

TERMS AND CONDITIONS

Guarantee & Indemnity

1. The terms of payment are strictly 30 days End of Month (or such shorter period as nominated by the supplier herein) from the date of invoice and payment is due and payable on that date.
2. Should the Applicant not pay for the goods or services supplied (by the supplier) in accordance with the credit terms as provided herein, or as agreed in writing by the Supplier from time to time, the Supplier shall be entitled to charge an interest fee of 15% per annum (calculated daily) from the date the goods or services were supplied (and not the day when the Supplier's invoice was payable) until payment by the Applicant.

Jurisdiction

3. The Applicant acknowledges and agrees that this agreement shall be governed by the laws of Queensland, and each party hereby submits to the non exclusive jurisdiction of the Courts of Queensland.
4. The Applicant acknowledges and agrees that any contract for the supply of goods or services between the Supplier and the Applicant is formed at the address of the Supplier.
5. The Applicant submits and consents to the jurisdiction of the Southport Court District in respect of any proceeding relating to this agreement or to the supply of goods to the Applicant.

Formation of Contract

6. Placement of an order, either verbally or in writing, shall imply acceptance of the Supplier's offer and of these terms and conditions

Retention of Title

7. Whilst the Applicant has not paid for the goods supplied in full at any time, the Applicant agrees that property and title in the goods shall not pass to the Applicant and the Supplier retains the legal and equitable title in those goods supplied and not yet sold
8. The Applicant agrees that whilst property and title in the goods remains with the Supplier, the Supplier has the right, with or without prior notice to the Applicant, to enter upon any premises occupied by the Applicant (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Applicant) to inspect the goods of the Supplier and to repossess the goods which may be in the Applicant's possession, custody or control when payment is overdue
9. The Applicant will be responsible for the Supplier's costs and expenses in exercising its rights under clause 8 where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Applicant against the Supplier, its employees, servants or agents.
10. The Applicant agrees that where the goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the goods, and if necessary, sell the goods with the trademark or name of the Applicant on those goods, and the Applicant hereby grants and irrevocable license of the Supplier to do all things necessary to sell the goods bearing the name or trademark of the Applicant.

Cancellations of Terms of Credit

11. The Supplier may cancel the credit facilities at any time by providing notice in writing to the Applicant
12. The Supplier may cancel the credit facilities without notice in the following circumstances
 - (a) The Applicant becomes insolvent;
 - (b) The Applicant is convicted of a serious offence
 - (c) The Applicant is fraudulent in connection with the operation of any agreement;

(d) The Applicant breaches any of the terms or conditions of this agreement;

(e) The Applicant fails to pay any money due to the Supplier;

(f) The Applicant breaches any other agreement with the Supplier

13. Upon cancellation with notice or without notice all liabilities incurred by the Applicant become immediately due and payable to the Supplier.

Indemnity

14. The Applicant agrees to indemnify the Supplier and keep the Supplier indemnified against any claim. This indemnity includes any legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.

Jurisdiction

15. The Applicant undertakes to comply with any request by the Supplier to provide further information for the purpose of assessing the Applicant's creditworthiness, including an updated credit application.

16. If the Applicant is a corporation (with the exception of a public listed company), it must advise the Supplier of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders the Supplier may ask for new guarantors to sign a guarantee and indemnity

Corporation

17. If the Applicant is a corporation, the Applicant warrants that all of its directors have signed this agreement and that all of its directors will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier

Trustee Capacity

18. If the Applicant is the trustee of a trust (whether disclosed to the Supplier or not), the Applicant warrants to the Supplier that

(a) The Applicant enters into this agreement in both its capacity as trustee and in its personal capacity;

(b) The Applicant has the right to be indemnified out of trust assets;

(c) The Applicant has the power under the trust deed to sign this agreement;

(d) The Applicant will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier

If the Supplier asks, the Applicant must give a copy of the trust deed Partnership

19. If the Applicant enters into this agreement as partners, the Applicant warrants that all of the partners have signed this agreement and that all of the partners will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier

20. If the Applicant is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier. In the case of a change of partners, the Supplier may ask for new guarantors to sign a guarantee and indemnity

Insolvency

21. If the Applicant becomes insolvent, the Applicant remains liable under this agreement for payment of all liabilities incurred hereunder. The Applicant remains liable under this agreement even if the Supplier receives a dividend or payment as a result of the Applicant being insolvent

Waiver

22. A waiver of any provision or breach of this agreement by the Supplier must be made by an authorized officer of the Supplier in writing. A waiver of a provision or breach of this agreement by the Applicant must be made by the Applicant's authorized officer in writing or orally if the waiver is made orally it must be communicated to the Supplier

Costs

23. The Applicant must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Applicant. The Applicant must also pay for all stamp duty and other taxes payable on this agreement (if any).

24. The Applicant will pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Applicant, including debt recovery fees (at the rate of 28%) and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Applicant to the Supplier irrespective of whether pursuit of the recovery action, claim or remedy is successful.

25. The interest rate on any outstanding debts is a fixed rate of 15% per annum, calculated daily from the date of invoice.

Power of Attorney

26. The Applicant appoints as its duly constituted attorney the Supplier's company secretary from time to time to execute in the Applicant's name and as the Applicant's act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Applicant may own in any Land Titles Office in any State or Territory of Australia, even though the Applicant may not have defaulted in carrying out its obligations hereunder.

Agreement

27. The Supplier is not liable for any loss caused to the Applicant by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other activity beyond the Supplier's control.

28. This agreement constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.