

**- JBS -**  
**TERMS & CONDITIONS**

**1. JBS**

In these terms and conditions and in this application for credit, "**JBS**" means Baybrick Pty Ltd (ABN 97 067 220 017), JBS Australia Pty Ltd (ABN 14 011 062 338) and any other "related body corporate" or "subsidiary" of those companies as those terms are defined in the *Corporations Act 2001* and includes JBS's successors and permitted assigns.

**2. TERMS AND CONDITIONS TO APPLY**

JBS and the customer (being the Applicant named in any application for credit accompanying these Terms & Conditions or otherwise) (**Customer**) agree that these Terms and Conditions (**Terms & Conditions**) shall apply to the supply of all products (**Goods**) or provision of all services (**Services**) or both by JBS to the Customer despite any prior agreements, prior offers, dealings or trade usage, or any terms communicated by the Customer to JBS. These Terms & Conditions supersede those in any previous form (and apply to Goods and Services previously supplied to a Customer and to any existing outstanding Credit Accounts or tax invoices) and do not affect the validity of any previous guarantee and may only be varied or added to by written agreement signed by an authorised representative of both the Customer and JBS.

In these Terms & Conditions:

**Credit Account** means each account of the Customer with JBS for moneys owing in relation to the supply Goods and Services;

**Customer's Land** means all of the Customer's right, title and interest in land (held now or in the future, wherever located) whether owned by the Customer legally or beneficially or as trustee of any Trust;

**Delivery Date** means, in relation to any Goods and Services, the date agreed between JBS and the Customer by which the Goods are to be delivered or the Services are to be provided or both.

**Goods and Services** includes Goods or Services or both.

**Monies** means all moneys now or in the future actually or contingently owing by the Customer to JBS on any Credit Account and includes any part of those moneys and includes all interest accruals and costs, expenses, and disbursements;

**3. QUOTATIONS**

If JBS has provided any quotation specifically for Goods and Services (**Quotation**):

- (a) these Terms & Conditions shall apply to the Quotation;
- (b) the price in the Quotation shall be JBS's current price as at the date of Quotation and the price actually payable for the Goods and Services shall be JBS's current price as at the date of the Customer's acceptance of the Quotation; and
- (c) (subject to paragraph (b)), the Quotation shall remain valid for acceptance by the Customer for three (3) days after the date of the Quotation.

**4. ORDERS**

If the Customer has made an order for Goods and Services without there being a Quotation provided by JBS (**Order**):

- (a) the Order is subject to acceptance in writing by JBS; and
- (b) the price actually payable for the Goods and Services is JBS's current price as at the date of JBS's acceptance of the Order.

**5. VARIATION OR CANCELLATION**

After the Customer's acceptance of the Quotation or JBS's acceptance of the Order, as the case may be:

- (a) no change in the specification of Goods and Services shall bind JBS, unless JBS expressly agrees to the change in writing; and
- (b) if the Customer cancels the Order or Quotation after acceptance, the Customer will pay JBS any loss, damage or expenses incurred by JBS in relation to the supply or proposed supply of the Goods and Services.

**6. CHARGES AND TAXES**

- (a) Unless otherwise expressly stated, the price of Goods and Services excludes all freight, transportation, shipping, insurance, packing, crating or casing, storage, handling, demurrage, delivery, export and similar charges, and all sales, GST, excise or other taxes, and the Customer shall pay and indemnify JBS for those charges or taxes. If JBS expressly agrees in writing that the price includes any of these charges or taxes, the price is subject to adjustment for increases in any of those charges or taxes after the date of the Quotation or acceptance of the Order.
- (b) The Customer shall pay all taxes, levies, duties and assessments of every nature due in connection with the Goods and Services supplied and hereby indemnifies and holds harmless JBS from any liability on account of any and all such taxes, levies, duties and assessments of every nature.

**7. PAYMENT**

- (a) The Customer shall pay for Goods and Services within 7 calendar days from the date of the tax invoice unless the Customer is notified of a different time for payment by JBS. Time shall be of the essence in respect of payment for the Goods and Services.
- (b) If payment is not made by the due date for payment, the Customer shall pay to JBS on demand interest at the rate of two percent (2%) per month until paid. This will not affect the other rights of JBS.
- (c) JBS is entitled to recover from the Customer, in addition to the price, any GST on the supply of the Goods and Services except to the extent that the prices expressly include GST.
- (d) JBS is entitled to recover from the Customer, in addition to the price all losses, expenses, costs (including legal fees) and disbursements, that JBS incurs or will incur consequent upon the Customer's failure to pay on the due date, on a full indemnity basis and are recoverable from the Customer by JBS as a liquidated debt.

- (e) JBS may apply payments received from the Customer firstly to any costs, expenses and disbursements, then to interest and then to the balance of money owing.

