

1. Definitions

- 1.1 “Company” means National Stairlifts Pty Ltd ABN 88 627 357 386, its successors and assigns or any person acting on behalf of and with the authority of National Stairlifts Pty Ltd.
- 1.2 “Customer” means the Customer, its successors and assigns or any person acting on behalf of and with the authority of the Customer as described on any application, quotation or other form as provided by the Company to the Customer.
- 1.3 “Goods” means all Goods supplied by the Company to the Customer at the Customer’s request (and where the context so permits shall include any supply of Services as hereinafter defined), including but not limited to straight stairlifts and curved stairlifts, and are as described on the invoices, quotation, or any other forms as provided by the Company to the Customer.
- 1.4 “Services” means all Services supplied by the Company to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.5 “Price” means the price payable for the Goods and/or Services as agreed between the Company and the Customer in accordance with clause 3 of this contract.

2. Acceptance

- 2.1 The Customer is taken to have accepted and is immediately bound by these terms and conditions if the Customer executes the quotation and/or provides the Company with any instructions for the supply of Goods and/or Services and/or the Customer’s acceptance of Goods and/or Services supplied by the Company shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of the Company, and shall prevail to the extent of any inconsistency with any other document or contract between the Customer and the Company.
- 2.4 The Customer shall give the Company not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer’s name and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by the Company as a result of the Customer’s failure to comply with this clause.
- 2.5 The quotation and these terms and conditions bind the Customer both personally and as trustee of any trust of which the Customer is trustee.
- 2.6 Goods and/or Services are supplied by the Company only on the terms and conditions of trade herein to the exclusion of

3. Price And Payment

- 3.1 At the Company’s sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Company to the Customer in respect of Goods and/or Services supplied; or
 - (b) the Company’s quoted Price (subject to clause 3.2) which shall be binding upon the Company provided that the Customer shall accept the Company’s quotation in writing within ninety (90) days of such quotation.
- 3.2 The Company reserves the right to change the Price in the event of a variation to the Company’s quotation. If there is a variation of the Company’s quotation, this will be recorded in a further quotation to be signed by the Company and Customer.
- 3.3 The Customer acknowledges and accepts that the Price, or part thereof, may be quoted in a foreign currency (other than Australian Dollars). The Customer solely bears any risk in respect of any currency fluctuation between the date of the quotation and the date of installation of the Goods and/or Services. The Company when issuing invoices will ensure the Price, or part thereof, expressed in a foreign currency are converted to Australian Dollars on the basis of the official exchange rate as at the date of the issuing of the invoice.
- 3.4 If the Customer requires work to be performed outside of the Company’s normal trading hours then the Price shall be increased to include a service fee.
- 3.5 At the Company’s sole discretion, a non-refundable deposit of the Price may be required upon acceptance of the Company’s quotation.
- 3.6 At the Company’s sole discretion, payment shall be due and payable by the Customer, in cleared funds:
 - (a) by the agreed date of installation; or
 - (b) otherwise, as stated on invoices provided by the Company to the Customer.
- 3.7 Time for payment for the Goods and/or Services shall be of the essence.
- 3.8 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by credit card (a credit card surcharge may apply per transaction) or by any other method as agreed to between the Customer and the Company.
- 3.9 If the Goods and/or Services are not installed at the Customer’s nominated address within thirty (30) days of the Goods and/or Services being in the possession of the Company and being available for installation then the Price shall be increased, at the Company’s sole discretion, to include a storage fee.
- 3.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Company an amount equal to any GST the Company must pay for any supply by the Company under this or any other contract for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

4. Delivery Of Goods and/or Services

- 4.1 At the Company’s sole discretion delivery of the Goods and/or Services shall take place when the Customer takes possession of the Goods and/or Services at the Customer’s nominated address (in the event that the Goods and/or Services are delivered by the Company or the Company’s nominated carrier).
- 4.2 At the Company’s sole discretion the costs of delivery are either included in the Price or is in addition to the Price.
- 4.3 The Customer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, the Company reserves the right to vary the Price with alternative Goods.
- 4.4 The Customer shall make all arrangements necessary to take delivery of the Goods and/or Services whenever they are tendered for delivery. The Company will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. In the event that the Customer is unable to take delivery of the Goods and/or Services as arranged then the Company shall be entitled to charge a reasonable fee for redelivery.
- 4.5 Delivery of the Goods and/or Services to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 4.6 The failure of the Company to deliver shall not entitle either party to treat this contract as repudiated.

