

## Standard Terms of Trade

### 1. Application of Terms

- 1.1** These Standard Terms of Trade ("Terms"), along with the Credit Application and Terms and Conditions of Credit, apply to and form part of the Credit Agreement between Queensland Cotton ("QC") and the Customer ("the Agreement") for the supply of goods ordered by the Customer from time to time.
- 1.2** The Customer acknowledges that the Customer has read and understands these Terms and the Customer acknowledges and agrees that all orders placed with QC by the Customer will only be accepted subject to these Terms.
- 1.3** Where there is any inconsistency in the Customer's written order for goods and this Agreement, the provisions of the written order for goods shall prevail to the extent of the inconsistency.
- 1.4** QC may vary the Terms by written notice to the Customer from QC's properly authorised representative. Any ordering of goods after the giving of a written notice of variation to the Customer will be an acceptance of the varied Terms.

### 2. Order of Goods

The Customer may from time to time order goods from QC pursuant to the Agreement.

### 3. Price to be paid

- (a) The price payable for the goods is QC's price for the goods ("the Price") as quoted by QC at the time of order by the Customer.
- 3.2** Except as otherwise agreed, the Price includes all transportation costs, insurance and other charges or costs associated with the delivery by QC of the goods to the Customer.
- 3.3** Unless otherwise indicated by QC, the Price is exclusive of any Goods and Services Tax ("GST") as defined by the *A New Tax System (Goods & Services Tax) Act 1999* (Cth).
- 3.4** Any price list maintained by QC may change at any time without notice but any orders placed by the Customer will be invoiced by QC to the Customer

at the Price contained in the price list at the date of the order, or at the price quoted by QC at the time of order.

### 4. Taxes and GST

- 4.1** Where a supply made by QC is subject to GST, the Customer will upon receipt of a valid tax invoice pay, in addition to any other consideration payable to QC, an amount equal to the GST on that supply. All other Taxes payable in Australia shall be the liability of the Customer.
- 4.2** For the purposes of these Terms, "Taxes" means all present and future taxes including without limitation, GST, levies, imposts, duties, excise, charges, fees, deductions, or withholding of any nature imposed, levied, collected, withheld or assessed by any taxing authority.

### 5. Payment by the Customer

- 5.1** On receipt of an order from the Customer, an invoice detailing the goods to be dispatched and the Price of the goods shall be raised ("the Invoice").
- 5.2** Payment of the Price will be made by the Customer to QC within the number of days specified by the Invoice or as otherwise agreed between the parties in writing.
- 5.3** Payments are to be made by direct debit, electronic funds transfer or cheque payable to QC, unless a specific payment method is contemplated in the Invoice or agreed between the parties in writing.
- 5.4** If the Customer's payments are made by cheque, the Invoice shall not be deemed to be paid until clear funds have been received by QC.
- 5.5** Any bank charges incurred by QC in re-presenting cheques in circumstances where the Customer has paid the Price by way of a cheque which has been dishonoured shall be paid by the Customer to QC on demand.
- 5.6** If any item on an Invoice is in dispute after giving the required notice in accordance with clause 6, the Customer must still pay the balance owing under the Invoice for items not in dispute.

### 6. Supply and Delivery

**6.1** QC will supply the goods to the Customer within a reasonable time period after order of the goods by the Customer.

**6.2** Delivery of Goods will not be made to the Customer if the Customer has not paid in accordance with the terms of the Agreement for previous goods supplied.

**6.3** Delivery ("the **Delivery**") shall be deemed to have taken place:

- (a) in the case of goods to be delivered to the Customer's premises, when the goods are unloaded at the Customer's premises;
- (b) in the case of goods stored at the time the Customer's contractor removes the goods from the storage facility; or
- (c) in all other cases, when the goods are collected by or on behalf of the Customer.

**6.4** QC shall use all endeavours to ensure prompt Delivery of the goods to the Customer but QC shall not be liable in connection with Delivery of goods later than any date requested by the Customer for Delivery.

## **7. Acceptance of the Goods**

**7.1** The Customer must give written notice to QC of any defect, shortfall or other claim in respect of the goods or the Invoice within 14 days after Delivery.

**7.2** The Customer shall be deemed to have accepted the goods 14 days after Delivery.

**7.3** The Customer acknowledges and agrees that the following provisions apply to the maximum extent by law subject to any rights the Customer may have under statutory protection consumer laws including the *Competition and Consumer Act 2010* (Cth) and this clause is to be read subject to those rights which cannot be excluded, restricted or modified:

- (a) After acceptance, the Customer shall not be entitled to reject the goods which are not in accordance with the Agreement;
- (b) No goods delivered to the Customer which have been accepted by the Customer may be returned by the Customer to QC

without the prior written approval of QC on terms acceptable to QC;

- (c) If QC agrees to accept any such goods for return, the Customer shall be liable to pay all handling charges associated with that return and such goods must be returned by the Customer to QC in their original packaging;
- (d) Goods returned without the prior written approval of QC may at QC's absolute discretion be returned to the Customer or stored at the Customer's cost without prejudice to any rights or remedies QC may have against the Customer; and
- (e) All returns of goods must be accompanied by the original Invoice together with an explanation as to the reason for the return.

