

# Terms and Conditions of Trade

## 1 Definitions

With reference to the provided purchase order, these definitions apply.

Term	Meaning
<b>Agreement</b>	The agreement between the Purchaser and Supplier subject to these Terms and Conditions;
<b>BOSCHETTI</b>	Boschetti Industries Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Boschetti Industries Pty Ltd.
<b>Business Day</b>	A day on which banks are open for business in the state excluding a Saturday, Sunday or Public Holiday.
<b>Claim</b>	Any claim, action, proceeding, demand, cost, damage, loss, fine, judgement, expense, liability or other outgoing howsoever incurred or suffered by, or brought or made or recovered howsoever arising (whether or not presently ascertained, immediate, future or contingent);
<b>Customer</b>	Shall mean the Customer (or any person acting on behalf of the Customer as representative) as described on any quotation, work authorisation or other form as provided by BOSCHETTI to the Customer
<b>Date of Completion</b>	Means the date in which the Goods must be delivered and/or the services provided as nominated by the purchaser.
<b>Defective Deliverables</b>	Means Deliverables which are not in conformity with the provided Purchase Order or Work Order.
<b>Delivery</b>	The delivery of the Goods by the Supplier to the Purchaser at the Delivery Point;
<b>Delivery Date</b>	The date(s) upon which the Supplier has undertaken to deliver the Goods or Services to the Purchaser at the Delivery Point;
<b>Delivery Point</b>	Means the delivery address set out in the Purchase Order or such other address that may be advised from time to time by the Purchaser;
<b>Goods</b>	Shall mean all Goods supplied by BOSCHETTI to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by BOSCHETTI to the Customer.
<b>Guarantor</b>	That person (or persons) who agrees to be liable for the debts of the Customer on a principal debtor basis.
<b>JSA</b>	Job Safety Analysis
<b>Liability Act</b>	Any one or more of the following legislative acts insofar as they are applicable to the Agreement: 1) Part 4 of the Civil Liability Act 2002 (NSW); 2) Part IVAA of the Wrongs Act 1958 (VIC); 3) Part 3 of the Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 (SA) 4) Part 1F of the Civil Liability Act 2002 (WA); 5) Part 9A of the Civil Liability Act 2002 (TAS); 6) Proportionate Liability Act 2005 (NT); 7) Part 7A of the Civil Law (Wrongs) Act 2002 (ACT); 8) Part 2, Division 2, Subdivision GA of the Australian Securities and Investments Commission Act 2001 (Cth); 9) Chapter 7, Part 7.10, Division 2A of the Corporations Act 2002 (Cth); or 10) Part VIA of the Australian Consumer Law.
<b>Order Number</b>	Means the identifying order number so set out in the Purchase Order;
<b>Price</b>	Shall mean the Price payable for the Goods as agreed between BOSCHETTI and the Customer in accordance with clause 4 of this contract.
<b>Purchase Order</b>	Purchase Order is interchangeable with Work Order. The document issued by the Purchaser to the Supplier to order the Goods or Services and includes any specifications, drawings or other documents that may be contained therein or annexed thereto.
<b>Purchaser</b>	The party procuring the Supplier to provide goods specified.
<b>Services</b>	Shall mean all Services supplied by BOSCHETTI to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
<b>SMWS</b>	Safe Work Method Statement
<b>Specification</b>	Means the specification for the Goods or Services (if any) as set out in the Purchase Order or specifications or drawings as provided by the Supplier to the Purchaser;
<b>State</b>	Means the State or Territory in Australia in which Delivery is to be made;
<b>Supplier</b>	BOSCHETTI; AND, means the person, corporation, or entity providing the Goods or Services pursuant to the Purchase Order; AND the company, firm or person identified in the Purchase Order as the supplier of the Goods and Services
<b>Supplier Personnel</b>	The Supplier; its subcontractors and the directors, officers, employees and agents of each of them;
<b>Taxes</b>	All taxes, fees, levies, duties and charges imposed or assessed in respect of the Goods or Services by all local, state or national government authorities including but not limited to, customs duty, excise tax, stamp duty and goods and services tax (or equivalent) but excludes taxes imposed on the income of the Supplier.
<b>Terms and Conditions</b>	Means Terms and Conditions of Trade
<b>Work Order</b>	Work Order and interchangeable with Purchase Order.