- 4.7 The Company shall not be liable for any loss or damage due to failure by the Company to deliver the Goods and/or Services (or any of them) promptly, or at all, where such failure is due to circumstances beyond the control of the Company.
- 5. Risk**
- 5.1 If the Company retains ownership of the Goods and/or Services nonetheless, all risk for the Goods and/or Services passes to the Customer on delivery.
- 5.2 Where a third party has supplied materials for the Company to complete the Goods and/or Services, the Customer acknowledges that the Company accepts no liability for the suitability of purpose, quality and any faults inherent in the materials. The Company shall not be responsible for any defects in the works, any loss or damage to the materials (or any part thereof), howsoever arising from the use of the materials supplied.
- 5.3 If any of the Goods and/or Services are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Company is entitled to receive all insurance proceeds payable for the Goods and/or Services. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.
- 5.4 The Customer shall indemnify the Company from and against all costs incurred and damages caused as a result of the Company following the Customer's instructions.
- 5.5 The Customer acknowledges that Goods supplied may exhibit variations in shade tone, colour, texture, surface and finish, and may fade or change colour over time. The Company will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
- 6. Customer's Warranties and Indemnity**
- 6.1 The Customer warrants to the Company, and the Company relies upon the following:
- (a) the Customer shall obtain and pay for all approvals, consents or permits required for the Goods and /or Services prior to commencement of the Goods and/or Services by the Company; and
 - (b) the Customer shall provide the Company with clear and unhindered access to the nominated address for installation, including electricity, to enable the Company to complete the delivery and installation of the Goods and/or Services, and any Services required at the installation address; and
 - (c) the Customer will ensure that the site will be a smoke-free area while the Company, its employees, its officers or its agents are in attendance;
 - (d) in respect of the premises, and all staircases situated at the premises, nominated by the Customer in which the Goods are to be installed:
 - (i) are structurally sound;
 - (ii) there are no structural or non-structural defects that will affect the Company's ability to conduct and complete the installation;
 - (iii) all Australian regulations, laws, codes, standards and practices have been complied with, including but not limited to handrail, barrier, balustrades and stair height restrictions; and
 - (e) instructions on the placement, installation and /or supervision for the Goods and/or Services shall be the sole responsibility of the Customer, the Company shall not be liable for errors or omissions arising from the Customer failing to comply with this clause.
- 6.2 The Company relies on the warranties set out in clause 6.1 and shall not be liable for any loss, damage or costs however resulting from the Customer's failure to comply with this clause.
- 6.3 The Customer agrees to indemnify the Company in respect of any and all loss or liability that the Company or any third party may sustain or incur that in any way relates to or arises out of a breach of these terms and conditions or installation of the Goods and/or Services by the Company, its officers, employees, agents and contractors, including but not limited to:
- (a) any personal injury, loss of income, expense, or property loss or damage of any kind;
 - (b) any legal and administration expenses (on a full indemnity basis) in any way relating to investigating and/or responding to, defending or prosecuting or settling any legal proceedings, claims, enquiries or investigations;
 - (c) any judgment or order obtained by any third party, including any interest;
 - (d) any exercise, or attempted or purported exercise, of the Company's rights under these terms and conditions; and
 - (e) any other claim that may be made against the Company whatsoever, except the extent that such claim relates to any loss caused by the Company's negligence.
- 7. Title**
- 7.1 The Company and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid the Company all amounts owing for the particular Goods and/or Services; and
 - (b) the Customer has met all other obligations due by the Customer to the Company in respect of all contracts between the Company and the Customer.
- 7.2 Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Company's ownership or rights in respect of the Goods and/or Services shall continue.
- 7.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Customer in accordance with clause 7.1 then the Customer is only a bailee of the Goods and must return the Goods to the Company on request;
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Company and must pay to the Company the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods and/or Services other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods and/or Services then the Customer must hold the proceeds of any such act on trust for the Company and must pay or deliver the proceeds to the Company on demand;
 - (d) the Customer should not convert or process the Goods and/or Services or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Company and must sell, dispose of or return the resulting product to the Company as it so directs;
 - (e) the Customer shall not charge or grant an encumbrance over the Goods and/or Services nor grant nor otherwise give away any interest in the Goods and/or Services while they remain the property of the Company;
 - (f) the Company may recover possession of any Goods and/or Services in transit whether or not delivery has occurred;
 - (g) until such time as ownership of the Goods shall pass from the Company to the Customer the Company may give notice in writing to the Customer to return the Goods and/or Services or any of them to the Company. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease;

