

TERMS AND CONDITIONS FOR SALE OF GOODS AND SERVICES BLAKE MACHINERY GROUP PTY LTD

THE PARTIES AGREE

1. Definitions

The terms used have the meaning given below:

- (a) **'Australian Consumer Law'** means Schedule 2 of the *Competition and Consumer Act 2010*.
- (b) **'BMG'** means Blake Machinery Group Pty Ltd ACN 146 680 720 or any of its Related Bodies Corporate.
- (c) **'Contract'** has the meaning given in clause 3(d).
- (d) **'Customer'** means the entity purchasing the Goods and/or Services or as otherwise described in the Quote, Invoice or Contract, or any of their Related Bodies Corporate.
- (e) **'Customer Representative'** means a duly authorised representative of the Customer as advised by the Customer to BMG in writing.
- (f) **'Delivery'** has the meaning given in clause 8.
- (g) **'Default Rate'** means an interest rate of 10% per annum above the Reserve Bank of Australia target cash rate.
- (h) **'Defect'** (and **defective**) means any Good which does not comply with the manufacturer's specifications, or which is faulty, materially non-conforming, inoperable, unsafe or not operating according to its normal use.
- (i) **'Dispute Notice'** means a notice given under clause 17.
- (j) **'Goods'** has the meaning given in clause 2 and for the avoidance of doubt, includes Serviced Equipment.
- (k) **'GST'** means a tax, impost or duty on goods, services or other things imposed by any fiscal, national, state, territory or local authority or entity and whether presently imposed or novel, together with interest or penalties either before or after the date of this Contract.
- (l) **'GST Act'** means A New Tax System (Goods & Services Tax) Act 1999.
- (m) **'Immediately Available Funds'** means cash, bank, cheque or telegraphic or other electronic means of transfer of cleared funds into a bank account nominated in advance by BMG.
- (n) **'Independent Person'** means a Queensland Law Society approved mediator to be agreed between the parties or failing agreement to be appointed on the application of either party by the president for the time being of the Queensland Law Society. The person agreed or appointed must have sufficient expertise in the areas in which the parties are in dispute. However, if any appointment is made by the Queensland Law Society, then that appointment is not subject to challenge by the parties on any grounds. If the Queensland Law Society is abolished, then reference to that body will mean such other recognised professional association as may assume the role of the Queensland Law Society.
- (o) **'Insolvency Event'** means any of the following in respect of a Customer:
 - (i) The Customer is or states that the Customer is unable to pay from the Customer's own money all the Customer's debts as and when they become due and payable.
 - (ii) An application is made to a court for an order, or an order is made appointing an administrator, liquidator, provisional liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction in respect of a Customer (or proceedings are commenced or a resolution passed or proposed in a notice of meeting for any of those things).
 - (iii) A receiver or receiver and manager is appointed in respect of any property of the Customer.
 - (iv) Proceedings are initiated with a view to obtaining an order for the winding up or similar process of the Customer or an order is made or any effective resolution is passed for the winding up of the Customer.
 - (v) The Customer enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors or it proposes a reorganisation, moratorium or other administration involving any class of its creditors.
 - (vi) A controller is appointed to take over or takes possession of all or a substantial part of the assets or undertakings of the Customer.
 - (vii) The Customer is or is deemed or presumed by law or a court to be insolvent.
 - (viii) If the Customer is a corporation, it is deregistered under the Corporations Act or notice of its proposed deregistration is given to the corporation.
 - (ix) The Customer takes any step to obtain protection or is granted protection from their creditors under any applicable legislation or an administrator is appointed to the Customer.
 - (x) Anything analogous or having a substantially similar effect to any of the events specified above happens in respect of the Customer under the law of any applicable jurisdiction.
- (p) **'Intellectual Property'** includes trade marks, logos, images, designs, copyright and patents.
- (q) **'Invoice'** has the meaning given in clause 5.1.
- (r) **'Loss'** means any damage, loss, liability, cost, charge, expense, penalty, outgoing or payment and includes legal costs and expenses on a solicitor/client basis.
- (s) **'Merchantable Quality'** has the meaning given to it in the Sale of Goods Act 1923.
- (t) **'Notice'** means a written notice, consent, approval, direction, order or other communication.
- (u) **'PPSA'** refers to the *Personal Properties Securities Act 2009* (Cth).
- (v) **'Price'** means the price of the Goods and/or Services as specified by BMG.
- (w) **'Purchase Money Security Interest'** has the meaning given to it in the PPSA.
- (x) **'Purchase Order'** means an order to purchase Goods or Services pursuant to clause 3(b).
- (y) **'Quote'** has the meaning given clause 3(a)(i).

- (z) **'Related Bodies Corporate'** has the meaning given to that term in the *Corporations Act 2001* (Cth).
- (aa) **'Sales Terms'** means the terms and conditions upon which BMG sells or supplies Goods and Services as set out in this document.
- (bb) **'Security Interest'** has the meaning given to it in the PSSA.
- (cc) **'Serviced Equipment'** means goods, machinery, equipment, components, parts, accessories and other materials which are owned, leased or hired by the Customer and are the subject of Services provided by BMG.
- (dd) **'Services'** has the meaning given in clause 2.
- (ee) **'Site'** means the Customer's site as specified in the Quote, Invoice or Contract.
- (ff) **'Trade-in'** means the exchange of the Customer's own goods for Goods.
- (gg) **'Uncontrolled Event'** means an act of God, strike, lock out or other interference with work, war declared or undeclared, blockage, disturbance, lightning, fire, drought, earthquake, storm, flood, explosion, government or quasi-government restraint, exploration, prohibition intervention, direction, or embargo, unavailability or delay in availability of equipment or transport, inability or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licences, authorities or allocations, or any other cause whether of the kind specifically set out above or otherwise which is not reasonably within the control of the party relying on the Uncontrolled Event.
- (hh) **'Vienna Convention'** means the United Nations Convention on Contracts for the International Sale of Goods.

