

BETTER STORAGE SYSTEMS Pty Ltd.

Conditions of Use

Terms and Conditions of Supply

1. INTERPRETATION

1.1. Definitions

The following meanings apply when used in these Terms of Supply:

"Client" means any purchaser of the Products pursuant to an Order;

"Confidential Information" means information which is by its nature confidential and includes, information relating to the business, technology, customers, assets, operations, financial affairs, business plans, marketing plans, price lists and other competitively sensitive information of the parties and their Related Companies;

"Costs" means and includes costs, charges, expenses, disbursements, fees, commissions, insurance premium payments, levies, taxes and duties;

"Duties" means and includes taxes limited to stamp, transaction or registration duties or similar charges levied or imposed by any governmental agency, excluding financial institutions duty, bank debits tax or other duties or charges passed on by any bank or financial institution, together with associated interest, penalties, charges, fees or other amounts;

"Force Majeure Event" means any circumstances beyond the control of BSS or its Related Companies or which make performance commercially impracticable including lockouts, strikes, slowdowns or other labour disturbances, a settlement which shall be at the discretion of BSS if it is a party, acts of God, piracy, war, riot, civil commotion, acts of government, earthquake, storm, flood, natural disaster, tempest, fire, lightning, explosion, embargo, unavailability of insurance at reasonable costs and the non delivery of any Product to BSS from BSS's usual sources of supply;

"Order" means any request for the supply of Products received by BSS from the Client;

"Products" means the range of BSS and any BSS Related Company products and services relating to storage and materials handling including, modular shelving systems, pallet, bar and long span racking, rack-supported warehouses, mobile racking systems, live storage shelving systems, stackable box pallets and still ages, storage and transport containers, workshop equipment and office systems and related delivery and installation services offered by BSS;

"Quotation" means any official quotation in relation to the supply of Products provided by BSS to the Client from time to time;

"Related Company" means a related body corporate within the meaning of Division 6 of Part 1.2 of the Corporations Law;

"Specifications" means the then current specifications of the Products as published by BSS from time to time;

"Specified Rate" means interest at the rate of 2% above the then published National Australia Bank 90 day Bank Bill Rate for amounts over \$100,000;

"BSS" means Better Storage Systems Pty Ltd;

"Taxes" means and includes taxes, levies, imposts, deductions, charges, rates, duties, compulsory loans and withholdings levied or imposed by any governmental agency, including without limitation income, payroll, sales, capital gains, any tax on goods and services, consumption tax, goods and services tax or value added tax, withholding, prescribed payments, land, rating, stamp, transaction, social service and workers' compensation taxes, duties, charges, contributions, levies and obligations, together with associated interest, penalties, charges, fees or other amounts which may become payable for any reason in connection with the supply of any Products;

"Tax Invoice" has the meaning given to that term under the *A New Tax System*; and

"TPA" means Trade Practices Act 1974 (Cth).

1.2. General

The following rules of interpretation apply in these Terms of Supply unless the context otherwise requires:

- a) Words denoting the singular number include the plural, and the converse also applies;
- b) Words denoting any gender include all genders;
- c) The verb "include" (in all its parts, tenses and variants) is not used as, nor is it to be interpreted as a word of limitation;
- d) When any obligation is imposed upon more than one person, that obligation shall bind all such persons severally and any two or more of them jointly;

- e) a reference to legislation, including any statute, enactment, ordinance, code or other legislation, or a section or provision of that legislation, includes any order, regulation, rule, bylaw, proclamation or statutory instrument made or issued under that legislation and any amendment, modification, consolidation, re-enactment or replacement of, or substitution for, that legislation from time to time; and
- f) All references to amounts are amounts in Australian Dollars or as converted to Australian Dollars at the prevailing exchange rate at the date an invoice is paid in full.

2. PRODUCT PRICES

2.1. The price at which the Products will be invoiced will be as specified in the applicable Quotation and/or Order (and in the absence of specification, will be based upon the then current BSS price list as published from time to time by BSS).

2.2. Unless otherwise expressly set out in the applicable Quotation, the price of the Products does not include:

- a) Transport/freight, packaging, handling, storage, insurance and similar costs incurred in the course of transit of the Products to or from the Client or while in the custody or control of the Client;
- b) Expenses incurred by BSS for storage of Products if the Client does not provide delivery instructions to BSS within 14 days of such a request being made by BSS to the Client; and
- c) Costs, Duties and Taxes arising in relation to the Products, all of which are payable in full by the Client and which will be invoiced by BSS in addition to the price for the Products.

