

## **BAXIT.COM.AU WEBSITE TERMS AND CONDITIONS OF ACCESS**

### **Parties, Obligations and the Website**

1. The baxit.com.au website ("Website") is owned and operated by the BAX IT Services Pty Ltd (ABN 66 103 232 024) ("BAX IT").
2. Access to the secure areas of this Website is restricted to persons who are authorised customers of BAX IT. Access by unauthorised persons is strictly prohibited.
3. By accessing, browsing and/or using this Website, each Customer is expressly agreeing to abide by the terms and conditions referred to in this document ("Terms of Use").
4. Each Customer should read the Terms of Use prior to using this Website.
5. Although BAX IT may notify Customers of a change in the Terms of Use it is under no obligation to provide such notice and reserves the right to amend the Terms of Use at any time without notice.
6. It is the Customer's responsibility to read and be familiar with the Terms of Use.

### **General Commercial Terms**

7. This Website is provided for the purposes of allowing the Customer to do the following with an industry standard browser:
  - a) access as presented on this Website information about BAX IT, the terms of the relationship between BAX IT and the Customer, and the goods and/or services presented on this Website; and
  - b) communicate to BAX IT the Customer's desire to purchase goods and/or services presented on this Website.The Customer must use this website solely for the above authorised purposes.
8. Upon registration and the opening of an account with BAX IT, BAX IT will authorise the Customer to become a Registered User. Customers will be notified once their BAX IT account has become fully activated.
9. Registered Users will have access to secure areas of the Website and may place orders with BAX IT for goods and/or services presented on this Website.
10. Notwithstanding anything in the Terms of Use or any other agreement between the Customer and BAX IT, all orders are subject to the acceptance of BAX IT and no order will be deemed to be accepted by BAX IT until such acceptance is communicated to the Customer.
11. In addition to any other information BAX IT thinks relevant, in deciding whether to accept an order placed by the Customer, BAX IT may have regard to:
  - a) the Customer's account with BAX IT;
  - b) the Customer's credit status; and
  - c) any previous dealings between BAX IT and the Customer.BAX IT reserves the right to delay or cancel any order at any time (including at the time of fulfilment) based on the above.
12. The Customer may print a hard copy of an order placed on the Website. The presentation of an order confirmation indicates only that BAX IT has received the order.
13. If the Customer wishes to cancel an order it must do so by telephoning a BAX IT customer sales representative, accounts manager or other authorised person and quote the order number. Orders may not be cancelled after 60 minutes of order placement or if the goods have left BAX IT's storage facilities.
14. Orders for goods not ordinarily stocked by BAX IT are irrevocable.

### **Prices and Products are subject to Change**

15. All prices, products and services displayed on this Website and offered by BAX IT are subject to change without notice. It is the responsibility of the Customer to check the price of a product or service before placing an order for it.

### **Supply of Goods and/or Services**

16. Upon receiving payment from the Customer or if the Customer is a credit Customer, in accordance with our standard terms of credit (as varied from time to time), BAX IT will deliver the goods to the address nominated by you in accordance with the invoice.
17. It is the Customer's responsibility to provide BAX IT with access to the premise at the time nominated for delivery. BAX IT reserves the right to charge the Customer for all costs and expenses including expenses of storage for redelivery of the goods.
18. BAX IT will take all reasonable steps to achieve delivery on or about the date nominated for delivery. However, BAX IT will not be liable for any delay or failure to deliver the goods on the nominated date or for any loss or liability of the Customer to a third party.
19. The Customer will inspect the goods on delivery and to the extent permitted by law will be deemed to have accepted the goods as being in accordance with the required quantity, merchantability and fitness for the purpose which they are required, safety standards and product specifications.
20. The Customer otherwise accepts terms as identified on the invoice provided on the supply of goods.
21. Risk in the products passes to the Customer on delivery of the goods. However, BAX IT retains ownership in all goods until full payment has been received.
22. The Customer will allow BAX IT access to enter their premises and remove goods at any time prior to BAX IT receiving full payment for the goods. All proceeds of sale for goods supplied by BAX IT will be held on trust for BAX IT until BAX IT receives full payment for the goods.
23. In the event that payment is not received in accordance with the terms of the invoice, the Customer agrees that if a demand is made on them they will immediately execute a mortgage and /or caveat over property owned by them as required by BAX IT. If a Customer fails to respond to the request within 21 days the Customer authorises BAX IT to appoint a credit manager or solicitor to be the true and lawful attorney of the Customer for the purpose executing and registering such instruments.

