



WESTANKS COMMERCIAL CREDIT TERMS

Term

1. This Credit Agreement commences on the date we accept your completed Credit Application in writing and notify you of your credit limit and continues until such time as it is terminated in accordance with these Credit Facility Terms.
2. The decision to grant you a credit facility is solely at our discretion.

No obligation to supply on credit

We reserve the right to refuse to supply you with Goods or Services on credit (even if you have not exceeded your credit limit), without having to provide reasons to you for doing so.

Payment terms

Until we notify you that you have been granted a credit facility with us, all Goods and Services supplied by us must be paid for on a cash on delivery or performance basis.

3. Where we have granted you a credit facility, the terms of payment are strictly thirty (30) days from the date of invoice (or such other period as nominated by us in writing).
4. If you default in the payment of any money due to us pursuant to these Credit Facility Terms, then in addition to any other rights which may be conferred upon us by law or equity, we will be entitled to charge you interest on such money at the rate of 15% per annum, which interest will accrue and will be recoverable for each day (or part thereof), that the money remains outstanding until payment is received by us in full.
5. Any sums owed to us by you under this Credit Agreement will be made free of any set-off or counterclaim whatsoever, and without deduction or withholding whatsoever.
6. We are entitled to deduct or set off against any monies owing to you by us on any account whatsoever.

Suspension of credit facility

7. We may, without prejudice to any other rights which may be conferred upon us by law or equity, suspend your credit facility by notifying you in writing if you fail to make payment of any monies due to us by the due date for payment or for any other reason in our sole discretion.

Liability for purchases

You are liable for all purchases made through the use of your credit facility. We are not responsible for confirming the authority of persons using your account. You are solely responsible for ensuring there is no unauthorised use of your account.

Retention of title

8. We are, and will at all times be and remain, the legal and beneficial owner of all Equipment supplied to you on hire and your interest in such Equipment is limited to that of bailee.
9. Until such time as you have made payment in full for any Goods supplied by us, and until such time as you have made payment in full of all other money owed to us by you (whether in respect of money payable under a specific contract or on any other account whatsoever):
 - (a) title in the Goods does not pass to you;
 - (b) you agree that property and title in the Goods will not pass to you and we retain the legal and equitable title in those Goods supplied and not yet sold;
 - (c) you will hold the Goods in a fiduciary capacity for us and agree to store the Goods in such a manner that they can be identified as our property, and will not mix the Goods with other similar goods; and
 - (d) you will be entitled to sell the Goods in the ordinary course of your business but will sell as agent and bailee for us and the proceeds of sale of the Goods will be held by you on trust for us absolutely.
10. Your liability to us will not be discharged by the operation of clause 9(d) (but your levels of indebtedness will be reduced by the extent of the funds so remitted to us).
11. You agree that whilst property and title in the Goods remains with us, we have the right, with prior notice to you, to enter upon any premises occupied by you (or any receiver, receiver and manager, administrator, liquidator, or trustee in bankruptcy of yours) to inspect our Goods and, when payment is overdue, to immediately enter the premises (as your invitee) to repossess the Goods which may be in your possession, custody, or control when payment is overdue.
12. You will be responsible for our costs and expenses (including legal costs, on a full indemnity basis) in exercising our rights under clause 11 where you are otherwise in default of this Credit Agreement. Where we exercise any power to enter the premises, that entry will not give rise to any action of trespass or similar action on your part against us, or our employees, servants, or agents.
13. You agree that where the Goods have been retaken into our possession, we have the absolute right to sell or deal with the Goods, and if necessary, sell any Goods bearing your name or trade mark, and you hereby grant us an irrevocable licence to do all things necessary to sell such Goods.
14. For the avoidance of doubt, our interest constitutes a 'purchase money security interest' pursuant to the PPSA.

Personal Property Securities Law

15. You acknowledge that by assenting to this Credit Agreement, which constitutes a security agreement for the purposes of the PPSA, you grant us a security interest in all Goods (and their proceeds) now or in the future supplied by us to you (or to your account).
16. You undertake to do anything that is required by us:
 - (a) so that we can acquire and maintain one or more perfected security interests under the PPSA in respect of the Goods (and their proceeds);
 - (b) to register a financing statement or financing change statement; and
 - (c) to ensure that our security position, and rights and obligations, are not adversely affected by the PPSA.

