

## **Standard terms and conditions**

### **1. General**

- 1.1** These are the terms and conditions referred to in the order.

#### *When terms and conditions apply*

- 1.2** These standard terms and conditions (standard conditions) apply to any contract entered into by Bob Adams Lifting Pty Ltd A.C.N 105 508 549 (BAL) receiving an order from its customer (the customer), whether as an offer or acceptance of an offer (the contract), where that order refers to the BAL standard terms and conditions.

### **2. Interpretation**

- 2.1** In these standard conditions:

**Goods** means any material, plant, item or equipment specified in the order.

**Manufacture** includes grow, extract, produce, process and assemble.

**Property** includes every type of right, interest or thing which is legally capable of being owned and includes, but is not restricted to, physical goods, equipment and real property, as well as intangibles such as intellectual property, contract options and goodwill.

**Supplies** means property and/or services as the context requires.

- 2.2** Headings are not part of these standard conditions.

#### *Conditions to prevail*

- 2.3** Subject to clause 6, these standard conditions will prevail in any conflict between them and the terms of any offer or acceptance by the customer.

### **3. Special conditions**

- 3.1** The contract conditions include any special conditions referred to in the order and if any such special conditions are inconsistent with these standard conditions, the former will, to the extent of this inconsistency, prevail.

### **4. Delivery**

#### *Time, place and manner*

- 4.1** Subject to clause 9, delivery of the goods must be made at the time, place and in the manner specified in the order. Any changes to the delivery mode may render a cost variation at the customer's expense.

#### *Later delivery*

- 4.2** BAL can specify in writing a later time for delivery, subject to its receipt of delivery from its supplier(s).

#### *Documentation*

- 4.3** Either a delivery docket, packing note or invoice is to accompany all deliveries made, quoting the order number, quantity dispatched, description of the supplies and consignment details.

### **5. Acceptance and Deposit and Cancellation**

- 5.1** The order may state that the customer shall pay a deposit amount before BAL attends in accordance with the order. Once a deposit is paid, unless in circumstances stated in clauses 6.2 and 6.4, the deposit is non-refundable by BAL to the customer.

- 5.2** Once the customer accepts the quote and/or sends the order to BAL, it can cancel it within 7 days from the date of notice of acceptance of the quote or the date of issue of the order ("**Cooling-off Period**") but it cannot cancel it thereafter. If the customer cancels after 7 days from the date of notice of acceptance of the quote or the date of issue of the order then, the customer is liable to pay to BAL the full amount stated in the quote and/or order in accordance with the terms stated in this document.

- 5.3** The customer can waive the Cooling-off Period by written notice to BAL.

### **6. Quality**

- 6.1** The goods will be of merchantable quality.

- 6.2** The customer can inspect the goods at any time and reject those not in accordance with the contract.

- 6.3** The customer cannot reject goods after acceptance.

- 6.4** The customer is not liable to pay for:

- rejected goods (that is, goods supplied not in accordance with the order).

- 6.5** If goods are rejected by the customer, BAL must, without prejudice to the customer's rights:

- (a) replace or repair, without cost to the customer, the rejected goods;
- or
- (b) remove the rejected goods and refund payment of the rejected goods.

### **7. Ownership of property**

- 7.1** Ownership of, and risk of loss of or damage to the goods, passes to the customer upon delivery.

### **8. Warranty**

#### *Correction*

- 8.1** If the customer gives reasonable notice of any defect or omission discovered in the goods during any warranty period, BAL must correct that defect or omission without delay and at no cost to the customer.

- 8.2** Where no warranty is otherwise specified, the warranty period shall be 90 days from acceptance by the BAL.

#### *Cost of warranty*

- 8.3** The customer must meet all costs of, and incidental to, the discharge of warranty obligations, including any packing, freight, disassembly and re-assembly costs.

### **9. Indemnity and insurance**

- 9.1** The customer indemnifies BAL, its officers, employees and agents against all loss, damage, injury or expense BAL may sustain or incur as a result, whether directly or indirectly, of any breach of this contract, including any action or claim for alleged infringement of any patent, copyright, registered design, trademark or any other intellectual property rights, by reason of the contract.