**8. GST**

- (a) Where a party to the Terms & Conditions makes a Taxable Supply under or in connection with the Terms & Conditions, JBS will be entitled, in addition to any other consideration recoverable in respect of the Taxable Supply, to recover from the Customer the amount of any GST on the Taxable Supply.
- (b) Where a party to the Terms & Conditions is entitled, under or in connection with the Terms & Conditions, to recover all or a proportion of its costs or is entitled to be compensated for all or a proportion of its costs, the amount of the recovery or compensation shall be reduced by the amount of (or the same proportion of the amount of) any Input Tax Credits available in respect of those costs.
- (c) In the Terms & Conditions:
  - (i) "**GST**" means the tax payable on Taxable Supplies under GST Legislation;
  - (ii) "**GST Legislation**" means A New Tax System (Produce and Services Tax) Act 1999 ("**Act**") and any related act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax;
  - (iii) "**Input Tax Credit**" has the meaning given in the Act; and
  - (iv) "**Taxable Supply**" has the meaning given in the Act.

**9. DELIVERY**

- (a) JBS will use all reasonable endeavours to deliver Goods and Services on or before the agreed date, but:
  - (i) delivery on the Delivery Date is not guaranteed and it is subject to extension for any delay caused by strikes, lockouts, war, breakdowns, accidents, delays in transport, fire or any other cause beyond the reasonable control of JBS; and
  - (ii) JBS will not be liable for any loss, damage or other liability whether in contract, tort, negligence or otherwise and whether directly or indirectly arising from the Goods and Services not being delivered by the Delivery Date for any reason.
- (b) JBS may deliver Goods and Services to the Customer in instalments and in which case JBS may separately invoice the Customer for payment for each delivery instalment (which shall be taken to be the subject of a separate and distinct contract between the parties).
- (c) Any Goods returned are only accepted with the prior written approval of JBS.
- (d) Goods which have been specifically produced by JBS or altered by the Customer cannot be returned simply because the Customer has changed their mind about purchasing the Goods.

**10. RISK AND PROPERTY IN GOODS**

- (a) For the purposes of the *Personal Property Securities Act 2009* (as amended from time to time) (**PPSA**) the term **Goods** used in this clause means any and all present and after acquired Goods and Services supplied by JBS to the Customer;
- (b) The Goods shall be entirely at the risk (including loss, damage or deterioration) of the Customer from the time of dispatch of the Goods (the carrier of the Goods shall be taken to be the agent of the Customer even if engaged or paid by JBS).
- (c) JBS retains full title to the Goods until JBS receives payment in full for the Goods and all other amounts owed by the Customer to JBS.
- (d) Until all such monies have been paid:
  - (i) JBS has the right to call for or recover possession of the Goods (for which purpose JBS's employees or agents may enter onto the Customer's premises, whether at the site of delivery or otherwise) and the Customer must deliver up the Goods if directed to do so by JBS;
  - (ii) the Customer:
    - (A) agrees that the relationship between the Customer and JBS shall be fiduciary and the Customer shall keep the Goods safely, securely and separately stored, kept in good condition and insured, and marked in a manner which clearly indicates that they belong to JBS;
    - (B) has the right to sell the Goods in the ordinary course of business as JBS' fiduciary agent but must not otherwise encumber or dispose of the Goods;
    - (C) shall not mix the Goods with or attach them to other materials or otherwise make them unable to be returned to JBS in their original state;
    - (D) agrees that if, in breach of this clause, the Goods are incorporated with Goods of the Customer, the resultant product shall become and be deemed to be the sole property of JBS. If the Goods are incorporated in any way with the property of a party other than the Customer, the resultant product shall become and be deemed to be owned in common by JBS with that other party (or parties) on a pro-rata basis to be calculated by reference to the cost to the Customer of the incorporated materials; and
    - (E) will hold any proceeds (as that term is defined in the PPSA) of any resale, disposal or other dealing with the Goods or any product incorporating the Goods (including sale or supply to a party other than the Customer) in breach of this clause in trust for JBS and shall pay the proceeds into a separate fiduciary account to be held in trust for JBS until accounted for to JBS at the demand of JBS.
- (e) To secure payment of all Monies, the Customer charges with the due payment of all of those Monies all of the Customer's interest in all personal property owned by the Customer wherever located both present and future and the Customer consents to JBS lodging a security including a financing statement under the PPSA.
- (f) It is the intention of the parties by clause 10(d) that there is created for the benefit of JBS a Purchase Money Security Interest (as defined in the PPSA) in all unpaid Goods;
- (g) It is the intention of the parties by clause 10(e) that there is created for the benefit of JBS a Purchase Money Security Interest in all present and after acquired personal property of the Customer;
- (h) The Customer agrees that JBS may register a financing statement of any Purchase Money Security Interest, its general security interest and any other security interest in the Goods created by the Terms & Conditions on the Personal Property Securities Register (**PPSR**) and the Customer waives its rights to receive a verification statement (as that term is defined in the PPSA) in respect of any

financing statement or financing change statement (as those terms are defined in the PPSA) registered by JBS in respect of any personal property of the Customer.