2.3. BSS will provide the Client with a Tax Invoice in respect of all charges arising under this Agreement, any Order and/or Quotation (as applicable).

2.4. Unless otherwise expressly set out in the applicable Quotation, any Quotation provided to a Client is subject to variation, BSS will give the Client a minimum of 14 days notice before any variation to the Quotation becomes effective.

2.5. If the Client wishes to take delivery of the Products from the BSS premises, then the Client is solely responsible for organising the collection and transportation of such Products and must bear all resulting freight, packing and other charges.

2.6. In the event that BSS suspends performance of its obligations under any Order or Quotation due to a failure on the part of the Client to perform its obligations under these Terms of Supply, any Order or any Quotation, without prejudice to any other rights or remedies which it may have, BSS may charge the Client for all costs, disbursements, losses and expenses arising from that suspension and the Client will pay such costs, disbursements, losses and expenses in accordance with clause 3.1.

2.7. Where the Client cancels any Order and notifies BSS of that cancellation no less than thirty (30) days prior to the agreed date of delivery for the Products described in that Order, BSS may charge the Client a cancellation fee of ten per cent (10%) of the total value of the Products. The Client acknowledges that if it cancels any Order within thirty (30) days of the agreed date of delivery for the Products described in that Order, BSS may charge the Client the full fees set out in that Order.

3. PAYMENT FOR PRODUCTS

3.1. Except to the extent otherwise set out in the applicable Quotation, invoices for Products supplied to the Client (or to the Client's nominee at its direction) must be paid in full to BSS (or credited to BSS's account at such bank as BSS may nominate from time to time) within seven (7) days of the date of that invoice.

3.2. If BSS does not receive full payment of an invoice within the time specified in clause 3.1 BSS may charge the Client interest, calculated at the Specified Rate, on the amount owed by the Client for each day that such payment is overdue.

3.3. Unless expressly agreed in the Order, the Client may not use a finance company in order to pay for the Products to be supplied to the Client under that Order. Furthermore, if it is agreed that the Client may pay for the products via a finance company, BSS may charge the Client for any administrative charges which may arise as a result of payment being delayed and may also charge the Client interest on overdue payments in accordance with clause 3.2.

4. PACKAGING & SUPPLY

4.1. All Products delivered to the Client will be packed in a manner considered normal and proper by BSS and any variations from such standard packing requested by the Client will only be provided at the Client's cost.

4.2. All Products supplied to the Customer by BSS are supplied subject to these Terms of Supply, the terms of the Quotation (including the Technical Assumptions and Conditions set out in the Quotation) and the applicable Order.

5. DELIVERY

5.1. Subject to clauses 5.2 and 2.2, BSS will deliver the Products to the Client by the delivery date and to the delivery address agreed between the parties from time to time (and in the absence of agreement by the delivery date specified by BSS).

5.2. If, following agreement on the delivery date and delivery address, the Client:

- a) Wishes to alter the premises to which the Products are to be delivered, BSS will not unreasonably withhold its agreement to any such alteration provided that the Client bears, in full, any resulting additional transportation and other costs (including where applicable double-handling costs) incurred by BSS as a result of that alteration. In this event, BSS may invoice the Client for such costs and the Client will pay that invoice in accordance with clause 3 of these Terms of Supply;
- b) Requests delivery to be delayed for any reason, BSS will not unreasonably withhold its agreement to such delay provided that the Client bears, in full, any resulting third party storage and other costs incurred by BSS as a result of that delay. Furthermore, at the request and cost of the Client, BSS will arrange third party storage on behalf of the Client. If any of the circumstances described in this clause arise, BSS may invoice the Client for such costs and the Client will pay that invoice in accordance with clause 3 of these Terms of Supply; and/or
- c) Requests any variation to the Products to be supplied by BSS, BSS will not unreasonably withhold its agreement to any such alteration provided that the Client bears, in full, any resulting additional Product and other costs incurred by BSS as a result of that alteration. In this event, BSS may invoice the Client for such costs and the Client will pay that invoice in accordance with clause 3 of these Terms of Supply.

