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## 1 DEFINITIONS

Except where it is otherwise apparent from the context, the words and expressions commencing with a capital letter in these General Terms and Conditions are defined words and expressions which have the following meaning:

### **Offer/Offers**

Every offer by Issey Sun Shade Systems to conclude an Agreement;

### **Issey Sun Shade Systems**

The private limited company Issey Pty Ltd trading as Issey Sun Shade Systems (ABN 088 699 594), with its registered office in 1/87 Hector Street OSBORNE PARK WA 6017 AUSTRALIA, being the user of the Terms and Conditions;

### **Services**

All (additional) services and/or work, technical or otherwise, of any nature whatsoever, performed by Issey



Sun Shade Systems, in the broadest sense;

#### **Agreement**

All Agreements between the Parties concerning the sale/purchase and delivery of Goods by Issey Sun Shade Systems to the Other Party and/or the provision of services by Issey Sun Shade Systems to the Other Party;

#### **Party/Parties**

#### **BE AWARE:**

**CONCERNING THE VARIABLE MATERIAL PRICES, INTERIM PRICES OR DISCOUNT ADAPPTIONS ARE POSSIBLE.**

Issey Sun Shade Systems and the Other Party jointly or each of them individually;

The general conditions applies to all our transactions which we deposited and is updated, with immediate effect on the 1st December 2019.

#### **Goods**

All items of a tangible nature offered for sale or sold and delivered by Issey Sun Shade Systems;

#### **Terms and Conditions**

These General Terms and Conditions of sale and delivery of Issey Sun Shade Systems;

#### **Other party**

The natural and/or legal person or persons to whom Issey Sun Shade Systems makes an Offer and/or with whom Issey Sun Shade Systems concludes an Agreement.

## **2 APPLICABILITY**

- 2.1 These Terms and Conditions are applicable to all Offers and Agreements.
- 2.2 If the Terms and Conditions have applied to any Agreement, they will automatically apply to any future agreement concluded between the Parties, without any separate agreement to this effect between the Parties being required, unless the Parties have expressly agreed otherwise in writing with respect to the relevant agreement.
- 2.3 The applicability to any Agreement of any general or specific terms and conditions applied by the Other Party is expressly rejected by Issey Sun Shade Systems, unless and after Issey Sun Shade Systems has expressly declared in writing that the relevant terms and conditions apply to an Agreement. Under no circumstances does acceptance of the applicability of the Other Party's general terms and conditions to an Agreement result in the tacit applicability of these terms and conditions to any future Agreements.
- 2.4 In case of invalidity or annulment by the Other Party of one or more provisions of the Terms and Conditions, the remaining provisions of the Terms and Conditions will continue to apply in full to the Agreement. The Parties will consult each other on replacing the invalid or voided provision of the Terms and Conditions by a provision which is valid and not voidable and which approaches the content and



purport of the invalid or voided provision as much as possible.

- 2.5 In so far as an Agreement deviates from one or more provisions of the Terms and Conditions, the provisions of the Agreement will prevail. The remaining provisions of the Terms and Conditions will in that case continue to apply to the Agreement.

### **3 OFFERS**

- 3.1 Unless expressly stated otherwise, an Offer is without obligation and is valid during the term stated in the Offer. If the Offer does not state a term for acceptance, the Offer will in any case lapse fourteen (14) days after the date stated in the Offer.
- 3.2 An Offer accepted by the Other Party within the term of validity may be withdrawn by Issey Sun Shade Systems within five (5) working days of the date of receipt of the acceptance by Issey Sun Shade Systems, without this resulting in any obligation on the part of Issey Sun Shade Systems to compensate the Other Party for any loss incurred by the latter as a result.
- 3.3 Issey Sun Shade Systems will confirm an assignment given by the Other Party by means of an order confirmation. If the Other Party does not object within two (2) working days of receipt of the order confirmation, the assignment as described in the order confirmation will be deemed accepted.
- 3.4 If the Other Party provides Issey Sun Shade Systems with information, drawings and suchlike for the purpose of making an Offer, Issey Sun Shade Systems may assume that these are accurate and base its Offer on these documents. The Other Party indemnifies Issey Sun Shade Systems against any third-party claims relating to the use of drawings and suchlike provided by or on behalf of the Other Party.
- 3.5 If an Offer is made at the request of the Other Party and this Offer is not accepted, Issey Sun Shade Systems will be entitled to charge the Other Party for all expenses incurred in connection with the Offer.

