

**Definitions**

“The Company” means Q-Boss Pty Ltd (ABN 35 149 600 448).

“Materials” means the material supplied by the Purchaser.

“Goods” means the Goods or Services the Company is contracted to supply.

“New Goods” means the goods acquired from the Company, with services or material added by the Purchaser.

The “Order” will be the official purchase order received in writing from the Purchaser.

“Quotation” means any written quotation supplied by the “Company”.

“Conditions” means the Terms and Conditions contained within this document.

“Purchaser” means the person to whom the “goods or services” are being supplied.

“Specification” means any specification which was covered in writing in a request for a Quotation and is included in a subsequent purchase Order.

“Parties” means the Company and the Purchaser:

**Acceptance of a Quotation**

- (a) A Quotation shall be accepted upon receipt by the Company of written notification by the Purchaser that the Quotation is accepted.
- (b) In the event that the written notification of acceptance purports to add different conditions, such conditions shall be deemed void and unenforceable, unless the Company provides notice in writing expressly accepting such revised conditions and in all other respects.
- (c) Acceptance of the Quotation by the Purchaser shall otherwise be deemed to be solely on the basis of these Conditions.
- (d) The Company shall be entitled to amend any clerical, mathematical or typographical error notwithstanding acceptance of a Quotation and the Conditions are deemed to be subject to any such correction.
- (e) Notwithstanding the foregoing, the Company may waive acceptance of a Quotation in writing, in its absolute discretion.
- (f) Once a Quotation is accepted, including oral acceptance should written acceptance be waived by the Company, the Purchaser is liable for all costs and losses suffered by the Company, whether foreseeable by the Purchaser or not, including loss of profits, or any other form of loss directly or indirectly resulting from such cancellation or suspension. The Purchaser shall be liable to pay the Company all costs associated with recovery of such costs and losses, including legal costs, on a full indemnity basis.
- (g) Whether or not a Quotation is accepted, the Purchaser agrees that the Quotation is confidential and cannot be used for any purpose other than business between the Company and the Purchaser. The Purchaser shall not assign its rights or obligations under any contract comprising the Conditions.
- (h) The prices and/or rates quoted are based on the award of the total scope of work tendered. In the event of a partial award, the Company reserves the right to revise the price/rates accordingly.

### **Delivery of Goods/Services**

- (a) The Company shall use reasonable endeavours to deliver the Goods within the time specified in the Quotation.
- (b) Unless stated otherwise, all Goods are to be collected by the Purchaser from the Company's premises.
- (c) In the event that the Quotation specifies that the Goods are to be delivered elsewhere, the Goods remain at the Purchaser's risk from the time that the Goods leave the Company's site for delivery to the Purchaser.
- (d) The Purchaser will be responsible for any delivery costs associated with Goods that are not collected by the Purchaser from the Company's premises
- (e) In the event that the Purchaser requests the Company provide an employee to drive, test, operate, adjust or otherwise handle the Goods or any vehicle or equipment incorporating the Goods, the Purchaser shall indemnify and keep indemnified the Company from and against all claims and demands whatsoever for loss or damage suffered by any person as a result of any act or omission on the part of such employee, negligent or otherwise, in handling the Goods or the equipment or vehicle incorporating the Goods.

### **Purchaser Vehicle and Goods**

In the event that the Purchaser delivers its material to the Company for Goods to be provided in respect of them, such material shall be entirely at the Purchaser's risk and the Company accepts no responsibility for any loss or damage thereto. The Purchaser warrants that it has title to such material and has the full authority to require the Company to provide Goods in respect of such material.

### **GST (Goods and Services Tax)**

Will be charged on all Goods or Services supplied.

### **Payment**

Unless credit terms are otherwise agreed to in writing, payment by the Purchaser must be made in full to the Company on or before delivery of the Goods or at the time when the Company has given notice to the Purchaser that the Goods are ready to be delivered.

### **Credit Terms**

- (a) If the Purchaser wishes to purchase Goods on credit from the Company, then it must first apply for such credit with the Company.
- (b) The Company may, in its sole discretion, decide whether or not to extend the Purchaser credit.
- (c) The Company will advise the Purchaser if credit terms have been granted or refused.
- (d) Where the Company agrees to extend credit to the Purchaser, the Company will submit to the Purchaser an invoice for the Goods (or any part thereof) on completion of the Order,.
- (e) Unless advised to the contrary, payment is required in full within 30 days of the end of the month in which the invoice is issued.

- (f) Notwithstanding any date for payment which may be specified on any invoice issued by the Company or otherwise provided for in these Conditions, the Purchaser shall at all times ensure that the total amount outstanding from time to time remains within the pre-determined credit limit set by the Company.
- (g) Should the Purchaser default in the payment of any amount due on a due date, then all monies due to the Company shall immediately become due and payable and shall be paid by the Purchaser within SEVEN (7) days of the date of demand.
- (h) The Company shall be entitled to charge interest at the rate of 15% per annum on all amounts so due from the date of the due payment until the day of actual payment.
- (i) Any expenses, costs or disbursements incurred by the Company in recovering any outstanding debt, including collection agency fees and solicitor's costs, shall be paid by the Purchaser.
- (j) The Company shall be entitled without notice to terminate any credit arrangement with the Purchaser in the event of the Purchaser defaulting on any of the Conditions herein contained.
- (k) The Company shall be entitled at any stage during the continuance of this agreement to request such security or additional security as the Company shall in its discretion think fit and shall be entitled to withhold supply of any Goods or credit arrangements until such security or additional security shall be obtained.
- (l) If the Purchaser requests documentation such as manufacturer's data reports etc, the Company will submit such reports as soon as practical upon completion of the Order. The Company will not accept any retention stipulations subject to submission of quality assurance documents.
- (m) If at the completion of a calendar month the Company has outlaid funds relating to materials, external services or direct labour in relation to an Order, it reserves the right to claim in the form of a progress payment for such expenditure from the Purchaser