## **8. Title and Risk**

**8.1** The risk (but not title) in respect to the goods passes to the Customer immediately upon delivery to the Customer, the Customer's agent or representative as the case may be.

**8.2** Despite Delivery, title in the goods shall not pass from QC until:

- (a) the Customer has paid the Invoice in full; and
- (b) no other amounts whatsoever are due to be paid by the Customer to QC; or
- (c) the Customer sells the goods to a customer of the Customer in the ordinary course of the Customer's business.

**8.3** Where the goods are sold by the Customer in accordance with Sub-clause 8.2(c), the Customer has resold the goods as a fiduciary agent and trustee for QC by way of bona fide sale at full market value and in the ordinary course of its business.

**8.4** Until all the monies have been paid in full:

- (a) the Customer shall take custody of the goods as trustee and fiduciary agent for QC;
- (b) the Customer shall keep the goods separate from any other goods and

properly marked, stored, protected and insured;

(c) The Customer must hold all of the money it receives ("**Proceeds**"):

- (i) from the sale of any property into which goods supplied have been incorporated; and
- (ii) from the sale of goods including the goods supplied by the QC as fiduciary agent and trustee for QC,

but the Customer need not hold on trust any money exceeding the amount of the debts at the time the money is received.

The Customer acknowledges that the agreement entered into between QC and the Customer in connection with any goods supplied may constitute a security agreement for the purposes of section 20 of the *Personal Property Securities Act 2009* (Cth) ("**PPSA**") and that a purchase money security interest may exist in certain goods (and their proceeds) previously supplied by QC to the Customer (if any) and in certain future goods (and their proceeds) supplied by QC to the Customer. The Customer must execute documents and do such further acts as may be required by QC to register any purchase money security interest granted to QC under these Terms under the PPSA.

**8.5** Until property in the goods passes from QC in accordance with Clause 8.2, the Customer shall upon request made by or on behalf of QC deliver up the goods to QC. If the Customer fails to do so, QC may enter upon any premises owned, occupied or controlled by the Customer where the goods are situated (without liability for trespass or any resulting damage) and retake possession of the goods and QC may keep or resell those repossessed goods.

## **9. Limitation of Liability**

**9.1** The Customer may have rights under statutory consumer protection laws including the *Competition and Consumer Act 2010* (Cth) ("**CCA**") and the following clause applies subject to any rights the Customer may have under such laws.

**9.2** Certain legislation, including the CCA, may contain consumer guarantees relating to the supply of goods and may imply warranties or conditions or

impose obligations upon QC which cannot be excluded, restricted or modified or cannot be excluded, restricted or modified except to a limited extent. These Terms must be read subject to these statutory provisions. If these statutory provisions apply, to the extent to which QC is entitled to do so, QC limits its liability in respect of any claim under those provisions to, at QC's option:

- (a) replacement of the goods or supply of equivalent goods; or
- (b) the payment of the cost of replacing the goods or of acquiring the equivalent goods.

**9.3** Any express warranty given in these Terms is in addition to and does not limit the Customer's rights under the CCA.

**9.4** QC assumes no liability whatever for any technical advice, recommendation, information or assistance given, or the results obtained there from, all such advice being given and accepted at the Customer's sole risk.

**9.5** If it becomes necessary to institute legal proceedings to recover amounts owing to QC by the Customer, the Customer shall pay all costs of and incidental to such action including the solicitor and own client costs of QC.

## **10. Accelerated Payment**

All moneys owing by the Customer to QC shall be immediately due and payable by the Customer to QC without demand if:

**10.1** Any information supplied by the Customer in applying for credit is incorrect or misleading;

**10.2** There is a material adverse change in the financial position or credit worthiness of the Customer;

**10.3** Any judgment, execution or other process of any Court is issued against or levied upon the Customer and that judgment, execution or other process is not dismissed, or withdrawn within 7 days from the date of the judgment, or issue or levy of the execution or other process;

**10.4** Any Controller, Receiver, Receiver and Manager, Voluntary Administrator, Provisional Liquidator, Liquidator or Trustee in Bankruptcy is appointed to the Customer; or

**10.5** Any application is made to the Court for an order that the Customer be made bankrupt or be wound up.

## **11. Default**

If the Customer fails to pay QC for any goods by the due date or the Customer fails to comply with any other obligation owed to QC:

- (a) The balance of any moneys owing by the Customer to QC shall immediately become due and payable by the Customer to QC without demand;
- (b) QC may charge interest on overdue amounts at a rate of 1.5% above QC's banker's monthly overdraft rate;
- (c) QC may suspend credit extended to the Customer;
- (d) QC may withhold the delivery of goods already ordered; or
- (e) QC may terminate the Agreement.