### **4 FORMATION OF AGREEMENTS**

- 4.1 With due observance of the other provisions contained in the Terms and Conditions, an Agreement will only be effected:
- (a) by acceptance of the Offer by the Other Party;
  - (b) by a written order confirmation of an assignment given by the Other Party, either orally or in writing, other than on the basis of an Offer;
  - (c) by the actual performance by Issey Sun Shade Systems of the Agreement.
- 4.2 The Agreement replaces all previous proposals, correspondence, arrangements and other communication between the Parties that took place before concluding the Agreement, however much these may differ from or be in conflict with the Agreement.
- 4.3 Alterations and/or additions to the Agreement will only be valid after they have been accepted by Issey Sun Shade Systems in writing. Issey Sun Shade Systems will not be obliged to accept any alterations and/or additions to an Agreement and is entitled to demand that a separate Agreement be concluded in this respect. Issey Sun Shade Systems is authorized to charge any expenses incurred in connection with the alterations and/or additions to the Other Party.



- 4.4 Undertakings by and agreements with employees or representatives of Issey Sun Shade Systems are only binding on Issey Sun Shade Systems vis-à-vis the Other Party in so far as Issey Sun Shade Systems has acknowledged or confirmed these undertakings and/or agreements in writing to the Other Party.
- 4.5 Issey Sun Shade Systems is entitled to have the Agreement performed by third parties or to engage third parties for the delivery of specific Goods or the provision of specific Services.

## 5 PRICES AND PAYMENT

- 5.1 Prices stated in an Offer or Agreement are in Australian Dollars and, unless explicitly stated otherwise, are exclusive of packaging, transport and delivery costs in the broadest sense and exclusive of turnover tax and/or any other government-imposed levies, of any nature whatsoever.
- 5.2 If the Other Party places an Order with Issey Sun Shade Systems without explicit agreement on a price, the Order will, irrespective of any Offers made or prices charged earlier, be carried out at the price applicable at the time of the performance of the Agreement.
- 5.3 Issey Sun Shade Systems will be entitled at all times, based on its assessment of the creditworthiness of the Other Party, to demand security or full or partial advance payment to ensure compliance with all payment obligations, whether due and payable or not. If and as long as the Other Party fails to provide security or to make a full or partial advance payment, Issey Sun Shade Systems will be authorized to suspend its obligation to deliver.
- 5.4 Payment must be made within thirty (30) days of the invoice date, unless agreed otherwise in writing. Payment must be made into the bank or accounts designated by Issey Sun Shade Systems. The moment of payment will be deemed to be the moment at which Issey Sun Shade Systems receives confirmation from its bank that the amount concerned has been credited to the account.
- 5.5 A deposit of 50% (unless agreed otherwise) is payable upon final check measure or re-measurement to confirm the final specification of the order. Production of blinds can only commence after receipt of the payment by Issey Sun Shade Systems. This deposit is non-refundable. The balance of payment is due on or before delivery and installation day.
- 5.6 If payment of an invoice has not been made in full within the stipulated period of time, the Other Party will immediately be in default by operation of law, without any further notice of default being required, and from the due date of the invoice concerned will be liable to pay interest of 2% per month, or the statutory commercial interest if this is higher, part of a month being counted as a full month. In addition, all extrajudicial collection costs will be payable by the Other Party, which costs are hereby set in advance by the Parties at a minimum of 15% of the outstanding claim; or with a minimum of A\$300; without prejudice to Issey Sun Shade Systems's right to claim the actual extrajudicial collection costs if these are higher.
- 5.7 If the Other Party is in default of payment of any invoice as referred to in Article 5.4, all other outstanding invoices will be immediately due and payable without notice of default being required.
- 5.8 Payments made by the Other Party will be used first to settle costs and interest due, and then to settle the outstanding invoices which have remained unpaid the longest, even if the Other Party states that a particular payment is to settle a different invoice.