- 9.2** BAL will, for so long as any obligations remain in connection with this contract, effect and maintain appropriate insurance policies. Upon request by the customer, BAL will provide the customer with proof of insurance.

### **10. Payment**

#### *Due days*

- 10.1** The customer must pay for the supplies no later than the due date stated in the invoice upon receipt of a correctly rendered invoice.

- 10.2** If the customer does not pay BAL's invoice within the due date then, BAL will charge a late payment fees of 15% per annum on the overdue invoice(s) and has the right to terminate the contract with the customer in accordance with this document.

#### *Invoices*

- 10.3** invoice will be correctly rendered if it is addressed in accordance with the order, identifies the order number, is a tax invoice for GST purposes and is, where explanation is necessary, accompanied by documentation substantiating the amount claimed.

#### *Assignment*

- 10.4** The customer must not, without BAL's consent in writing, assign the customer's rights under the contract.

## **11. Applicable law**

**11.1** The contract will be governed by and construed in accordance with the laws in force in New South Wales and the parties agree to comply with this jurisdiction.

## **12. Termination**

**12.1** If BAL:

- (a) fails to deliver the goods by the date stated in the order or within a reasonable period;
- (b) is in breach of any material term of the contract;
- (c) being a corporation (other than for the purpose of a reconstruction or amalgamation):
  - (i) is the subject of a compromise or arrangement with its creditors;
  - (ii) in respect of property of which a receiver or a receiver and manager is appointed
  - or
  - (iii) in respect of which a provisional liquidator or liquidator is appointed,the customer can, without prejudice to any other rights and remedies it has under the contract or otherwise, terminate the contract in whole or part by notice in writing to BAL.

**12.2** If the customer:

- (a) fails to pay the invoice in accordance with the contract;
- (b) is in breach of any material term of the contract;
- (c) being a corporation (other than for the purpose of a reconstruction or amalgamation):
  - (i) is the subject of a compromise or arrangement with its creditors;
  - (ii) in respect of property of which a receiver or a receiver and manager is appointed;
  - or
  - (iii) in respect of which a provisional liquidator or liquidator is appointed;BAL can, without prejudice to any other rights and remedies it has under the contract or otherwise, terminate the contract in whole or part by notice in writing to the customer.

**12.3** On termination:

- (a) subject to clauses 6.2 and 6.4, the customer will be required to pay the invoice(s).;

## **13. Waiver**

**13.1** A party's failure or delay to exercise a power or right does not operate as a waiver of the power or right. A waiver is not effective unless it is in writing.

## **14. Variation**

**14.1** This contract will only be varied by written agreement between BAL and the customer. BAL and the customer shall act reasonably in deciding whether to agree to a variation, as requested by the other party.

## **15. Negation of employment, partnership and agency**

**15.1** This contract does not create a relationship of employment, agency or partnership between the customer and BAL.

## **16. Price**

**16.1** The contract price for the supplies includes:

- (a) all taxes, duties and other imposts for which the contractor is liable;
- (b) all insurance costs; and
- (c) all charges for performances of the services

## **17. Personal Property Security Act 2009 (Cwlth)**

**17.1** The customer agrees and acknowledges that under the Personal Property Securities Act 2009 Cth (PPSA):

- (a) this document and contract constitute a security agreement;
- (b) the customer grant BAL a purchase money security interest in the goods and any proceeds; and
- (c) BAL may register a financing statement on the Personal Property Securities Register (PPSR).

**17.2** The customer agrees and acknowledges to provide information and do anything BAL reasonably require for it to register, maintain and enforce its security interest against the customer.

**17.3** The customer waives the requirement to provide information under various provisions of the PPSA. In particular, the customer agrees that as provided for in:

- (a) section 157 – BAL is not required to give the customer a verification statement;
- (b) section 144 – BAL is not required to give the customer notices under section 95, 118, 121, 130, 132 and 135; and
- (c) section 275 – BAL is not required to provide interested persons with information relating to its security interest and neither is the customer.

**17.4** Terms defined in the PPSA (including purchase money security interest, verification statement, proceeds and various other terms) have the same meaning when used in this document.