## **12. Additional Costs**

If payment is not made by the Customer to QC by the due date or the Customer fails to comply with any other obligation to QC including the payment of any accelerated amount, the Customer is liable for all costs including but not limited to:

- (a) Legal costs (on a solicitor/own client basis);
- (b) Mercantile agents fees;
- (c) Any other costs and expenses incurred by QC in exercising or attempting to exercise its rights under the Agreement; and
- (d) Any direct, indirect or consequential loss, damages or expenses that QC incurs or suffers.

## **13. Customer as Trustee**

Where the Customer is a Trustee of any Trust:

- (a) The Customer is liable to QC both personally and as Trustee of the Trust.
- (b) On demand by QC the Customer will exercise its rights of indemnity in relation to the property of the Trust and its rights

against the beneficiaries of the Trust so as to cause payment of any moneys owing to QC or otherwise hold such rights for QC.

- (c) The Customer will not release cause or permit the right of indemnity which the Customer now has or in the future may have against the property of the Trust or against the beneficiaries of the Trust to be lost or diminished.

## **14. Force Majeure**

**14.1** QC shall not be liable for any failure, delay or breach of any obligation imposed on QC under the Agreement (other than an obligation to make a payment) if and to the extent that:

- (a) the failure, delay or breach arises directly or indirectly from any act, event or omission or cause beyond QC's control or the control of QC's employees, officers, contractors and sub-contractors including but not limited to an Act of God, insurrection or civil disorder or disturbance, terrorism, labour disputes, disruption to supply lines, lockouts, war, riot or military operations, national or local emergency, acts or omissions of government, highway authority or other competent authority, industrial disputes of any kind (whether or not involving QC's employees), fire, lightning, explosion, flood, subsidence, inclement weather, acts or omissions of persons or bodies for whom neither QC nor its employees, officers, contractors or sub-contractors is responsible, or any other cause outside the control of QC and its employees, officers, contractors and sub-contractors ("**Force Majeure Event**"); and
- (b) QC gives the Customer prompt written notice of the Force Majeure Event as soon as possible, but within 5 days after QC becomes aware of the Force Majeure Event, providing details of the nature, expected duration and effect of the Force Majeure Event and of the cessation of the Force Majeure Event.

**14.2** The date of delivery of the goods shall be automatically extended by a period equal to the number of days reasonably necessary to overcome

the Force Majeure Event in QC's reasonable opinion. If the Force Majeure Event continues for more than 90 days, QC may terminate the Agreement and QC shall be entitled to full payment for all goods in accordance with the Agreement up to the date of such termination.

## **15. Excusable Delay**

QC is relieved of its obligations under these Terms to the extent of any delays caused by the Customer.

## **16. General**

### **16.1 Governing Law**

The Agreement is governed by and construed according to the laws in force in Queensland and the parties agree to submit to the non-exclusive jurisdiction of the Courts of Queensland.

### **16.2 Entire Agreement**

The Agreement constitute the entire agreement between the parties and any prior arrangements, agreements, representations or undertakings are superseded.

### **16.3 Waiver**

No right under the Agreement shall be deemed to be waived except by notice in writing signed by each party and such a waiver by a party shall not prejudice its rights in respect of any subsequent breach of the Agreement by the other party. Any failure by a party to enforce any clause of the Agreement, or any forbearance, delay or indulgence granted by a party to the other party, shall not be construed as a waiver of that party's rights under the Agreement.

### **16.4 Severance**

If any term or provision in the Agreement shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law that term or provision or part shall to that extent be deemed not to form part of the Agreement and the enforceability of the remainder of the Agreement shall not be affected.

### **16.5 Assignment**

The Customer must not assign, transfer or novate the Agreement or any rights or obligations under

the Agreement, without the prior written consent of QC which will not be unreasonably withheld.

### **16.6 Customer Restructure**

The Customer will notify QC in writing of any change in its structure, management or position including any sale or disposition of any part of the business of the Customer, any change in directors, shareholders, management, partnership or trusteeship or any new charge, mortgage or security given to any supplier or financier, within 7 days of any such change.

### **16.7 Time**

In the Agreement time shall be of the essence.

### **16.8 Exercise of Remedies**

All rights and remedies of QC under the Agreement are in addition to QC's other rights and remedies and are cumulative not alternative.

### **16.9 Set Off**

QC shall be entitled to set off any moneys owed by QC to the Customer against any monies owed by the Customer to QC.

### **16.10 Notices**

Any notice or court document which QC may wish to give to the Customer may be hand delivered, left at, mailed to or sent by facsimile or other electronic facility to any address, registered office, facsimile number or electronic address of the Customer shown in the Account Application or hand delivered, left at, mailed to or sent by facsimile or other electronic facility to the address, registered office, facsimile number, electronic address or residence of the Customer last known to QC.