- 5.9 Without prejudice to mandatory provisions, the Other Party does not have the right to suspend its payment obligations to Issey Sun Shade Systems or set them off against payment obligations of Issey Sun Shade Systems to the Other Party.
- 5.10 Issey Sun Shade Systems is entitled to set off all claims against the Other Party against any amounts owed by Issey Sun Shade Systems to the Other Party or to natural persons or legal persons affiliated to the Other Party.
- 5.11 All Issey Sun Shade Systems's claims against the Other Party become due and payable immediately in the following cases:
- (a) if after the conclusion of the Agreement circumstances have come to Issey Sun Shade Systems's attention that give it good reason to fear that the Other Party will not fulfil its obligations, which is entirely at Issey Sun Shade Systems's discretion;
  - (b) if on conclusion of the Agreement Issey Sun Shade Systems asked the Other Party to provide security for the fulfilment as referred to in Article 5.3 and this security is not forthcoming or is insufficient;
  - (c) in the event of the Other Party's liquidation or insolvency or if a moratorium is applied for or, in so far as the Other Party is a natural person, if the Debt Rescheduling (Natural Persons) Act is declared applicable.

## 6 PRICE CHANGE

- 6.1 In the event that four (4) months have passed after the date on which the Agreement was concluded and Issey Sun Shade Systems could not complete the performance of the Agreement, an increase in one or more price determining factors may be charged to the Other Party, at the discretion of Issey Sun Shade Systems. The price increase must be paid at the same time that the principal sum or last payment term is paid.
- 6.2 If, however, the increased price which Issey Sun Shade Systems wishes to charge as referred to in Article 6.1 has risen by more than ten per cent (10%) compared to the original price, the Other Party will be entitled to cancel the Agreement within seven (7) days of the notification of the price change, with the provision that under no circumstances will Issey Sun Shade Systems be obliged in that case to compensate the Other Party for any loss incurred as a result. Any payment of deposits, so far committed to the job offer, is not refundable.

## 7 DELIVERY TIME

- 7.1 The delivery time stated by Issey Sun Shade Systems within the framework of an Agreement is always an indication and may therefore never be considered a strict deadline, unless explicitly agreed otherwise in writing between the Parties. Under no circumstances does exceeding an agreed delivery time give entitlement to compensation.
- 7.2 The delivery time stated by Issey Sun Shade Systems commences as soon as agreement has been reached on all details, including technical details, all necessary information and suchlike is in the possession of Issey Sun Shade Systems and all conditions necessary for the performance of the Agreement have been met.



- 7.3 When determining the delivery time Issey Sun Shade Systems assumes that it will be able to perform the assignment in the circumstances existing at the time of concluding the Agreement.
- 7.4 In the event of different circumstances to those known to Issey Sun Shade Systems at the time of concluding the Agreement, Issey Sun Shade Systems may extend the delivery time by the amount of time required to perform the Agreement in the changed circumstances. If, as a result of the above, any work cannot be fitted into Issey Sun Shade Systems's schedule, it will be carried out or completed as soon as Issey Sun Shade Systems's schedule permits.
- 7.5 In case of a suspension of obligations by Issey Sun Shade Systems on account of a shortcoming by the Other Party, the delivery time will be extended by the duration of the suspension. If, as a result of the above, any work cannot be fitted into Issey Sun Shade Systems's schedule, it will be carried out or completed as soon as Issey Sun Shade Systems's schedule permits.
- 7.6 If an agreed delivery period for the Goods, or a delivery period that has been extended based on Articles 7.4 or 7.5 of these Terms and Conditions, has been exceeded, Issey Sun Shade Systems will only be in default if it has received a written notice of default from the Other Party giving it one (1) month to deliver and still fails to comply within this period of time. In the event of termination, the Other Party will not be entitled to compensation unless such exceeding of this period of time is the result of intent or gross negligence on the part of the management of Issey Sun Shade Systems and/or its managing employees.

