

## GENERAL TERMS AND CONDITIONS

### DEFINITIONS

"Additional Charges" includes all delivery, handling and storage charges, goods and services tax, stamp duty, interest, legal and other costs of recovery of unpaid money and all other government imposts and all money, other than the Purchase Price, payable by the Customer to Supplier arising out of the sale of the Goods and Services.

"Customer" means the person to or for whom the Goods and Services are to be supplied by the Supplier.

"Goods and Services" means the goods and/or the services provided to the Customer by the Supplier.

"Purchase Price" means the list price for the Goods and Services as charged by Supplier at the date of delivery or such other price as may be agreed by Supplier and the Customer prior to delivery of the Goods and Services.

"Terms and Conditions" means these general terms and conditions, as amended by Supplier from time to time.

### 1. CONTRACT

- 1.1 An order given to Supplier is binding on the Supplier and Customer, if
  - (a) a written acceptance is signed for or on behalf of the Supplier; or
  - (b) the Goods and Services are supplied by Supplier in accordance with the order; or
  - (c) the Customer or Customer's agent collects Goods and Services from the Supplier.
- 1.2 An acceptance of the order by the Supplier is then to be an acceptance of these Terms and Conditions by the Supplier and the Customer and these Terms and Conditions will override any conditions contained in the Customer's order. The Supplier reserves the right to accept a partonly of any order by notifying the Customer in writing or by delivering the Goods and Services to the Customer. No order is binding on the Supplier until accepted by it.
- 1.3 Quotations and Purchase Price are exclusive of GST unless otherwise stated.

### 2. CANCELLATION

- 2.1 An order which has been accepted in whole or in part by the Supplier cannot be cancelled by the Customer without obtaining the prior written approval of the Supplier, which it may refuse in its absolute discretion.
- 2.2 Without prejudice to any other rights which the Supplier may have at law or under this contract, the Supplier may suspend delivery, cease manufacture, or cancel any contract between the Customer and the Supplier if the Customer at any time:
  - (a) breaches the Terms and Conditions or any other contract with the Supplier.
  - (b) commits an act of bankruptcy, resolves to or goes into liquidation, has a receiver or manager appointed, enters into voluntary administration or enters into a scheme of arrangement or other composition with its creditors or otherwise becomes insolvent and unable to pay its debts; or
  - (c) refuses or neglects to take delivery of the Goods and Services.

### 3. PRICE VARIATION

- 3.1 Unless otherwise stated in this contract, the Supplier may vary the price stated in the contract to reflect any change in costs, taxes or duties incurred by the Supplier after the date of this contract.
- 3.2 Where a list price applies to products all prices listed:
  - (a) are subject to alteration without notice;
  - (b) are applicable to all deliveries on or after the effective day of any alteration;
  - (c) do not include tax or other government impost unless specifically stated.

### 4. VARIATIONS TO SCOPE OF CONTRACT

The price is based upon:

- (a) the scope of the work as detailed in the information provided by the Customer to the Supplier for the purpose of this contract including, where applicable, plans, specifications (including standards and finish), schedules, and nominated quantities; and
- (b) delivery arrangements in accordance with Clause 7 and any variations to the scope of the work or delivery arrangements shall be a variation of the contract entitling the Supplier to vary the price stated.

### 5. SPECIFICATIONS

- 5.1 Where the Customer requests that the Supplier provides the Goods and Services in accordance with the Customer's specifications and the Supplier agrees, the Purchase Price and Additional Charges are based on
  - (a) the scope of the work as detailed in the information provided by the Customer to the Supplier for the purpose of this contract including, where applicable, plans, specifications (including standards and finish), schedules, and nominated quantities; and
  - (b) delivery arrangements in accordance with these Terms and Conditions.
- 5.2 Where the Supplier manufacturers or supplies Goods and Services according to the Customer's specifications.
  - (a) the Supplier, to the extent permissible by law, does not warrant the suitability or performance of the Goods and Services; and
  - (b) the Customer must provide the Supplier with accurate information sufficient to enable the Supplier to provide the Goods and Services in accordance with the specifications and the Customer warrants to the Supplier that the information and any such Goods and Services do not breach any copyright, registered design, patent or other right of any third party and the Customer will indemnify the Supplier in relation to any such breach.
- 5.3 Where the Supplier agrees to manufacture or supply Goods and Services according to the Customer's specifications, the Customer is not entitled to withdraw such order and will be liable for payment of the agreed Purchase Price and Additional Charges for such order and take delivery under the agreed delivery arrangement.

