

## TERMS AND CONDITIONS

### 1. Definitions

- 1.1. "BIY" means Tampala Pty Ltd (ACN 008 016 082) trading as BIY Constructions Supplies;
- 1.2. "Customer" means the purchaser of the Goods as specified on BIY's quote, invoice or Customer's order;
- 1.3. "Goods" means all goods and services supplied by BIY to the Customer at the Customer's request from time to time;
- 1.4. "PPSA" means the *Personal Property Securities Act 2009* (Cth), and its successor legislation;
- 1.5. "PPSR" means the Personal Property Securities Register held in accordance with the PPSA.

### 2. Contract

- 2.1. Subject to any arrangements in writing between the parties, whether as part of a quote or invoice or otherwise, these Terms and Conditions constitute the entire agreement between the Customer and BIY and no purported amendment or variation shall be binding on BIY unless it is expressly agreed in writing and signed by a director of BIY.
- 2.2. The Customer is taken to have accepted and immediately be bound by these Terms and Conditions if the Customer places an order with BIY or accepts delivery of Goods.
- 2.3. BIY may amend these Terms and Conditions at any time and any such change shall take effect upon notice to the Customer of any such change.

### 3. Quotes

Any quote prepared by BIY and submitted to the Customer are invitations to treat only and shall not in any way be binding on BIY. A quote only becomes binding after BIY confirms in writing separately that it is bound by the quote.

### 4. Price and Payment

- 4.1. Any prices invoiced or quoted by BIY shall, unless specified, be exclusive of GST and any GST shall be payable by the Customer in addition to the invoiced or quoted price.
- 4.2. The Customer shall pay all packaging, shipping and handling charges (including insurance) for the delivery of the Goods unless otherwise agreed.
- 4.3. BIY may agree to change the price of the Goods, but only if the Customer requests a variation to the invoice or quote provided by BIY before entering into the contract for supply.
- 4.4. The timing for payment of the Goods is of the essence and in any event is:
  - 4.4.1. on delivery of the Goods;
  - 4.4.2. on the date specified in the invoice for the Goods; or
  - 4.4.3. within seven (7) days of the Customer's receipt of the invoice.

### 5. Packaging

- 5.1. At the request of the Customer, BIY may at its discretion agree to supply, at BIY's cost, the Goods in "shelf ready" packaging selected and designed by the Customer inclusive of the Customer's name, logo, address and other details, and which accordingly can only be used for the Customer, and no other customer.
- 5.2. The cost of such packaging will be included and absorbed in the price of Goods invoiced to the Customer by BIY.
- 5.3. The Customer acknowledges that BIY will hold packaging stocks in advance of future orders to be made by the Customer, in order to ensure prompt supply to the Customer.
- 5.4. On termination of the relationship between the Customer and BIY, or at such time as BIY shall reasonably consider that the volume of sales to the Customer does not warrant BIY incurring the supply of such packaging at its cost, the Customer is liable to reimburse BIY for all such packaging stock reasonably held by BIY.

### 6. Delivery

- 6.1. Unless the Customer takes delivery of the Goods at BIY's premises the Goods will be delivered to the nominated address of the Customer.
- 6.2. Whilst every effort will be made to deliver the Goods at an agreed time, time is not of the essence with regard to delivery of the Goods. Any delivery time or date on a quote, order or invoice is indicative only and BIY is not responsible for any loss or damage resulting from the failure to deliver Goods at an agreed date or time.
- 6.3. Delivery takes effect upon the collection of the Goods from BIY's premises by the Customer or the Customer's agent, or in the case of delivery by BIY upon delivery of the Goods to the address nominated by the Customer.
- 6.4. On delivery the Customer must conduct a thorough examination of the Goods. The Goods shall be deemed to have been accepted by the Customer upon delivery as being in good condition, unless the Customer rejects the Goods in writing on the basis of a defect given to BIY within 48 hours of delivery.

### 7. Risk

All risk in the Goods passes to the Customer upon delivery to the Customer or the Customer's authorised representative (including responsibility for insurance).

