



TERMS AND CONDITIONS OF CREDIT AND TRADE

1. GENERAL

- 1.1 Blue Star Pacific Pty Ltd Pty Ltd ('Blue Star') is the supplier of Goods to the Applicant and/or the provider of Services to the Applicant.
- 1.2 The Applicant wishes to buy Goods and/or procure Services from Blue Star by orders placed from time to time.
- 1.3 Blue Star has agreed to sell and the Applicant has agreed to buy Goods and/or Services on the conditions set out in this agreement ('Agreement').
- 1.4 Except as otherwise expressly agreed upon in writing between a duly authorised officer of Blue Star and the Applicant, these Terms and Conditions apply notwithstanding any provisions to the contrary which may appear on any order form or other document issued by the Applicant.
- 1.5 The credit being applied for by the Applicant is to be used solely or predominantly for business purposes.
- 1.6 The granting of credit to the Applicant is at the absolute discretion of Blue Star and unless otherwise demanded by Blue Star the Applicant must make payment of all amounts payable in accordance with the payment terms shown on the Tax Invoice/Statement/Payment Claim.

2. DEFINITIONS

In these terms and conditions:

- (a) Goods means the goods supplied by Blue Star to the Applicant.
- (b) PPSA means the *Personal Property Securities Act 2009* (Cth), as amended from time to time.
- (c) PPS Register means that Personal Property Securities Register.
- (d) Price means the consideration payable by the Applicant to Blue Star for the Goods supplied and/or Services provided.
- (e) Services means the Services provided by Blue Star to the Applicant.

3. AGREEMENT TO BUY AND SELL GOODS AND SERVICES

- 3.1 In consideration of payment of the Price for the Goods supplied and/or Services provided from time to time by Blue Star to the Applicant, Blue Star shall sell and the Applicant shall pay for certain Goods and/or Services in accordance with this Agreement.

4. PLACEMENT OF ORDERS

- 4.1 The Applicant shall order Goods and/or Services from Blue Star in writing and each order shall specify:
 - (a) the date of placement of the order; and
 - (b) the Goods and/or Services ordered.
- 4.2 Blue Star reserves the right to accept or decline any order in whole or in part and each order accepted by Blue Star shall constitute a separate contract which will incorporate the conditions of this Agreement ('contract').

- 4.3 Blue Star reserves the right to make part supply of any order. Failure to supply a total order shall not invalidate any contract as regards to supply of that order. No order may be cancelled by the Applicant except with consent in writing of Blue Star and the Applicant indemnifies Blue Star against all claims and losses which Blue Star may suffer due to the cancellation of any order.

- 4.4 Blue Star reserves the right to accept or decline any order where the Applicant has exceeded their credit limit or has failed to make a payment when due.

5. DELIVERY OF ORDERS

- 5.1 Blue Star shall deliver during normal business hours at the Applicant's expense each order to the location specified by the Applicant.

6. PAYMENT

- 6.1 Blue Star will provide a tax invoice/payment claim to the Applicant requiring payment of the Price for the Goods and/or Services.
- 6.2 The Applicant shall pay the Price in relation to each order to Blue Star within thirty (30) days from the tax invoice/payment claim date.
- 6.3 Blue Star reserves the right of "Retention of Title" of Goods not paid for in full.
- 6.4 The Applicant is not entitled to withhold payment of any account by reason of any account query, dispute or set off.

7. RETENTION OF TITLE

- 7.1 Blue Star remains the owner of the Goods delivered to the Applicant until payment is received in full for such Goods and for all other Goods supplied by Blue Star to the Applicant. Where the Applicant processes or commingles the Goods into other Goods, equipment or property, Blue Star takes title to the other Goods, equipment and/or property as well. Risk in the Goods will pass to the Applicant on Blue Star's despatch of the Goods to the Applicant and the Applicant will hold the Goods as Blue Star's bailee and will store and label the Goods so that Blue Star's ownership of the Goods is clear.
- 7.2 The Applicant grants Blue Star the irrevocable right to enter premises in which Blue Star's Goods are stored to inspect and/or remove them, at any time and for whatever reason, and if the Goods are sold, the Applicant agrees to grant Blue Star access to the Applicant's records that evidence the sale of the Goods and the treatment of any sale proceeds.
- 7.3 The Applicant is entitled to sell Blue Star's Goods as Blue Star's bailee, but not otherwise, and if the Applicant sells Goods before all moneys payable to Blue Star are paid in full, the proceeds from the sale, to the extent that they do not exceed the moneys outstanding to Blue Star by the



Applicant at the time of the sale, are to be held in trust for Blue Star and shall be paid to Blue Star immediately. The Applicant agrees not to bank any such proceeds into any loan account (including overdraft account) or any overdrawn account.