### 6. PAYMENT

- 6.1 Time of payment for the amount due to the Supplier is of the essence in this contract.
- 6.2 Where no credit arrangements have been previously agreed by the Supplier, but credit has been agreed by the Supplier as a condition of this particular contract, the Customer shall pay the amount due within the month following the month of invoice.
- 6.3 Where no credit arrangements have been agreed by the Supplier, the Customer shall pay the amount due before the first delivery of the Goods and Services.
- 6.4 Interest is payable at the rate of 12% per annum calculated monthly on any amount not paid by the Customer by the due date.
- 6.5 Where Purchase Price is stated on a volumetric basis, payment will be based on measurement of the volume of Goods and Services as loaded by the Supplier for delivery.
- 6.6 If the Customer is in default, the Customer agrees to pay Supplier all costs and disbursements including legal costs on a solicitor and own client basis incurred by Supplier in collecting or attempting to recover money outstanding.
- 6.7 A surcharge will be added to the total amount payable when you make a payment with a Visa, MasterCard and American Express. This is in accordance with Competition and Consumer Amendment (Payment Surcharges) Act 2016.

### 7. ORDERS AND DELIVERY

- 7.1 All orders for products are subject to acceptance from the Supplier.
- 7.2 The times quoted for delivery are estimates only and Supplier accepts no liability for failure or delay in delivery of Goods and Services. The Customer is not relieved of any obligation to accept or pay for Goods and Services by reason of any delay in delivery. Goods and Services may be delivered by instalments at the discretion of Supplier and failure to deliver any instalments shall not entitle the Customer to terminate the contract.
- 7.3 The Supplier shall not be liable for delay in delivery arising from any cause whatsoever.
- 7.4 Where the Customer refuses or denies delivery, the Customer's obligation to pay for products, as set out in Clause 6, remains unchanged. The Customer shall also pay any additional storage, freight, holding or handling charges incurred by the Supplier.
- 7.5 Delivery occurs:
  - (a) for Goods and Services to be collected from the Supplier by the Customer or their agent, upon collection at the Supplier's premises as evidenced by the Customer's or their agent's signature or as evidenced by digital verification;
  - (b) for Goods and Services accepted by the Supplier from the Customer or their agent, upon receipt at the Supplier's premises as evidenced by the Customer's or their agent's signature or as evidenced by digital verification;
  - (c) for Goods and Services to be delivered by the Supplier to the Customer or their agent, upon delivery at the address nominated at the time of the order by the Customer and as evidenced by the Customer's or their agent's signature or as evidenced by digital verification;
- 7.6 Deliveries are subject to suitable access, firm standing, storage, unloading and maneuvering space, as determined by the Supplier and the Supplier is not liable for, and the Customer will indemnify the Supplier against any claims for damage to access ways, storage areas, plant, equipment or works during delivery.
- 7.7 The Customer may incur Additional Charges due to:
  - (a) delivery or unloading of Goods and Services outside the hours of 7:30am to 4:00pm weekdays (excluding public holidays);
  - (b) delays at or unsuitability of the Customer's nominated site; or
  - (c) the quantity of Goods and Services ordered being less than full truckloads.
- 7.8 The Customer warrants that its receipt facilities and equipment are suitable for deliveries and meet all relevant standards, laws and regulations. The Customer will indemnify the Supplier against any breach of such standards, laws or regulations during delivery, and against any damage or loss caused by leakage, spillage, breakage or contamination during or caused by delivery.
- 7.9 The customer is liable for payment in relation to all Orders and Delivery. It is not the responsibility of the Supplier to confirm authority of the person placing the Order or Delivery. It is the sole responsibility of the Customer to ensure there is no unauthorised use of its Account number or name, and that only authorized persons place Orders or take delivery on behalf of the Customer.