17. Unless you have obtained our prior written consent, you undertake not to:
 - (a) register a financing change statement in respect of a security interest contemplated or constituted by this Credit Agreement; and
 - (b) create or purport to create any security interest in the Goods, nor register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party.
18. You:
 - (a) waive your right under section 157 of the PPSA to receive a copy of the verification statement relating to a security interest contemplated or constituted by this Credit Agreement;
 - (b) agree that to the extent permitted by the PPSA, the following provisions of the PPSA will not apply and are contracted out of: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and
 - (c) agree that the following provisions of the PPSA will not apply and you will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.
19. You agree that you will, if requested by us, sign any documents, provide any information, or do anything else we request, to ensure that any security interest created in our favour by this Credit Agreement is, to the fullest extent possible under the PPSA, perfected in accordance with Part 2.2 of the PPSA.
20. Notwithstanding section 275 of the PPSA, the Parties agree to keep confidential all information of the kind referred to in section 275 of the PPSA, unless compelled by law to disclose such information.
21. You irrevocably grant to us the right to enter upon your property or premises, with notice, and without being in any way liable to you or to any third party, if we have cause to exercise any of our rights under sections 123 or 128 of the PPSA, and you will be liable for and indemnify us from and against any claims made by any third party as a result of such exercise.
22. You will be responsible for our costs and expenses (including legal costs, on a full indemnity basis) in exercising our rights under clause 21 where you are otherwise in default of this Credit Agreement. Where we exercise any power to enter the premises, that entry will not give rise to any action of trespass or similar action on your part against us, or our employees, servants, or agents.
23. You agree to accept service of any document required to be served, including any notice under this Credit Agreement or the PPSA or any originating process, by prepaid post at any address nominated in this Credit Agreement or any other address later notified to us by you or your authorised representative.
24. You further agree that where we have rights in addition to those under Part 4 of the PPSA, those rights will continue to apply.

Charge over property

25. You charge in our favour all of your estate and interest in any real property, whether held in your own right or as capacity as trustee, you own at present and in the future with payment of all monies which are now or in the future become owing to us whether pursuant to this Credit Agreement or otherwise until all such monies are paid in full by you.
26. You charge in our favour all of your estate and interest in any personal property, whether held in your own right or as capacity as trustee, you own at present and in the future with payment of all monies which are now or in the future become owing to us whether pursuant to this Credit Agreement or otherwise until all such monies are paid in full by you.
27. As security for the payment of the amount of your indebtedness to us from time to time, you irrevocably appoint as your duly constituted attorney our company secretary from time to time to execute in your name and as your act and deed any real property mortgage, bill of sale or consent to any caveat we may choose to lodge against real property that you may own in any Land Titles Office in any state or territory of Australia (even though you may not have defaulted in carrying out your obligations hereunder) upon written notice and demand to you (in the event that there is no default by you in carrying out its obligations hereunder).
28. Where you have previously entered into an agreement with us by which you have granted a charge, mortgage, or other security interest (including a security interest as defined in the PPSA) over or in respect of real or personal property, those charges, mortgages, or other security interests and the terms which directly or indirectly create rights, powers, or obligations in respect thereto will continue and co-exist with the obligations and security interests created in this Credit Agreement and will secure all of your indebtedness and obligations hereunder. We may, at our election and upon the provision of written notice, vary the terms of such previous charges, mortgages, or other securities to reflect the terms herein.

Provision of further information

29. You undertake to comply with any reasonable written requests made by us from time to time to provide us with further documents and information we may require for the purpose of assessing your creditworthiness.
30. If you are a corporation (with the exception of a public listed company), you must advise us of any alteration to your corporate structure (for example, by changing directors, shareholders, or your constitution). In the case of a change of directors or shareholders, we may ask for your directors to sign a guarantee and indemnity.

Corporations

31. If you are a corporation, you warrant and represent to us that all of your directors have signed this Credit Agreement.

Partnerships

32. If you enter into this Credit Agreement in your capacity as a partnership, you warrant and represent to us that all partners have signed this Credit Agreement.
33. If you are a partnership, you must not alter your partnership (for example, adding or removing partners or altering its partnership agreement) without notifying us in writing.

Trustees

34. If you are the trustee of a trust (whether disclosed to us or not), you warrant to us that:
 - (a) you enter into this Credit Agreement in both your capacity as trustee and in your personal capacity;
 - (b) you have the right to be reasonably indemnified out of trust assets;
 - (c) you have the power under the trust deed to sign this Credit Agreement; and
 - (d) you will not retire as trustee of the trust or appoint any new or additional trustee without advising us and having the new or additional trustee sign an agreement on substantially the same terms as this Credit Agreement.
35. You must give us a copy of the trust deed upon request.

Insolvency

36. If you become insolvent, to the extent permitted by law, you remain liable under this Credit Agreement for payment of all liabilities incurred hereunder. You remain liable under this Credit Agreement even if we receive a dividend or payment as a result of you being insolvent.