## **8 TRANSPORT, RISK AND DELIVERY OF GOODS**

- 8.1 The risk of the Goods to be delivered to the Other Party will pass to it ex Issey Sun Shade Systems's warehouse or the warehouse of any third party engaged by Issey Sun Shade Systems (i.e. Ex Works, as included in the most recent version of ICC Incoterms). All Goods will at all times be transported at the risk of the Other Party. Unless the Other Party requests of Issey Sun Shade Systems in good time that the Goods be insured during transport at the expense of the Other Party, the Goods will be transported uninsured by or on behalf of Issey Sun Shade Systems.
- 8.2 Unless the Parties have expressly agreed otherwise in writing, export and import duties, clearance charges, taxes and any other government levies relating to the transport and delivery of the Goods by Issey Sun Shade Systems, of whatever nature, will be charged to the Other Party.
- 8.3 Issey Sun Shade Systems has fulfilled its obligation to deliver by making the Goods available to the Other Party on the agreed date at its warehouse or at the warehouse of a third party engaged by Issey Sun Shade Systems. The delivery document signed by or on behalf of the Other Party and/or the relevant appendices of the carrier will constitute conclusive proof of correct and undamaged delivery by Issey Sun Shade Systems of the Goods stated in the delivery document and/or the relevant appendices.
- 8.4 An offer for delivery by Issey Sun Shade Systems to the Other Party of the Goods ordered will be considered equivalent to the delivery of these goods. If the Other Party refuses to accept the Goods offered for delivery, Issey Sun Shade Systems will store the Goods concerned at a location to be decided by Issey Sun Shade Systems for fifteen (15) working days from the date of offering. After the expiry of this period Issey Sun Shade Systems will no longer be obliged to keep the goods available for the Other Party and will be entitled to sell the goods to a third party or to dispose of them in any other way. The Other Party will, however, remain obliged to comply with the Agreement by taking possession at Issey Sun Shade Systems's request at the agreed price and is also obliged to compensate Issey Sun Shade Systems for the loss arising from the Other Party's initial refusal to accept the Goods concerned, including storage and transport costs.