5.3. In the event that delivery is delayed for any reason other than due to the act or omission of BSS, BSS may vary the prices set out in the Order and/or the Quotation (as applicable) in accordance with the rise and fall clause set out in the Quotation. In this event, BSS may invoice the Client for any such varied costs and the Client will pay that invoice in accordance with clause 3 of these Terms of Supply.

5.4. Except as otherwise expressly agreed in writing BSS is not responsible for off-loading of Products or their safe storage at the point of delivery.

5.5. The Client will be deemed to have accepted delivery of any Products and will be deemed to accept that they conform with the terms of the applicable Order and are undamaged at the date of delivery unless notice in writing (which includes full details of the believed non-conformance or damage) is received by BSS from the Client within seven (7) days of the date of delivery to the Client by BSS or any other person.

5.6. Without prejudice to the generality of the foregoing, where BSS is obliged under any Order or any Quotation to provide the Client with any documentation or drawings for the approval of the Client, the Client's approval will be deemed to have been given unless notice in writing (which includes detailed reasons why that approval is being withheld) is received by BSS from the Client within seven (7) days after the date of delivery of that documentation or those drawing (as the case may be) to the Client by BSS or BSS's nominee.

5.7. Any time quoted for delivery and/or supply are estimates only and BSS shall not be liable for failure to deliver/supply, or for delay in delivery/supply. The Client shall not be relieved of any obligation to accept or pay for Goods, by reason of any delay in delivery/supply or dispatch. BSS reserves the right to stop supply at any time if the Client fails to comply with the Terms.

5.8. The Client may at their own cost collect orders from the BSS during normal business hours.

6. AVAILABILITY OF STOCK

6.1. Any order that cannot be fulfilled on its receipt will automatically be back ordered and processed when stock becomes available unless it is the Client's stated standard policy not to accept back orders or the Client specifically marks its order, "Do Not Back Order". Deliveries at any time are subject to availability to stock and BSS will not be liable for any charges due to product unavailability.

7. ACCESS TO PREMISES

7.1. The Client will provide BSS with such access to the Client's premises as BSS may reasonably require in order to deliver the nominated Products, and providing any agreed services to the Client.

7.2. If BSS's performance of its obligations under any Order is delayed or hindered in any way due to the actions of the Client (including a failure on the part of the Client to comply with clause 6.1), BSS may charge the Client for any costs (including costs for waiting time, overtime etc.) incurred by BSS as a result of that hindrance or delay and the Client will pay those costs in accordance with clause 3 of these Terms of Supply.

8. RISK & TITLE IN THE PRODUCT

8.1. Risk of damage to or loss of Products shall pass to the Client at the time of delivery or, if the Client fails to take delivery of Products, the time when BSS has tendered delivery of the Products.

8.2. Notwithstanding clause 7.1, title in any Product supplied sold or delivered to the Client shall not pass to the Client until full payment is made of all amounts owing by the Client:

- a) Under these Terms of Supply; and/or
- b) Any individual Order, and until such time, BSS has the right to call for and recover the Product at its option (for which purpose the Client hereby consents to BSS entering the Client's premises) and the Client is obliged to deliver up the Product if directed by BSS.

8.3. The Client acknowledges and agrees that if the Products are not paid for in full when delivery of the Product is made to the Client then, until a re-sale of the Product by the Client, the Product will be kept by the Client as a fiduciary for BSS and shall be stored in a manner that clearly identifies the ownership of BSS.

9. FORCE MAJEURE

9.1. Neither party will be liable to the other for any breach of its obligations under these Terms of Supply, any Order and/or any Quotation if that breach arises from a Force Majeure Event. If a Force Majeure Event which affects the delivery of the Products occurs, the delivery date(s) for the Products (or any portion of them) will be deferred for that period which is reasonable in the circumstances (but in any event for a period which is not less than the actual period of the Force Majeure Event).

10. SUBCONTRACTORS & BSS MATERIAL

10.1. BSS may, in its sole discretion, engage subcontractors to perform its obligations under these Terms of Supply, any Order and/or any Quotation (as applicable). The Client hereby consents to the appointment of any such subcontractors.

10.2. If, in the course of performing its obligations under these Terms of Supply, any Order and/or any Quotation, BSS brings any BSS property onto any premises of the Client, that property will remain the property of BSS and BSS will, within a reasonable period of completing performance of its obligations to the Client, remove that property from the Client's premises at no cost to the Client.

11. INTELLECTUAL PROPERTY

11.1. BSS retains all rights, title and interest (including, all rights to patents, future copyright, trade secrets and trade marks) in:

- a) The Products, the Specifications, any other materials (including documentation, drawings, plans and calculations); and
- b) Any improvements, enhancements, modifications and derivative works to any of the materials described in clause 10.1(a), which may be provided to the Client by or on behalf of BSS from time to time and nothing in these Terms of Supply, any Order and/or any Quotation transfers such rights to the Client.

11.2. The Client will not reverse engineer, disassemble, modify or create derivative works from any of the items identified in clause 10.1 of these Terms of Supply.

12. WARRANTIES

12.1. BSS warrants that, on delivery, the Products will comply with the Specifications.

12.2. To the extent permitted by law, BSS warrants that, the Products manufactured by BSS will, for twenty four (24) months from the date of installation by BSS (or in the event that the Client installs the Products, from the date of delivery of the Products to the Client), be free of material defects. To the extent permitted by law, any Products supplied by BSS but manufactured by a third party will be subject to such manufacturer's warranty protection as is offered by the applicable manufacturer.

12.3. BSS warrants that the Products will not infringe the intellectual property rights of any third party

13. LIMITATION & EXCLUSION OF WARRANTIES AND REPRESENTATIONS

13.1. The warranties set out in these Terms of Supply do not apply in relation to any defects in the Products which arise due to:

- a) Improper installation, use, operation, maintenance or operation of the Products;
- b) Tampering with, misuse, modification, alteration or repair of the Products;
- c) Loading of the Products over and above those recommended loading levels set out in the Specifications;
- d) Wear and tear or other damage; caused by any person other than BSS (or a subcontractor engaged by BSS to perform its obligations under these Terms of Supply) and/or carried out without BSS's prior written approval.

13.2. The warranties set out in these Terms of Supply do not apply in relation to any defects in the Products where the Products purchased by the Client are not new products or are not supplied to the Client by BSS.

13.3. The warranties set out in these Terms of Supply will only apply provided that BSS is notified in writing of the damage within seven (7) days of the date of the damage and provided that BSS is given full access to the Client's premises to assess the damage.

13.4. Except to the extent expressly set out in these Terms of Supply or any Order, any statement made by BSS or its Related Companies to the Client in relation to all or any part of the Products, their capacity, output, performance, efficiency or suitability for any particular purpose is made only as a bona fide estimate without warranty as to its correctness.

13.5. The descriptions, illustrations and performances contained in any catalogues, price lists and other advertising matter published by BSS from time to time do not form part of these Terms of Supply.

13.6. Subject to clause 13.4, but otherwise unless expressly set out in these Terms of Supply, any Quotation, any Order or the Specifications, or unless not permitted by law, BSS excludes all representations, implied conditions and implied warranties (including warranties regarding merchantability and fitness for purpose) arising in relation to the Products, these Terms of Supply, any Quotation, any Order or the Specifications.

14. INDEMNITIES & LIMITATION OF LIABILITY

14.1. Subject to clauses 13.3 and 13.4, BSS indemnifies the Client against all direct losses and damages awarded against the Client arising from:

- a) The death of or injury to any person directly caused by the conduct of BSS, its employees or agents;
- b) Any breach by BSS of the warranty set out at clause 11.3 of these Terms of Supply.

14.2. Subject to clause 13.4 and otherwise, except to the extent not permitted by law, BSS will not be liable for any:

- a) Incompleteness, inaccuracies or defects in any drawings, bills of quantity, specifications or any other information supplied to BSS by or on behalf of the Client; or
- b) Losses suffered by the Client arising from any such incompleteness, inaccuracies or defects in any such information provided to BSS by or on behalf of the Client.

14.3. Subject to clause 13.4 and otherwise except to the extent not permitted by law, BSS:

- a) Excludes all liability (whether that liability is based in contract, tort (including negligence), statute or other legal theory) for any consequential, indirect, incidental, economic or special loss or damage (including loss of profits; loss of savings; loss of or damage to goodwill, opportunity, business or custom; loss of contract; loss of anticipated benefit or any other opportunity expectation benefit) whether suffered by the Client or any third party and whether or not BSS was aware or should have been aware of the possibility of such loss or damage; and
- b) Limits its liability to the Client for any direct loss or damages arising under these Terms of Supply, any Order and/or any Quotation (whether that liability is based in contract, tort (including negligence), statute or other legal theory) to the amount paid by the Client to BSS under the Order or Quotation giving rise to the loss or damage.

14.4. If these Terms of Supply constitute a supply of goods or services to a consumer as defined in the TPA nothing contained in these Terms of Supply will exclude, restrict or modify any condition warranty right or remedy which pursuant to the TPA (or any relevant State Act or Territorial Ordinance) is applicable or is conferred on the Client or any third party provided that BSS's liability for such breach including any consequential loss which the Client may sustain or incur shall be limited to:

- a) The replacement of the goods or the supply of goods or payment of the cost of replacing the goods, supplying equivalent goods or resupplying the services; or
- b) The repair of the goods, the repayment of the cost of having the goods repaired or the cost of having the services resupplied, as BSS may in its sole discretion determine.

15. SUSPENSION

15.1. If the Client fails to perform the Client's obligations under these Terms of Supply, any Order and/or any Quotation and the Client does not cure any such failure within seven (7) days of the date of a notice from BSS to the Client notifying the Client of that breach, BSS may suspend performance of BSS's obligations under these Terms of Supply, the applicable Order and/or the applicable Quotation (as the case may be).

16.2. If BSS exercises its rights under clause 14.1, it will re-instate performance of BSS's obligations within a reasonable period following rectification by the Client of the Client's failure.

16. REPRESENTATIVES

16.1. If requested by BSS, the Client will appoint a representative to whom BSS can direct all queries and issues arising in relation to these Terms of Supply, any Order and/or any Quotation (as applicable) and will provide BSS with full contact details for that person.

16.2. Where specified in an Order, BSS will appoint a representative to whom the Client can direct all queries and issues arising in relation to these Terms of Supply, any Order and/or any Quotation (as applicable) and will provide the Client with full contact details for that person.

17. TERM & TERMINATION

17.1. These Terms of Supply will come into force on the date of the Order and will remain in force until terminated in accordance with this clause 16.

17.2. Either party may terminate these Terms of Supply, any Order and/or any Quotation (as applicable) if:

- a) The other party fails to make any payment due to the other party or breaches any other provision of these Terms of Supply and the defaulting party fails to cure that breach within fourteen (14) days of the date of a notice from party suffering the breach notifying the defaulting party of that breach;
- b) The other party is unable or deemed to be unable to pay its debts as and when they fall due;
- c) The other party ceases to carry on business;
- d) An administrator, receiver, receiver and manager, inspector or liquidator is appointed in respect of the other party or any of its assets;
- e) An application is filed or an order is made for the winding up of the other party;
- f) A resolution is passed to wind up the other party;
- g) The other party commits an act of bankruptcy; or
- h) The other party suffers a Force Majeure Event and that Force Majeure Event continues for thirty (30) consecutive days or longer.

17.3. In addition to its rights under clause 16.2, BSS may terminate these Terms of Supply, any Order and/or any Quotation (as applicable) if BSS suspends its obligations in accordance with clause 14 and the Client fails to cure the breach which gave rise to the suspension within thirty (30) days of the notice of suspension from BSS to the Client.

17.4. If any event referred to in Clause 16 occurs, BSS (in addition to any other remedies) may withhold further delivery of any Products and require the immediate payment of all amounts owing to it by the Client despite the terms of any agreed credit period.

17.5. If these Terms of Supply are terminated for any reason:

- a) BSS (in addition to any other remedies) may, without any liability to the Client withhold further delivery of any Products until it receives payment in full from the Client in accordance with clause 16.5(b);
- b) The Client must, notwithstanding the terms of any agreed credit period, immediately pay to BSS all amounts outstanding on all invoices and any other additional Costs, Duties and Taxes;
- c) The Client will be liable to pay BSS for all Products supplied to the Customer up to the date of termination;
- d) Except to the extent set out in this clause 16.5, such termination will not affect any liabilities or obligations of either party arising up to the date of termination and/or any damages or other remedies to which a party may be entitled under these Terms of Supply, the applicable Order and/or Quotation, at law, in equity or otherwise; and
- e) All clauses which by their nature should survive termination of these Terms of Supply will survive termination of these Terms of Supply.

18. RETURNS, CANCELLATIONS AND CLAIMS

18.1. The Client shall not return any Goods to BSS without obtaining prior authorisation from BSS. No returns will be accepted unless a copy of relevant invoice is enclosed with the returned Goods. A list of the Goods returned including product descriptions, quantity, date of return and the Client's name and address must also be enclosed. Freight charge must be paid by the Client. All Goods must be returned in the original packaging and the Client shall be responsible for all damage incurred during return shipment. A credit note will be issued by BSS only after Goods returned are either collected by BSS authorised representative or agent or returned to it by the client as set out above. The Client shall not deduct the amount of any anticipated credit from any payment due to BSS but must await receipt of a credit note.

18.2. All goods returned must be of merchantable and reasonable quality such that the goods are complete in their original packaging, not shopsoiled, are not price ticketed and are still listed in the current price list.

18.3. If goods are considered by the Client to have been damaged in transit the carriers delivery note must be endorsed with full particulars of such alleged damage and the carrier and BSS must be notified in writing within three (3) days of receipt otherwise BSS will not be liable for any claim.

18.4. If BSS accepts the return of any Goods that have been ordered, BSS may charge the Client **fifteen per cent (15%)** of the invoice price as a handling fee with freight costs and risk remaining the responsibility of the Client.

18.5. No cancellations or partial cancellation of an order by the Client shall be accepted by BSS unless it has first consented in writing to such cancellation or partial cancellation and unless a cancellation charge has been paid which, as determined by BSS, will indemnify BSS against all loss, without limitation. Cancellation will not be accepted on goods that are not regular stock which are in the process of manufacture or ready for shipment.

18.6. All complaints, claims, or notification of lost Goods, incomplete Goods, Goods damaged in transit or Goods that do not comply with the Client's purchase order must be submitted by the Client to BSS in writing within seven (7) business days of the date of the

invoice rendered for the supply of the Goods. Otherwise, the Client shall be deemed to have accepted the Goods and shall not refuse to pay for the Goods on the basis that they were lost, incomplete, damaged in transit, or do not comply with the Client's purchase order.

19. CONFIDENTIAL INFORMATION

19.1. The parties acknowledge that during the term of this Agreement, they or their employees may be exposed to or acquire Confidential information of the other party. Each party agrees to keep confidential the Confidential Information of the other party and will not disclose or use the other party's Confidential Information for any purpose other than the performance of its obligations under this Agreement and the applicable Order.

19.2. The obligations set out in this clause 17 shall not apply in respect of any information which:

- a) Is or becomes available to the public without the fault or negligence of the recipient;
- b) Was already in the possession of the recipient;
- c) Is subsequently received from a third party without notice of restriction on further disclosure;
- d) Has been independently developed by the recipient; or
- e) Is required to be disclosed by any law or regulation, or by decree or any competent tribunal.

19.3. This clause 17 will survive termination or expiry of this Agreement.

20. MISCELLANEOUS

20.1. The waiver by BSS of any provision or breach by the Client of any provision of these Terms of Supply shall not be construed as a waiver of any other provision or breach of any other provision or subsequent breach of the same of these Terms of Supply.

20.2. Any notice required or permitted to be given by either party to the other under these Terms of Supply will be in writing, addressed to the other party at its registered office or such other address as may be specified from time to time by the party to whom the notice is addressed.

20.3. BSS may use the Client's name and details in any marketing materials (including on any website) of BSS.

20.4. If any provision in these Terms of Supply or an Order becomes unenforceable, held void in any jurisdiction either in whole or part for any reason, then that provision shall be deemed to be deleted in respect of that jurisdiction alone without in any way affecting the validity or enforceability of any other provision or that provision in any other jurisdiction.

20.5. Unless stated in writing otherwise and agreed by BSS in writing these Terms of Supply together with the applicable Quotation constitutes the entire terms as agreed by BSS and the and supersedes any prior agreement or arrangement.

20.6. No provision of these Terms of Supply shall be varied unless expressly agreed between the Parties in writing.

20.7. The contract shall in all respects be construed in accordance with the laws of the State of Queensland, Australia and the parties submit to the non-exclusive jurisdiction of the courts of Queensland.