- (h) if the Customer fails to return the Goods and/or Services to the Company then the Customer irrevocably authorises the Company or the Company's agent to enter upon and into land and premises owned, occupied and/or used by the Customer, or any premises as the invitee of the Customer, where the Goods and/or Services are situated and take possession of the Goods and/or Services; and
- (i) the Company may commence proceedings to recover the Price of the Goods and/or Services sold notwithstanding that ownership of the Goods has not passed to the Customer.

8. Defects, Warranties and Returns, Competition and Consumer Act 2010 ("CCA")

- 8.1 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions.
- 8.2 The Company's Goods are covered by a warranty against defective parts, with the exclusion of batteries and consumables, for a three (3) year period commencing from the date the Company installed the Goods at the installation address ('Parts Only Warranty'), provided that the Goods have been annually serviced by a qualified professional that is a certified Handicare Technician, unless agreed in writing otherwise by the Customer and the Company. To the extent a claim fails under the Parts Only Warranty, the warranty covers the repair and/or replacement of such failed component free of charge at the installation address. If the Customer wishes to make a claim under the Parts Only Warranty, it must notify the Customer of the full details of the defect together with proof of purchase as soon as reasonably possible after any such defect becomes evident. The Customer shall afford the Company an opportunity to inspect the Goods and/or Services within a reasonable time following notification if the Customer believes the Goods and/or Services are defective in any way. The decision to repair or replace the component the subject of the Parts Only Warranty will be entirely at the discretion of the Company.
- 8.3 The Parts Only Warranty only applies to the Goods installed by the Company and does not cover any parts not supplied by the Company.
- 8.4 The Parts Only Warranty does not apply to second hand reconditioned stairlifts.
- 8.5 The benefits conferred by the Parts Only Warranty are in addition to all other rights and remedies in respect of the Goods and/or Services, which the Customer has under the CCA. Nothing in the Parts Only Warranty has the effect of excluding, restricting or modifying those rights.
- 8.6 The Company strongly recommends that the Customer update their household insurance policy to include the Goods.
- 8.7 The Company's Goods and/or Services come with guarantees that cannot be excluded under the CCA. For major failures with the Services, the Customer is entitled:
 - (a) to cancel your Services contract with us; and
 - (b) to a refund for the unused portion, or to compensation for its reduced value.The Customer is also entitled to choose a refund or replacement for major failures with Goods. If a failure with the Goods and/or Services does not amount to a major failure, the Customer is entitled to have the failure rectified in a reasonable time. If this is not done, the Customer is entitled to a refund for the Goods and to cancel the contract for the Services and obtain a refund of any unused portion. The Customer is also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the Goods and/or Services (**Non-Excluded Guarantees**).
- 8.8 The Company acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 8.9 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Company makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods and/or Services. The Company's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 8.10 If the Customer is a consumer within the meaning of the CCA, the Company's liability is limited to the extent permitted by section 64A of the CCA.
- 8.11 If the Company is required to replace the Goods and/or Services under this clause or the CCA, but is unable to do so, the Company may refund any money the Customer has paid for the Goods and/or Services.
- 8.12 If the Customer is not a consumer within the meaning of the CCA, the Company's liability for any defect or damage in the Goods is:
 - (a) limited to the value of any express warranty or warranty card provided to the Customer by the Company at the Company's sole discretion;
 - (b) limited to any warranty to which the Company is entitled, if the Company did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 8.13 Subject to this clause 8, returns will only be accepted provided that:
 - (a) the Customer has complied with the provisions of clause 8; and
 - (b) the Company has agreed that the Goods and/or Services are defective; and
 - (c) the Goods and/or Services are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Goods and/or Services are returned in as close a condition to that in which they were delivered as is possible.
- 8.14 Notwithstanding clauses 8.1 – 8.13 but subject to the CCA, the Company shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
 - (a) the Customer failing to properly maintain or store any Goods and/or Services;
 - (b) the Customer using the Goods and/or Services for any purpose other than that for which they were designed;
 - (c) the Customer continuing the use of any Goods and/or Services after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by the Company; or
 - (e) fair wear and tear, any accident, or act of God.
- 8.15 In the case of second hand Goods and/or Services, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods and/or Services prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by the Company as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that the Company has agreed to provide the Customer with the second hand Goods and/or Services and calculated the Price of the second hand Goods and/or Services in reliance of this clause 8.15.
- 8.16 The Company may in its absolute discretion accept non-defective Goods and/or Services for return in which case the Company may require the Customer to pay handling fees of up to ten percent (10%) of the value of the returned Goods and/or Services plus any freight costs.
- 8.17 The Company will take all reasonable endeavours to ensure that its employees, its officers and its agents are free from injury and illness when in attendance with the Customer and at the nominated installation address. Provided reasonable endeavours