- (i) The parties agree that, insofar as the provisions of Chapter 4 of the PPSA are for the benefit of the Customer or place an obligation on JBS, those provisions will apply only to the extent that they cannot be contracted out of or to the extent that JBS otherwise agrees in writing.

## 11. LIABILITY

The Customer agrees (subject to clause 12(d)) that:

- (a) the Customer must satisfy itself as to the truth and accuracy of and may not rely for any purpose upon, any technical or other advice or information provided by or on behalf of JBS in connection with Goods and Services or the Terms & Conditions;
- (b) except to the extent prohibited by law, the only remedy of the Customer against JBS for any loss, damage or liability whether in contract, tort, negligence or otherwise of the Customer in connection with the Terms & Conditions or Goods and Services or JBS's failure to supply the Goods and Services to the Customer (or all three) in accordance with the Terms & Conditions shall be limited to JBS, at its option, replacing the Goods or re-performing the Services or both; and
- (c) JBS shall otherwise have no liability to the Customer whether in contract, tort, negligence or otherwise.

## 12. DEFECTIVE GOODS and SERVICES

- (a) Within two (2) days after the delivery/supply of Goods and Services the Customer shall both complete any inspection required by it to confirm the Goods and Services comply with any requirements of quantities, quality or description and notify JBS in writing of the extent to which the Goods and Services do not comply with any requirements of quantities, quality or description.
- (b) The Customer shall not use the Goods (or goods in relation to any Services) (other than to the extent reasonably necessary for inspection) before the Customer completes its inspection and satisfies itself that they comply with any requirements of quantities, quality or description, or, if the Customer notifies JBS under clause 12(a) that the Goods and Services do not comply with any requirements of quantities, quality or description, until JBS has had a reasonable opportunity to inspect the Goods and Services after JBS receives that notice.
- (c) If the Customer does not comply with this clause, the Customer shall be taken to have unconditionally accepted the Goods and Services and the Customer shall lose any right to reject any Goods or claim any remedy (including damages) against JBS.
- (d) If the Customer is a Consumer (as the term "Consumer" is defined at section 3 of the Australian Consumer Law (which is at Schedule 2 of the *Competition and Consumer Act 2010*)) the Goods and Services come with guarantees that cannot be excluded under the Australian Consumer Law. Such a Consumer Customer is entitled to replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. A Consumer Customer is also entitled to have Goods repaired or replaced if they fail to be of accepted quality and the failure does not amount to a major failure.

## 13. DELAY

Where JBS incurs any extra costs in relation to the supply of Goods and Services, directly or indirectly, as a result of any delay, interruption, suspension or alteration of any work or the supply of the Goods and Services caused by or as a consequence of any act or omission of the Customer, JBS shall be entitled to increase the price by the amount of the extra costs incurred.

## 14. CHARGING CLAUSE

- (a) To secure payment of all Monies, the Customer (or where the Customer is comprised of two or more persons or other entities then each person and other entity jointly and severally) hereby charges as legal or beneficial owner and as trustee of any trust in favour of JBS all the Customers' Land with the due payment of all of those Monies. The Customer acknowledges that JBS may register a caveat or caveats over the Customer's Land in respect of this charge.
- (b) If the Customer is a trustee of any trust:
- (i) it is bound by these Terms & Conditions and charges the Customer's Land as trustee;
- (ii) warrants that it is a proper exercise of the Customer's authority and power under the trust instrument and at law to trade with JBS and to charge the Customer's Land under these Terms & Conditions.
- (c) Upon demand by JBS, the Customer agrees to immediately execute a mortgage or other instrument in terms satisfactory to JBS to further secure the Customer's indebtedness to JBS and the Customer acknowledges by reason of this agreement to give a mortgage in favour of JBS that JBS is an equitable mortgagee in respect of the Customer's Land.
- (d) Should the Customer fail within a reasonable time of such demand to execute such mortgage or other instrument then the Customer appoints irrevocably the credit manager or a duly authorised officer of JBS to be the Customer's lawful attorney to execute any such mortgage or other instrument.

## 15. TRUST AND TRUSTEES

Where the Customer is a trustee of any trust:-

- (a) The Customer agrees to produce immediately to JBS a stamped copy of the trust deed (including all amendments) upon written notice from JBS in accordance with clause 23 of these Terms & Conditions.
- (b) The Customer warrants that it has full power and authority to enter into these Terms & Conditions on behalf of the trust and that it shall be bound by these Terms & Conditions both personally and as trustee and clause 14 extends to any Customer's Land held by the Customer as trustee.

