

Credit & General Terms

1. Credit & General Terms

- 1.1 These Credit & General Terms apply to the provision of credit and all Contracts for the provision of goods and/or services by Resourceco to the Customer.
- 1.2 Unless otherwise agreed by Resourceco in writing these Credit & General Terms 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 The terms of the Contract take precedence over any terms provided by the Customer (including without limitation in any Contract Particulars) to the extent of any inconsistency.
- 1.4 These Credit & General Terms take precedence over any other Contract terms to the extent of any inconsistency.
- 1.5 The Customer will be deemed to have read and accepted and be bound by the terms of the Contract (including these Credit & General Terms) each time it orders goods and/or services from Resourceco.

2. Changes to Customer

The Customer must notify Resourceco in writing if there is any change in the shareholding or ownership of the Customer or any material change in the Customer's financial position.

3. Credit

- 3.1 Resourceco may withhold or extend credit to the Customer in its absolute discretion. The Customer acknowledges that any failure by Resourceco to strictly apply the specified Credit Limit will not affect the obligations of the Customer.
- 3.2 Resourceco may grant the Customer credit upon these Credit & General Terms on the basis of the Application made by the Customer and such other documents and information as may be required by Resourceco.
- 3.3 The Customer acknowledges and agrees that:
 - 3.3.1 where there are various Resourceco entities specified in section 1 of the Application any Credit Limit may be allocated (at Resourceco's sole discretion) between each Resourceco entity such that the specified Credit Limit represents the total Credit Limit across all those Resourceco entities; and
 - 3.3.2 if the Customer engages a new or additional Resourceco Related Party in addition to those specified in Item 8 of the Application, these Credit & General Terms will automatically apply to such engagement of that additional entity and the Credit Limit will be deemed to include that additional entity.

4. Payment

- 4.1 If credit has not been granted to the Customer by Resourceco in accordance with **clause 3** or the Credit Limit is exceeded, payment will be made by the Customer and received by Resourceco on or before the fulfilment of any Contract, including where applicable, in excess of the Credit Limit.
- 4.2 If credit has been granted to the Customer by Resourceco in accordance with **clause 3**, payment will be made by the Customer and received by Resourceco within 30 days of end of month following receipt of invoice unless otherwise specified by Resourceco in writing.
- 4.3 Payment terms may be revoked or amended at Resourceco's discretion immediately by giving written notice to the Customer.
- 4.4 The Customer will make all payments due to Resourceco 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, the Resourceco 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 Resourceco.
- 4.6 Interest will be charged on overdue amounts at the rate of 2% above the BBSY Rate.
- 4.7 The time for payment by the Customer is of the essence.
- 4.8 Liability for accounts held in more than one name is joint and several.

5. 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 does not include GST.
- 5.2 To the extent that any supply made under or in connection with a Contract is a taxable supply, the GST exclusive consideration to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is to be paid or provided.
- 5.3 A party's right to payment under **clause 5.2** is subject to a valid tax invoice being delivered to the party who is the recipient of the taxable supply.
- 5.4 To the extent that a party is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.
- 5.5 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, unless the context otherwise requires.

6. Security of Payments

These Credit & General Terms 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, Resourceco 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 Resourceco 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 Resourceco's property;
 - 7.2.2 not deal with or part with possession of, the Product, or any part thereof, or attempt to do so other than in the ordinary course of its business;
 - 7.2.3 provided that the Customer has not used or on sold the Product, return the Product to Resourceco, should Resourceco request the Customer to do so;
 - 7.2.4 hold the Product as Resourceco's bailee and hold any proceeds from the sale, use or disposal of Product on trust for Resourceco.

