



AJ BAKER & SONS PTY LTD
ABN 93 008 734 834
PO Box 1491, Osborne Park DC WA 6916

1800 423 626
email@ajbaker.com.au
www.ajbaker.com.au

SCHEDULE 2

TERMS AND CONDITIONS OF TRADE

1. Acceptance of Terms and Conditions

- (a) Ordering Goods and/or Services from the Company will constitute and be accepted by the Company as the Customer's acceptance of the Agreement. That Agreement will continue to apply to the Customer's future orders from the Company for Goods and/or Services from time to time.
- (b) The Company and the Customer agree that the Agreement forms a binding legal agreement between them relating to the Company's provision of Goods and/or Services to the Customer from time to time and the Customer's obligation to pay the company for those goods and/or services.

2. Capacity

- (a) The Customer warrants that it has the capacity to enter into this Agreement.
- (b) If the Customer is entering into this Agreement as a trustee the Customer warrants that the Customer is liable both in the Customer's personal capacity and as trustee and that the Customer has the authority under the trust as trustee to enter into this Agreement and is entitled to be fully indemnified out of the trust's assets for the Customer's liabilities as trustee of the trust.

3. Payment – Payment Before Delivery - Cash Account

- (a) Subject to clause 4, the Customer must pay to the Company:
 - (i) the Deposit, if the Company requires, at the time of the Order of the Goods and/or Services from the Company; and
 - (ii) the balance of the Purchase Price outstanding at the time the Company delivers the Goods and/or Services to the Customer.
- (b) If the Customer does not pay to the Company the remaining Purchase Price on delivery of the Goods or Services, the Company will:
 - (i) not deliver the Goods and/or Services to the Customer;
 - (ii) charge the Customer the Delivery Fee payable within 7 days of the Tax Invoice for the Delivery Fee; and
 - (iii) issue to the Customer a Tax Invoice for the balance of the purchase price payable under this clause, payable within 7 days of the Tax Invoice. The Company will deliver the Goods and/or services within 7 days of payment of that Tax Invoice.

4. Payment – Credit Account

- (a) If the Company agrees in writing with the Customer to the Customer purchasing Goods and/or Services on credit from the Company, the Customer must pay to the Company the Purchase Price in accordance with the Credit Terms.
- (b) If the Customer does not comply with the Credit Terms, the Customer must pay to the Company within 7 days of the Tax Invoice:
 - (i) interest at the Interest Rate on the Outstanding Debt; and
 - (ii) the Default Fee.

5. Price

- (a) Quotes are valid for 30 days from date of the Quote.
- (b) Quotes do not include delivery and the delivery fee unless the Company otherwise agrees with the Customer in writing.
- (c) Quotes are subject to the Company's review and price variation after the Customer's acceptance of the Quote:
 - (i) unless stated otherwise in writing in the Quote;
 - (ii) if the Customer's start date or general construction time is delayed for reasons beyond the Company's control;
 - (iii) the Company's costs of the Goods and/or Services vary or increase after the date of the Quote before the Customer accepts it; or
 - (iv) the Company incurs any additional costs, expenses or charges in relation to the Goods and/or Services the subject of the Quote that are not incurred because of the Customer's delay, default or neglect.

6. Property & Risk

- (a) To the extent allowed at law:
 - (i) risk in the Goods and/or Services, passes to the Customer on delivery;
 - (ii) property in the Goods remains with the Company until the Customer pays the relevant Tax Invoice for the Goods in full. The Company has the right to recover possession of the whole or any part of the Goods including any machine or equipment to which the Goods are attached;
 - (iii) the Customer must safely and securely store the Goods and hold them, as a bailee for the Company until the Customer pays any relevant Tax Invoice for the Goods in full and the Customer; safely and securely store the Goods; and
 - (iv) the Customer must not, assign, charge or offer by way of security any interest in the Goods before the Customer pays any relevant Tax Invoice for the Goods in full.
- (b) If the Customer does not pay for the Goods by the Due Date the Customer must, at the Company's request, deliver up to the Company all Goods not paid for in full failing which the Customer authorises the Company to enter, at any time, by its employees, agents or otherwise the place where the Goods are stored to repossess and remove the Goods. The Customer indemnifies the Company against all losses, costs and expenses incurred by it in repossessing and removing the Goods under this clause and against all claims against the Company arising from such repossession or removal.
- (c) The Company can, at its sole discretion, commence any legal proceedings against the Customer to recover the Outstanding Debt in respect of the Goods whether ownership of the Goods has passed to the Customer or not.

7. Guarantee

- (a) In consideration for the Company, agreeing to provide to the Customer credit on the Credit Terms and the Goods and/or Services, the Guarantor unconditionally and irrevocably guarantees the Customer's performance of all of the Customer's obligations under this Agreement including but not limited to the payment of the Purchase Price, Tax Invoice, Interest, Delivery Fee, Default Fee or any Outstanding Debt.
- (b) The guarantee contained in this clause:
 - (i) is a principal debt;
 - (ii) where there is more than one Guarantor, is joint and several; and
 - (iii) can be enforced at any time by the Company against the Guarantor.
- (c) The Guarantor agrees that the following actions will not, wholly or partially, release or discharge the Guarantor from any liability:
 - (i) a grant of an indulgence;
 - (ii) a variation to the terms of this Agreement whether express, by implication or at law;
 - (iii) a waiver of the Customer's default; or
 - (iv) a delay in the Company enforcing the terms of the Agreement or this Guarantee..

8. Security & Charge

- (a) In consideration for the Company agreeing to provide to the Customer the Goods and/or Services in accordance with this Agreement, the Customer and the Guarantor each charge the whole of each or any of their interest in any personal property, including the Goods provided under this Agreement, and land the Customer or the Guarantor own from time to time in the Company's favour to secure each of the Customer's and the Guarantor's performance of each of their obligations under this Agreement.
- (b) Each of the Customer and the Guarantor agree that the Company can register:
 - (i) an absolute Caveat, in reliance on the Charge in clause 8(a), against the Certificates of Title of any of the Customer's and/or the Guarantor's interest in any land to secure each of the Customer's and the Guarantor's performance of their obligations under the Agreement; and
 - (ii) 1 or more Financing Statement on the PPSR to record and to better secure the Customer's and the Guarantor's obligations under this Agreement.
- (c) The Customer acknowledges that the terms of this Agreement constitute a Security Agreement, which creates a Security Interest in the Company's favour in all of the Customer's present and after acquired property to secure the Purchase Price and/or the Outstanding Debt owing by the Customer to the Company from time to time.

Customer Sign:

Guarantor Sign:

Guarantor Sign:

Guarantor Sign:

- (d) The Customer accepts, acknowledges and agrees that:
- (i) the Company can, register its Security Interest on the PPSR without prior notice to the Customer; and
 - (ii) under section 275(6) of the PPSA, the Customer agrees the Company is not required to disclose to an interested person information pertaining to the Security Interest unless required to do so pursuant to the PPSA or at law.
- (e) The Customer agrees to:
- (i) sign any further documents and/or provide any further information (which information the Customer warrants to be complete, accurate and up-to-date in all respects) which the Company reasonably requires to enable it to perfect its Security Interest;
 - (ii) give the Company not less than 14 days written notice of any proposed change in the customer's name and/or any other changes in its details (including but not limited to, changes in the Customer's Directorship, their address, facsimile number, email address, trading name or business practice);
 - (iii) indemnify the Company against any costs the Company incurs in perfecting and maintaining its Security Interests constituted by this Agreement and any costs the Company incurs in the course of enforcing any of its rights under this Agreement, the PPSA or at law;
 - (iv) procure from any persons the Company considers to be relevant such agreement and waiver as the Company reasonably requires;
 - (v) waive its rights, to the extent the PPSA permits the Customer to do so; to
 - (A) receive a notice under any of subsections 95(1), 121(4), 129(2) and 130(1) and sections 135 and 157 of the PPSA;
 - (B) receive a statement that includes the information referred to in paragraph 132(3)(d) of the PPSA;
 - (C) receive a statement under subsection 132(4) of the PPSA;
 - (D) redeem Collateral, as defined in the PPSA, after default under section 142 of the PPSA unless it is agreed in writing to such redemption;
 - (E) reinstate the Security Agreement under section 143 of the PPSA; and
 - (F) give a Notice of Objection, as defined in the PPSA under section 137 of the PPSA.

9. Limitation of Liability

- (a) The Company is not responsible for the Company's late delivery or installation of Goods and supply of Services, unless the such late delivery or installation of the Goods or supply of the Services arises because of the Company's delay, default or neglect.
- (b) To the extent allowed by law, the Company:
 - (i) is not responsible for any loss or damage suffered by any person because of:
 - (A) the Goods and/or Services;
 - (B) acts of force majeure including but not limited to strikes, fire, storm, tempest, floods and earthquake;
 - (C) any late or non-delivery of the Goods and/or Services;
 - (D) loss or damage to the Goods in transit;
 - (E) events out of the Company's control or which the Company could not reasonably foresee; and
 - (F) any costs, expenses or loss, including consequential loss, incurred in relation to the Goods and/or Services whether that liability arises in contract, equity, tort, under statute otherwise at law;
 - (ii) is not bound by and excludes any liability under this Agreement from any implied conditions and warranties;
 - (iii) the Company's liability to the Customer for a breach of a condition or warranty implied by law which cannot be excluded is limited to at the Company's, option (at its absolute discretion) to:
 - (A) the supply of the Goods or the Services again; or
 - (B) the repair or rectification of the Goods or the Services; or
 - (C) the payment of the cost of having the Goods and/or Services supplied again or repaired.
- (c) The Customer acknowledges that it has:
 - (i) not relied on the Company's, or its agents, employees or officers, expertise when ordering the Goods and/or Services; and
 - (ii) made its own enquiries about the suitability of the Goods and/or Services for the purposes the Goods and/or Services are intended and that the

Company is not liable, to the extent allowed at law, to the Customer if the Goods and/or Services are not suitable for the Customer's intended purpose.

- (d) The Goods and Services are sold subject to the relevant manufacturer's terms and conditions and are protected by the relevant manufacturer's warranty and the Company is not liable to the extent that the Goods are protected under the relevant manufacturer's warranty.

10. Cancellation or Postponement

- (a) The Customer cannot cancel any accepted order or part order for Standard Goods, unless the Company agrees in writing. In the event that the Customer cancels the whole or any part of its order for the Standard Goods then the Company will charge a cancellation fee of 20% of the Purchase Price.
- (b) The Customer cannot cancel any order the Company has accepted, or any part order, for Specifically Manufactured Goods. If the Customer cancels the whole or any part of its order for Specifically Manufactured Goods then the Company will charge the Customer the Purchase Price in full for the Specifically Manufactured Goods.
- (c) If the Customer provides to the Company a timetable for the provision of the Company's Goods or Services and the Company is not given 4 weeks' notice of any change to any timetable the Customer provides, the Customer must pay the Company's costs and expenses incurred in relation to any postponement of the Company's Goods and/or Services and the Customer agrees that those costs and expenses be added to the Quote.
- (d) If any third party delays or prevents the Company from supplying the Goods and/or Services on a continuous basis and the Company incurs any cost, expense or charge as a result, the Company will on charge to the Customer that costs, expenses or charge the Company incurs as a result and which will be added to the Quote.

11. Asbestos Handling

Unless specifically included in the Quote, all removal and disposal of asbestos or asbestos products at the Customer's premises, location or site are excluded from the Quote. If asbestos is found at the Customer's premises, location or site the Company will:

- (a) withdraw its employees or agents; and
- (b) suspend its Services until the Customer provides to the Company written certification that the asbestos or asbestos products have been removed from the Customer's premises, location or site.