### **BAX IT Terms of Credit**

24. The Customer agrees that BAX IT may:
- a) require any future sales transactions be conducted on a cash before delivery basis;
  - b) require that all amounts owing to BAX IT for any reason become immediately due and payable without deduction or demand;
  - c) if the Customer is a corporation, require the directors or other nominated third parties to give a guarantee and indemnity in the form required by BAX IT;
  - d) Charge an account service fee of 1.5 per cent per month until full payment is received;
  - e) Reserve its right to rescind all discounted rates and to recalculate outstanding charges;
  - f) Require that the Customer pay all costs, commissions and legal expenses whatsoever arising from the collection of any overdue monies. Such Interest, costs and commissions and legal expenses may be recovered as a liquidated debt.

### **Customer Responsibilities**

25. The Customer must:
- a) use this Website in accordance with the Terms of Use;
  - b) if under the age of 18, obtain a parent or guardians consent prior to using the Website;
26. The Customer is responsible for maintenance and supply of all their own hardware and software used to access the Website and the Internet.
27. The Customer must not:
- a) use the Website to post or transmit any information or materials in breach of any laws or regulations;
  - b) use the Website to infringe another parties copyright;
  - c) use the Website to infringe a third party's privacy;

- d) use the Website to defame, harasses, threaten, menace or offend another person;
- e) post illegal, obscene, indecent, inflammatory or pornographic material or other material that could give rise to civil or criminal proceedings;
- f) use the Website to send unsolicited, commercial or bulk email;
- g) tamper with the settings of the Website;
- h) use the Website to do anything that constitutes an offence under any law or regulation;
- i) aid or assist any person to do any of the above acts.

### **Security**

- 28. It is the Customers responsibility to ensure that all details including all telephone, email and address details are correct and current.
- 29. The Customer must maintain confidentiality on all matters communicated to them by BAX IT.
- 30. The Customer must comply and obey all instructions and directions issued to it by BAX IT regarding the use of the Website or membership details.
- 31. The Customer must not send or disclose its login details and password to any other person or store it in a manner that would reasonably allow another person or entity to obtain access to it unless the details are disclosed to:
  - a) an authorised agent or employee ("Authorised Person") of the Customer; and
  - b) that Authorised person agrees to be bound by the Terms of Use.
- 32. The Customer must immediately notify BAX IT in writing if they become aware that the confidentiality of their login details have been compromised or there has been an unauthorised use of the Customers BAX IT account. Notice given to BAX IT does not release the Customer from the Terms of Use.
- 33. In the event of an unauthorised use, BAX IT will take reasonable steps to deactivate the Customers Account and issue the Customer with new login details within a reasonable time.

### **Privacy**

- 34. The Customer agrees that BAX IT may use and provide personal information about its Customers that is collected on the Website. The collection and provision of collected information is subject to privacy laws and BAX IT will comply with the its Privacy Statement in dealing with any personal information.
- 35. BAX IT may release to an Authorised Person information collected by BAX IT from the Website.

### **Disclaimer**

- 36. The content, products and services on this Website provided on an "as is" basis. BAX IT does not represent the contents of this Website as being accurate, comprehensive, complete, verified or error free.
- 37. BAX IT gives no guarantee that the Website will always be accessible and available and/or fault or virus free.
- 38. Prior to using any download BAX IT recommends the user carry out an appropriate virus check as BAX IT does not accept any liability for any computer viruses transmitted in connection with the use of this website.
- 39. Subject to any applicable law which cannot be excluded, the Terms of Use expressly set out in this document form the entire agreement. No other terms apply.
- 40. All trademarks displayed on this website belong to their respective owners unless otherwise indicated.
- 41. Visitors to this website are under an obligation to take all reasonable steps to minimise the extent of loss suffered as result.
- 42. BAX IT owns the copyright in the content on this website and reserves its full rights for any unauthorised use by you.
- 43. The Customer releases from all liability whether in contract or tort (including negligence), to the maximum extent permitted by law as to the quality and fitness of purpose of the goods and services available on this website.
- 44. The Customer releases from all liability whether in contract or tort (including negligence), to the maximum extent permitted by law for any loss or damaged cause by factors reasonably considered to be the fault of third party conduct or equipment.
- 45. The Customer releases from all liability whether in contract or tort (including negligence), to the maximum extent