## 9 RETENTION OF TITLE AND RIGHT OF PLEDGE

- 9.1 All Goods delivered will remain the exclusive property of Issey Sun Shade Systems until such time as the Other Party has complied with all of its obligations arising from or in connection with the Agreement or Agreements, including claims relating to penalties, interest and costs.
- 9.2 In the event that Goods are delivered to the Other Party in the territory outside of Australia, supplementary to the retention of title under Australian law as referred to in Article 9.1, the following retention of title under Australian law will also apply to the Goods concerned, if and in so far as they are located in overseas territory, with the provision that for the remainder the Agreement is exclusively governed by Australian law as referred to in Article 18:
- 9.3 Goods delivered by Issey Sun Shade Systems that are subject to retention of title on the basis of Article 9.1 or Article 9.2 may only be sold on or processed as part of the ordinary business operations of the Other Party, under the condition, however, that the Other Party pays the price due for the Goods concerned to Issey Sun Shade Systems in advance. The Other Party is furthermore not permitted to pledge or establish any other restricted right on Goods subject to retention of title.
- 9.4 After Issey Sun Shade Systems has invoked its retention of title, it will be entitled to recover the Goods delivered. The Other party must allow Issey Sun Shade Systems to access the premises where the Goods are stored.
- 9.5 The Other Party undertakes:
- (a) to insure the Goods delivered subject to retention of title and to keep them insured against damage caused by fire, explosion or water, and against theft until they become the property of the Other Party, and to make the insurance policy and the premium receipts available for inspection;
  - (b) to pledge all claims of the Other Party against the insurer with respect to the Goods subject to retention of title to Issey Sun Shade Systems in the manner prescribed or in a equivalent provision under the Australian Law in Article 9.2;
  - (c) to mark the Goods delivered subject to retention of title as the property of Issey Sun Shade Systems;
  - (d) to cooperate in other ways in taking all reasonable measures that Issey Sun Shade Systems wishes to take in order to protect its proprietary rights to the Goods and that do not unreasonably interfere with the Other Party's normal business operations.
- 9.6 If Issey Sun Shade Systems cannot invoke its retention of title because the Goods delivered have been mixed, deformed or become a constituent element of other goods, the Other Party will be obliged to pledge the resulting new goods to Issey Sun Shade Systems or mortgage them.

## 10 GUARANTEE / WARRANTY / EXCLUSIONS

- 10.1 Issey Sun Shade Systems will guarantee the soundness of the operating systems delivered by it for a period of one year.
- 10.2 If the Other Party makes a claim under the guarantee within the term stated in Article 10.1, Issey Sun Shade Systems will have the choice to either repair or replace the Goods delivered. At the request of



Issey Sun Shade Systems the Other Party will be obliged to return the faulty Goods carriage paid to Issey Sun Shade Systems. These General Conditions will be applicable to all work to be carried out by Issey Sun Shade Systems under the guarantee.

- 10.3 The guarantee on Goods does not apply to normal wear and tear, improper use, incorrect maintenance or external causes, at the discretion of Issey Sun Shade Systems. Guarantee on fabric, motors or third party accessories and products, will only be given on the basis of the manufacturer's limited warranty. Discolouring, waviness (10.4) and creases, fold lines and rubbing marks (10.4) are explicitly excluded. Furthermore, Goods advertised using the term 'blackout' never fully black out the light and Issey Sun Shade Systems provides no guarantee for such statements, nor does it accept any claims concerning non-conformity on this basis.

- 10.4 Creases, fold lines and rubbing marks and Waviness, as referred to in Article 10.3 are defined by Issey Sun Shade Systems as follows.

Creases, fold lines and rubbing marks occur during manufacture, assembly, installation of the fabric, or during use afterwards. In places where the fabric is folded or creased dark lines may become visible, resembling pencil lines (particularly visible in the case of light colours) or light-coloured lines resembling chalk lines (particularly visible in the case of dark colours).

Waviness may occur in the seams or edges, or in the centre of the fabric. The double thickness on the seams results in different diameters when rolling up the fabric. The tension created by the awning arms, the weight, the drooping of the roller tube or the width of the fabric may increase this effect even further. This effect may also occur during heavy rainfall, when water pooling occurs in the fabric due to the weight of the water.

Fabric Joints: When both width and drop exceed the fabric roll width, a joint is unavoidable. Any other fabric not recommended by Issey Sun Shade Systems, does not warrant its performance and void warranty.

- 10.5 Potential Damage during Installation: All necessary care will be taken to prevent damage to existing structure, however Issey Sun Shade Systems or its installers will not be responsible for the failure or damage, from any cause whatsoever of any surfaces while drilling or fixing, including but not limited to; cracking or collapse of walls, tiles, chipping or masonry, render blowouts and accidental or consequential damage. We have an "all care and no responsibility" policy because of the unknown nature of substrates to which we are fixing.