12. Installation

- (a) All Quotes exclude installation and future servicing costs, unless otherwise specified in writing in the Quote.
- (b) The Customer is be liable to arrange and supply all electricity, water, gas and any other services required for the installation of any Goods and provision of any Services at the Customer's expense.
- (c) If the Company's access to the Customer's premises, site or building for the purposes of installation of any Goods or provision of any Services is inhibited, the Company can charge, at its absolute discretion, additional installation charges which the Customer agrees will be added to the Quote

13. Warranty

The Company gives the warranties for the Goods and/or Services as specified on the Company's website: <https://aibaker.com.au/>.

14. Indemnity

The Customer indemnifies the Company against any costs, expenses, losses, damages and liability, including but not limited to any and legal costs (on a full indemnity basis) the Company suffers or incurs including any liability the Company incurs to any of its employees, agents and contractors, arising from the Customer's breach of this Agreement, the Company's performance under this Agreement or caused by any unlawful or negligent action of the Customer or third party the customer contracts or retains relating to the Goods and/or Services.

15. Termination

The Company can suspend or terminate the Agreement if any Outstanding Debt is not paid when due or the Customer commits any other breach of this Agreement.

16. GST

Any money payable under this Agreement is exclusive of any GST, sales tax, customs or any other tax or impost chargeable in connection with the supply of the Goods and Services.

17. Notices

Any communication under or in connection with this Agreement:

- (a) must be in writing;
- (b) must be addressed as shown above in item 4 of Schedule 1 (or as otherwise notified, in writing, by that Party to the other Party from time to time);

Customer Sign:

Guarantor Sign:

Guarantor Sign:

Guarantor Sign:

- (c) must be signed by the Party making the communication or (on its behalf) by the solicitor for, or by any attorney, Director, Secretary, or authorised agent of that Party;
- (d) must be delivered or posted by prepaid post to the address, or sent by facsimile to the number of the addressee in accordance with clause 17(b); and
- (e) will be deemed to be received by the addressee:
 - (i) (in the case of prepaid post) on the fourth Business Day after the date of posting to an address within Australia and on the seventh Business Day after the date of posting to an address outside Australia;
 - (ii) (in the case of facsimile) at the local time (in the place of receipt of that facsimile) which then equates to the time at which that facsimile is sent as shown on the transmission report which is produced by the machine from which that facsimile is sent and which confirms transmission of that facsimile in its entirety unless that local time is a non-Business Day or is after 5.00 pm on a Business Day, when that communication will be deemed to be received at 9.00 am on the next Business Day; and
 - (iii) (in the case of delivery by hand) on delivery at the address of the addressee as provided in clause 17(b) unless that delivery is made on a non-Business Day or is after 5.00 pm on a Business Day, when that communication will be deemed to be received at 9.00 am on the next Business Day.

18. General

- (a) The Company and the Customer agree that this Agreement is governed and construed in accordance with the laws of Western Australia and that any dispute in relation to this Agreement will be heard in the Courts of Western Australia.
- (b) The Company's failure to insist upon or enforce strict performance of any provision of this Agreement cannot be construed as a waiver of any provision or right. The course of conduct between the Parties will not modify any provision of the Agreement which can only be amended or modified in writing.
- (c) To the extent allowed by law, this Agreement constitutes the entire agreement between the Company and the Customer and the Customer agrees that the Company has not made any prior representations inducing it to enter into the Agreement and that any prior communications between them are superseded by this Agreement and are of no effect.
- (d) The Customer shall immediately notify the Company of any change in the information applicable to it set out in the Application including, but not limited to, any change in ownership, proprietors, shareholders or directors of the Customer.
- (e) If any provision or part of any provision of this Agreement is unenforceable it shall be severed from this Agreement and that severance or unenforceability shall not affect any other part or provision hereof.
- (f) The Customer irrevocably:
 - (i) authorises the Company to request from agencies the Company considers appropriate personal and commercial information about the Customer for the purposes of assessing the Customer's credit worthiness;
 - (ii) authorises the Company to provide personal and commercial information about the Customer's creditworthiness in relation to the Company to agencies the Company considers appropriate; and
 - (iii) indemnifies the Company in respect of claims or actions arising out of, obtaining or providing of information concerning the Applicant Parties.
- (g) The Parties:
 - (i) agree that this Agreement can be signed electronically by an electronic signature;
 - (ii) consent to this Agreement being signed electronically by an electronic signature; and
 - (iii) acknowledge that if the Agreement is accepted and signed with an electronic signature that each Party:
 - (A) intends to sign the Agreement with an electronic signature;
 - (B) the Party's electronic signature is binding on that Party; and
 - (C) this Agreement is binding and enforceable.

