

### 1. Credit and General Terms & Conditions (“CGT&C”)

- 1.1 These CGT&C apply to the provision of credit and all Contracts for the provision of goods and / or services by Allbrook to the Customer.
- 1.2 Unless otherwise agreed by Allbrook in writing these CGT&C apply exclusively to and form part of every Contract and cannot be varied or replaced by any other terms unless agreed by the parties in writing.
- 1.3 These CGT&C take precedence over any other Contract terms to the extent of any inconsistency.
- 1.4 The Customer will be deemed to have read, accepted and be bound by the terms of the Contract (including these CGT&C) each time it is provided goods and / or services from Allbrook.

### 2. Changes to Customer

The Customer must notify Allbrook in writing of any changes to its shareholding, officeholding or contact details.

### 3. Credit

- 3.1 Allbrook may withhold or extend credit to the Customer in its absolute discretion. The Customer acknowledges that any failure by Allbrook to strictly apply the specified Credit Limit will not affect the obligations of the Customer.
- 3.2 Allbrook may grant the Customer credit upon these CGT&C and assessment of the Credit Application and other such documents and / or information as may be required.

### 4. Payment

- 4.1 If credit has not been granted to the Customer by Allbrook in accordance with clause 3, payment will be made by the Customer and received by Allbrook on or before the fulfilment of any Contract (COD terms).
- 4.2 If credit has been granted to the Customer by Allbrook in accordance with clause 3, payment will be made by the Customer and received by Allbrook within 14 days from date of invoice, unless otherwise specified by Allbrook in writing.
- 4.3 Payment terms may be revoked or amended at Allbrook’s discretion by giving written notice to the Customer.
- 4.4 The Customer will make all payments due to Allbrook in full without deduction, whether by way of set-off, counter-claim, or any other equitable or legal claim.
- 4.5 Without limiting any right of set off, deduction or withholding at law, Allbrook may at any time deduct, set-off or withhold from moneys otherwise due to the Customer any debt or other moneys due from the Customer to Allbrook.
- 4.6 Interest will be charged on overdue amounts at the rate of 2% above ANZ Bank’s Official Cash Rate.
- 4.7 All other debt collection costs incurred by Allbrook will be borne by the Customer.
- 4.8 Liability for accounts held in more than one name is joint and several.

### 5. Goods & Services Tax (“GST”)

- 5.1 Unless GST is expressly included, the consideration to be paid or provided under a Contract for any supply made under or in connection with a Contract is exclusive of GST.
- 5.2 To the extent that any supply made under or in connection with a Contract is a taxable supply, GST will be added to the total price of the supply in accordance with relevant GST legislation.
- 5.3 Allbrook’s right to payment under clause 5.2 is subject to a valid tax invoice being delivered to the Customer.
- 5.4 Words or expressions used in this clause 5 which have a particular meaning in the GST law (as defined in the GST Act), any applicable legislative determinations and Australian Taxation Office public rulings, have the same meaning.

### 6. Security of Payments

These CGT&C and any Contract is subject to the provisions of the applicable Security of Payments Act. Where progress payments are provided for in the Contract those payments are due on the dates specified therein. Notwithstanding that progress payments may not be provided for in the Contract, Allbrook may issue payment claims from time to time in accordance with the provisions of the applicable Security of Payments Act.

### 7. Title

- 7.1 Where Allbrook provides Product to the Customer on credit, title will not pass in the Product to the Customer until payment is received;
- 7.2 Until title to the Products passes to the Customer, the Customer must:
  - 7.2.1 where Product is stockpiled, keep the Product in such manner that it is identifiable as Allbrook’s property;
  - 7.2.2 not release possession of the Product, or any part thereof;

- 7.2.3 provided the Customer has not used or on-sold the Product, return the Product to Allbrook, should Allbrook request the Customer to do so;
- 7.2.4 hold the Product as Allbrook's bailee and hold any proceeds, from its sale or use, on trust for Allbrook.