### 8. RETENTION OF TITLE

- 8.1 Ownership in title and property to the Goods remains with Supplier until payment in full for the Goods and all sums due and owing by the Customer to Supplier on any account has been made.
  - (a) the Customer has the right to sell the Goods in the ordinary course of business;
  - (b) until the Goods have been sold by the Customer in the ordinary course of the Customer's business, the Customer holds the Goods as bailee for Supplier;
  - (c) the Goods are always at the risk of the Customer.
- 8.2 The Customer is deemed to be in default immediately upon the happening of any of the following events:
  - (a) if any payment to Supplier is not made promptly before the due date for payment;
  - (b) if the Customer ceases to carry on business or stops or suspends payment or states its intention of so doing or is unable to pay its debts as they fall due or if any cheque or bill of exchange drawn by the Customer payable to Supplier is dishonoured;
- 8.3 In the event of a default by the Customer, then without prejudice to any other rights that Supplier may have at law or under this contract:
  - (a) Supplier or its agents may without notice to the Customer enter the Customer's premises or other premises where the Customer has located the Goods and the Customer agrees to indemnify and keep indemnified Supplier from any claim whatsoever by any third party person or company in possession arising out of any action required by Supplier to recover such Goods;
  - (b) Supplier may recover and resell the Goods;
  - (c) if the Goods cannot be distinguished from similar Goods which the Customer has or claims to have paid for in full, Supplier may in its absolute discretion seize all goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of Supplier and the Customer may be ascertained. Supplier must promptly return to the Customer any goods the property of the Customer and Supplier is in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Customer's business howsoever arising from the seizure of the Goods.
  - (d) In the event that the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Goods in trust for Supplier. Such part will be an amount equal in dollar terms to the amount owing by the Customer to the Supplier at the time of the receipt of such proceeds. The Customer will pay Supplier such funds held in trust upon the demand of Supplier.

### 9. PERSONAL PROPERTY SECURITIES ACT ("PPSA")

- 9.1 Defined terms in this clause have the same meaning as given to them in the PPSA.
- 9.2 Supplier and Customer acknowledge that these Terms and Conditions constitute a Security Agreement and gives rise to a Purchase Money Security Interest ("PMSI") in favour of Supplier over the Goods supplied or to be supplied to the Customer as Grantor pursuant to the Terms and Conditions.
- 9.3 The Goods supplied or to be supplied under these Terms and Conditions fall within the PPSA classification of "Other Goods" acquired by the Customer pursuant to these Terms and Conditions.
- 9.4 Supplier and the Customer acknowledge that Supplier, as Secured Party, is entitled to register its interest in the Goods supplied or to be supplied to the Customer as Grantor under the Terms and Conditions on the PPS Register as Collateral.
- 9.5 To the extent permissible at law, the Customer:
  - (a) waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer, as Grantor, to Supplier.
  - (b) agrees to indemnify Supplier on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the:
    - (i) registration or amendment or discharge of any Financing Statement registered by or on behalf of Supplier; and
    - (ii) enforcement or attempted enforcement of any Security Interest granted to Supplier by the Customer.
  - (c) agrees that nothing in sections 130 to 143 of the PPSA will apply to the Terms and Conditions or the Security under the Terms and Conditions;

- (d) agrees to waive its right to do any of the following under the PPSA:
- (i) receive notice of removal of an Accession under section 95;
  - (ii) receive notice of an intention to seize Collateral under section 123;
  - (iii) object to the purchase of the Collateral by the Secured Party under section 129;
  - (iv) receive notice of disposal of Collateral under section 130;
  - (v) receive a Statement of Account if there is no disposal under section 132(4);
  - (vi) receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
  - (vii) receive notice of retention of Collateral under section 135;
  - (viii) redeem the Collateral under section 142; and
  - (ix) reinstate the Security Agreement under section 143.

#### 10. DEFECTS

- 10.1 The Customer must ensure it has an authorised representative at the nominated delivery site to check that the information shown on the delivery docket corresponds with the Customer's order. Unless otherwise noted on the delivery docket, the signature of the Customer's representative on the delivery docket shall represent acknowledgment by the Customer that the Goods comply with its order and have been supplied in accordance with this contract.
- 10.2 Notice of any defects shall be given to the Supplier in writing on the delivery docket/receipt/ manifest signed by the Customer and immediately returned with the cartage contractor. Where the point of delivery or collection is unattended, the Customer shall give notice in writing to the Supplier, within 24 hours from the time of delivery or collection and prior to installation of the Goods.
- 10.3 If notice in accordance with this clause is not given, the Goods will be deemed to be in good order and condition and in accordance with the contract and the Customer shall accept the Goods accordingly.
- 10.4 The Customer agrees that the Supplier will have the right to inspect on site any Goods notified by the Customer as being defective and until such inspection is completed the Goods must not be installed.

#### 11. TESTING AND REPORTING

- 11.1 Where the Customer requires the Goods and Services to be subject to special testing or inspection the Customer must pay for all costs associated with such testing or inspection.
- 11.2 Any inspector or other person attending the Supplier's premises on behalf of the Customer must be authorised in writing by the Customer.
- 11.3 The Customer must provide the Supplier with copies of all authorisations, test results, measurements and reports prepared by or for the Customer in relation to the Goods and Services.

#### 12. LIMITATION OF LIABILITY

- 12.1 The liability of the Supplier in respect of a breach of a consumer guarantee or any warranty made under these Terms and Conditions for any Goods and Services not of a kind ordinarily acquired for personal, domestic or household use is limited to the extent permitted by law and at the option of Supplier to:
- In relation to Goods, to:
- (a) replacing the Goods or the supply of equivalent Goods;
  - (b) the repair of the Goods;
  - (c) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
  - (d) the payment of the cost of having the Goods repaired.;
- In relation to Services, to:
- (a) the supply of the Services again; and
  - (b) the payment of the cost of having the Services supplied again.

- 12.2 To the extent permitted by law, all other warranties whether implied or otherwise, not set out in these Terms and Conditions are excluded and Supplier is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Customer for:

- (a) any increased costs or expenses;
- (b) any loss of profit, revenue, business, contracts or anticipated savings;
- (c) any loss or expense resulting from a claim by a third party; or
- (d) any special, indirect or consequential loss or damage of any nature whatsoever caused by Supplier's failure to complete or delay in completing the order to deliver the Goods and Services.

- 12.3 Any claims to be made against Supplier for short delivery of Goods and Services must be lodged with Supplier in writing within 7 days of the delivery date.
- 12.4 Except as required by law, return of Goods and Services will not be accepted by Supplier except by prior agreement in writing with Supplier. Any Goods returned may, at the discretion of Supplier, be subject to a restocking fee of 10% of the Purchase Price of those Goods.
- 12.5 The Supplier does not accept any liability regarding contamination of materials after they have been tested and/or approved, and delivered, as per section Clause 7.5. All costs and liability, therefore, associated with the rejection of any previously tested and/or approved Benedict products delivered to Customer nominated sites, shall be borne by the Customer.

#### 13. RISK

Risk in the Goods passes to the Customer upon delivery and, in the event of the nominated site being unattended, the delivery docket/manifest signed by the cartage contractor will be prima facie evidence of delivery of the Goods. Except as required by law, the Customer is responsible for ensuring the Goods are suitable for its own purpose and the Supplier is not liable for any loss or damage resulting from the use of the Goods.

- 13.1 In accordance with the NSW Government mandate in relation to COVID-19, the Supplier will no longer require signed acceptance as acknowledgment of receipt of goods via delivery or collection and instead treat receipt of goods as formal acceptance of delivery or collection in accordance with our Terms and Conditions.

#### 14. AMENDMENTS AND WAIVER

The Supplier will not be taken to have agreed to any amendment or waiver of any provision of these Terms and Conditions or of the contract unless the amendment or waiver is in writing signed by the Supplier. Any conditions found to be void, unenforceable or illegal may, to that extent be severed from the Agreement. No terms and conditions referred by the Customer after the date of this contract shall form part of this contract unless expressly agreed in writing by the Supplier.