19. Definitions

In these Terms and Conditions:

Application is the application for a customer or credit account set out in Schedule 1 of this Agreement.

Applicant Party means the Customer and the Guarantor(s).

Agreement means the Application each Schedule to the Application.

Business Day means a day that is not a Saturday, Sunday or public holiday.

Company means A.J. Baker & Sons Pty Ltd, ACN 008 734 834 of 6 Parkland Road, Osborne Park, WA 6017.

Credit Terms means 30 days from the end of the month immediately following the Company's delivery of the Goods or Services to the Customer.

Customer means the customer (or any entity acting on behalf of the customer) ordering goods and/or services from the Company, as described in the Application, Quote or Tax Invoice.

Default Fee means the restocking fee of 15% of the Purchase Price.

Delivery Fee means the freight charge plus 15% that the Company charges the Customer for delivery of the Goods.

Deposit means any deposit the Company requires the Customer to pay to the Company for the supply of Goods and/or Services under clause 3 of this Agreement.

Due Date means the due date for any Tax Invoice specified in this Agreement or as otherwise specified in the Tax Invoice.

Guarantor means the persons specified in item 8 of the Application.

Goods means any goods supplied the Company supplies to the Customer from time to time.

GST means any goods & services or similar tax imposed by the GST Law.

Interest means interest at the interest rate.

Interest Rate means 6% each year.

Order means an invitation to treat by the Customer to the Company for the supply of Goods and/or Services.

Outstanding Debt means any amount that the Customer owes to the Company from time to time not paid on or before the Due Date and which includes Interest, any Default Fee, Delivery Fee or other amount payable under this Agreement.

Party means an Applicant Party or the Company.

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

PPSR means the Personal Property Securities Register operated under the PPSA.

Purchase Price means the cost of the Goods and/or Services in the Quote plus any costs and expenses the Customer is liable to pay under this Agreement.

Schedule means a schedule to this Agreement, including Schedule 1, and Schedule 2.

Security Interest has the same meaning given to that term in the PPSA.

Services means any service the Company provides to the Customer from time to time and includes but without limitation engineering, designing, manufacturing or servicing services.

Standard Goods means Goods the Company supplies to the Customer that were not manufactured to meet the Customer's specifications.

Specifically Manufactured Goods means Goods the Company supplied to the Customer that have been specifically manufactured or customised to meet the Customer's specifications.

Tax Invoice means any tax invoice the Company issues for its supply of Goods and/or Services.

Quote means any quote, tender and price that the Company provides to the Customer from time to time for Goods and/or Services.

20. Interpretation

Unless the contrary intention appears:

- (a) a reference to a clause is a reference to a clause of this Agreement;
- (b) a reference to this document or another instrument includes any variation or replacement of either of them;
- (c) the singular includes the plural, the plural includes the singular and any gender includes each other gender;
- (d) the word person includes a firm, a body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes that person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (f) an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and severally;
- (g) a reference to a thing includes a reference to the whole or any part of that thing;
- (h) if a word or phrase is defined, cognate words and phrases have a corresponding meaning;
- (i) headings are for convenience only and do not affect the interpretation of this document; and
- (j) these terms override any other conditions between the parties to the extent of any inconsistency between them.

Customer Sign:

Guarantor Sign:

Guarantor Sign:

Guarantor Sign: