect any goods when they are delivered and shall notify the Company upon delivery, or otherwise within 5 days, if the goods are damaged or do not conform to specification of the Product ordered. In the event that Products are defective and notification of such defect has been duly made, the Company’s only obligation shall be, at its sole discretion, to either supply the Client with non-defective replacement Product, or to issue a credit with regard to such Product.

8. Contractors and consultants

Where the Client engages any Principal either directly (whether or not in writing) or through the agency of the Company, the Client will hold such relevant person responsible for the proper execution of the work and all acts or omissions related to such work. Where the Client contracts directly with such Principal it shall satisfy itself that the Principal holds appropriate qualifications and insurance to conduct such work.

9. Copyright

Copyright in all documents and drawings prepared by the Company and any design rights in any works executed from those documents and drawings shall remain the property of the Company. Such documents, drawings and works are and shall be confidential and shall not be disclosed to any third party without the Company's prior written consent.

10. Liability

The Company shall not be liable for any loss of profit, financial or other economic loss (direct or indirect) or damage in relation to the provision of the Products and/or Services. Without limiting any other Clause in these Terms or elsewhere, the Client agrees that the Company's aggregate liability in respect of its provision of the Products and Services (whether negligently or otherwise), shall not exceed the total amount payable by the Client to the Company for the provision of that aspect of the Products and/or Services.

Without limiting the Company's other rights and remedies, the Client must indemnify the Company and each of its officers, employees, agents and subcontractors (for each whom the Company holds the benefit of this indemnity upon trust) from any liabilities, losses, damages, costs and expenses suffered or incurred by the Company arising out of, or relating to:

- (a) storage or handling of the Products by the Client;
- (b) misuse of the Products by the Client;
- (c) warranties or representations made by the Client without the authority of the Company; and
- (d) any negligence, wrongful act or omission, or breach of statutory duty by the Client or by its employees, contractors, officers or agents.

11. Retention of Title and Insurance

Title and property in the Products shall remain vested in Company and will not pass to Client until the purchase price for such Products has been paid in full in accordance with Clause 3. Until such time, the Client must: (a) hold the Products as fiduciary agent and bailee of Company; and (b) to the extent practicable, keep all Products supplied and delivered by Company separate from Client's and others' property, and in a manner to enable the Products to be readily identified. In any event of breach of the payment obligations, the Company will be entitled to access to the location where the Products are situated and reclaim possession of any such Products and all without needing the Client's acceptance and/or judicial authorization of any kind.

The Company is not responsible for arranging any insurance coverage in relation to the Products, Services, Quotation or otherwise for the benefit of the Client.

12. GST

- (a) For the purposes of this clause 12, "consideration", "GST", "input tax credit", "taxable supply" and "tax invoice" have the meaning given by section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (b) Except where express provision is made to the contrary, the consideration payable by a party for a taxable supply made by the other party pursuant to these Terms and/or the Quotation is expressed exclusive of any GST.
- (c) Notwithstanding any other provision of these Terms and/or the Quotation, if a party makes a taxable supply in connection with these Terms and/or the Quotation (the "supplier"), then the party liable to pay for the taxable supply (the "recipient") must also pay, at the same time and in the same manner as the GST exclusive consideration is otherwise payable, an additional amount equal to the amount of any GST payable in respect of the taxable supply.
- (d) The supplier in respect of any taxable supply, if registered or required to be registered for GST, shall upon request by the recipient of the taxable supply, provide to the recipient a tax invoice in respect of the amount constituting any such taxable supply.

11. Entire Agreement

These Terms and the Quotation constitute the entire agreement between the parties relating to the Products and the Services unless the Company agrees to a variation in writing to such terms.

12. Waiver

The granting of time or any other concession shall in no way constitute a waiver of the Company's entitlement to enforce any rights under these Terms

14. Termination

In the Company's absolute discretion, it reserves the right to suspend the provision of all or part of the Products and/or Services or terminate any contract made with the Client at any time without prejudice to any other rights the Company may have (including the right to recover any outstanding payment for work conducted prior to such time). In these circumstances the Company shall not be liable for any failure to complete any Services and/or provide any Product.

15. Governing Law

These Terms shall be governed by the laws of New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.