### 1.1 Interpretation

In these Terms and Conditions unless the context otherwise requires:

- 1.1.1 the singular shall include the plural and vice versa;
- 1.1.2 words importing persons shall include corporations and words importing the masculine gender shall include the feminine gender;
- 1.1.3 the headings shall not affect the interpretation of these Terms and Conditions;
- 1.1.4 reference to any statute shall mean that statute as amended, modified or replaced from time to time and includes orders, ordinances, regulations and rules and by-laws made in terms of or pursuant to the relevant legislation;

- 1.1.5 reference to a party or parties includes a reference to its successors and permitted assigns in accordance with these terms and conditions; and
- 1.1.6 "including" means "including (without limitation)".

## 2 The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")

- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

### 3 Acceptance

- 3.1 Any instructions received by BOSCHETTI from the Customer for the supply of Goods and/or Services shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where a Customer provides instruction they assume contractual responsibility for the quoted works and the costs associated with said instruction. The Customer confirms to have understood the scope and quoted works.
- 3.3 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 3.4 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of BOSCHETTI.
- 3.5 The Customer shall give BOSCHETTI not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, phone, or business practice). The Customer shall be liable for any loss incurred by BOSCHETTI as a result of the Customer's failure to comply with this clause.
- 3.6 Goods and/or Services are supplied by BOSCHETTI only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

### 4 Price and Payment

- 4.1 At the sole discretion of BOSCHETTI, the Price shall be either:
  - 4.1.1 as indicated on invoices provided by BOSCHETTI to the Customer in respect of Goods supplied; or
  - 4.1.2 The quoted price of BOSCHETTI (subject to clause 4.2) which shall be binding upon BOSCHETTI provided that the Customer shall accept BOSCHETTI quotation in writing within thirty (30) days.
- 4.2 BOSCHETTI reserves the right to change the Price in the event of a variation to the BOSCHETTI quoted scope. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation because of increases to BOSCHETTI in the cost of materials and labour) will be charged for based on the BOSCHETTI quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 At BOSCHETTI's sole discretion:
  - 4.3.1 payment shall be due on delivery of the Goods; or
  - 4.3.2 payment shall be due before delivery of the Goods; or
  - 4.3.3 payment for approved Customers shall be made by instalments in accordance with BOSCHETTI's payment schedule; or
  - 4.3.4 payment for approved Customers shall be due per the approved credit terms. The invoice due date will be written on the invoice.
- 4.4 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. Standard Payment Terms are 50% Deposit, 30% Delivery, 20% Practical Completion, or as otherwise outlined in the approved quote.
- 4.5 BOSCHETTI is entitled to progress claim works completed based on an assessment of value or proportion of contract.
- 4.6 At BOSCHETTI's sole discretion a non-standard payment term structure may be applied. Such a non-standard payment term would be required where goods may need to be held for significant periods or material costs dominate the cost of the project by more than 50%.
- 4.7 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Customer and BOSCHETTI.
- 4.8 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

- 4.9 Invoices are insured through NCI Trade Credit Solutions. This means at any point the debt may be taken over by NCI Trade Credit Solutions.
- 4.10 Late payment will attract late payment fees to the value of 30% per calendar year, calculated daily.
- 4.11 A 2% surcharge applies to all credit card payments.
- 4.12 If re-invoicing is required due to customer error or special customer instruction this will attract a \$200 administrative fee.
- 4.13 Labour will be charged in blocks of not less than one (1) hour.
- 4.14 Where a variation to a scope of works is created, the administrative fee for processing the variation is \$440 incGST. This is separate to the cost of the goods and services.
- 4.15 Minimum charge for any works requested is \$200incGST.
- 4.16 Rise and Fall
  - 4.16.1 Adjustment of Price: The price of the goods/services to be provided under this agreement is subject to adjustment based on fluctuations in the cost of materials, labour, or other related costs
  - 4.16.2 Basis of Adjustment: In the event of a rise in the cost of materials or labour, as verified by BOSCHETTI the price shall be increased accordingly. Conversely, if there is a decrease in the cost of materials or labour, the price shall be reduced accordingly.
  - 4.16.3 Notification of Change: BOSCHETTI shall notify the customer in writing of any price adjustment due to variations in costs, with an explanation of the reasons for the increase or decrease.

### 5 Delivery of Goods

- 5.1 At BOSCHETTI's sole discretion delivery of the Goods shall take place when:
  - 5.1.1 the Customer takes possession of the Goods at BOSCHETTI's address; or
  - 5.1.2 the Customer takes possession of the Goods at the Customer's nominated address (if the Goods are delivered by BOSCHETTI or BOSCHETTI's nominated carrier); or
  - 5.1.3 the Customer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Customer's agent.
- 5.2 At BOSCHETTI's sole discretion the costs of delivery are in addition to the Price, unless stated otherwise and included in the quotation.
- 5.3 Delivery shall be via a truck facilitating forklift unloading. In the event unloading is required to be undertaken by a crane, then this shall be charged as an extra to standard delivery.
- 5.4 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. If the Customer is unable to take delivery of the Goods as arranged, then BOSCHETTI shall be entitled to charge a reasonable fee for redelivery.
- 5.5 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 5.6 BOSCHETTI may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.7 The failure of BOSCHETTI to deliver shall not entitle either party to treat this contract as repudiated.
- 5.8 BOSCHETTI shall not be liable for any loss or damage whatsoever due to failure by BOSCHETTI to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of BOSCHETTI. This includes licensing applications or renewal delays by outside authorities.
- 5.9 Where a delivery docket is not returned signed by the recipient within 7 days, the goods are deemed received per the delivery docket.
- 5.10 BOSCHETTI shall have insurance of one hundred and fifty thousand dollars (\$150,000) for all deliveries including unloading. It is the Customers responsibility to ensure that they are similarly insured.

### 6 Risk

- 6.1 If BOSCHETTI retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.

6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, BOSCHETTI is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by BOSCHETTI is sufficient evidence of BOSCHETTI's rights to receive the insurance proceeds without the need for any person dealing with BOSCHETTI to make further enquiries.

6.3 Where the Customer expressly requests BOSCHETTI to leave Goods outside BOSCHETTI's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk and it shall be the Customer's responsibility to ensure the Goods are insured adequately or at all.

## 7 Access

7.1 The Customer shall ensure that BOSCHETTI always has clear and free access to the work site to enable works to be undertaken. BOSCHETTI shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of BOSCHETTI.

7.2 In the event of inclement weather adversely affecting construction activities, the construction schedule shall be subject to reasonable adjustments. Delays caused by inclement weather, may result in an extension of the project timeline without penalty to BOSCHETTI. BOSCHETTI shall employ reasonable efforts to mitigate the impact of adverse weather conditions on the construction progress and promptly notify the Project Manager of any anticipated delays. The determination of what constitutes inclement weather, and the extent of any schedule adjustments shall be determined by BOSCHETTI and/or the Project Manager.

7.3 Where a project duration exceeds the originally anticipated timeframe, BOSCHETTI reserves the right to assert claims for adjustments due to escalations in labour and material costs.

7.4 In instances where a project experiences interruptions, characterized by starts and stops that impede efficiency, BOSCHETTI retains the right to seek compensation for costs resulting from such disruptions.

7.5 If the site is not accessible at the agreed time, the works will be cancelled and later rescheduled. A Service Call of \$140exGST will be charged or to the sum of labour incurred to get to site.

## 8 Underground Locations

8.1 Prior to BOSCHETTI commencing any work the Customer must advise BOSCHETTI of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.

8.2 Whilst BOSCHETTI will take all care to avoid damage to any underground services the Customer agrees to indemnify BOSCHETTI in respect of all and any liability claims, loss, damage, costs and fines because of damage to services not precisely located and notified as per clause 8.1.

## 9 Title

9.1 BOSCHETTI and the Customer agree that ownership of the Goods shall not pass until:

9.1.1 the Customer has paid BOSCHETTI all amounts owing for the Goods; and

9.1.2 the Customer has met all other obligations due by the Customer to BOSCHETTI in respect of all contracts between BOSCHETTI and the Customer.

9.2 Receipt by BOSCHETTI of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then BOSCHETTI's ownership or rights in respect of the Goods shall continue.

9.3 Any material removed or decommissioned under contract is the property of BOSCHETTI. Ownership of this material has formed part of the quoted price. BOSCHETTI is not obliged to credit the value of the goods back to the customer.

9.4 It is further agreed that:

9.4.1 where practicable the Goods shall be kept separate and identifiable until BOSCHETTI shall have received payment and all other obligations of the Customer are met; and

9.4.2 until such time as ownership of the Goods shall pass from BOSCHETTI to the Customer BOSCHETTI may give notice in writing to the Customer to return the Goods or any of them to BOSCHETTI. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and

9.4.3 BOSCHETTI shall have the right of stopping the Goods in transit whether or not delivery has been made; and

9.4.4 if the Customer fails to return the Goods to BOSCHETTI then BOSCHETTI or BOSCHETTI's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated and take possession of the Goods; and

9.4.5 the Customer is only a bailee of the Goods and until such time as BOSCHETTI has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to BOSCHETTI for the Goods, on trust for BOSCHETTI; and

9.4.6 the Customer shall not deal with the money of BOSCHETTI in any way which may be adverse to BOSCHETTI; and

9.4.7 the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of BOSCHETTI; and

9.4.8 BOSCHETTI can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and

9.4.9 until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that BOSCHETTI will be the owner of the end products.

## 10 Personal Property Securities Act 2009 ("PPSA")

10.1 In this clause:

10.1.1 financing statement has the meaning given to it by the PPSA;

10.1.2 financing change statement has the meaning given to it by the PPSA;

10.1.3 security agreement means the security agreement under the PPSA created between the Customer and BOSCHETTI by these terms and conditions; and

10.1.4 security interest has the meaning given to it by the PPSA.

10.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions:

10.2.1 constitute a security agreement for the purposes of the PPSA; and

10.2.2 create a security interest in:

a) all Goods previously supplied by BOSCHETTI to the Customer (if any);

b) all Goods that will be supplied in the future by BOSCHETTI to the Customer.

10.3 The Customer undertakes to:

10.3.1 Promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which BOSCHETTI may reasonably require to:

a) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;

b) register any other document required to be registered by the PPSA; or

c) correct a defect in a statement referred to in clause 10.3.1a), or 10.3.1b).



- 10.3.2 indemnify, and upon demand reimburse, BOSCHETTI for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby.
- 10.3.3 not register a financing change statement in respect of a security interest without the prior written consent of BOSCHETTI.
- 10.3.4 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 the prior written consent of BOSCHETTI; and
- 10.3.5 immediately advise BOSCHETTI of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 10.4 BOSCHETTI and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 10.5 The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by BOSCHETTI, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Customer shall unconditionally ratify any actions taken by BOSCHETTI under clauses 10.3 to 10.5.

## 11 Defects

- 11.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify BOSCHETTI of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford BOSCHETTI an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer fails to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which BOSCHETTI has agreed in writing that the Customer is entitled to reject, BOSCHETTI's liability is limited to either (at BOSCHETTI's discretion) replacing the Goods or repairing the Goods except where the Customer has acquired Goods as a consumer within the meaning of the Trade Practices Act 1974 (Cwlth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.
- 11.2 Goods will not be accepted for return other than in accordance with 11.1 above.

## 12 Warranty

- 12.1 Subject to the conditions of warranty set out in clause 12.2 BOSCHETTI warrants that if any defect in any workmanship of BOSCHETTI becomes apparent and is reported to BOSCHETTI within twelve (12) months of the date of delivery (time being of the essence) then BOSCHETTI will either (at BOSCHETTI's sole discretion) replace or remedy the workmanship.
- 12.2 The conditions applicable to the warranty given by clause 12.1 are:
- 12.2.1 the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
- a) failure on the part of the Customer to properly maintain any Goods; or
  - b) failure on the part of the Customer to follow any instructions or guidelines provided by BOSCHETTI; or
  - c) any use of any Goods otherwise than for any application specified on a quote or order form; or
  - d) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
  - e) fair wear and tear, any accident or act of God.

- 12.2.2 If any item of 12.2.1 is met the warranty shall cease and BOSCHETTI shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without BOSCHETTI's consent.
- 12.2.3 in respect of all claims BOSCHETTI shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 12.3 For Goods not manufactured by BOSCHETTI, the warranty shall be the current warranty provided by the manufacturer of the Goods. BOSCHETTI shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

## 13 Intellectual Property

- 13.1 Where BOSCHETTI has designed, drawn or written Goods for the Customer, then the copyright in those designs and drawings and documents shall remain vested in BOSCHETTI, and shall only be used by the Customer at BOSCHETTI's discretion.
- 13.2 The Customer warrants that all designs or instructions to BOSCHETTI will not cause BOSCHETTI to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify BOSCHETTI against any action taken by a third party against BOSCHETTI in respect of any such infringement.
- 13.3 The Customer agrees that BOSCHETTI may use any documents, designs, drawings or Goods created by BOSCHETTI for the purposes of advertising, marketing, or entry into any competition.

## 14 Default and Consequences of Default

- 14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at the rate specified in clause 4.10. Such interest shall compound monthly at such a rate after as well as before any judgment.
- 14.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by BOSCHETTI.
- 14.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify BOSCHETTI from and against all costs and disbursements incurred by BOSCHETTI in pursuing the debt including legal costs on a solicitor and own client basis and BOSCHETTI's collection agency costs.
- 14.4 Without prejudice to any other remedies BOSCHETTI may have, if at any time the Customer is in breach of any obligation (including those relating to payment) BOSCHETTI may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. BOSCHETTI will not be liable to the Customer for any loss or damage the Customer suffers because BOSCHETTI has exercised its rights under this clause.
- 14.5 If any account remains overdue after thirty (30) days then an amount of the greater of forty dollars (\$40.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 14.6 Without prejudice to BOSCHETTI's other remedies at law BOSCHETTI shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to BOSCHETTI shall, whether or not due for payment, become immediately payable in the event that:
- a) any money payable to BOSCHETTI becomes overdue, or in BOSCHETTI's opinion the Customer will be unable to meet its payments as they fall due; or
  - b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 14.6.4 A default notice is issued by any credit agency.

## 15 Security and Charge

- 15.1 Despite anything to the contrary contained herein or any other rights which BOSCHETTI may have howsoever:
  - 15.1.1 where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to BOSCHETTI or BOSCHETTI's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that BOSCHETTI (or BOSCHETTI's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
  - 15.1.2 should BOSCHETTI elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify BOSCHETTI from and against all BOSCHETTI's costs and disbursements including legal costs on a solicitor and own client basis.
  - 15.1.3 the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint BOSCHETTI or BOSCHETTI's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 15.1.
  - 15.1.4 In consideration for BOSCHETTI performing work for the Customer. On acceptance of the quoted sum that is an unconditional agreement by the customer to comply to these terms and conditions.
  - 15.1.5 On acceptance of the quote, all company directors representing the customer unconditionally guarantee to the payments of all amounts by the Customer under the Contract. BOSCHETTI may recover the amounts from the guarantor as a liquidated debt.

## 16 Compliance with Laws

- 16.1 The Customer and BOSCHETTI shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the works.
- 16.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the works.
- 16.3 The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

## 17 Cancellation

- 17.1 BOSCHETTI may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice BOSCHETTI shall repay to the Customer any sums paid in respect of the Price. BOSCHETTI shall not be liable for any loss or damage arising from such cancellation.
- 17.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by BOSCHETTI (including, but not limited to, any loss of profits) up to the time of cancellation.
- 17.3 Cancellation of orders for Goods made to the Customer's specifications or non-stocklist items will not be accepted, once production has commenced.
- 17.4 Where cancellation by BOSCHETTI is undertaken and partial payments have been made, the sum returned to the Customer will represent the sum of Services not yet provided.