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- 8. PPSA**
- 8.1 This **clause 8** applies, if at any time, Resourceco retains legal title or ownership in the Products. The Customer acknowledges that:
- 8.1.1 this **clause 8** creates a security interest in all present and after acquired Products and any proceeds as security for the Customer's obligations to Resourceco;
- 8.1.2 Resourceco is a secured party in relation to the Products and any proceeds of the Products and is entitled to register its interest on the register established under the PPSA Law as a:
- (a) security interest; and
- (b) if applicable, a purchase money security interest in the Products and any proceeds of the Products, at the discretion of Resourceco;
- 8.1.3 Resourceco may, by notice to the Customer, require the Customer to take all steps that Resourceco considers necessary or desirable to ensure its security interest in the Products is enforceable, and to perfect, or better secure the position of Resourceco as a first ranking security;
- 8.1.4 the Customer must comply with a notice from Resourceco under this **clause 8** at the cost and expense of the Customer;
- 8.1.5 the Customer must promptly inform Resourceco of any change to information that it provides to Resourceco under this **clause 8**; and
- 8.1.6 Resourceco is not obliged to give any notice, document or information under the PPSA Law, unless the provision of that notice (including notice of a verification statement), unless the notice is required by law and cannot be excluded.
- 8.2 Resourceco retains any rights of enforcement arising under the PPSA Law, under these Credit & General Terms 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 required by sections 275(7)(b)-(e) of the PPSA Law.
- 8.4 Unless otherwise defined in these Credit & General Terms, 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 terms are accepted by the Customer) in favour of Resourceco to secure the performance of the Customer's obligations under these Credit & General Terms and any Contract. The Customer acknowledges and agrees that Resourceco may at its discretion register its interest (including by way of caveat) over such property in respect of the interests conferred on it under this clause.
- 9.2 The Customer hereby appoints Resourceco and each of its directors as its joint and several attorneys for the purpose of doing all such acts, matters and things as Resourceco shall deem necessary to give effect to this **clause 9**. If Resourceco wishes to exercise its rights in respect of the charge, the Customer grants Resourceco 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 Resourceco 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 Resourceco, then Resourceco 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 Resourceco 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 Resourceco against any liability, claims or costs (howsoever caused) arising from Resourceco exercising its right under this clause.
- 10.2 If Resourceco 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 Resourceco relating to any action taken by Resourceco 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 Resourceco must co-operate and comply with a reasonable request or direction from the other party in relation to:
- 11.1.1 monitoring compliance with Chain of Responsibility Laws;
- 11.1.2 responding to an investigation or enquiry from any third party regarding compliance with Chain of Responsibility Laws; and
- 11.1.3 management of any transport and journey documentation.
- 11.2 Each of the Customer and Resourceco 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 a Resourceco site.
- 11.3 Each of the Customer and Resourceco must:
- 11.3.1 notify the other party immediately of any actual or suspected breach of a Chain of Responsibility Law by it or any of its Personnel; and
- 11.3.2 take immediate steps to remedy its actual or suspected breach (at its own cost) of any Chain of Responsibility Laws.
- 12. Force Majeure**
- Resourceco 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 Resourceco.
- 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

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and acknowledges that Resourceco 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 Resourceco, 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) Resourceco 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 Resourceco 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 Resourceco 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 (Cth), that disclosure by a credit reporting agency and/or use by Resourceco of the relevant information may occur for the purposes of assessing any Application;
- 15.4 Resourceco will collect, use and disclose any personal information provided in the Application and Contract Particulars in accordance with its Privacy and Credit Reporting Policy (which can be accessed at www.Resourceco.com.au);
- 15.5 Resourceco may supply information about the Customer's credit worthiness to other credit providers; and
- 15.6 Resourceco may disclose the contents of any credit report on the Customer to any of Resourceco's solicitors and mercantile agents.

16. Modern Slavery

- 16.1 The Customer certifies that any Materials supplied to ResourceCo were sourced, processed or manufactured in compliance with Modern Slavery laws of the countries in which the Customer operates.
- 16.2 The Customer has in place adequate and reasonable policies, controls, procedures and training designed to prevent, detect, assess, manage and remedy (as appropriate) Modern Slavery risks in its operations and supply chain.

17. General Clauses

- 17.1 With reasonable notice to the Customer, Resourceco may terminate, assign or subcontract any rights or obligations under a Contract.
- 17.2 The rights and obligations under a Contract are personal and cannot be assigned by the Customer without the prior written consent of Resourceco. Resourceco is free to assign the Contract without consent.
- 17.3 If the Customer is a trustee of a trust, it is bound by a Contract both personally and in its capacity as trustee.

- 17.4 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.

- 17.5 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.

- 17.6 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.

- 17.7 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.

- 17.8 Unless stated otherwise, a reference to money means Australian currency.

- 17.9 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 trustee and beneficiary.

- 17.10 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.

- 17.11 A Contract may only be amended in writing signed by the parties.

- 17.12 In these Credit & General Terms and any Contract, unless the contrary intention appears:

- 17.12.1 a clause or annexure is a clause of or an annexure to these Credit & General Terms or the relevant Contract;

- 17.12.2 any legislation includes any subordinate legislation under it and includes that legislation and subordinate legislation as modified, amended or replaced; and

- 17.12.3 'includes' or 'including', or similar words do not limit what else might be included.

18. Definitions

- 18.1 '**Application**' means the application by the Customer to Resourceco for trade credit.

- 18.2 '**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) which is the bid rate shown at approximately 10.15am (Sydney time) on the Thomson Reuters online page on BBSY on the date an amount begins to accrue interest.

- 18.3 '**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) for heavy vehicles, including but not limited to the Heavy Vehicle National Law Act 2012 (Qld), Heavy Vehicle National Law Application Act 2013 (VIC), Heavy Vehicle National Law (NSW) (2013 No 42), Heavy Vehicle National Law (ACT) Act 2013, Heavy Vehicle National Law (SA) Act 2013,

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- Road Traffic (Administration Act 2008 (WA), Road Traffic (Vehicles) Act 2012 (WA) in force as at the date of this Contract and as amended from time to time.
- 18.4 **'Claim'** includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, damage, loss, cost, expense or liability however arising and whether:
- 18.4.1 known or unknown;
 - 18.4.2 past, present or future;
 - 18.4.3 based in contract, tort or statute;
 - 18.4.4 involving a third party or a party to the Contract; and
 - 18.4.5 for interest or costs.
- 18.5 **'Classification Report'** means a report from a suitably qualified environmental consultant or results that give suitable classification (in Resourceco's reasonable opinion) of the Material and which specifies the origin/source of the Material and its composition.
- 18.6 **'Contract'** means a contract between Resourceco and the Customer comprising of these Credit & General Terms and any one or more of:
- 18.6.1 the Application;
 - 18.6.2 the Incoming Material Terms;
 - 18.6.3 the Outgoing Product Terms; and
 - 18.6.4 the Transport Terms,
- and includes the Contract Particulars.
- 18.7 **'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.
- 18.8 **'Credit Limit'** means the amount approved by Resourceco in the Application or such other amount as approved from time to time by Resourceco.
- 18.9 **'Credit & General Terms'** means these terms and conditions.
- 18.10 **'Customer'** means the customer identified in the Application or Contract Particulars.
- 18.11 **'Excluded Material'** means in respect of a Premises, any material that Resourceco is not licensed to receive at that Premises.
- 18.12 **'GST, taxable supply and tax invoice'** have the same meaning as in the GST Act.
- 18.13 **'GST Act'** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 18.14 **'Incoming Material Terms'** means Resourceco's terms for the receipt of Material and which terms are available at www.resourceco.com.au/terms-and-conditions/ (at the time of entry into the Contract).
- 18.15 **'Law'** means any applicable law, statute, regulation, ordinance, by-law or subordinate legislation or other document enforceable under any statute, regulation, order, rule or subordinate legislation.
- 18.16 **'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, and includes:
- 18.16.1 the cost of any action taken by the person to protect itself against any Loss or to preserve any right it has under a Contract;
 - 18.16.2 any taxes or duties payable by the person in connection with a Contract (other than tax on its assessable income); and
 - 18.16.3 where applicable, legal costs on an indemnity basis or on a solicitor and own client basis, whichever is higher.
- 18.17 **'Material'** means all Material that is not Excluded Material.
- 18.18 **'Modern Slavery'** means conduct that would breach Divisions 270 and 271 of the *Commonwealth Criminal Code* if it occurred in Australia, human trafficking or the worst forms of child labour;
- 18.19 **'Outgoing Product Terms'** means Resourceco's terms for the supply of Product and which terms are available at www.resourceco.com.au/terms-and-conditions/ (at the time of entry into the Contract).
- 18.20 **'Personnel'** means of a party, an employee, representative, associate, officer, agent or subcontractor of that party.
- 18.21 **'PPSA Law'** means the Personal Property Securities Act 2009 (Cth) (**'PPS Act'**) and regulations made under the PPS Act as amended from time to time and any amendment made to any other legislation as a consequence of the PPS Act.
- 18.22 **'Premises'** means a Resourceco location for collection of Product or delivery of Material as the case may be.
- 18.23 **'Price'** means the price for Resourceco to receive the Material, and/or provide the Transport Services and/or to supply the Product as contained in the Contract Particulars.
- 18.24 **'Product'** means any product supplied by Resourceco under a Contract.
- 18.25 **'Related Party'** means a related body corporate or any entity related to Resourceco as defined in the Corporations Act.
- 18.26 **'Resourceco'** and **'Resourceco Group'** 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 Credit & General Terms relate and that entity's successors, assigns, and any other Resourceco Related Party.
- 18.27 **'Resourceco Policies'** means all policies issued by Resourceco for access to the Premises, for receipt and handling of Material and other policies issued by Resourceco from time to time.
- 18.28 **'Security of Payments Acts'** means the *Building and Construction Industry Security of Payment Act 1999* (NSW), the *Building and Construction Industry Security of Payment Act 2002* (Vic), the *Building and Construction Industry Payments Act 2004* (Qld), the *Building and Construction Industry Security of Payment Act 2009* (South Australia), the *Construction Contracts Act 2004* (WA), the *Building and Construction Industry (Security of Payment) Act 2009* (ACT), the *Building and Construction Industry Security of Payment Act 2009* (Tas), and/or the *Construction Contracts (Security of Payments) Act 2009* (NT).
- 18.29 **'Transport Services'** means services provided by Resourceco for the collection and delivery of Material and for the delivery of Product.
- 18.30 **'Transport Terms'** means Resourceco's terms for the provision of Transport Services and which terms are available at www.resourceco.com.au/terms-and-conditions/ (at the time of entry into the Contract).