

# NADRASCA TERMS & CONDITIONS

## **Payment Terms**

1. The terms of payment are strictly thirty (30) days from date of invoice and payment is due and payable on that date. Nadrasca Ltd may, at any time, unilaterally vary the terms of trade at its absolute and unfettered discretion.
2. Should the Applicant not pay for the goods or services supplied by the Supplier in accordance with the credit terms as provided herein, or as agreed in writing by the Supplier from time to time, the Supplier shall be entitled to charge an administration fee of 10% of the amount of the invoice payable per year, or part thereof, from the date the goods or service were supplied (and not the day when the Supplier's invoice was payable) until payment by the Applicant.

## **Security/Charges**

3. The Applicant charges in favour of the Supplier all of its estate and interest in any real property that the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.
4. The Applicant charges in favour of the Supplier all of its estate and interest in any personal property that the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.
5. The Applicant appoints as its duly constituted attorney the Supplier's company secretary from time to time to execute in the Applicant's name and as the Applicant's act and deed any 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.

## **Purpose of Credit**

6. The Applicant acknowledges and agrees that the credit to be provided to the Applicant by the Supplier is to be applied wholly or predominantly for commercial purposes.
7. The credit facilities provided by the Supplier are not transferable by the Applicant without the prior written consent of the Supplier. The Supplier may assign this agreement to another party without prior notice to the Applicant. The Supplier will give the Applicant notice when the assignment has been effected.

## **Formation of Contract**

8. 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 offer to purchase received by it. Only written acceptance by the Supplier of the Applicant's offer shall complete a contract.

9. Placement of an order, either verbally or in writing, shall imply acceptance of the Supplier's offer and of these terms and conditions.

## **Retention of Title**

10. Whilst the Applicant has not paid for the goods supplied in full at any time, the Applicant agrees that property and title in the goods shall not pass to the Applicant and the Supplier retains the legal and equitable title in those goods supplied and not yet sold.
11. Until payment in full has been made to the Supplier, 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.
12. 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.
13. The Applicant's indebtedness to the Supplier, whether in full or in part, shall not be discharged by the operation of clause 12 hereof unless and until the funds held on trust are remitted to the Supplier.
14. 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.
15. The Applicant will be responsible for the Supplier's costs and expenses in exercising its rights under clause 14. 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.
16. 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.
17. For the avoidance of doubt, the Supplier's interest constitutes a 'purchase money security interest' pursuant to the *Personal Property Securities Act 2009*.

## **NADRASCA TERMS & CONDITIONS** (cont'd)

### **Cancellation of Terms of Credit**

18. 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.
19. Upon cancellation with or without notice, all liabilities incurred by the Applicant become immediately due and payable to the Supplier.

### **Indemnity**

20. 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**

21. The Applicant undertakes to comply with any request by the Supplier to provide further information for the purpose of assessing the Applicant's credit-worthiness, including an updated credit application.
22. 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**

23. If the Applicant is a corporation, the Applicant warrants that all of its directors have signed this agreement and that all of its directors will enter into a guarantee anti indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.

### **Trustee Capacity**

24. 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 sign this agreement; andthe Applicant will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier.
25. The Applicant must give the Supplier a copy of the trust deed upon request.

### **Partnership**

26. If the Applicant enters into this agreement as partners, the Applicant warrants that all of the partners have signed 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.

27. 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**

28. 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**

29. 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**

30. 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).
31. 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. Such costs and disbursements will be due and payable by the Applicant to the Supplier irrespective of whether pursuit of the recovery action, claim or remedy is successful.

### **Taxes and Duty**

32. 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.
33. 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.