

**These are the Terms and Conditions under which Big River Group Pty Ltd, ACN 000 009 754, (the Supplier) will supply Goods and / or Services to the Applicant.**

**Definitions**

**"Agreement"** means the contract formed between the Applicant and Supplier and constituted by these Terms and any acceptance or confirmation of Order by the Supplier, whether written or oral or constituted by the Supplier supplying Goods and / or Services to the Applicant.

**"Applicant"** means the person or entity to whom Goods are supplied by the Supplier.

**"Delivery"** means the delivery to or collection by the Applicant of the Goods as provided for in these Terms or as otherwise agreed in writing between the Supplier and Applicant.

**"Goods"** means all goods, products, equipment and other materials the subject of an Order by the Applicant or otherwise provided to the Applicant by the Supplier under this Agreement provided that unless the context provides otherwise, any reference to 'Goods' includes all proceeds of such Goods. Goods includes the provision of Services.

**"GST"** means goods and services tax as defined by A New Tax System (Goods and Services Tax ) Act 1999 (Cth.)

**"Order"** means any purchase order, request, instructions, direction to proceed whether written or oral, and in any form used by the Applicant from time to time for ordering Goods.

**"PPSA"** means the Personal Property Securities Act 2009 (Cth.)

**"PPSR"** means the Personal Property Securities Register established pursuant to the PPSA.

**"Related bodies corporate"** as defined in the Corporations Act 2001 (Cth.)

**"Services"** means any work or labour the subject of an Order by the Applicant or otherwise provided to the Applicant by the Supplier under this Agreement.

**"Supplier"** means Big River Group Pty Ltd, ACN 000 009 754.

**"Terms"** means these terms and conditions and as amended by the Supplier in writing from time to time.

**Payment terms**

1. The terms of payment are as follows, unless otherwise agreed to in writing by the Supplier:
  - (a) in the case of an Applicant granted an approved credit account by and with the Supplier - strictly thirty (30) days from the end of month of purchase;
  - (b) in any other case, Cash on Delivery ('COD')
2. Payments required to be made by the Applicant to the Supplier under this Agreement will be made free of any set-off, or counterclaim and without deduction or withholding.
3. Any amount due to the Supplier from time to time may be deducted by the Supplier from any monies which may be or may become payable to the Applicant by the Supplier.
4. Should the Applicant not pay for the Goods and /or Services supplied by the Supplier in accordance with the payment terms as provided herein, or as agreed to in writing by the Supplier from time to time, the Supplier may do any of the following:
  - (a) withdraw any credit;
  - (b) refuse any further credit;
  - (c) stop supply; and
  - (d) charge interest on all amounts owing by the Applicant to the Supplier on a daily basis at the rate of 15% p.a. and the Applicant agrees to pay this interest to the Supplier.

**Quotations**

5. The Applicant agrees that:
  - (a) any quotation given by the Supplier must be in writing.
  - (b) any quotation given by the Supplier is based on then current prices and subject to availability and shall not be binding on the Supplier unless an Order is placed with the Supplier within 14 days from the date of quotation;
  - (c) prior to receipt of any Order the Supplier may amend a quotation;
  - (d) quotations made by the Supplier shall not be construed as an offer or obligation to supply in accordance with the quotation. The Supplier reserves the right to accept or reject, at its discretion, any Order to purchase received by it.
  - (e) the Supplier shall not be bound by any Quotation, if it forms the view that the subject matter of the Quotation is to form part of a larger transaction or series of transactions with the Applicant and those circumstances have materially changed;
  - (f) it will pay any reasonable charges the Supplier claims for holding any Goods referred to in any quotation pending placement of an Order.

**Jurisdiction**

6. The Applicant acknowledges and agrees that this Agreement shall be governed by the laws of New South Wales, and the laws of the Commonwealth of Australia which are in force in New South Wales.

7. The Applicant acknowledges and agrees that the Agreement for the supply of Goods and / or Services between the Supplier and the Applicant is formed at the address of the Supplier.
8. The parties to this agreement submit to the non-exclusive jurisdiction of the courts of New South Wales and the relevant federal courts and courts competent to hear appeals from those courts.

**Security**

9. The Applicant hereby charges in favour of the Supplier all of its right, title and interest in any and all real property that the Applicant owns at present and in the future with the amount of its indebtedness to the Supplier until discharged.
10. The Applicant appoints as its duly constituted attorney an authorised officer of the Supplier from time to time to execute in the Applicant's name any deed, real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Applicant may own in any Land Titles Office in any state or territory of Australia, even though the Applicant may not have defaulted in carrying out its obligations hereunder.
11. Where the Applicant has previously entered into an agreement with the Supplier by which the Applicant has granted a charge, mortgage or other security over real property, those charges, mortgages or other security interests shall continue and co-exist with the obligations and security interests created in this agreement. The Supplier may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

**Formation of contract**

12. Each Order placed by the Applicant constitutes an offer to acquire Goods and / or Services from the Supplier and placement of an Order, either verbally or in writing, shall imply acceptance of the Supplier's Terms, except as otherwise agreed in writing between the Supplier and Applicant, and to the exclusion of any other terms and conditions (including any terms and conditions contained in any Order or document of the Applicant).
13. Only acceptance by the Supplier of the Applicant's Order shall complete an Agreement and such acceptance of Order by the Supplier may be written, oral or constituted by the Supplier supplying Goods and / or Services to the Applicant.

**Cancellations and Returns**

14. The Applicant agrees, other than in the case of warranty or consumer guarantee claims:
  - (a) not to cancel the whole or part of any Order placed with the Supplier;
  - (b) not to return Goods without the Supplier's prior written approval and then only if Goods are in new and saleable condition with undamaged packaging and less than 3 weeks have passed since delivery;
  - (c) the Supplier may elect to take back Goods on such terms as the Supplier requires including:
    - (i) payment of a restocking fee of not less than 20% of the invoice value; and
    - (ii) original invoice as proof of purchase is produced;
  - (d) not to return any Goods which were custom cut, custom processed or custom acquired.

**Delivery**

15. The Applicant agrees:
  - (a) the Supplier accepts no responsibility or duty for Delivery but may elect to arrange Delivery at its discretion and without any liability and at the Applicant's cost and responsibility in all things;
  - (b) the Supplier reserves the right to charge for any Delivery;
  - (c) the Applicant shall be deemed to have accepted Delivery and liability for Goods immediately the Supplier notifies the Applicant that any Goods are ready for collection or upon the Supplier delivering any Goods to a carrier or to the Applicant's business premises or site nominated by it whether attended or not;
  - (d) a certificate purporting to be signed by an officer of the Supplier confirming Delivery shall be conclusive evidence of Delivery as shall any signed Delivery docket;
  - (e) the Supplier will not be liable for delay, failure or inability to deliver any Goods;
  - (f) once the Applicant is notified Goods are ready for collection or Delivery the Applicant agrees to pay all costs of the Supplier in holding those Goods for the Applicant.

**Retention of title**

16. Until payment has been made for the Goods supplied and any other sums whatsoever outstanding from the Applicant to the Supplier from time to time ('Full Payment'):
  - (a) the Applicant agrees that property and title in the Goods shall not pass to the Applicant; and
  - (b) the Applicant will hold the Goods in a fiduciary capacity for the Supplier and agrees to store the Goods in such a manner that they can be identified as the property of the Supplier, and shall not mix the Goods with other similar goods.

17. The Applicant shall be entitled to sell the Goods in the ordinary course of its business, but until Full Payment for the Goods has been made to the Supplier, the Applicant shall sell as agent and bailee for the Supplier and the proceeds of sale of the Goods shall be held by the Applicant on trust for the Supplier absolutely.
18. The Applicant's indebtedness to the Supplier, whether in full or in part, shall not be discharged by the operation of clause 17 unless and until the funds held on trust are remitted to the Supplier.
19. If the Applicant supplies any of the Goods to any person before all monies payable by the Applicant have been paid to the Supplier the Applicant agrees that the Supplier retains title to any proceeds, including but not limited to sale proceeds or an account for such monies or rent monies and insurance monies.
20. The Applicant agrees that whilst property and title in the Goods remains with the Supplier, the Supplier has the right, with or without prior notice to the Applicant, to enter upon any premises occupied by the Applicant (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Applicant) to inspect the Goods of the Supplier and to repossess the Goods which may be in the Applicant's possession, custody or control when payment is overdue.
21. The Applicant will be responsible for the Supplier's costs and expenses in exercising its rights under clause 20. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Applicant against the Supplier, its employees, servants or agents.
22. The Applicant agrees that where the Goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the Goods, and if necessary, sell the Goods with the trademark or name of the Applicant on those Goods, and the Applicant hereby grants an irrevocable licence to the Supplier to do all things necessary to sell the Goods bearing the name or trademark of the Applicant.

#### **Cancellation of terms of credit**

23. The Supplier reserves the right to withdraw credit at any time, whether the Applicant is in default under the terms of this Agreement or not.
24. Upon cancellation with or without notice all liabilities incurred by the Applicant become immediately due and payable to the Supplier.

#### **Acceptable Variation**

25. The Applicant will accept variation in quantities at plus or minus 5% and will pay pro-rata for the actual quantity delivered.

#### **Exclusions**

26. Other than where a consumer guarantee under the Australian Consumer Law applies:
  - (a) No dealing with the Applicant shall be or be deemed to be a sale by sample.
  - (b) If the Supplier publishes material concerning its Goods, its Services and/or its prices anything so published which is incompatible with these Terms is expressly excluded.
  - (c) The Applicant shall rely on its own knowledge and expertise in selecting any Goods and/or Services for any purpose and any advice or assistance given for or on behalf of the Supplier shall be accepted at the Applicant's risk and shall not be or be deemed to be given as expert or adviser nor to have been relied upon by the Applicant or anyone claiming through the Applicant.
  - (d) All Goods are sold subject to any manufacturer's trading terms, warranties and representations applicable to those Goods.
  - (e) The Supplier shall not be liable nor responsible for any failure of Goods or Services to comply with any requirements of the Applicant or any other person (whether relating to manufacture, design, fabrication, installation and/or intended use or otherwise).
  - (f) The Supplier disclaims any responsibility or liability relating to any Goods and/or Services:
    - (i) made or performed to designs, drawings, specifications and/or procedures etc, and/or with materials which are provided and/or approved (whether fully or in part) by or on behalf of the Applicant; and
    - (ii) utilised, stored, handled and/or maintained incorrectly or inappropriately.
  - (g) The Applicant agrees to check all Goods for compliance with all relevant applicable standards and regulatory bodies (Standards) before use, on-sale or application and/or to use or apply all Goods in accordance with those Standards with all manufacturer and/or the Supplier's recommendations and/or directions and in accordance with good commercial practice.

#### **Intellectual Property**

27. The Applicant agrees to all tooling, material, industrial and/or intellectual property employed in the preparation for sale or production of any Goods and/or Services shall be and remain the property of the Supplier notwithstanding any contribution by the Applicant relating thereto.
28. If the Supplier utilises any design patent or intellectual property or follows any instruction provided by or on behalf of the Applicant the Applicant indemnifies the Supplier against any claim, proceeding, damages or liability for any loss, cost or expense arising as a result whether for any alleged infringement of any intellectual property or otherwise.
29. The Applicant must not advertise, use or represent any intellectual property of the Supplier or of any Goods themselves in any way without the prior written consent of the Supplier.

30. If the Applicant breaches or permits any breach of this clause, it acknowledges the Supplier may suffer claims by third parties as a result (e.g. by parties who are entitled to exploit any intellectual property) and the Applicant indemnifies the Supplier against such third party claims.

#### **Timber Goods**

31. The Applicant acknowledges the Supplier's timber Goods may have the following characteristics:
  - (a) as a natural product, variations in colour texture and inherent quality occur;
  - (b) it is susceptible to exposure to elements (sun, rain, temperature etc);
  - (c) it is susceptible to bending, warping, crushing, swelling and fungal growth if not stored or used properly;
  - (d) it is susceptible to damage and size variations which may be caused (inter alia) by relative humidity, moisture content, chemicals, petrochemicals etc;
  - (e) may contain or be treated with poisons and/or potentially toxic chemicals (including formaldehyde, preservatives etc) and should be stored and worked upon in well ventilated areas and not burned except in safe manner; and
  - (f) product related dust and saw dust are inherently dangerous if inhaled and may be highly combustible.
32. The Applicant agrees to observe all relevant material safety data sheets applicable to the Goods and/or the Services.

#### **Pallets and Stands**

33. The Applicant agrees to return to the Supplier all pallets, stands and any re-usable packaging or display equipment (**Equipment**) supplied and to indemnify the Supplier for the full replacement cost of any Equipment not returned promptly.

#### **Stock Discretion**

34. The Supplier has a continuing discretion to allocate available stock and gives no warranty as to certainty of supply unless expressly agreed in writing in advance.

#### **Partial Delivery/Forward Orders**

35. If the Applicant places forward Orders or requests partial or instalment Delivery, the Applicant agrees:
  - (a) to pay for so much of any Order as is from time to time delivered by the Supplier;
  - (b) that no delay or failure to fulfil any part of any Order will entitle the Applicant to cancel or vary any Order or delay or reduce any payment.

#### **Specifications**

36. To the extent permissible by law, any illustration, drawing or specification supplied by the Supplier (Specs) are drafts and approximates.
37. Any tangible or intellectual property rights in Specs remain the property of the Supplier and may be recalled at any time. Specs are to be treated at all times as confidential and not made use of without the prior written consent of the Supplier.

#### **On Sale**

38. The Applicant agrees that upon on-sale of any Goods to third parties it must not make any misrepresentations to third parties about the Goods.

#### **Indemnity**

39. The Applicant agrees to indemnify the Supplier and keep the Supplier indemnified against any claim. This indemnity includes any legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.

#### **Provision of further information**

40. If the Applicant is a corporation (with the exception of a public listed company), it must advise the Supplier of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders the Supplier may ask for new guarantors to sign a guarantee and indemnity.

#### **Corporations**

41. If the Applicant is a corporation, the Applicant warrants that its directors have either signed or accepted this Agreement and that all of its directors will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier on request.

#### **Trustee capacity**

42. If the Applicant is the trustee of a trust (whether disclosed to the Supplier or not), the Applicant warrants to the Supplier that:
  - (a) the Applicant enters into this Agreement in both its capacity as trustee and in its personal capacity;
  - (b) the Applicant has the right to be indemnified out of trust assets;
  - (c) the Applicant has the power under the trust deed to enter into this Agreement; and
  - (d) the Applicant will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier in writing.
43. The Applicant must give the Supplier a copy of the trust deed upon request.

#### **Partnership**

44. If the Applicant enters into this agreement as partners, the Applicant warrants that all of the partners have signed or authorised the entering of this Agreement and that all of the partners will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier on request.

45. If the Applicant is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier. In the case of a change of partners, the Supplier may ask for new guarantors to sign a guarantee and indemnity.

#### **Insolvency**

46. If the Applicant becomes insolvent, the Applicant remains liable under this agreement for payment of all liabilities incurred hereunder. The Applicant remains liable under this Agreement even if the Supplier receives a dividend or payment as a result of the Applicant being insolvent.

#### **Waiver**

47. A waiver of any provision or breach of this Agreement by the Supplier must be made by an authorised officer of the Supplier in writing. A waiver of any provision or breach of this Agreement by the Applicant must be made by the Applicant's authorised officer in writing.

#### **Costs**

48. The Applicant must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Applicant. The Applicant must also pay for all stamp duty and other taxes payable on this Agreement (if any).
49. The Applicant will pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Applicant, including debt recovery fees and legal costs on an indemnity basis and as a liquidated sum.

#### **Taxes and duty**

50. The Applicant must pay GST on any taxable supply made by the Supplier to the Applicant under this Agreement. The payment of GST is in addition to any other consideration payable by the Applicant for a taxable supply.

51. If as a result of:

- (a) any legislation becoming applicable to the subject matter of this Agreement; or
- (b) any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;

the Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Applicant, then the Applicant must pay the Supplier these additional amounts on demand.

#### **Miscellaneous**

52. The Supplier is not liable for any loss caused to the Applicant by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other activity beyond the Supplier's control.

53. The Supplier's liability in respect of a breach of a consumer guarantee (as defined in the Australian Consumer Law) or any express warranty provided by the Supplier for any Service or Good not of a kind ordinarily acquired for personal, domestic or household use is limited, to the extent permissible by law and at the Supplier's option to;

- (a) in relation to the Goods:

- (i) the replacement of the Goods or the supply of equivalent goods;
- (ii) the repair of the Goods;
- (iii) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
- (iv) the payment of the cost of having the Goods repaired.

- (b) in relation to the Services:

- (i) the supply of the Services again; or
- (ii) the payment of the cost of having the Services supplied again.

54. To the extent permitted by law, all other warranties whether implied or otherwise, not set out in these Terms are excluded and the Supplier is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Applicant 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 damage or fault in performance arising out of incorrect or inappropriate operation of the Goods by the Applicant;
- (e) any special, indirect or consequential loss or damage of any nature whatsoever caused by the Supplier's failure to complete or delay in completing the order to deliver the Goods.

#### **Severance**

55. If any provision of these Terms is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
56. If any part of these Terms is invalid or unenforceable, that part is deleted and the remainder of these Terms remains effective.

#### **Variation**

57. The Applicant agrees that these Terms may be varied, added to, or amended by an authorised officer of the Supplier at any time by written notice to the Applicant.
58. Any proposed variation to these Terms by the Applicant must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.

#### **Entire agreement**

59. These Terms constitute the entire agreement between the parties relating in any way to its subject matter.
60. Other than where a consumer guarantee under the Australian Consumer Law applies:
- (a) all previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect.
  - (b) no oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.

#### **PPSA**

61. Defined terms in this clause have the same meaning as given to them in the PPSA.
- (a) The Supplier and the Applicant acknowledge that these Terms constitute a Security Agreement and gives rise to a Purchase Money Security Interest ("PMSI") in favour of the Supplier over the Goods supplied or to be supplied to the Applicant as Grantor pursuant to these Terms and that the Goods supplied or to be supplied under these Terms fall within the PPSA classification of "Other Goods".
  - (b) The Supplier and the Applicant acknowledge that the Supplier as Secured Party, is entitled to register its Security Interest in the Goods supplied or to be supplied to the Applicant as Grantor under these Terms on the PPSR as Collateral.
62. To the extent permissible at law, the Applicant:
- (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 Applicant, as Grantor, to the Supplier;
  - (b) agrees to indemnify the 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 the Supplier; and
    - (ii) enforcement or attempted enforcement of any Security Interest granted to the Supplier by the Applicant.
  - (c) agrees that nothing in sections 130 to 143 of the PPSA relating to enforcement by the Supplier of any Security Interest created or provided for herein will apply to these Terms or the Security under the Terms;
  - (d) waives any rights it may have under sections 95, 123, 130, 132(4), 135, 142, 143, 129, 132(3)(d) of the PPSA.