permitted by law for any loss whatsoever of data, profits or revenue arising as a result of the use of this Website.

### **Links to other websites and third party content**

46. The Website may contain links to other web sites operated by third parties ("Third Party Web Sites"). BAX IT does not endorse, or approve of the operators of those Third Party Web Sites, or the information, graphics and material on those Third Party Web Sites ("Third Party Material").

47. Subject to any applicable law which cannot be excluded, BAX IT makes no warranties or representations:

a) regarding the quality, accuracy, merchantability or fitness for purpose of Third Party Material or products or services available through Third Party Web Sites; or

b) that Third Party Material does not infringe the intellectual property rights of any person. BAX IT is not authorising the reproduction of Third Party Material by linking Material on this web site to Third Party Material.

48. All offers to sell and statements relating to goods and services available on Third Party Web Sites are the responsibility of and given by the Third Party Web Site operator. BAX IT expressly disclaims acting in any other respect on behalf of Third Party Web Site operators.

49. BAX IT may receive payments, fees and/or commissions from third party operators for goods or services supplied by the operator as a result of you linking to the Third Party Web Site from the Website. The Customer consents fully to BAX IT receiving such payments, fees and/or commissions.

50. Third party products, services and information ("Third Party Content") are not provided or endorsed by BAX IT.

Where it is apparent that Third Party Content is not provided by BAX IT or the Customer has left the Website, the Customer's legal relationship in respect of the Third Party Content is with the third party provider.

51. BAX IT does not check the accuracy or completeness of Third Party Content. It is the Customer's responsibility to make any enquires regarding Third Party Content before relying on that content or before entering into a transaction in relation to

Third Party Content supplied via the Website.

### **Change of the Terms of Use**

52. These are the current Terms of Use. They replace any other terms of use for the Website. BAX IT may at any time vary the Terms of Use by publishing the varied Terms of Use on the Website. The Customer accepts that by doing this, BAX IT has provided sufficient notice of the variation.

53. BAX IT reserves any rights not expressly granted in these Terms of Use.

### **Suspension and Termination**

54. The Customer may stop using the Website at anytime, for any reason.

55. BAX IT may immediately suspend or limit the Customer's access to the Website if:

a) the Customer is in breach of the Terms of Use and the breach in cannot be remedied or the customer has failed to remedy breach within thirty (30) days of being notified of the breach;

b) BAX IT has reasonable grounds to believe that there is a real risk of loss or damage to us or another party unless BAX IT suspends or limit usage;

c) the law requires BAX IT to do so;

d) access to the Website becomes illegal;

e) the Australian Competition and Consumer Commission issues a competition notice relating to the Website or BAX IT has reasonable grounds to believe it will do so; or

f) there is an emergency.

56. The Terms of Use are effective until terminated by BAX IT.

57. BAX IT may terminate this agreement and the Customers Access to the Website at anytime without notice.

58. In the event of termination, the Customer is no longer authorised to access the Website, but all restrictions, disclaimers and limitations of liability remain enforceable.

59. Termination will not affect any legal right tat may have accrued to BAX IT against the Customer up to the date of

termination.

60. The law in force in the State of New South Wales, Australia governs this agreement and the parties irrevocably submit to the exclusive jurisdiction of the courts of New South Wales.

61. If any of the terms in this Terms of Use are invalid for whatever reasons, they will be struck out and the remaining terms will remain in force.

62. A failure by BAX IT to pursue a breach of the Terms of Use by the Customer does not waive any rights BAX IT has to pursue the Customer for a similar or subsequent breach.