## 18 Privacy Act 1988

- 18.1 The Customer and/or the Guarantor/s (herein referred to as the Customer) agree for BOSCHETTI to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by BOSCHETTI.
- 18.2 The Customer agrees that BOSCHETTI may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
  - 18.2.1 to assess an application by the Customer; and/or
  - 18.2.2 to notify other credit providers of a default by the Customer; and/or
  - 18.2.3 to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - 18.2.4 to assess the creditworthiness of the Customer.The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 18.3 The Customer consents to BOSCHETTI being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 18.4 The Customer agrees that personal credit information provided may be used and retained by BOSCHETTI for the following purposes (and for other purposes as shall be agreed between the Customer and BOSCHETTI or required by law from time to time):
  - 18.4.1 the provision of Goods; and/or
  - 18.4.2 the marketing of Goods by BOSCHETTI, its agents or distributors; and/or
  - 18.4.3 analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
  - 18.4.4 processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - 18.4.5 enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
- 18.5 BOSCHETTI may give information about the Customer to a credit reporting agency for the following purposes:
  - 18.5.1 to obtain a consumer credit report about the Customer;
  - 18.5.2 allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 18.6 The information given to the credit reporting agency may include:
  - 18.6.1 personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number;
  - 18.6.2 details concerning the Customer's application for credit or commercial credit and the amount requested;
  - 18.6.3 advice that BOSCHETTI is a current credit provider to the Customer;
  - 18.6.4 advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than thirty (30) days, and for which debt collection action has been started;
  - 18.6.5 that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
  - 18.6.6 information that, in the opinion of BOSCHETTI, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
  - 18.6.7 advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
  - 18.6.8 that credit provided to the Customer by BOSCHETTI has been paid or otherwise discharged.

## 19 General

- 19.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.
- 19.3 BOSCHETTI shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by BOSCHETTI of these terms and conditions.
- 19.4 In the event of any breach of this contract by BOSCHETTI the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 19.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by BOSCHETTI nor to withhold payment of any invoice because part of that invoice is in dispute.
- 19.6 Dispute Notification: The Customer must raise any disputes regarding an invoice in writing before the invoice due date. If no dispute is raised within this period, the invoice shall be deemed accepted.
- 19.7 If a dispute is raised more than 30 days after the invoice due date, it is within BOSCHETTI's discretion whether it is accepted.
- 19.8 Late Dispute Handling Fee: If a dispute is raised more than 30 days after the invoice due date, the Customer agrees to pay an administrative fee of \$400 to cover processing and review costs.
- 19.9 Dispute Resolution Process: Both parties agree to negotiate in good faith to resolve any disputes promptly. If no resolution is reached within 14 days, the dispute may be escalated to mediation or legal proceedings as per the governing law of the respective state/territory.
- 19.10 BOSCHETTI may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 19.11 The Customer agrees that BOSCHETTI may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which BOSCHETTI notifies the Customer of such change.
- 19.12 Neither party shall be liable for any default due to any Act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, pandemic or other event beyond the reasonable control of either party.
- 19.13 The failure by BOSCHETTI to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect BOSCHETTI's right to subsequently enforce that provision.
- 19.14 All invoices will be issued for:
- 19.14.1 NSW - This is a payment claim made under the Building And Construction Industry Security Of Payment Act 1999; OR
- 19.14.2 VIC - This is a payment claim made under the Building And Construction Industry Security Of Payment Act 2002
- 19.15 Should BOSCHETTI be unable to procure a particular product required for the Works that is specified within the Quotation, it shall be entitled to use a substitute product that it considers substantially similar.
- 19.16 The Customer shall be responsible for ensuring that BOSCHETTI has free and unfettered access to the premises where the Works shall be carried out and that the Works can be completed without interruption or prevention.
- 19.17 Non-Solicitation of Employees
- 19.17.1 The Customer agrees that, during the term of this Agreement and for a period of 12 months after its termination, they shall not directly or indirectly solicit, hire, or attempt to hire any employee, contractor, or representative of BOSCHETTI who was engaged in providing services under this Agreement.

- 19.17.2 In the event of a breach of this clause, the Customer agrees to pay BOSCHETTI a compensation fee of \$30,000, representing a reasonable estimate of the costs associated with employee recruitment, training, and business disruption.
- 19.18 BOSCHETTI is not responsible for appliance failure or circuit interruptions in circuits not associated with works undertaken.
- 19.19 The power supply will be disconnected in a safe and controlled manner following a process which does not does not introduce electrical faults, surges, or irregularities. This process does not result in damage to appliances. In the event of a suspected appliance failure, it is the customer's responsibility to ensure that suitable circuit protection (including surge protection) is in place for the affected equipment. The act of connection or disconnection does not, in itself, cause appliance failure. Any concerns regarding power quality should be directed to the customer's Electricity Retailer, who is responsible for power quality monitoring and has access to specialised equipment for logging power quality events.

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*End of Terms and Conditions*

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