



# **Australian Road Services PTY LTD**

## 1 Payment

The Customer must pay in full for all Products supplied by Australian Road Services by the 30th of the month following the date of the invoice (30 days).

## 2 Interest and costs

Australian Road Services may, in its absolute discretion, charge the Customer interest on all amounts (including legal costs on a solicitor and own client basis, charges and expenses) not paid within the specified credit period at a rate equivalent to the reference rate charged by the Commonwealth Bank from the invoice date until payment of the debt.

## 3 GST

Each amount payable by the Customer under these Terms in respect of a Taxable Supply by Australian Road Services is a GST exclusive amount and the Customer must, in addition to that amount and at the same time, pay the GST payable in respect of that supply. "Taxable Supply" and "GST" have the meanings set out in the A New Tax System (Goods and Services) Act 1999.

## 4 Withdrawal or Variation of Credit

Australian Road Services may at any time vary or withdraw any credit granted to the Customer without being liable to any third party. Credit limits may be imposed by Australian Road Services in its absolute discretion. Australian Road Services reserves the right to modify any credit limit at any time without any liability whatsoever to the Customer.

## 5 Property

- a) Property in the Products does not pass until the Customer has paid all monies owing to Australian Road Services in full. Risk in the Products passes to the Customer at the time of delivery.
- b) Until payment of all monies owed by the Customer to Australian Road Services, the Customer holds the Products as fiduciary, Bailee and agent Australian Road Services and must keep the Products physically separate from all other goods of the Customer, and clearly identified as owned by Australian Road Services.
- c) If an Event of Default occurs, then without prejudice to Australian Road Services' other rights including any rights Australian Road Services may have pursuant to any security of payments legislation applicable in the relevant State or Territory, Australian Road Services may without notice to the Customer enter any premises occupied by the Customer or any other place where the Products may be and recover possession of them. If the Customer sells any of the Products while money is owed to Australian Road Services, the Customer must keep the proceeds of the sale in a separate account and not mix them with any other funds.
- d) If the Customer uses the Products in some manufacturing or construction process of its own or of some third party, then the Customer must hold such part of the proceeds of such manufacturing or construction process as relates to such Products in trust for Australian Road Services. Such part is deemed to equal in dollar terms the amount owing by the Customer to Australian Road Services and at the time of payment of such proceeds the Customer's obligation to pay the amount owed for such Products will be discharged.
- e) If the Products are resold, or goods using the Products are manufactured and resold by the Customer, the Customer holds all of the book debts owed in respect of such sales and proceeds of such sales in trust for Australian Road Services. Such part of the book debts and proceeds is deemed



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to equal in dollar terms the amount owed by the Customer to Australian Road Services at the time of the receipt of such book debts.

- f) The Customer consents to Australian Road Services registering a security interest in relation to Products supplied to the Customer, and the Customer will provide all assistance reasonably requested by Australian Road Services to facilitate this registration.

### **6 Charge over Customer's Property**

- a) To further secure the payment of all moneys payable by the Customer, the Customer hereby charges in favour of Australian Road Services all the right, title, estate and interest which it now has or may later acquire in any freehold or leasehold property.
- b) The Customer further agrees that if demand is made by Australian Road Services the Customer will immediately execute a mortgage in registrable form or other instrument of security, as required by Australian Road Services, and if it fails to do so within a reasonable time of being so requested, the Customer irrevocably and by way of security appoints any secretary, director, manager or attorney engaged by Australian Road Services to be its true and lawful attorney to execute and register such instruments.

### **7 Suspension or Ceasing of Supply**

- a) Australian Road Services may in its complete discretion and without incurring any liability to the Customer, cease or suspend supply of Products to the Customer or amend these Terms.
- b) Without limiting clause 7(a), if an Event of Default occurs or the Customer otherwise fails to comply with its obligations under these Terms, Australian Road Services may, without prejudice to its other rights: immediately terminate all agreements and arrangements with the Customer; call up monies owed to it by the Customer; retain all monies paid on account; cease further deliveries; recover from the Customer all loss of pro fits arising there from ; and/or take immediate possession of any Products not paid for, without incurring liability to any third party.

