

Payment terms

1. The terms of payment are strictly thirty (30) days (or such other period as nominated by the supplier herein) from the date of invoice. Bretts Pty Limited ABN 22 009 658 315 and their related bodies corporate (as that term is defined in the Corporations Act 2001) (Supplier) may, at any time, unilaterally vary the terms of trade in its absolute and unfettered discretion.

2. If the Applicant does not have a current credit facility with the Supplier then: (a) if a stock order is place for goods on hand, a deposit of 30 percent of the price of goods must be paid at the time of order with the balance due at the time of sale; or (b) if a stock order is place and the Supplier does not hold the ordered goods on hand and is required to order such goods then the whole of the purchase price must be paid at the time or order; or (c) all off-the-shelf purchases must be paid at the time of sale.

3. During each month the Supplier will provide a statement of account identifying all sales made to the Applicant during the preceding month.

4. If the Applicant pays any part of their credit account by a credit card than the Applicant must pay an additional amount to the Supplier equivalent to the merchant fee payable by the Supplier to the respective card issuer.

5. 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 will be entitled to charge an administration fee of 2.5 percent of the amount of the invoice payable per year, or part thereof, from the date the goods or services were supplied.

6. The provision of this clause applies despite any arrangement between the parties under which the Supplier grants the Applicant credit. Where the Supplier grants the Applicant credit for a specific period the credit period is for that period or until the resale of the goods by the Applicant or their use by the Applicant in a manufacturing or construction process of its own or a third party whichever is the earlier.

Price

7. Any quotation or price list is not an offer to sell but is an invitation to treat only and the Supplier reserves the right to accept or reject in its absolute discretion any orders which may be received by it.

8. The prices shown in a quotation or price list are subject to alteration without notice up to the time of acceptance by the Supplier.

9. All orders are subject to acceptance by the Supplier within thirty (30) days of receipt by it of the Applicant's order.

10. If the Applicant accepts an order it must supply the goods at the price shown in the quotation or price list current when they accept the order unless otherwise agreed in writing.

11. Orders cannot be cancelled without the Supplier's written consent and then under terms that will indemnify the Supplier against any losses.

12. Quotations issued against bills of quantities submitted by the Applicant, are limited to the quantities and descriptions shown on such bills and the Supplier accepts no responsibility for the accuracy of, or omissions from such bill of quantity. The quantities and descriptions will be charged for at the rate of each item for which a price is included in the quotation.

Delivery

13. Unless otherwise specified in writing, delivery is at the Supplier's store and the cost of transportation of the goods must be paid by the Applicant.

14. Where a place of delivery other than at the Supplier's store is specified in writing, the Applicant must pay the costs of transportation of the goods to the place of delivery at the same time as and in addition to the price.

15. If a delivery date is specified that date is an estimate only and the Supplier is not liable for any delay in delivery.

16. If the Supplier is unable to supply the Applicant's total order these terms and conditions continue to apply to the goods supplied.

17. Should storage by the Supplier of goods be necessary due to the Applicant being unable to accept delivery on the agreed delivery date, a progress payment equal to 90 percent of the cost of such goods stored will be payable by the Applicant within thirty (30) days of the original agreed date. The Applicant will pay all reasonable storing and insurance charges in relation to goods/materials (manufactured or not) which are stored by the Supplier on the Applicant's behalf.

18. The Applicant must inspect the goods immediately upon delivery and must within seven (7) days after the date of inspection give written notice to the Supplier with particulars, of any claim that the goods are not in accordance with the contract. If the Applicant fails to give that notice, then to the extent permitted by statute the goods must be treated as having been accepted by the Applicant and the Applicant must pay for the goods in accordance with the provisions of these terms and conditions.

19. If the Applicant requires any variation in the works and/or goods after acceptance of this quotation including any in accuracies in documents, drawings etc supplied for quotation purposes it shall notify the Supplier of the variation required but such variation will not be effective unless and until the Supplier and the Applicant agrees as to the amount of which or manner in which the price is to be varied and consequence.

Returns

20. The Applicant must not return any goods which the Applicant claims are not in accordance with the contract (whether or not the goods are treated as accepted by the Applicant) unless the Supplier has first given its written approval to their return. Their return must then be with freight and cartage prepaid by the Applicant.