## 16. DEFAULT, INSOLVENCY AND TERMINATION

- (a) The Customer indemnifies JBS against all its costs and expenses (including legal costs on a solicitor own client basis) as a result of the matter being referred to a collection agent or solicitor or both for recovery or in relation to any security interest created under these Terms & Conditions or both.

- (b) If the Customer:

- (i) commits a substantial breach of the Terms & Conditions including unreasonably refusing to accept any Goods and Services or failing to pay for any Goods and Services in accordance with the requirements of the Terms & Conditions; or
- (ii) informs any person it is insolvent, commits an act of bankruptcy, has a bankruptcy petition presented against it, becomes bankrupt, becomes subject to or bound by any arrangement, assignment, composition or moratorium of debts with its creditors, official management, receivership, liquidation, voluntary administration, winding up or other external administration,

JBS may, without affecting JBS's other rights:

- (iii) immediately terminate the supply of Goods and Services, by notice in writing to the Customer;
- (iv) refuse, suspend or withhold any further supply of Goods and Services;
- (v) enter upon (personally or by its employees or agents) any premises in the possession or control of the Customer and use reasonable force for the purposes of retaking possession of any of Goods (title to which has not passed to the Customer), in which case the sale of the Goods shall be taken to be terminated and JBS shall have no liability to the Customer whether for trespass, negligence, payment of damages or compensation or otherwise;
- (vi) terminate any credit arrangement with the Customer, by notice in writing to the Customer (in which case outstanding amounts will become immediately due and payable);
- (vii) forfeit any deposit paid for Goods and Services; or
- (viii) if payment in addition to a deposit has been made by the Customer in respect of any of the Goods and Services, the sale of which is terminated, appropriate that payment to any other debts of the Customer to JBS or damages incurred by JBS as a result of the termination of the sale.

## 17. SET OFF

- (a) JBS may at any time set off amounts owed by JBS to the Customer from the amounts owed by the Customer to JBS.
- (b) The Customer is not entitled to make any claim against JBS if any amount is owed by the Customer to JBS.
- (c) The Customer is not entitled to set off any amounts against amounts owed by the Customer to JBS.

## 18. FURTHER SECURITY

JBS may from time to time require further security as a condition of continuing to supply Goods and Services on credit. For the purposes of this clause "security" includes a guarantee, mortgage or charge granted by any person nominated by JBS.

## 19. GOVERNING LAW

The laws of the State of Queensland shall apply to the Terms & Conditions and the parties submit to the exclusive jurisdiction of the Courts in the Central Business District at Brisbane.

## 20. NON-WAIVER

JBS's failure to exercise any right under the Terms & Conditions or failure to insist on strict performance of any part of the Terms & Conditions does not operate as a waiver and a partial exercise of a right does not preclude any further or fuller exercise of that right.

## 21. NO EXPORT

- (a) Unless otherwise agreed in writing by JBS, any Goods supplied to the Customer are intended for use in Australia only such that if any such Goods are exported by the Customer, it is the responsibility of the Customer to ensure the Goods comply with the laws of any foreign country to which they are exported.
- (b) The Customer agrees to indemnify JBS in respect of any loss, damage, expense, claim or liability suffered or incurred by JBS as a result of any breach by the Customer of this clause or any claims against JBS arising out of any matters referred to in this clause.

## 22. SEVERANCE

If any part of these Terms and Conditions or any related document is or becomes void or unenforceable that part is severed so that all parts which are not void or unenforceable remain in full force and effect and are unaffected by the severance.

## 23. NOTICES

- (a) Notices required to be given by the Customer to JBS pursuant to these Terms & Conditions may be delivered to JBS:
- (i) by post at PO Box 299, Carole Park QLD 4300; or
- (ii) by facsimile at 07 3344 0097; or
- (iii) by email at [creditservices@bssa.com.au](mailto:creditservices@bssa.com.au).
- (b) Notices will be taken as delivered when received by JBS.
- (c) Notices required to be given by JBS to the Customer pursuant to these Terms & Conditions may be delivered:
- (i) by post to the Customer's last known address (and shall be taken as delivered on the second business day following posting); or
- (ii) By facsimile to the Customer's last known facsimile number; or
- (iii) by email to the last notified email address of the Customer (which will be taken to be received within 24 hours of JBS sending the email to the correct email address).
- (d) JBS's invoices and statements are deemed to be received by the Customer on the second business day after posting by ordinary pre-paid post.

24. Where the Customer is comprised of more than one person or entity then each person or entity that comprises the Customer is bound by these Terms and Conditions jointly and severally.