- 10.6 Storm Wind & Rain: Although all sun shades are designed to resist reasonable winds and very light rain showers, it is advisable to retract them when strong winds occur or are expected. Damage by wind or rain is excluded from Issey's warranty. An Automatic Weather Control System is available for electric operation with automatic traction and retraction of your sun shades according to weather conditions.

Note: Rain, Wind Sensors or Sun and Wind Sensors are incapable of safeguarding sun shades from sudden freak gusts of wind. A sensor requires two seconds to detect wind speed and rain, and another 10 to 30 seconds to retract a blind, depending on width, drop and weight of the product. In case of failure of any electronic devices, Issey cannot be held liable for any damages thereof.

- 10.7 Corrosion and Oxidation, Rust, Salt Spray: Warranty is not included where installations are close to excessive salt water environments included but not limited to coastlines, harbours, rivers and estuaries where exposure to salt water is greatest.



- 10.8 Electrical Work / Wiring is NOT included: Supply and installation of wiring, plugs, wall-plates and junction boxes, special switches, relay-boxes, electronic modules and automatic control systems are not included. Issey is not a licensed electrical contractor. However, Issey can organise an electrician to complete electrical work upon request. The electrician will invoice you directly. Alternatively, you can have your own electrician complete the electrical work. Wiring diagrams can be supplied by Issey upon request. It is advisable to arrange electrical works to be completed prior to or on the same day as the installation of the sun shades. The complexity and cost of electrical work are dependent on the structure of your building. Issey is not liable or responsible for any electrical costs. Issey payment is due at the completion of installation, regardless of the completion of electrical wiring. At installation, a test cord is utilized to ensure the proper functioning of the product.
- 10.9 Warranty: Issey will make good by repair or, at our option, supply a replacement for defects which under proper use appear under warranty within five years (5) for the Issey Systems; five years (5) for manufacturer's limited warranty given accordingly; after the goods have been dispatched and arise solely from faulty design, workmanship or materials supplied by us.  
This warranty does not apply if defect arises by normal weathering, normal wear and tear, adverse exposure, oxidation/corrosion/rust, fire, accidental or intentional damage, fire, flood, windblown objects, wind/hail/rain storm, salt spray or chemical pollutants, mildew, structural defects, negligent maintenance/misuse/abuse, incorrect installation by a third party or any causes or occurrences beyond the control of Issey.  
In case of warranty repairs or replacement, the Buyer is responsible for all access equipment hire (eg: scaffold, cherry picker, etc) and electrical dis-connection and re-connection, and travel & accommodation costs, and labour costs beyond the one year, from date of installation.
- 10.10 The Other Party cannot make a claim under the guarantee referred to in this article 10.9, if it has carried out repairs or other work to the Goods delivered without the permission of Issey Sun Shade Systems.
- 10.11 Issey Sun Shade Systems is entitled to charge costs for repair works if during the work if it becomes apparent that the work is not covered by the guarantee or warranty.
- 10.12 The Other Party is only entitled to make a claim under the guarantee if it has fulfilled all its obligations, financial or otherwise, towards Issey Sun Shade Systems.
- 10.13 Complaints of any nature whatsoever relating to the performance of the Agreement by Issey Sun Shade Systems do not suspend the Other Party's payment obligation and may only be communicated to Issey Sun Shade Systems in writing.
- 10.14 Upon receiving of Goods, if there are any damages, complaints must be made in writing within 24 hours with sufficient evidences accompanied with photos.
- 10.15 No obligation whatsoever rests on Issey Sun Shade Systems concerning a complaint submitted if the Other Party has not fulfilled all its obligations towards Issey Sun Shade Systems (both financial and otherwise) in time and in full.
- 10.16 A complaint concerning the Goods delivered and/or Services provided by Issey Sun Shade Systems cannot affect Goods delivered and/or Services provided earlier or yet to be delivered and/or provided, even if these have been or will be delivered and/or provided in the performance of the same Agreement.



