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Customer Contract Termination Policy – Failure to Pay Invoices

PURPOSE

To ensure consistency and fairness when determining whether to suspend supply of water and/or terminate a BIL Customer Contract, in response to the Customer failing to pay invoices.

SCOPE

The policy applies to all Customer Contracts and relates specifically to defaults arising from the failure to pay invoices by the due date.

This policy does not apply where the Customer's payment default arises from or in connection with:

- a Force Majeure event (clause 48); or
- a formal dispute between the parties, which is being dealt with under the Dispute Resolution Procedure provided in the Customer Contract.

Further, this policy does not apply where a Customer suffers an insolvency event (e.g. appoints an external administrator or liquidator), unless the Customer has also defaulted on payment of invoices.

CONTEXT

BIL's Customer Contract allows BIL to suspend the delivery of water to the Customer and/or terminate the Customer Contract for failing to pay invoices. The relevant clauses regarding suspension and termination are as follows:

- Clause 30.7 "All invoices must be paid in full within 14 days of receipt by the Customer."
- Clause 31 "Any invoice which remains outstanding whether in full or partially will incur interest at the rate being 2 percentage points above the prime lending rate charged by the Commonwealth Bank of Australia on overdrafts of \$100,000 or more which interest will accrue from day to day on the amount outstanding from the due date until that amount is paid."
- Clause 36.1 "BIL may give the Customer a notice of default if the Customer breaches any of its obligations under this Agreement."

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- Clause 36.2 "The notice of default must specify in reasonable detail the breach complained of and stipulate a reasonable time for the breach to be rectified and in the case of the failure to pay any monies payable under this Agreement the period of 14 days is deemed to be reasonable."
- Clause 36.3 "If the Customer disputes the default the Customer must give a Dispute Notice to BIL within the time stipulated for the breach to be rectified upon which that time will be deemed to be extended until the Dispute Resolution Procedure expires."
- Clause 36.4 "The Customer may not give a Dispute Notice in relation to any notice of default received from BIL except in accordance with Clause 36.3"
- Clause 37 "The Customer commits an event of default if:
- 37.1 it fails to rectify the default within the time stipulated in a notice of default given by BIL under Clause 36 or if it becomes insolvent."
- Clause 38.1 "If the Customer commits an Event of Default, BIL may suspend the delivery of water to the Customer until the default is rectified. Once the default has been rectified BIL will endeavour to end the suspension as soon as reasonably practicable."
- Clause 38.2 "In addition to rectifying the default, the Customer must pay the Suspension Reinstatement Fee before BIL is obliged to re-commence the delivery of water to the Customer."
- Clause 39.1 BIL may terminate a Customer's rights under this Agreement whose delivery of water has been suspended for more than 90 days and whose default has not been rectified, by written notice to the Customer."

This is, at minimum, a four-month process. The Customer's responsibilities survive contract termination, including payment of all monies owed - current and future (e.g. levies).

Immediately upon termination of the Customer Contract, Clause 4.1 of BIL's constitution makes the now former Customer ineligible to hold shares in BIL, which must be disposed.

Other relevant clauses of the Customer Contract that should be considered, in responding to failure to pay invoices, are as follows:

- Clause 47 BIL and the Customer agree to conduct themselves and deal with each other in good faith in order to give effect to the terms of this Agreement.
- Clause 48 A party who is unable to perform any of its obligations under this Agreement because of a Force Majeure is not liable for any loss or damage arising from that failure if that party:
- (a) immediately gives the other party written notice explaining the failure and identifying the Force Majeure;
- (b) uses all reasonable endeavours to overcome the Force Majeure.
- Clause 32 Dispute Resolution Procedure – applicable where a Dispute Notice has been issued and the parties are required to attempt to resolve the dispute

through negotiation and mediation, before commencing any legal proceedings.

Clause 58.2 The Customer must pay all legal and other costs in relation to the enforcement of its obligations under this Agreement by BIL.

Termination of a Customer Contract has the potential to significantly impact the viability of the Customer's viticulture business, due to:

- An inability or reduced ability to irrigate, leading to a reduced crop and/or higher input costs (if, say, SA Water mains water can be sourced), and
- The value of their BIL asset decreasing, from circa \$20k/ML for shares with a water contract (with fully paid levies) to circa \$1,750/ML for shares only

Accordingly, any wrongful suspension of supply or termination of a Customer Contract, can expose BIL to significant reputational and legal risks and monetary claims, as the Customer may seek to have their contract reinstated or compensation for its loss or damage. The Customer may either seek this directly from BIL or via court proceedings, including on the basis that BIL did not act in good faith (Clause 47).

POLICY

Set out below are the key procedural steps that must be followed under this Policy. These steps must be read in conjunction with the Guidance section set out below, which provides further detail about relevant timeframes, requirements and considerations.

Note:

- If during any step of this procedure, the Customer establishes a payment plan with BIL, this will effectively 'stop the clock' on BIL taking further action against the Customer under this Policy (e.g. by suspending their water supply or terminating the Customer Contract). The Customer must be advised that any failure to adhere to that payment plan, will result in BIL taking immediate, further action to recover its debts.
- If the Customer issues a Dispute Notice in relation to any Notice of Default, this will effectively 'stop the clock' on BIL taking further steps under this Policy, and the parties will follow the Dispute Resolution Procedure under clause 32.

Procedural steps:

1. Send the Customer regular account updates.
2. If an invoice is unpaid after 30 days from the date it was issued, Management will call the Customer to confirm receipt of the invoice & seek immediate payment, or alternatively negotiate a payment plan.
3. If the Customer does not respond to calls, refuses to pay the invoice and/or fails to adhere to the payment plan, Management will send the Customer a 'Notice of Default' letter (a contractual requirement of the termination process).