Indemnity

37. You are liable for and indemnify us from and against any liability, claims, damages, losses, costs, and expenses whatsoever (including collection costs, debt recovery fees, and legal costs on an indemnity basis) that we may suffer or incur at any time, directly or indirectly, arising out of, or in connection with, any default by you in the performance or observance of your obligations under this Credit Agreement.
38. Your liability to indemnify us is a continuing obligation separate and independent from your other obligations and survives termination of this Credit Agreement.
39. It is not necessary for us to incur any expense or make any payment before enforcing our rights of indemnity conferred upon us by this Credit Agreement.

Costs

40. You are responsible for your own legal, accounting, and business costs in connection with the execution of this Credit Agreement. You must also pay for all stamp duty and other taxes payable on this Credit Agreement (if any).
- You will pay our costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against you, including collection costs, debt recovery fees, bank dishonour fees, and legal costs on a full indemnity basis.

Application of payments

41. Subject to clauses 42 and 43, payments by, or on behalf of, you will be applied by us as follows:
 - (a) Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 12, 22, 37, and 0.
 - (b) Secondly, in payment of any interest incurred in accordance with clause 4.
 - (c) Thirdly, in payment of any outstanding Tax Invoices (or part thereof) in an order determined by us in our sole discretion.
42. To the extent that payments have been allocated to Tax Invoices by us in our business records, we may allocate or retrospectively reallocate payments in any manner whatsoever at our absolute discretion, including in a manner inconsistent with clause 41 herein.
43. Payments allocated (or reallocated) under clause 41 or 42 will be treated as though they were allocated (or reallocated) in the manner determined by us on the date of receipt of payment.

Notices

A notice or other communication connected with this Credit Agreement has no legal effect unless it is in writing. In addition to any other method of service provided by law, a notice or other communication may be sent by pre-paid post to the address of the addressee as set out in this Credit Agreement, or sent by email or fax to the email or fax number of the addressee.

Termination

44. If:
 - (a) a Party commits a material breach of this Credit Agreement and fails to remedy that breach within fourteen (14) days of receiving notice from the other Party requiring it to do so; or
 - (b) an Insolvency Event occurs in relation to a Party,then the other Party may terminate this Credit Agreement by written notice to that Party, in which case this Credit Agreement will terminate immediately.
45. Each Party expressly waives any rights it may have to terminate this Credit Agreement other than as contemplated by clause 44.
46. Each Party acknowledges that the other Party may terminate this Credit Agreement under clause 44 without considering the impact of the termination on the other Party.
47. On termination of this Credit Agreement, accrued rights of a Party are not affected.

Assignment

48. Neither Party may assign, transfer, or novate its rights or obligations under this Credit Agreement without the prior written and fully informed consent of the other (which consent must not be unreasonably withheld).

Waiver

A waiver of any provision or breach of these Credit Facility Terms will only be effective if made by the affected Party in writing. If a Party elects not to enforce its rights arising as a result of a breach of these Credit Facility Terms, that will not constitute a waiver of any rights in relation to any subsequent or other breach.

Severance

49. If any part of these Credit Facility Terms is illegal, invalid, or unenforceable, it will be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it will be severed from these Credit Facility Terms. Other provisions which are self-sustaining are, and will continue to be, enforceable in accordance with their terms.

Variation of Credit Facility Terms

50. Any proposed variation to these Credit Facility Terms by you must be requested in writing and we may refuse any such request without providing reasons to you for doing so.
51. For clarity, no proposed variation of these Credit Facility Terms will be binding upon us, unless varied in writing and agreed by an authorised officer of ours. Clerical errors (such as spelling mistakes, grammatical errors, or numerical errors) may be subject to correction by us without notification

52. You agree that these Credit Facility Terms may be amended by an authorised officer of ours at any time by written notice to you. Subject to clause 53, after fourteen (14) days of receipt of the written notice of the amendments, the amendments will be deemed agreed by you.
53. If you do not agree with the amendments proposed by us, you must notify us in writing, within fourteen (14) days from receipt of the written notice, that the amendments are not agreed to. We will then be at liberty to suspend your credit facility until such time as an agreement can be reached.

Governing law

54. You acknowledge and agree that this Credit Agreement will be governed by the laws of Western Australia, and the laws of the Commonwealth of Australia which are in force in Western Australia.
55. The Parties to this Credit Agreement submit to the non-exclusive jurisdiction of the courts of Western Australia and the relevant federal courts and courts competent to hear appeals from those courts.

Entire agreement

56. This Credit Agreement constitutes the entire agreement and understanding between the Parties in relation to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda, or commitments about the subject matter of this Credit Agreement are merged in this Credit Agreement and are of no further effect. No oral explanation or information provided by a Party to another affects the meaning or interpretation of this Credit Agreement or constitutes any collateral agreement, warranty, or understanding.
57. Notwithstanding clause 56, in circumstances where there is a pre-existing written credit agreement ("**Original Agreement**") between the Parties, this Credit Agreement will constitute a variation of the Original Agreement whereby the terms and conditions of the Original Agreement are deleted and replaced with this Credit Agreement, unless the terms of the Original Agreement are otherwise expressly or implicitly preserved by this Credit Agreement, in which case they will co-exist with this Credit Agreement, and, to the extent of any inconsistency, this Credit Agreement will prevail.

Definitions

58. In these Credit Facility Terms:
 - "**Credit Agreement**" means the Application for Commercial Credit, the Privacy Statement, these Credit Facility Terms, the National Credit Declaration, and the Terms of Trade.
 - "**Credit Facility Terms**" means these credit facility terms.
 - "**Customer**," "**you**," "**your**" means the person acquiring Goods or Services from us, as described in Part 1 of this Credit Agreement.
 - "**Equipment**" means the plant, machinery, vehicles, or equipment hired by us to you from time to time (together with such accessories, tools and associated items, manuals, and logbooks as accompanies such plant, machinery, vehicles, or equipment).
 - "**Goods**" means all goods supplied by us to you but does not include the supply of any Equipment (and where the context so permits includes any supply of Services) and as are described on our Tax Invoices, quotation, or any other forms as provided by us to you.

"**GST**" has the meaning given to it by the GST Act.

"**GST Act**" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"**Hire Agreement**" means a separate agreement between the Parties for the hire of Equipment

"**Insolvency Event**" means any of the following events concerning a Party, unless the events take place as part of a solvent reconstruction, amalgamation, merger, or consolidation on terms approved by the other Party before it takes place and the implementation of the reconstruction, amalgamation, merger, or consolidation complies with the terms of the approval:

- (a) if an administrator, liquidator, receiver, receiver and manager or other controller (as defined in the *Corporations Act 2001* (Cth)) is appointed to, or over, any of the property or undertaking of the Party;
- (b) if the Party becomes bankrupt;
- (c) if a controlling trustee is appointed to, or over, any of the property or undertaking of the Party;
- (d) if the Party's property or undertaking becomes subject to a personal insolvency arrangement under part X *Bankruptcy Act 1966* (Cth) or a debt agreement under part IX *Bankruptcy Act 1966* (Cth);
- (e) the Party is unable to pay its debts when they become due and payable;
- (f) if the Party ceases to carry on business; or
- (g) if any event happens in Australia or any other country or territory in respect of a Party that is similar to any of the events or circumstances referred to in this definition.

"**Parties**" means Westanks and the Customer, and "**Party**" means either one of them.

"**PPSA**" means the *Personal Property Securities Act 2009* (Cth).

"**Services**" means all services supplied by us to you (and where the context so permits includes any supply of Goods).

"**Tax Invoice**" the meaning given to it by the GST Act.

"**Terms of Trade**" means our terms of trade.

"**Westanks**," "**we**," "**us**," "**our**" means Westanks Australia Pty Ltd ACN 121 863 607.

Interpretation

59. If there is any conflict, ambiguity, or inconsistency between any of the documents which comprise this Credit Agreement, it is expressly agreed the order of precedence will be (in descending order of precedence):

- (a) these Credit Facility Terms; and
- (b) our Terms of Trade.

If there is any conflict, ambiguity, or inconsistency between this Credit Agreement and a Hire Agreement (if any), the Hire Agreement will prevail to the extent of the conflict, ambiguity, or inconsistency.

60. Unless the contrary intention appears, a reference to:

- (a) this Credit Agreement or another document includes any variation or replacement of it, notwithstanding any change in the identity of the Parties;
- (b) the singular includes the plural and vice versa;
- (c) a right includes a benefit, remedy, authority, discretion, or power; person includes a natural person, partnership, body corporate, association, joint venture, governmental or local authority or agency, or other entity;
- (d) a person includes the person's successors, executors, administrators, substitutes (including a person who becomes a party by novation) and assigns; and
- (e) any statute, ordinance, code, or other law includes regulations and other statutory instruments under any of them and consolidations, amendments, re-enactments, or replacement of any of them.

61. Headings are for convenience only and will not affect the interpretation of these Credit Facility Terms.

62. The meaning of general words is not limited by specific examples introduced by including, for example, or similar expressions.

The expressions "in writing" or "written" means any expression of information in words, numbers, or other symbols, which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

Where two or more persons are defined as a Party in these Credit Facility Terms, that term means each of the persons jointly, each of them severally, and any two or more of them jointly.

An agreement, covenant, obligation, representation, or warranty on the part of two or more persons binds them jointly and severally and an agreement, covenant, obligation, representation, or warranty in favour of two or more persons is for the benefit of them jointly and severally.

63. Unless specified otherwise, all reference to sums of money is in terms of Australian currency (AUD), and all documents and correspondence between the Parties must be in the English language.