### **Retention of Title**

- (a) Ownership of the Goods remains with the Company until the Purchaser has paid in full the price of the Goods.
- (b) In the event that the Goods are delivered to the Purchaser, or any other person nominated by the Purchaser prior to payment by the Purchaser for the Goods, the Purchaser agrees with the Company that the Purchaser:
  - a. Must store the Goods separately from other property; and
  - b. If the purchaser makes a new object from the Goods, or incorporates or mixes the Goods with other goods, ("the New Goods"), ownership of the New Goods immediately passes to the Company at the moment of the event or operation by which the Goods are converted into incorporated or mixed or become part of the New Goods and the Purchaser must keep the New Goods as fiduciary owner for the Company and must store the New Goods separately from any other property.

### **Variations**

- (a) The Company shall not be liable to undertake any variations to the Specification required by the Purchaser, provided that the Company may, in its absolute discretion, agree to any such variation on

such terms as to price and extension of time for delivery of the Goods as shall be agreed by the Company in writing.

- (b) The prices specified in this Quotation for the Goods are based on the cost of materials, transport and other charges existing as at the date of quotation.

### **Exclusion of Liability**

- (a) The Company shall not be liable under any circumstances to the Purchaser for any economic or consequential loss, damage or other expenses suffered by the Purchaser arising out of or in the consequence of any fault or defect in the Goods unless such fault or defect was proven to be caused by the negligence of the Company.
- (b) To the extent that they are capable of being excluded, any warranties, guarantees or conditions established by legislation or common law or equity and deemed to form part of any contract incorporating these Conditions are hereby excluded.
- (c) The Company shall not provide any credit for any Goods returned by the Purchaser unless the Company elects to do so in its absolute discretion.
- (d) Provided the Purchaser does not interfere with the ordinary and smooth operation of work at the Company's site, the Purchaser may, on providing reasonable notice to the Company, inspect the Goods at the Company site.

### **Default**

In the event that:

- (a) The Purchaser breaches any of its obligations comprised in these Conditions and does not remedy such default within SEVEN (7) days of written notice by the Company requiring rectification of the default; or
- (b) The Purchaser is insolvent or suffers bankruptcy proceedings to be instituted or become subject to any external administration under the Corporations Law; or
- (c) A change occurs in the circumstance which is represented by the Purchaser to exist, which in the reasonable opinion of the Company, may have a material adverse affect on the ability of the Purchaser to perform its obligations hereunder;

then the Company may, without prejudice to any other rights or remedies it might have;

- (a) Cancel the provision of credit to the Purchaser without notice;
- (b) Demand immediate payment of the sum equal to the price of all Goods then unpaid, together with costs and expenses referred to herein;
- (c) Retain any cash deposit that the Purchaser may have paid to the Company;
- (d) Enter into any premises in respect of which the Purchaser has any degree of possession or control in order to recover and re-sell the Goods or the New Goods, and apply the proceeds to the payment of all monies owing to the Company by the Purchaser, whether under an agreement containing these conditions or any other agreement entered into between the Company and the Purchaser;

- (e) Suspend and/or terminate performance of any other contracts which the Company has with the Purchaser.

A document signed by an officer of the Company as the amount owing by the Purchaser is conclusive evidence of that amount, except in the case of manifest error.

### **Costs**

In the event that payment is not made by the Purchaser in accordance with these conditions, the Purchaser must pay the Company all costs and other expenses of whatsoever nature (including all debt collection fees and commissions, and legal fees and disbursements on a solicitor/client basis) which may be incurred by the Company in recovering any sums due to it by the Purchaser.

### **Resolution of Disputes**

- (a) Where the Purchaser is in default of its obligations under these Conditions, the Company in its absolute discretion may issue proceedings in a court of law,.
- (b) Any dispute between the Company and the Purchaser in relation to any matter arising in respect of the provision of the Goods by the Company to the Purchaser, shall be determined by an arbitrator appointed by both parties pursuant to the provisions of the Commercial Arbitration Act 1985 or failing appointment by agreement, such arbitrator as may be nominated by the President of the Law Society from time to time.
- (c) If the matters in dispute involve questions of law as well as technical issues, there shall be two arbitrators appointed, being a duly qualified legal practitioner to determine questions of law (preferably a barrister) and a duly qualified expert to determine technical issues within the expert's area of expertise.
- (d) The agreement incorporating these Conditions, is governed by and construed in accordance with the laws of Western Australia
- (e) The Purchaser agrees to submit to the exclusive jurisdiction of the Courts of Western Australia and irrevocably waives any objections to the venue of any legal process selected by the Company.

### **General**

- (a) If any Condition is or becomes for any reason wholly or partly invalid, that Condition is to the extent of the invalidity severed without prejudice to the continuing force and validity of the remainder of the Conditions.
- (b) Any notice to be given to the Purchaser is deemed to be received by the Purchaser upon it being posted, emailed or sent by facsimile to the trading or registered address of the Purchaser addressed in this Quotation
- (c) If the Purchaser is the trustee of any trust ("the Trust") at any time, the Purchaser is personally liable for the performance of the obligations contained in these Conditions and agrees that the Company shall be entitled to have recourse to the assets of the Trust in order to satisfy the Purchaser's obligations under these Conditions.