were taken, the Company is not liable for any loss or damage caused by such injury or illness of the Company's employees, officers or agents.

8.18 This clause 8 is subject to clauses 5 and 6.

8.19 Notwithstanding anything contained in this clause if the Company is required by a law to accept a return then the Company will only accept a return on the conditions imposed by that law.

9. The Competition and Consumer Act 2010 ("CCA") and Fair Trading Acts ("FTA")

9.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the CCA and the FTA in each of the States and Territories of Australia except to the extent permitted by those Acts where applicable.

10. Default & Consequences of Default

10.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of ten percent (10%) per annum and such interest at such a rate after as well as before any judgment.

10.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in pursuing the debt including legal costs on a solicitor and own Customer basis and the Company's collection agency costs.

10.3 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Goods and/or Services to the Customer and any of its other obligations under the terms and conditions. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company has exercised its rights under this clause.

10.4 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to meet its payments as they fall due; or
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

11. Notices and Material

11.1 Any written notice given under these terms and conditions shall be deemed to have been given and received by handing the notice to the other party, in person; by leaving it at the address of the other party as stated in these terms and conditions; by sending it by registered post to the address of the other party as stated in these terms and conditions or if sent by email to the other party's last known email address.

11.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

11.3 The Company may send to the Customer such promotional material as the Company considers relevant to the Customer from time to time to the Customer's address and/or email address as stated in these terms and conditions or any last known address or email address

12. General

12.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

12.2 The expiry or termination of these terms and conditions does not affect the rights which have accrued before that expiry or termination or any rights and obligation of the parties which survive the expiry or termination.

12.3 Any reference in these terms and conditions to any Statute or Statutory Provision includes a reference to that Statute or Statutory Provision as from time to time amended, extended or re-enacted.

12.4 These terms and conditions and any contract to which they apply shall be governed by the laws of the State of Queensland and each party submits to the non-exclusive jurisdiction of the courts of the State of Queensland.

12.5 The Customer acknowledges and accepts that the Company shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):

- (a) resulting from an inadvertent mistake made by the Company in the formation and/or administration of this contract; and/or
- (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Company in respect of the Good and/or Services.

12.6 In the event such an error and/or omission occurs in accordance with clause 12.5, and is not attributable to the negligence and/or wilful misconduct of the Company; the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.

12.7 The Company shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these terms and conditions.

12.8 In the event of any breach of this contract by the Company the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods and/or Services.

12.9 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Company nor withhold payment of any invoice because part of that invoice is in dispute.

12.10 The Company may license, sub-contract or assign all or any part of its rights and obligations without the Customer's consent and in so doing the Company is fully discharged from its obligations to the Customer.

12.11 The Customer agrees that the Company may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Customer of such change in writing.

12.12 This agreement is personal to the Customer and the Customer may not assign the agreement without the Company's written consent.

12.13 Neither party shall be liable for any breach of contract or liable for any defaults, delays, or failures to perform any of the party's obligations under the contract due to but not limited to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

12.14 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

12.15 The failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision.