

Terms and Conditions

Payment terms

1. The terms of payment are strictly thirty (30) days (or such other period as nominated by the supplier herein) from the end of the month. 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, upon provision of 48 hours' notice to the Applicant vary the terms of trade.

2. If the Applicant does not agree with the variations proposed above, they must notify the Supplier within fourteen (14) days. Absent any notice from the Applicant, the varied terms and conditions of trade may be deemed accepted.

3. If the Applicant does not have a current credit facility with the Supplier then: (a) if a stock order is placed for goods on hand, a deposit of thirty (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 placed 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 of order; or

(c) all off-the-shelf purchases must be paid at the time of sale.

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

5. If the Applicant pays any part of their credit account by a credit card, unless agreed otherwise, the Applicant must pay an additional amount to the Supplier equivalent to the merchant fee payable by the Supplier to the respective card issuer.

6. The Applicant must check all invoices and advise the Supplier of any errors or omissions within seven (7) days of receipt. Failing advice from the Applicant that the invoice contains any errors or omissions, the invoice may be deemed accepted by the Supplier.

7. 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 and Applicant from time to time, after issuing a written demand to the Applicant demanding payment, the Supplier will be entitled to charge an administration fee of two-and-a-half (2.5) percent per month of the amount payable on any outstanding debts, calculated daily.

8. 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 and formation of contract

9. 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. A contract will only be completed if: (a) the Supplier accepts the Applicant's offer in writing; or (b) the Supplier accepts the Applicant's offer verbally and issues a sales order and/or invoice to the Applicant.

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

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

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

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

14. 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.

Purpose of credit

15. 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

16. 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.

Delivery

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

18. 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.

19. The Applicant acknowledges and accepts that any estimated delivery or supply of goods provided by the Supplier is an estimate only and the Supplier will not be liable for any loss suffered by the Applicant as a result of any delay in the delivery of goods.

20. The Applicant accepts that the Supplier may deliver goods by instalments and require payment for each separate instalment in accordance with these terms and conditions. For the avoidance of doubt, if the Supplier is unable to supply the Applicant's total order, these terms and conditions continue to apply to the goods supplied.

21. 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 ninety (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.

22. 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.

23. If the Applicant requires any variation in the works and/or goods after acceptance of this quotation including any inaccuracies 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 agreed in writing between the Supplier and the Applicant.

Returns

24. 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) without the Supplier's prior written approval. The Applicant is liable for, and must pay, all costs incidental to the return of the goods, including, but not limited to, the costs of freight and cartage (which must be pre-paid prior to the goods return).

25. 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 twenty-five (25) percent 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.

26. 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.

27. Subject to any rights the Applicant might have under the Competition and Consumer Act 2010 or any other relevant legislation, the Applicant understand and agrees that it cannot return any goods that are custom goods, made to order goods, or non-stock goods.

Jurisdiction

28. 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.

29. 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.

30. 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

- 31.** The Applicant charges in favour of the Supplier all of its estate and interest in any real property, whether held in its own right or in its capacity as trustee, the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.
- 32.** The Applicant charges in favour of the Supplier all of its estate and interest in any personal property, whether held in its own right or in its capacity as trustee, the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.
- 33.** 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 upon written notice and demand to the Applicant (in the event that there is no default by the Applicant in carrying out its obligations hereunder).
- 34.** 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 co-exist 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, and upon the provision of written notice, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

Retention of title

- 35.** Title in the goods does not pass to the Applicant until the Applicant has made payment in full for the goods and, further, until the Applicant has made payment in full of all the other money owing by the Applicant to the Supplier (whether in respect of money payable under a specific contract or on any other account whatsoever).
- 36.** 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.
- 37.** 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.
- 38.** If the Applicant uses any of the goods in a manufacturing or construction process of its own or 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.
- 39.** 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.
- 40.** The Applicant's indebtedness to the Supplier, whether in full or in part, will not be discharged by the operation of clause 39 hereof unless and until the funds held on trust are remitted to the Supplier.
- 41.** 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. For the avoidance of doubt, the Supplier's property in the goods is not affected by the fact that goods have become fixtures (or incorporated into fixtures) attached to premises of the Applicant or a third party.
- 42.** Notwithstanding clause 41, 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.

- 43.** The Applicant will be responsible for the Supplier's reasonable costs and expenses in exercising its rights under clauses 41 and 42. 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. Further, the Applicant agrees to indemnify the Supplier against any claim made by a third party in the Supplier's exercise of any power to enter any premises to repossess its goods.
- 44.** 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.
- 45.** 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 that the Supplier elects. For the avoidance of doubt, the Supplier's interest constitutes a 'purchase money security interest' pursuant to the PPSA.

Limitation of liability

- 46.** 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).
- 47.** 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 46 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; (iv) at the Supplier's sole discretion; and (v) in the case of advice, recommendations, information or services by supplying the advice, recommendations, information or services again.
- 48.** The Supplier is not liable for loss of profit, economic or financial loss, damages, consequently loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Applicant as a result of the goods and/or services (including advice, recommendations, and/or information) supplied under this agreement.
- 49.** 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.

Cancellation of terms of credit

- 50.** The Supplier reserves the right to withdraw credit at any time upon provision of 48 hours' notice.
- 51.** Upon cancellation with notice all liabilities incurred by the Applicant become due and payable to the Supplier within seven (7) days.

Indemnity

- 52.** The Applicant agrees to indemnify the Supplier and keep the Supplier indemnified against any claim that arises out of the goods and services supplied under this agreement. 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

- 53.** 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.
- 54.** 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

- 55.** If the Applicant is a corporation, the Applicant warrants that all of its directors have signed this agreement and that all of its directors may be required to enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.

Trustee capacity

- 56.** 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.
- 57.** The Applicant must give the Supplier a copy of the trust deed upon request.

Partnership

58. 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 may be required to enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.

59. 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

60. 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.

61. Notwithstanding anything herein to the contrary, the Applicant acknowledges and understands that it will be in breach of this agreement if an Insolvency Event occurs.

Waiver

62. 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.

63. Until ownership of the goods passes, the Applicant waives its rights it would otherwise have under the PPSA (unless otherwise agreed to in writing by the Supplier and Applicant): (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(1) 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

64. 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).

65. 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.

66. Subject to clauses 65 and 67, payments by, or on behalf of, 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 43 and 65. (b) Secondly, in payment of any interest incurred in accordance with clause 72.

(c) Thirdly, in payment of the outstanding invoice(s).

67. In circumstances where the Supplier seeks to enforce a purchase money security interest under the PPSA over collateral or proceeds (these terms being consistent with the terms defined in the PPSA), payments received from the Applicant will be allocated in a manner at the Supplier's absolute and unfettered discretion, so as to attribute, to the greatest extent possible, the unpaid balance of the debt to the purchase money obligation in respect of the collateral and/or proceeds over which the Supplier seeks to enforce its purchase money security interest.

68. To the extent that payments have been allocated to invoices by the Supplier in its business records, the Supplier may, at its sole and unfettered discretion, allocate and/or retrospectively reallocate payments in any manner whatsoever at the Supplier's absolute discretion, including in a manner inconsistent with clause 66 herein.

69. Payments allocated (and/or reallocated) under clause 66 and/or 67 will be treated as though they were allocated (and/or reallocated) in the manner determined by the Supplier on the date of receipt of payment.

Taxes and duty

70. 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.

71. 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 48 hours' written demand.

Interest rates

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

Set-off

73. 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 unless agreed to otherwise by the Supplier and Applicant in writing.

Miscellaneous

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

75. The Supplier is not liable 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 as a result of the goods and/or services supplied under this agreement.

76. 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.

77. 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 in writing to the Supplier by the Applicant or the Applicant's authorised representative.

78. The Applicant further agrees that where the Supplier has rights in addition to those under part 4 of the PPSA, those rights will continue to apply.

79. 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.

80. 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.

81. 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

82. 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.

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

Variation

84. 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. The Applicant will be provided with fourteen (14) days to accept the variation/s, failing which the variations may be deemed accepted by the Supplier.

85. 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. Variations requested by the Applicant will only be binding upon the Supplier if they are accepted in writing.

Consent to register

86. 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.

87. 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

88. This agreement constitutes the entire agreement between the parties relating in any way to its subject matter, unless agreed to otherwise by the Supplier and the Applicant in writing. 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.

89. Notwithstanding the preceding paragraph, in circumstances where there is a pre-existing written credit agreement (**Original Agreement**) between the Applicant and the Supplier, these terms and this agreement will constitute a variation of the Original Agreement whereby the terms of the Original Agreement are deleted and replaced with the terms herein, unless the terms of the Original Agreement are otherwise expressly or implicitly preserved by the terms herein in which case they will co-exist with the terms herein, and, to the extent of any inconsistency, these terms will prevail.

Privacy Act

90. 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.