### **8 Set-off/Contra Arrangements**

If the Customer is also a supplier of goods and/or services to Australian Road Services, Australian Road Services may, in its absolute discretion, apply amounts owed by the Customer to Australian Road Services against amounts owed by Australian Road Services to the Customer (set-off) and/or receive goods and/or services from the Customer in full or part satisfaction of amounts owed by the Customer to Australian Road Services (contra arrangements) on the following terms:

- a) Australian Road Services may commence and/or cancel set-off/contra arrangements at any time and with immediate effect upon written notice to the Customer.
- b) Australian Road Services will not be liable for any loss or damage whatsoever suffered by the Customer as a result of a decision by Australian Road Services to commence and/or cancel set-off/contra arrangements.
- c) A decision by Australian Road Services to commence set-off/contra arrangements with a Customer on any occasion does not amount to a course of conduct or dealing on the part of Australian Road Services such that the Customer should expect that the set-off/contra arrangements will remain in effect indefinitely.
- d) The existence of any set-off/contra arrangements with the Customer does not amount to a waiver by Australian Road Services of any of its rights or remedies under these Terms, at law or in equity including, but not limited to, Australian Road Services' right to demand payment from the Customer of



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the full amount owing to Australian Road Services by the Customer at any time and the right to charge interest on any amounts not paid within the credit period.

## **9 Liability**

Australian Road Services will not be liable for any loss or damage whatsoever suffered by the Customer as a result of any act, omission or statement made by Australian Road Services, its employees, contractors or agents whether negligent or not, except that nothing in these Terms limits any liability imposed by any statute unless or to the extent that it is lawful to do so.

## **10 Certification**

A statement signed by an Officer certifying the amount of any moneys payable by the Customer or identifying any Products as “unpaid for” is, in the absence of manifest error, conclusive and binding on the Customer.

## **11 Notification of Change of Details:**

The Customer will notify Australian Road Services of any change in its structure or management, including any change of director, shareholder, unit holder or any change in partnership or trusteeship within 7 days of the date of change. Until the Customer notifies Australian Road Services of the change, the Customer remains liable for and hereby indemnifies Australian Road Services for all Products sold to the Customer pursuant to these Terms.

## **12 Effect of Other Terms**

These Terms are in no way affected by any other express or implied terms contained in any terms of sale issued in relation to the sale of the Products. No terms of the Customer apply to any agreement between the Customer and Australian Road Services where inconsistent with these Terms.

## **13 Expenses**

The Customer must pay to Australian Road Services any costs, charges and expenses (including all stamp duty and legal fees calculated on a full indemnity basis) incurred by Australian Road Services in connection with the entry into these Terms, the exercise or attempted exercise of any power, right or remedy under these Terms, and the failure of the Customer to comply with these Terms.

## **14 Trusts**

Where the Customer is a trustee, the Customer shall be liable on the account and in addition the assets of the trust shall be available to meet payment of any monies due and owing to Australian Road Services.

## **15 Severance**

Each clause and sub clause of these Terms is separate and independent. If any clause or sub clause is found to be invalid or ineffective, the other clauses or sub clauses or parts will not be adversely affected.

## **16 Time**

Time is of the essence in respect of all the Customer's obligations under these Terms.



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## **17 Application of Laws**

The parties submit to the non-exclusive jurisdiction of the courts of the State or Territory in which the Application for Commercial Credit was entered into and the law applying in that State or Territory is the proper law governing these Terms.

## **18 Assignment**

The Customers agrees that Australian Road Services may by notice to the Customer assign any rights against the Customer to any third party.

## **19 Definitions**

In these Terms unless the context requires otherwise:

- a) "Customer" means each and every person or corporation to whom Australian Road Services supplies Products;
- b) "Event of Default" means any of the following events: (i) the Customer fails to pay for the Products; (ii) the Customer is in breach of these Terms; (iii) if the Customer is a company: an order is made or a resolution is effectively passed for winding up of the Customer; the Customer resolves to appoint a receiver or provisional liquidator or an administrator, or a receiver or provisional liquidator or an administrator is appointed; the Customer goes into liquidation or makes an assignment or an arrangement or composition with its creditors; the Customer stops payment or is deemed unable to pay its debts within the meaning of the Corporations Act 2001; if the Customer is a natural person, an order is made for the Customer's bankruptcy, or the Customer dies or becomes mentally or physically incapable of managing his or her affairs or an order is applied for or made to place the assets and affairs of the Customer under administration; the Customer ceases or threatens to cease carrying on business;
- c) "Officer" means each director, secretary, manager and authorised representative of Australian Road Services;
- d) "Products" means all goods supplied and all services rendered by Australian Road Services to the Customer;
- e) "Terms" means these General Terms and Conditions.