## 11 EXPIRY PERIOD

- 12.1 Legal actions and other powers of the Other Party, for whatever reason, with respect to Issey Sun Shade Systems in connection with the Goods delivered and Services provided will lapse after twelve (12) months following the date on which the Other Party became aware or could reasonably be aware of the existence of these rights and powers, but has not lodged a written claim with Issey Sun Shade Systems on this basis before the expiry of this period.
- 12.2 If within the period stated in Article 12.1 a written claim has been lodged by the Other Party with Issey Sun Shade Systems in connection with Goods delivered and/or Services provided by Issey Sun Shade Systems, any legal action of the Other Party in this respect will also lapse if no lawsuit has been brought against Issey Sun Shade Systems before the competent court pursuant to Article 18 of the Terms and Conditions within a term of four (4) months after receiving the relevant written claim.

## 13 TERMINATION

- 13.1 Issey Sun Shade Systems has the right to terminate all or part of the Agreement without being obliged to pay compensation to the Other Party if:

Issey Sun Shade Systems has declared the Other Party to be in default and has given it a term of at least five (5) days in the event that:

- (a) the Other Party does not fulfil one of the obligations under the Agreement, or does not fulfil it promptly or properly; In all other cases without a notice of default on the part of Issey Sun Shade Systems being required, including if:
  - (b) The Other Party is granted a moratorium or has applied for a moratorium;
  - (c) the Other Party has been declared insolvent, or a winding-up petition is filed against or by the Other Party;
  - (d) in so far as the Other Party is a natural person, the Debt Rescheduling (Natural Persons) Act has been declared applicable to the Other Party or a request to that effect has been submitted;
  - (e) a third party levies a prejudgment attachment or attachment in execution on the Other Party's assets;
  - (f) the Other Party is a legal person and the legal person is dissolved or, if the Other Party is a natural person, the Other Party dies or is no longer able to operate his business;
  - (g) other circumstances arise which endanger Issey Sun Shade Systems's recovery options, entirely at Issey Sun Shade Systems's discretion.
- 13.2 If the Agreement is dissolved on one or more of the grounds referred to above in Article 13.1, Issey Sun Shade Systems will be entitled to compensation from the Other Party for any financial loss incurred by it.



## 14 LIABILITY AND COMPENSATION

- 14.1 Issey Sun Shade Systems will only be liable towards the Other Party for loss incurred by it as a direct consequence (i.e. direct loss) of gross negligence or intent on the part of Issey Sun Shade Systems.
- 14.2 Issey Sun Shade Systems is under no circumstances liable for:
- (a) indirect loss, including but not limited to trading loss, consequential loss or loss due to delays incurred by the Other Party (including business disruption, loss of income etc.), through whatever cause. The Other Party is required to take out insurance if necessary to cover such loss;
  - (b) loss arising through the actions or omissions of the Other Party or third parties in breach of the instructions given by Issey Sun Shade Systems or in contravention of the Agreement and the Terms and Conditions;
  - (c) loss of any nature, incurred because or after the Other Party has put the goods delivered into use, processed them, delivered them to third parties or arranged for them to be used, processed or delivered to third parties;
  - (d) loss caused by actions and/or omissions of third parties, including auxiliary persons engaged by Issey Sun Shade Systems.
- 14.3 If and in so far as Issey Sun Shade Systems should be liable for loss incurred by the Other Party, this liability will always be limited to 50% of the invoice amount excluding GST with respect to the Goods delivered and/or Services provided as acknowledged and paid out by the insurer of Issey Sun Shade Systems under a liability insurance policy based on a loss report, increased by any excess of Issey Sun Shade Systems under this insurance policy. For the purposes of this article, a series of connected loss-causing events will count as one event/claim.
- 14.4 If at the time of the loss Issey Sun Shade Systems does not have liability insurance as referred to in Article 14.3 or no payment is made under any liability insurance policy for whatever reason, Issey Sun Shade Systems's liability will always be limited to 50% of the invoice amount excluding GST with respect to the Goods delivered and/or Services provided to which Issey Sun Shade Systems's liability relates.
- 14.5 The restrictions and/or exclusions of liability included in Articles 14.1 to 14.4 also apply to personnel of Issey Sun Shade Systems and the auxiliary persons engaged by Issey Sun Shade Systems in the performance of the Agreement.

