

# TERMS AND CONDITIONS

## Payment terms

- The terms of payment are strictly thirty (30) days (or such other period as nominated by the Supplier) from end of month. Sean Enterprises (WA) Pty Ltd as trustee for the S & D Carren Family Trust trading as Goldstar Transport ABN 78 179 817 092 and its related bodies corporate (as that term is defined in the *Corporations Act 2001*) (**Supplier**) may, at any time, unilaterally vary these conditions in its absolute and unfettered discretion by giving fourteen days' notice to the Applicant.
- 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:
  - An interest rate of 15 percent per annum payable per year, or part thereof, until payment by the Applicant.

## Jurisdiction

- The Applicant acknowledges and agrees that this agreement will be governed by the laws of Western Australia, and the laws of the Commonwealth of Australia which are in force in Western Australia.
- The parties to this agreement submit to the non-exclusive jurisdiction of the courts of Western Australia and the relevant federal courts and courts competent to hear appeals from those courts.

## Security/charges

- 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.
- 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.
- 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.
- 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, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

## Purpose of credit

- 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.

## Formation of contract

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

## Cancellation of terms of credit

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

## Indemnity

- 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

- 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.
- 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

- 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

- If the Applicant is the trustee of a trust (whether disclosed to the Supplier or not), the Applicant warrants to the Supplier that:
  - The Applicant enters into this agreement in both its capacity as trustee and in its personal capacity;
  - The Applicant has the right to be indemnified out of trust assets;
  - The Applicant has the power under the trust deed to sign this agreement; and
  - The Applicant will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier.
- The Applicant must give the Supplier a copy of the trust deed upon request.

## Partnership

- 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.
- 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

- 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

- 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.
- Until ownership of the goods passes, the Applicant waives its rights it would otherwise have under the PPSA:
  - under section 95 to receive notice of intention to remove an accession;
  - under section 118 to receive notice that the Supplier intends to enforce its security interest in accordance with land law;
  - under section 121(4) to receive a notice of enforcement action against liquid assets;
  - under section 129 to receive a notice of disposal of goods by the Supplier purchasing the goods;
  - under section 130 to receive a notice to dispose of goods;
  - under section 132(2) to receive a statement of account following disposal of goods;

- under section 132(4) to receive a statement of account if no disposal of goods for each 6 month period;
- under section 135 to receive notice of any proposal of the Supplier to retain goods;
- under section 137(2) to object to any proposal of the Supplier to retain or dispose of goods;
- under section 142 to redeem the goods;
- under section 143 to reinstate the security agreement; and
- under section 157(1) and 157(3) to receive a notice of any verification statement.

## Costs

- 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).
- 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.
- The Applicant acknowledges and agrees that payments by the Applicant will be applied by the Supplier as follows:
  - Firstly, in payment of any and all collection costs and legal costs in accordance with clause 26.
  - Secondly, in payment of any interest incurred in accordance with clause 33.
  - Thirdly, in payment of the outstanding invoice(s).
- 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.
- 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 28 herein.
- Payments allocated (and/or reallocated) under clause 28 and/or 29 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

- 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.
- If as a result of:
  - any legislation becoming applicable to the subject matter of this agreement; or
  - 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

- The interest rate on any outstanding debts is a fixed rate of 15 percent per annum.

## Set-off

- 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.
- 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.

## Miscellaneous

- 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.
- 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.
- 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.
- 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.
- 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.

## Definitions

- The following additional terms and conditions apply:
  - Fuel Surcharge** - all prices incur a fuel levy which is subject to variation. The fuel levy is payable as a percentage of the freight invoice;
  - Pallet definition** - irrespective of weight, if the item occupies a pallet space and/or is shipped as a pallet, it will be classified accordingly; pallet dimensions = 1.2 x 1.2 x height and the cubic conversion of 333kg/cubic meter will be calculated for charging purposes;
  - Hand unload** - when a consignment involving pallets requires the driver to unload by hand due to the unavailability of a forklift, an additional charge of \$50 per pallet will apply;
  - Credit claims** - credit claims will not be recognised after 7 days from date of invoice;
  - Rates** - rates will be reviewed annually as a minimum;
  - Service charge** - a minimum charge will apply when a booking is cancelled after the driver has already been despatched. Likewise with a futile attempt or redirected consignment;
  - Dangerous goods** - Current charge is \$50 per consignment;
  - Insurance** - insurance is not offered by the Supplier and remains the responsibility of the Applicant.

## Severance

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

## Variation

- 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.