#### 15. GOVERNING LAW

The contract is governed by the laws of the State in which the Goods and Services are supplied.

#### 16. FORCE MAJEURE

The Supplier is not liable for any delay, loss, damage or injury arising by reason of any event beyond its control and without limiting the generality of the foregoing such events include industrial disputes, the unavailability of equipment or materials, fire, flood, machinery breakdown, civil disturbance, acts of God or government action.

#### 17. SUBJECT TO STATUTE

The contract is subject to the provisions of any statute applicable to it and which may not be varied by the terms of the contract. If any provision of the contract is void or unenforceable that provision shall be severed and the remaining provisions will continue with full force and effect.

#### 18. NOTICES

All notices given under or in connection with this contract must be in writing and given or delivered to the recipient at its address specified in this contract or at its registered office or principal place of business.

#### 19. CONFIDENTIAL INFORMATION

If at any time the Supplier discloses to the Customer or the Customer becomes aware of confidential information of the Supplier including confidential information relating to Goods and Services, material, procedures, tests or equipment, the Customer must not use the information for any purpose not approved by the Supplier and not disclose that confidential information to any other person unless expressly agreed in writing by the Supplier.

#### 20. ASSIGNMENT

This contract is assignable by the Customer in whole or in part only with the Supplier's consent.

#### 21. RETURNABLE PACKAGING

Unless otherwise stated, all pallets, stillages, timbers, dunnage, formers or similar packaging delivered with the Goods remain the property of the Supplier and must be returned in good order and condition to the Supplier within 30 days of the date of delivery. Any such packaging not returned by the due date must be paid for by the Customer at a reasonable price determined by the Supplier.

#### 22. SAMPLES AND BLENDING

Any sample, product or sample colour is provided to indicate only the general nature of the Goods. To the extent permissible by law, the Supplier provides no warranty or guarantee that the Goods supplied will correspond in colour, texture or blend with any sample or any previous or future Goods supplied. The Supplier is not liable for any failure of the Customer or others to blend the Goods.

#### 23. NON-CONFORMING PRODUCT

Where a product is supplied on the basis of a description or marking such as "nonconforming", "second", "reject" or similar, no warranty or undertaking (express or implied) whatsoever is given by the Supplier. Notwithstanding the preceding terms and conditions, the Supplier shall not be liable in any way for the performance or use of, or any defect in, such a product.

#### 24. FITTINGS

Unless otherwise stated in this contract, cast in or similar fittings for handling the Goods are to be removed or finished by the Customer.

#### 25. PRESSURE APPLICATIONS

Unless otherwise stated in this contract, the Goods are not warranted by the Supplier to be suitable for applications or use involving internal pressure.

#### 26. INSPECTION

- 26.1 Supplier reserves the right to inspect any of the Customer's materials that is subject to the provision of Goods and Services. The Customer must provide the Supplier with reasonable access to such materials upon the Supplier's request for inspection and the Customer agrees to cooperate with the Supplier's reasonable directions during such inspection.
- 26.2 Upon inspection, if the Supplier determines that there are materials which fall outside of its operating licence or are contrary to its policies, the Supplier may refuse to provide Goods and Services to the Customer in relation to such materials.
- 26.3 Where the Customer's materials have been transported to the Supplier's premises and the Supplier, upon inspection, determines that there are materials which fall outside of its operating licence or are contrary to its policies, the Supplier may at its option and in its sole discretion, either return the rejected materials to the Customer or send the rejected materials to a licensed facility that is capable of dealing with the rejected materials. The Customer is liable for all costs and expenses incurred by the Supplier in dealing with the rejected materials including but not limited to loading, unloading, transport, testing and disposal costs.
- 26.4 The Customer indemnifies and agrees to indemnify the Supplier against all loss or damage resulting from the Supplier dealing with the rejected materials.

I am duly authorized to sign on behalf of

\_\_\_\_\_  
(the Customer) and agree to the above terms and conditions

ABN: \_\_\_\_\_ ACN: \_\_\_\_\_

Signed: \_\_\_\_\_

Name and Position: \_\_\_\_\_

Date: \_\_\_\_\_