### 8. PPSA

- 8.1 Where Allbrook retains legal title or ownership of the Product, the Customer acknowledges that:
  - 8.1.1 this clause 8 creates a security interest in all present and after acquired Product, and any proceeds, as security for the Customer's obligations to Allbrook;
  - 8.1.2 Allbrook is a secured party in relation to the Products, and any proceeds, and is entitled to register its interest on the register established under the PPSA Law as a security interest;
  - 8.1.3 Allbrook may, by written notice, require the Customer to take all steps that Allbrook considers necessary to ensure its security interest in the Products is enforceable, and to perfect or better secure Allbrook's security ranking; and
  - 8.1.4 the Customer must comply with a notice from Allbrook under this clause 8 at its own cost;
- 8.2 Allbrook retains any rights of enforcement arising under the PPSA Law, under these CGT&C or otherwise, including but not limited to a right to seize collateral under section 123 of the PPSA Law.
- 8.3 The Customer agrees not to disclose information of the kind mentioned in s275(1) of the PPSA Law, except in circumstances where it is required to do so by law.
- 8.4 Unless otherwise defined in these CGT&C, the terms and expressions used in this clause 8 have the meanings given to them, or by virtue of, the PPSA Law.

### 9. Security

- 9.1 The Customer charges its current and future estate and interest in all real property (including property acquired after the date these T&C are accepted) in favour of Allbrook to secure the performance of the Customer's obligations stated herein. The Customer acknowledges and agrees that Allbrook may at its discretion register its interest over such property.
- 9.2 The Customer hereby appoints Allbrook and each of its directors as its joint and several attorneys for the purpose of doing all such acts, matters and things as Allbrook shall deem necessary to give effect to this clause 9. If Allbrook wishes to exercise its rights in respect of the charge, the Customer grants Allbrook the right to sell the property.

### 10. Default

- 10.1 If the Customer breaches any term of a Contract, is insolvent, bankrupt, commences winding up, is placed under official management, into liquidation or has a receiver appointed in respect of any of its assets or is subject to a similar event (or Allbrook has reasonable grounds to form the opinion that the Customer is experiencing or about to experience such an event), or if the ownership or effective control of the Customer or the Customer's business has changed without the prior consent of Allbrook, then Allbrook may:
  - 10.1.1 immediately terminate any Contract that has not been delivered, collected or supplied, as the case may be;
  - 10.1.2 withdraw credit which has been extended to the Customer and require immediate payment of all amounts owed to Allbrook by the Customer; or
  - 10.1.3 enter any premises to reclaim any of the Products in the Customer's possession or control which have not been fully paid for by the Customer, and the Customer indemnifies Allbrook against any liability, claims or costs (howsoever caused) arising from Allbrook exercising its right under this clause.
- 10.2 If Allbrook breaches any term of a Contract and fails to rectify such breach within 14 days' notice from the Customer, is insolvent, commences winding up, is placed under official management, into liquidation or has a receiver appointed in respect of any of its assets or is subject to a similar event, then the Customer may immediately terminate any Contract that has not been delivered, collected or supplied, as the case may be.
- 10.3 All costs incurred by Allbrook relating to any action taken by Allbrook to recover moneys due from the Customer (including without limitation, legal costs on an indemnity basis or other debt collection costs) will be payable by the Customer on demand as an additional amount owed.

### 11. Chain of Responsibility

- 11.1 Each of the Customer and Allbrook must co-operate and comply with a reasonable request or direction from the other party in relation to Chain of Responsibility Law.
- 11.2 Each of the Customer and Allbrook must, upon request, allow the other party to inspect the transport or journey documentation held by the other party that relates to transport to or from Allbrook's site(s).

11.3 Each of the Customer and Allbrook must:

- 11.3.1 notify the other party immediately of any actual or suspected breach of any Chain of Responsibility Laws; and
- 11.3.2 take immediate steps to remedy such breach, at its own cost.

### 12. Force Majeure

Allbrook will not be responsible for any damages caused by any delay, default or other failure to perform under a Contract due to any contingency beyond its reasonable control preventing or interfering with such performance, including, but not limited to, war, embargoes, civil disturbance, export, shipping or remittance restrictions, strikes, lockouts, accidents, fire, delays or defaults caused by carriers, floods, governmental seizure, control or rationing, pandemics or epidemics, or any other circumstance that might materially jeopardise or adversely affect the commercial or other interests of Allbrook.

### 13. Warranty and indemnity

- 13.1 The Customer warrants on the date of each Contract that the information contained in the Application is true and correct and acknowledges that Allbrook intends to rely on this information to decide whether or not to grant or continue to grant a credit facility to the Customer and that there is no other material circumstance or event which, if known to Allbrook, would be likely to affect any decision whether or not to grant a credit facility to the Customer.
- 13.2 The Customer indemnifies (and must keep indemnified) Allbrook from and against all Loss including any debt recovery and legal costs (on an indemnity basis) arising from the Customer's acts, omissions, or breach of a Contract except to the extent that such Loss is caused or contributed to by the gross negligence or wilful misconduct of Allbrook or its Personnel.

### 14. Confidentiality

The Customer must keep confidential and not disclose or make known to anyone any Confidential Information and the Customer agrees to procure each of its Personnel to do so.

### 15. Privacy

The Customer authorises and acknowledges that:

- 15.1 personal information contained in any Application and permitted to be kept on a credit information file might be used, disclosed or exchanged with other credit providers about the Customer's credit arrangements in order to assess this Application, monitor credit worthiness and collect overdue accounts.
- 15.2 Allbrook may obtain credit information about its personal, consumer and commercial credit worthiness from any bank or trade referee disclosed in the Application and from any other credit provider or credit reporting agency for the purpose of assessing the Application, or in connection with any guarantee given.
- 15.3 in accordance with the Privacy Act 1988, that disclosure by a credit reporting agency and / or use by Allbrook of the relevant information may occur for the purposes of assessing any Application.
- 15.4 Allbrook will collect, use and disclose any personal information provided in the Application and Contract Particulars in accordance with its Privacy Policy (available upon request).
- 15.5 Allbrook may supply information about the Customer's credit worthiness to other credit providers.
- 15.6 Allbrook may disclose the contents of any credit report on the Customer to any of Allbrook's solicitors and mercantile agents.

### 16. General Clauses

- 16.1 With reasonable notice to the Customer, Allbrook may terminate, assign or subcontract any rights or obligations under a Contract.
- 16.2 The rights and obligations under a Contract are personal and cannot be assigned by the Customer without the prior written consent of Allbrook. Allbrook is free to assign the Contract without consent.
- 16.3 If the Customer is a trustee of a trust, it is bound by a Contract both personally and in its capacity as trustee.
- 16.4 Any provision of a Contract must be read down to any extent necessary to be valid. If that is not possible, it must be severed. All other provisions of the Contract are unaffected.
- 16.5 A provision of a Contract must not be construed to the disadvantage of a party because that party was responsible for including that provision and / or that provision benefits that party.
- 16.6 The termination or cessation otherwise of a Contract howsoever caused will be without prejudice to any obligations or rights of either party pursuant to the terms of a Contract which have accrued prior to such termination or cessation and will not affect any provision of a Contract which is expressly or by implication provided to come into effect on or to continue in effect after such termination or cessation.

- 16.7 Each Contract will be governed and construed in accordance with the law of the state of South Australia and the parties submit to the exclusive jurisdiction of the courts of the state of South Australia.
- 16.8 Unless stated otherwise, a reference to money means Australian Dollars.
- 16.9 Unless a Contract expressly provides otherwise, nothing in a Contract may be construed as creating a relationship of partnership, joint venturers, of principal and agent or of trustee and beneficiary.
- 16.10 Any party's failure or delay to exercise any right, power or privilege does not operate as a waiver of that right, power or privilege. The exercise of a right, power or privilege does not preclude either its exercise in the future or the exercise of any other right, power or privilege. A waiver is not effective unless it is in writing. Waiver of a right, power or privilege is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.
- 16.11 A Contract may only be amended in writing signed by all parties
- 16.12 In these CGT&C and any Contract, unless the contrary intention appears:
  - 16.12.1 a clause or annexure is a clause of or an annexure to these CGT&C or the relevant Contract; and
  - 16.12.2 'includes' or 'including', or similar words do not limit what else might be included.

### 17. Definitions

- 17.1 'Application' means the application by the Customer to Allbrook for trade credit;
- 17.2 'BBSY Rate' means the three month bank bill swap rate (expressed as a percentage yield to maturity and rounded upwards to the nearest two decimal places) on the date an amount begins to accrue interest.
- 17.3 'Chain of Responsibility Laws' means all applicable laws and standards relating directly or indirectly to the licensing and operation of heavy vehicles, mass, dimension and load restraint limits and requirements for heavy vehicles and driving rules (including laws and rules relating to fatigue management, driving under the influence of drugs or alcohol and speeding);
- 17.4 'Claim' includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, damage, loss, cost, expense or liability however arising and whether:
  - 17.4.1 known or unknown;
  - 17.4.2 past, present or future;
  - 17.4.3 based on contract, tort or statute;
  - 17.4.4 involving a third party or a party to the Contract; and
  - 17.4.5 for interest or costs.
- 17.5 'Classification Report' means a report from a suitably qualified environmental consultant or results that give suitable classification (in Allbrook's reasonable opinion) of the Material and which specifies the origin/source of the Material and its composition;
- 17.6 'Allbrook' means each legal entity specified in section 1 of the Application or as otherwise set out in the Contract Particulars with which the Customer contracts for the receipt of Materials, the supply of Products, the provision of Transport Services and / or other goods and services to which these CGT&C relate and that entity's successors, assigns, and any other Allbrook Related Party.
- 17.7 'Contract' means a contract between Allbrook and the Customer comprising of these CGT&C and any one or more of:
  - 17.7.1 the Application;
  - 17.7.2 the Incoming Material Terms;
  - 17.7.3 the Outgoing Product Terms; and
  - 17.7.4 the Transport Terms,and includes the Contract Particulars.
- 17.8 'Contract Particulars' means the agreed terms of any online application for goods and / or services, quote, tender response, purchase order, delivery docket, invoice, written or electronic correspondence or any other applicable document describing the goods and / or services forming part of and described in a Contract.
- 17.9 'Credit Limit' means the amount approved by Allbrook in the Application or such other amount as approved from time to time by Allbrook.
- 17.10 'CGT&C' means these terms and conditions.
- 17.11 'Customer' means the customer identified in the Application or Contract particulars.
- 17.12 'Excluded Material' means in respect of a Premises, any material that Allbrook is not licensed to receive at that Premises.
- 17.13 'GST, taxable supply and tax invoice' have the same meaning as in the GST Act.
- 17.14 'GST Act' means A New Tax System (Goods and Services Tax) Act 199.
- 17.15 'Law' means any applicable law, statute, regulation, ordinance, by-law or subordinate legislation or other document enforceable under any statute, regulation, order or rule.



- 17.16 'Loss' means any loss, damage, cost, interest, expense, fee, penalty, fine, forfeiture, assessment, demand, action, suit, claim, proceeding, cause of action, liability or damages incurred by a person to preserve any contractual rights.
- 17.17 'Material' means all Material that is not Excluded Material.
- 17.18 'Personnel' means (of a party), an employee, representative, associate, officer, agent or subcontractor of that party.
- 17.19 'PPSA Law' means the Personal Property Securities Act 2009 ('PPS Act') and regulations made under the PPS Act and any amendments made to it or any other relevant legislation.
- 17.20 'Premises' means any site or location under the control of Allbrook.
- 17.21 'Price' means the amount charged by Allbrook to the Customer for receipt of the Material, and / or the supply of the Product as contained in the Contracts.
- 17.22 'Product' means any product supplied by Allbrook under a Contract.
- 17.23 'Related Party' means any entity or natural person related to Allbrook as defined in the Corporations Act 2001.
- 17.24 'Security of Payments Act' means the Building and Construction Industry Security of Payment Act 2009 (South Australia).