7.4 Proceeds held in trust are payable on demand, and the Applicant agrees not to charge or encumber in any way those proceeds.

7.5 The retention of title arrangement described in this clause 7 constitutes the grant by the Applicant of a Purchase Money Security Interest to Blue Star in respect of all present and after-acquired Goods supplied to the Applicant by Blue Star.

8. RISK

8.1 Risk in each order shall pass to the Applicant upon delivery of that order to the Applicant. Delivery is deemed to have been affected as soon as the Goods are placed with the courier or agent for the delivery of the Goods to the Applicant.

9. BEYOND CONTROL

9.1 If for any reason beyond the reasonable control of Blue Star it is unable to perform in whole or in part any obligation under this Agreement, then Blue Star shall be relieved of that obligation to the extent and for the period that it is so unable to perform and shall not be liable to the Applicant in respect of this inability.

10. CLAIMS FOR SHORTAGES

10.1 Claims for shortages by the Applicant shall be made in writing and forwarded to Blue Star within seven (7) days of the Applicant receiving the Goods and/or Services. The Applicant shall supply to Blue Star such documentary evidence and other material to justify their claim. The issue on whether there was a shortage will be decided by Blue Star and any decision shall be conclusive.

11. PPSA

11.1 The Applicant acknowledges and agrees that these terms and conditions:

- (a) constitutes a Security Agreement for the purposes of the PPSA; and
- (b) where Blue Star supplies the Applicant with Goods, creates a Security Interest in:
 - a. all Goods previously supplied by Blue Star to the Applicant;
 - b. all Goods that will be supplied in the future by Blue Star to the Applicant;
 - c. the Proceeds of the sale of all Goods (whether already supplied or to be supplied) by the Applicant; and

d. all of the Applicant's present and after acquired property; or

(c) where Blue Star provides the Applicant with Services, creates a Security Interest in all of the Applicant's present and after acquired property,

to secure payment of all monies (including but not limited to, the Price payable for the Goods supplied or Services provided, and any interest and/or other monies unpaid) owing by the Applicant to Blue Star from time to time under these terms and conditions and under any other agreement or arrangement between the Applicant and Blue Star.

11.2 The Applicant acknowledges that Blue Star may:

- (a) register its Security Interest (and the Proceeds) as a Purchase Money Security Interest, to the extent that it secures payment of that part of the Price which comprises the aggregated unpaid purchase price of the Goods; and/or
- (b) register its Security Interest as a general Security Interest to the extent that it secures payment of that part of the Price which comprises the aggregated unpaid purchase price of the Services.

11.3 The Applicant undertakes to:

- (a) promptly execute any further documents and/or do such further acts and things and provide such further information (such information to be complete, accurate and up-to-date in all respects) which Blue Star may reasonably require to:
 - a. register a Financing Statement or Financing Change Statement in relation to a Security Interest on the PPS Register and other wise do all things necessary and required by Blue Star to ensure that any Security Interest registered by Blue Star is a perfected Security Interest under the PPSA;
 - b. register any document on any register reasonably necessary to secure Blue Star's interest under these terms and conditions;
 - c. register any other document required to be registered under the PPSA; or
 - d. correct a defect in a statement referred to in sub-clauses (b)a, (b)b and (b)c of this clause;
- (b) indemnify, and upon demand reimburse, Blue Star for all expenses incurred in registering a Financing Statement or Financing Change Statement on the PPS Register or releasing any Goods that are the subject of a Security Interest;
- (c) not make any amendment demand in respect of a security interest, apply to the Registrar to register a



- financing change statement in respect of a security interest, without Blue Star's prior written consent; and
- (d) not register, or permit to be registered, a Financing Statement or a Financing Change Statement in relation to the Goods in favour of a third party without Blue Star's prior written consent.

- 11.4 The Applicant and Blue Star agree that section 96, 116, 125, the second sentence only of 126(2) of the PPSA do not apply to the Security Interest created by these terms and conditions.
- 11.5 The Applicant hereby waives its rights to receive notices, information or statements (as the case may be) under sections 95, 118, 120, 121(4), 123(2), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA and the Applicant's rights as a grantor and/or a customer under section 142 and 143 of the PPSA.
- 11.6 Unless otherwise agreed in writing by the Applicant and Blue Star, the Applicant waives its right to receive a Verification Statement in accordance with section 157 of the PPSA.
- 11.7 The Applicant acknowledges that Blue Star has a caveatable interest in any real property of the Applicant under this clause and may lodge a caveat over the Applicant's real property.
- 11.8 The Applicant unconditionally ratifies any actions taken by Blue Star under this clause 11.
- 11.9 The provisions of this clause 11 survive termination of these terms and conditions or any other agreement between the Applicant and Blue Star for the supply of the Goods and/or the provision of the Services.
- 11.10 Terms in this clause have the same meaning as in the PPSA.