21. If the Supplier has given its written approval to the return of goods treated as accepted: (a) the Supplier will only give credit for the goods returned if they are in a saleable condition; and (b) the Supplier may charge a handling charge equivalent to 25% of the price of the goods returned unless the Applicant is a "consumer" for the purposes of the Competition and Consumer Act 2010 or similar State or Territory legislation.

22. If the Supplier has given its written approval to the return of goods which are not treated as accepted by the Applicant, the Supplier must refund the freight and cartage to the Applicant if the Applicant's claim that the goods are not in accordance with the contract is found to be valid.

Jurisdiction

23. The Applicant acknowledges and agrees that this agreement will be governed by the laws of Queensland, and the laws of the Commonwealth of Australia which are in force in Queensland.

24. 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.

25. The parties to this agreement submit to the non-exclusive jurisdiction of the courts of Queensland and the relevant federal courts and courts competent to hear appeals from those courts.

Security / charges

26. The Applicant charges in favour of the Supplier all of its estate and interest in any real property that the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.

27. The Applicant charges in favour of the Supplier all of its estate and interest in any personal property that the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.

28. 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.

29. Where the Applicant has previously entered into an agreement with the Supplier by which the Applicant has granted a charge, mortgage or other security interest (including a security interest as defined in the Personal Property Securities Act 2009 (PPSA)) over or in respect of real or personal property, those charges, mortgages or other security interests and the terms which directly or indirectly create rights, powers or obligations in respect thereto will continue and coexist with the obligations and security interests created in this agreement and will secure all indebtedness and obligations of the Applicant under this agreement. The Supplier may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

Purpose of credit

30. The Applicant acknowledges and agrees that the credit to be provided to the Applicant by the Supplier is to be applied wholly or predominantly for commercial purposes.

Credit limit

31. The Supplier will be entitled to vary the limit of credit afforded to the Applicant at any time and any credit sum then outstanding in excess of the Applicant's credit limit will be repayable immediately.

Formation of contract

32. Quotations made by the Supplier will not be construed as an offer or obligation to supply in accordance with the quotation. The Supplier reserves the right to accept or reject, at its discretion, any offer to purchase received by it. Only written acceptance by the Supplier of the Applicant's offer will complete a contract.

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

Retention of title

34. 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 will not pass to the Applicant and the Supplier retains the legal and equitable title in those goods supplied and not yet sold.

35. Until payment in full has been made to the Supplier, the Applicant will hold the goods in a fiduciary capacity for the Supplier and agrees to store the goods in such a manner that they can be identified as the property of the Supplier, and will not mix the goods with other similar goods.

36. The Applicant will be entitled to sell the goods in the ordinary course of its business, but until full payment for the goods has been made to the Supplier, the Applicant will sell as agent and bailee for the Supplier and the proceeds of sale of the goods will be held by the Applicant on trust for the Supplier absolutely.

37. The Applicant's indebtedness to the Supplier, whether in full or in part, will not be discharged by the operation of clause 36 hereof unless and until the funds held on trust are remitted to the Supplier.

38. 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.

39. The Applicant will be responsible for the Supplier's costs and expenses in exercising its rights under clause 38. 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.

40. 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 an irrevocable licence to the Supplier to do all things necessary to sell the goods bearing the name or trademark of the Applicant.

41. The Applicant will be responsible for the Supplier's costs and expenses in exercising its rights under clause 38. 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.

42. For the avoidance of doubt, the Supplier's interest constitutes a 'purchase money security interest' pursuant to the Personal Property Securities Act 2009.

43. Where the Applicant does not make payment in respect of specific goods, payment must be treated as having been made first in respect of goods which have passed out of the possession of the Applicant, and then in respect of whatever goods still in the possession of the Applicant the Supplier elects.

44. If the Applicant uses any of the goods in a manufacturing or construction process of its own or a third party and sells the product of the manufacturing or construction process (Manufactured Product) then the Applicant holds such part of the proceeds of the sale of any Manufactured Product as relates to any goods sold by the Supplier to the Applicant and used in the manufacturing or construction process on trust for the Supplier. That part must be treated for the purpose of quantifying how much the Applicant holds on trust for the Supplier but for no other purpose, as being equal in dollar terms to the amount owing by the Applicant to the Supplier at the time of the receipt by the Applicant of the proceeds of sale for all goods sold by the Supplier to the Applicant.

45. If the amount owing by the Applicant to the Supplier is greater than the proceeds of sale of the Manufactured Product the balance remains owing by the Applicant to the Supplier.

46. The Supplier is entitled to reclaim possession of the goods, even if they have been paid for in full, in satisfaction of all debts owing to the Supplier if any of the following events occurs (Insolvency Event): (a) the Applicant defaults under these terms or conditions; (b) the Applicant commits an act of bankruptcy; (c) a receiver is appointed to the Applicant; (d) the Applicant goes into liquidation, administration, or some other form of insolvency administration whether formal or informal; (e) the Applicant ceases to carry on business; or (f) the Applicant enters into a scheme or compromises with its creditors; without prejudice to any other rights of the Supplier.

47. The Supplier's property in the goods is not affected by the fact that the goods become fixtures attached to premises of the Applicant or a third party, and if the Supplier enters those premises for the purpose of reclaiming possession of the goods, and incurs any liability to any person in connection with the entry or reclamation, the Applicant indemnifies the Supplier against that liability.

Limitation of liability

48. The only conditions and warranties which are binding on the Supplier in respect of: (a) the state, quality or condition of the goods supplied by it to the Applicant; or (b) advice, recommendations, information or services supplied by it, its employees, servants or agents to the Applicant regarding the goods their use and application: are those imposed and required to be binding by statute (including the Competition and Consumer Act 2010).

49. To the extent permitted by statute the liability, if any, of the Supplier arising from the breach of the conditions or warranties referred to in clause 48 is at the Supplier's option limited to and completely discharged: (a) in the case of the goods by either: (i) the supply of equivalent goods by the Supplier; or (ii) the replacement by the Supplier of the goods supplied to the Applicant; or (iii) paying the costs of replacing the goods; at the Supplier's sole discretion; and (b) in the case of advice, recommendations, information or services by supplying the advice, recommendations, information or services again.

50. Except as provided in clauses 48 to 53 all conditions and warranties implied by law are in respect of the state, quality or condition of the goods which may apart from this clause be binding on the Supplier are excluded.

51. The Applicant acknowledges that they do not rely on and it is unreasonable to rely on the skill or judgment of the Supplier as to whether the goods supplied are reasonably fit for any purpose for which they are being acquired and that the sale is not a sale of goods by description or sample.

52. Except to the extent provided in clauses 48 to 53 the Supplier has no liability (including liability in negligence) to any person for: (a) any loss or damage consequential or otherwise suffered or incurred by that person in relation to the goods or advice, recommendations, information or services; and (b) in particular without limiting clause 52(a) any loss or damage consequential or otherwise suffered or incurred by that person caused by or resulting directly or indirectly from any failure, defect or deficiency of any kind of or in the goods or advice recommendations, information or services.

53. Nothing in this agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods and/or services pursuant to this agreement of all or any of the provisions the Competition and Consumer Act 2010 or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified.

54. All the goods are manufactured from high-grade materials and to rigid specifications but since the Supplier has no control over the condition under which the goods are applied, used, stored, transported or handled the Applicant is advised to test the goods thoroughly before adapting them to its own use.

Cancellation of terms of credit

55. The Supplier reserves the right to withdraw credit at any time, whether the Applicant is in default under the terms of this agreement or not.

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

Indemnity

57. 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.

Provision of further information

58. 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.

59. 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.

Corporations

60. 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

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

62. The Applicant must give the Supplier a copy of the trust deed upon request.

Partnership

63. 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.

64. 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

65. 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.

66. A breach of contract will have occurred if: (a) an application or order is made to or by a court or a resolution is passed for the winding up of the Applicant or notice of intention to propose such a resolution is given; or (b) a controller (as defined in section 9 of the Corporations Act 2001) or an administrator under Part 5.3A of the Corporations Act 2001 is appointed in respect of the Applicant or the whole or any party of its undertaking or property.

Waiver

67. A waiver of any provision or breach of this agreement by the Supplier must be made by an authorised officer of the Supplier in writing. A waiver of any provision or breach of this agreement by the Applicant must be made by the Applicant's authorised officer in writing.

68. Until ownership of the goods passes, the Applicant waives its rights it would otherwise have under the PPSA: (a) under section 95 to receive notice of intention to remove an accession; (b) under section 118 to receive notice that the Supplier intends to enforce its security interest in accordance with land law; (c) under section 121(4) to receive a notice of enforcement action against liquid assets; (d) under section 129 to receive a notice of disposal of goods by the Supplier purchasing the goods; (e) under section 130 to receive a notice to dispose of goods; (f) under section 132(2) to receive a statement of account following disposal of goods; (g) under section 132(4) to receive a statement of account if no disposal of goods for each 6 month period; (h) under section 135 to receive notice of any proposal of the Supplier to retain goods; (i) under section 137(2) to object to any proposal of the Supplier to retain or dispose of goods; (j) under section 142 to redeem the goods; (k) under section 143 to reinstate the security agreement; and (l) under section 157(1) and 157(3) to receive a notice of any verification statement.

Costs

69. 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).

70. 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 collection costs, debt recovery fees 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.

71. The Applicant acknowledges and agrees that payments by the Applicant will be applied by the Supplier as follows. (a) Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 38 and 70. (b) Secondly, in payment of any interest incurred in accordance with clause 74. (c) Thirdly, in payment of the outstanding invoice(s).

Taxes and duty

72. The Applicant must pay GST on any taxable supply made by the Supplier to the Applicant under this agreement. The payment of GST is in addition to any other consideration payable by the Applicant for a taxable supply.

73. If as a result of: (a) any legislation becoming applicable to the subject matter of this agreement; or (b) any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration; the Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Applicant, then the Applicant must pay the Supplier these additional amounts on demand.

Interest rates

74. The interest rate on any outstanding debts is a fixed rate of 1.5 percent per .

Set-off

75. All payments required to be made by the Applicant under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding.

76. Any amount due to the Supplier from time to time may be deducted from any monies which may be or may become payable to the Applicant by the Supplier.

Limitation

77. The only conditions and warranties which are binding on the Supplier in respect of: (a) the state, quality or condition of the goods supplied by it to the Applicant; or (b) advice, recommendations, information or services supplied by it, its employees, servants or agents to the Applicant regarding the goods, their use and application: are those imposed and required to be binding by statute (including the Credit Contracts Act 1981).

Miscellaneous

78. 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.

79. The Supplier is not liable, whether claims are made or not, for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Applicant.

80. The Applicant will, at the request of the Supplier, execute documents and do such further acts as may be required for the Supplier to register the security interest granted by the Applicant under the PPSA.

81. The Applicant agrees to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to the Supplier by the Applicant or the Applicant's authorised representative.

82. The Applicant further agrees that where we have rights in addition to those under part 4 of the PPSA, those rights will continue to apply.

83. The Applicant irrevocably grants to the Supplier the right to enter upon the Applicant's property or premises, without notice, and without being in any way liable to the Applicant or to any third party, if the Supplier has cause to exercise any of their rights under sections 123 and/or 128 of the PPSA, and the Applicant shall indemnify the Supplier from any claims made by any third party as a result of such exercise.

84. If a party is prevented from or delayed in complying with an obligation (other than to pay money) by an event beyond its reasonable control, performance by it of that obligation is suspended during the time but only to the extent that compliance is prevented or delayed.

85. Nothing in this agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods and/or services pursuant to this agreement of all or any of the provisions the Competition and Consumer Act 2010 or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified.

Severance

86. If any provision of this agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.

87. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

Variation

88. The Applicant agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of the Supplier at any time by written notice to the Applicant.

89. Any proposed variation to these terms and conditions by the Applicant must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.

Consent to register

90. The Applicant hereby consents to the Supplier recording the details of this Agreement on the Personal Property Securities Register and agrees to do all things necessary and reasonably required by the Supplier to effect such registration.

91. The Applicant waives any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.

Entire agreement

92. 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.

Privacy Act

93. The Applicant agrees to the terms of the Privacy Statement pursuant to the Privacy Act 1988 (as amended by the Privacy Amendment (Enhancing Privacy Protection) Act 2012 contained in this document.