### 8. Title

- 8.1. Title to the Goods shall pass to the Customer upon payment of all monies owing to BIY by the Customer.
- 8.2. If the Customer supplies any of the Goods to any person before all monies payable by the Customer have been paid to BIY (and have not been claimed or clawed back by any person representing the Customer) then the Customer acknowledges that it holds the proceeds of sale of any such Goods on trust for and as agent for BIY immediately when they are receivable or are received.
- 8.3. In the event that any monies owing to BIY by the Customer under any contract for the supply of Goods are outstanding, irrespective of whether the Goods have been sold by the Customer, then:
  - 8.3.1. BIY may impose interest on all unpaid amounts at the rate of 10% per annum until such amounts are paid; and
  - 8.3.2. The Customer must return the Goods to BIY upon request and irrevocably authorises BIY to enter the Customer's or the Customer's agent's premises and use reasonable force (if necessary) to take possession of the Goods without liability for trespass or negligence to recover possession of the Goods.

### 9. PPSA

- 9.1. The Customer acknowledges that these Terms and Conditions and the supply of Goods to the Customer constitute a security agreement for the purposes of the PPSA and creates a security interest in all of the present and after acquired Goods supplied by BIY to the Customer and any proceeds of sale of those Goods.
- 9.2. The Customer acknowledges that any purchase by the Customer on Credit terms from BIY or retention of title supply pursuant to these Terms and Conditions will constitute a purchase money security interest as defined by the PPSA, and any purchase money security interest granted thereof will continue to apply to any Goods coming into existence or proceeds of sale of goods coming into existence.
- 9.3. The Customer undertakes to:
  - 9.3.1. promptly sign any documents and provide any information which BIY may require to register its security interest on the PPSR;
  - 9.3.2. indemnify, and upon demand reimburse, BIY for all expenses incurred in registering BIY's interest on the PPSR or amending or releasing any such interest;
  - 9.3.3. not register any security interest in respect of the Goods on the PPSR without BIY's consent;
  - 9.3.4. immediately advise BIY of any change in circumstance that would affect BIY's security interest in the Goods;
  - 9.3.5. ratify any actions taken by BIY in accordance with this clause 8 to give full effect to BIY's security interest.
- 9.4. The Customer and BIY agree that sections 96, 115 and 125 of the PPSA do not apply to any security interest, including any purchase money security interest, created by these Terms and Conditions.
- 9.5. The Customer waives its right to receive any notice required to be given under the PPSA. The Customer waives its rights as grantor and/or debtor to the fullest extent allowed for under the PPSA.
- 9.6. The Customer waives its rights to receive a verification statement in accordance with any provisions of the PPSA.
- 9.7. Nothing in these Terms and Conditions are intended to have the effect of contracting out of any provisions of the PPSA.

### 10. Cancellations

- 10.1. BIY's written consent is required to cancel any order made by the Customer.
- 10.2. In the event that BIY agrees to cancel an order it shall be on the condition that the Customer must pay BIY an amount equal to the losses, costs and expenses incurred by BIY in the design, manufacture, packaging or supply of the Goods subject to the order.

### 11. Liability

To the fullest extent permitted by law, BIY is not liable for any claims for damages however arising including but not limited to claims for faulty design, breach of these Terms and Conditions, negligent or misleading advice, damages arising from loss or use of the Goods and any direct, indirect, special or consequential damages or injury to any Customer or third parties (and alternatively BIY's liability shall be limited to damages which under no circumstance shall exceed the price of the Goods).

### 12. Indemnity

The Customer fully indemnifies BIY against any loss, damage, claim, demand, suit, action, proceeding, order or judgment whatsoever arising directly or indirectly out of or in respect to the supply of Goods to the Customer or any third party.

### 13. Jurisdiction

These Terms and Conditions and any contract between BIY and the Customer are governed by and interpreted in accordance with the laws of South Australia and the Customer irrevocably submits to the jurisdiction of the Courts of South Australia