4. If the Customer disputes the invoice, Management will check the information in the invoice is correct and complete (including any specified quantities and amounts). If required, the invoice will be corrected and re-issued to the Customer, and they will be given 14 days from the date it is re-issued to make payment.
5. If the Customer fails to pay its debts within 14 days of receipt of the 'Notice of Default' letter, Management will send the Customer an 'Event of Default' letter (another contractual requirement of the termination process) and suspend water supply (unless BIL's Executive Committee grants an exemption to the suspension of supply).
6. The Customer will have 90 days in which to remedy the Event of Default. During this period, Management will email the Customer and offer to assist with selling all or some of their BIL contract and shares to raise cash to pay their BIL debt. Management will also make the Customer aware the value of their BIL asset is likely to decrease significantly if the Customer Contract is terminated.
7. If the Customer's water supply has been suspended for 90 days, and it has not made the payments requested in the 'Event of Default' letter. Management will seek approval from the Board to terminate the Customer Contract (a contractual option) and if approval is given, send a Termination of Contract letter to the Customer.
8. After termination, and at the request of the former Customer, the Board may consider reinstating the Customer Contract on terms acceptable to the Board.

Guidance

Item numbers below relate directly to those within the Policy section.

1. BIL will send regular (e.g. monthly, as appropriate) email account statements to Customers with unpaid invoices. This demonstrates BIL has made reasonable efforts to notify Customers of their unpaid invoices.
2. Management will call Customers once invoices are 2-4 weeks overdue to:
 - a) Confirm receipt of the invoice and, if required, resend it; and
 - b) Either seek immediate payment; or
 - c) If immediate payment is not possible, establish a payment plan.

Management must make reasonable efforts to tailor the payment plan to what the Customer advises is achievable. It will ideally contain regular payments.

Allowing a payment plan is a sign BIL is acting in good faith. Regular payments under the payment plan are a sign the Customer is reciprocating that good faith.

3. The Notice of Default letter must address:
 - a. what payments remain outstanding;
 - b. when those payments became due;

- c. how long the Customer has to remedy the payment default(which must be no less than 14 calendar days); and
- d. what the consequences will be if the payment default is not rectified within that time period (e.g. it will constitute an 'Event of Default' under the Customer Contract and result in suspension of their water supply.

The letter is to be sent to all addresses provided (e.g. by email and/or post, if both details have been provided). Forewarning the Customer of the consequences of not remedying the payment default, is an act of good faith by BIL, since some Customers may not recall the details of the Customer Contract.

- 4. If an invoice is reissued by BIL, and is not paid by the Customer, this will re-trigger this procedure from Step 1.
- 5. The Event of Default letter must address all matters outlined in Guidance Note 4 above, except that it will:
 - a. confirm that water supply has now been suspended;
 - b. specify any Suspension Reinstatement Fee that is payable for recommencing delivery of water, which must be reasonable and proportionate to BIL's costs in this regard); and
 - c. forewarn that if the Event of Default is not rectified within 90 days, the Customer Contract will normally be terminated. The letter is to be sent to all addresses provided (e.g. by email and/or post, if both details have been provided).
- 6. Part way through the 90-day Event of Default period, email the Customer:
 - a) Suggesting consideration be given to selling some or all BIL Customer Contract and shares to raise cash to pay off the debt to BIL;
 - b) Offering to provide a shortlist of other BIL Customers who have submitted a BIL Expression of Interest to purchase additional BIL shares/assets
 - c) Identifying that the value of their BIL shares with a Customer Contract is likely to be significantly more than BIL shares only.

This demonstrates BIL is acting in good faith by offering to assist the Customer and forewarning them of the financial consequences of inaction.
- 7. The Board is to confirm the Customer Contract is to be terminated. Once confirmation is received, Company Secretary will send a Termination of Contract letter to the customer which addresses:
 - a) why the Customer Contract is terminated;
 - b) the amount owing, including overdue interest not yet invoiced, invoices not yet due, and future levies (if applicable);
 - c) that the Customer's BIL shares now need to be disposed of;
 - d) that BIL can assist in finding a buyer by providing a shortlist of interested parties, and providing a share transfer form for signing; and
 - e) that any proceeds from the disposal of the shares, less any costs, will be applied against the outstanding debt.

The Termination of Contract letter is to be sent by email and/or post, if both addresses have been provided.

8. The Board has ultimate discretion in this circumstance, having regard to local/business relationships with the particular Customer, the impact that refusing to reinstate the Customer Contract would have on the Customer, BIL's past approach in analogous circumstances, and BIL's reputation in the market. The decision must be in the best interest of BIL.

BIL will maintain its 'good corporate citizen' status within the Barossa community. When a contract is terminated, BIL does not set out to cause undue financial hardship, although this may occur as an effect of termination. Reasonable care should be taken to ensure consistent and justifiable decisions.

Consideration could be given to:

- a) The Customer's historical context with BIL (e.g. are they a long-time / foundational member? Is this an aberration in an otherwise good payment history?)
- b) Their communication with BIL, if any, during this process. (e.g. their genuine attempts to meet payment plans; whether they have acted in good faith towards BIL).
- c) Pre-payment of water use charges going forward (e.g. 50% in October and 50% in December, with reconciliation at the end of September).
- d) Prospects of being able to pay future invoices when due.

If the Board decides to reinstate the Customer, all debt, the Suspension Reinstatement Fee and any pre-payments must be paid in full before water supply can recommence.