12. AMENDMENT

- 12.1 This Agreement shall not be amended except in writing signed by each of the parties.

13. JURISDICTION

- 13.1 This Agreement is governed by the laws of Queensland and all parties agree to submit all disputes to the relevant Courts of that State.

14. NOT AGENT

- 14.1 Nothing in this Agreement or any other circumstance makes the Applicant the agent for Blue Star.

15. RETURNED GOODS

- 15.1 Blue Star shall not be under any obligation to accept Goods returned by the Applicant and will do so only on terms to be agreed in writing in each individual case.

16. DEFAULT

- 16.1 If:
- (a) the Applicant fails to make a payment to Blue Star when due and does not make payment within seven (7) days of receiving written notice from Blue Star requesting payment;
 - (b) the Applicant is placed in receivership, liquidation or under administration;
 - (c) the Applicant breaches this Agreement;
 - (d) the Applicant (if a natural person) dies;
 - (e) the Applicant enters into a Deed of Assignment, Arrangement or Composition;
 - (f) any statements made by the Applicant are not correct;

then Blue Star may declare all moneys owing by the Applicant to become immediately due and payable and may terminate this Agreement and each contract by notice in writing to the Applicant.

- 16.2 All of Blue Star's rights under this Agreement will be preserved, for example, payment of outstanding moneys, access to take possession of the Goods etc.

- 16.3 The Applicant shall pay interest at 1% per month, calculated daily, on any amount not paid when due.

17. LOSS OR DAMAGE IN TRANSIT

- 17.1 Blue Star is not responsible for any loss or damage to Goods in transit. Blue Star shall render to the Applicant such assistance as may be necessary to press claims provided that the Applicant shall have notified Blue Star immediately the loss or damage is discovered.

18. EXCLUSION OF LIABILITY

- 18.1 Where any Act of Parliament implies in this Agreement any term, condition or warranty, and that Act avoids or prohibits provisions in an agreement excluding or modifying the application or exercise of, or liability under such term, condition or warranty, such term, condition or warranty will be deemed to be included in this Agreement. However, to the maximum extent permitted by any such Act, the liability of Blue Star for any breach of such term, condition or warranty will be limited, at the option of Blue Star, to any one or more of the following:

- (a) if the breach relates to the supply of Goods;
 - (i) the replacement of the Goods or the supply of equivalent Goods;
 - (ii) the repair of such Goods;



- (iii) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
 - (iv) the payment of the cost of having the Goods repaired; and
- (b) if the breach relates to the supply of Services:
- (i) the supplying of the Services again; or
 - (ii) the payment of the cost of having the Services supplied again.

18.2 Under no circumstances, unless otherwise provided by an Act of Parliament (and then only to the minimum extent permitted by law), will Blue Star be liable to the Applicant for loss of profits, loss of revenue, loss of opportunity or for any direct or indirect economic or consequential loss whatsoever, whether arising from any failure to provide the Goods or Services by reason of negligence or breach of contract or otherwise.

18.3 Blue Star will not be under liability whether in contract, tort or otherwise from any cause, whether occasioned by negligence or otherwise, for any injury, damage or loss, including special, indirect or consequential damage or loss whether to persons or property, arising out of these Terms and Conditions or the Goods and/or Services, including any defects in the Goods and/or Services, anything connected with the Goods and/or Services, late delivery or non-delivery of the Goods and/or Services or any other work related to the Goods and/or Services.

19. MANUFACTURER'S DOCUMENTATION

19.1 The manufacturer of the Goods may provide documents with the Goods detailing the manufacturer's warranty against defects. The Australian Consumer Law requires that these documents meet certain requirements. Blue Star makes no representation, and gives no guarantee, as to the content of any documents supplied by the manufacturer with the Goods, or the compliance of these documents with any law or regulation, including, but not limited to the Australian Consumer Law.

19.2 To the fullest extent permitted by law, Blue Star is not liable in the event that the Applicant suffers any loss or damage, or is the subject of any claim, arising out of the content of any documents that the manufacturer supplies with the Goods. It is the Applicant's responsibility to check these documents for accuracy and compliance.