## 15 FORCE MAJEURE

- 15.1 Force majeure means a shortcoming in the performance of an Agreement which cannot be attributed to Issey Sun Shade Systems.
- 15.2 Force majeure as referred to in Article 15.1 includes in any case – therefore not exclusively – shortcomings as a result of:
- (a) failures of and/or serious disruptions to the production process at suppliers of Issey Sun Shade Systems, including utility companies;
  - (b) failure by third parties to deliver the necessary materials;
  - (c) wilful misconduct or gross negligence of auxiliary persons;



- (d) strikes;
- (e) excessive sickness absence of Issey Sun Shade Systems's personnel;
- (f) fire;
- (g) special weather conditions (such as floods);
- (h) government measures (both national and at Global level), including import and export prohibitions and impediments;
- (i) war, mobilization, disturbances, riots, state of siege;
- (j) sabotage;
- (k) traffic congestion;
- (l) machinery breakdown.

15.3 In the case of force majeure, Issey Sun Shade Systems has the choice of either suspending the performance of the Agreement until the situation of force majeure has ceased to exist or, whether or not having originally chosen to suspend performance, to terminate the Agreement in full or in part. In either case the Other Party will not be entitled to any compensation. If the period in which Issey Sun Shade Systems is unable to comply with its obligations for reasons of force majeure is longer than thirty (30) days, the Other Party will also be entitled to terminate part of the Agreement (with respect to the future), with the provision that Issey Sun Shade Systems, in accordance with Article 15.4, will be entitled to send an invoice for the work already performed. In case of partial termination there will be no obligation to compensate for loss, if any.

15.4 If Issey Sun Shade Systems has met its obligations in part at the time the force majeure occurs or can only partially comply with its obligations, it will be entitled to invoice that part separately. The Other Party will be required to pay this invoice as if it were a separate Agreement.

## **16 CONFIDENTIALITY**

16.1 Both Parties are bound not to disclose any confidential information they have acquired from each other or from some other source within the context of their Agreement. Information is to be regarded as confidential if a party has stated that it is confidential or if it is obvious from the nature of the information that it is confidential.

16.2 If Issey Sun Shade Systems is obliged, by virtue of a statutory provision or a judicial ruling, to disclose confidential information to third parties designated by the law or a competent court and Issey Sun Shade Systems is unable to claim a right of non-disclosure recognized or granted by the competent court in such a case, then Issey Sun Shade Systems will not be obliged to pay any damages or compensation and the Other Party will not be entitled to terminate the Agreement.

## **17 INTELLECTUAL PROPERTY RIGHTS**

17.1 Unless agreed otherwise, Issey Sun Shade Systems will retain all copyrights and all industrial property rights to the offers made by it, or to the images, drawings, models, trial models, software and suchlike provided.

17.2 The rights to the items referred to in Article 17.1 will remain Issey Sun Shade Systems's property, regardless of whether costs were charged to the Other Party for the manufacturing. The Other Party is



not permitted to copy, use or show these items to third parties without Issey Sun Shade Systems's prior explicit permission.

**18 APPLICABLE LAW AND COMPETENT COURT**

- 18.1 All Agreements concluded by Issey Sun Shade Systems are exclusively governed by Australian law.
- 18.2 Any disputes between the Parties will exclusively be settled by the District Court of Western Australia in Perth.

END.

By signing here, you have read and understood Issey General Terms & Conditions herewith, and confirmed your acceptance.

I/We .....of .....  
 (Name) (Company's Name & Stamp)

Dated:

Of  
Address:

.....