2. General

All new and used vehicles, machinery, plant and equipment (excluding rentals), materials, consumables, software, hardware, components and parts (including reconditioned and rebuilt parts) (**Goods**) and all labour or services in connection with such Goods (**Services**) sold or supplied to the Customer by BMG is or are supplied on these Sales Terms.

3. Formation of Contract

- (a) Until BMG has accepted a Purchase Order in accordance with clause 3(c) of these Sales Terms:
 - (i) any quotation, estimate or price prepared or represented by BMG (**Quote**) is indicative only, not an offer to contract and is only valid for 30 days;
 - (ii) no Purchase Order by the Customer to BMG following a Quote will by itself or in association with a Quote bind BMG; and
 - (iii) all Quotes prepared by BMG may be withdrawn or varied by BMG prior to acceptance.
- (b) If the Customer requests or orders Goods and/or Services from BMG and that order is consistent with a Quote, then the Customer offers to contract with BMG on the basis of the order and the Quote and a **Purchase Order** is created.
- (c) BMG accepts and is deemed to have accepted a Purchase Order made by the Customer under clause 3(b) on the earlier of:
 - (i) when those Goods are delivered to the Customer or the Services are completed by BMG as the case may be;

- (ii) when Notice of acceptance is provided by BMG to the Customer; and
- (iii) when BMG has issued an invoice to the Customer.
- (d) Upon acceptance by BMG under clause 3(c), a Contract comes into existence between BMG and the Customer incorporating the following documents:
 - (i) any Quote, Invoice or other document of BMG whether attaching these Sales Terms or not;
 - (ii) any Notice of acceptance provided by BMG in accordance with clause 3(c)(ii);
 - (iii) these Sales Terms;
 - (iv) any document attached or annexed to these Sales Terms by BMG; and
 - (v) the Purchase Order placed by the Customer including any attached or associated terms and conditions.
- (e) In the event of any inconsistency, ambiguity or discrepancy, the order of precedence set out above applies with the first listed document taking the highest priority and so on.
- (f) If, after applying the order of precedence, there still remains an inconsistency, ambiguity or discrepancy, either party may give the other party Notice.
- (g) A Purchase Order may not be varied except with the written consent of BMG.

4. Price

- (a) Unless otherwise stated, all quoted Prices are for supply of the Goods and/or Services only and do not include delivery or freight.
- (b) BMG may at any time require the Customer to provide security against default by way of a cash deposit or unconditional bank guarantee, such security to be released within seven days of payment of all monies due.
- (c) In relation to Services performed, the Customer acknowledges each of the following:
 - (i) where BMG, following the commencement of Services, considers that additional work, parts or other materials are required for the Services which are not provided for in the Quote, then BMG may, in its absolute discretion, cease providing the Services and request that the Customer accept a revised Quote in respect of the Services;
 - (ii) any Services performed by BMG prior to the issuance of the revised Quote under clause 4(c)(ii) must be paid for;
 - (iii) where the Customer accepts BMG's revised Quote, the revised Quote will be deemed to be the Purchase Order; and
 - (iv) where the Customer does not accept BMG's revised Quote, then BMG will continue to provide the Services as set out in the original Quote (if it is safe to do so) and the Customer releases BMG from, and will indemnify, keep indemnified and hold harmless BMG in respect of all claims arising in connection with the Customer's decision not to undertake the additional work or purchase the additional parts or other materials.

5. Payment

5.1 Invoicing

BMG will invoice the Customer for the Goods and Services with each invoice setting out the Price and the quantity of Goods and/or Services supplied (the **Invoice**).

5.2 Payment

- (a) Subject to clause 5.2(b), the Customer must pay the Price for the Goods and/or Services supplied to the Customer:
 - (i) within the time period stipulated on the Invoice;
 - (ii) in Immediately Available Funds or in any other way that BMG directs in writing to the Customer; and
 - (iii) without any abatement, reduction or set-off by the Customer.
- (b) Time is of the essence in relation to payment for Goods and/or Services and if the Customer fails to pay BMG any amount when due, BMG is, without limitation, entitled to payment of interest at the Default Rate calculated in accordance with clause 16.1(a).
- (c) BMG may request that the Customer make one or more upfront or progress payments in respect of particular Goods and/or Services.
- (d) BMG may set off, or otherwise account for, amounts paid by the Customer against any other amounts owed by the Customer to BMG or claimed to be so owed whether arising under or in connection with this Contract or otherwise.
- (e) The Customer indemnifies BMG for any losses, costs or fees incurred or arising in connection with recovery of any overdue payment due to BMG.

5.3 Retention of title – Goods supplied

- (a) The Goods remain the property of BMG until such time as all amounts owing by the Customer to BMG from time to time have been paid for in full in cleared funds.
- (b) Until all amounts owing by the Customer to BMG from time to time are paid for in full, the Customer must:
 - (i) act, with respect to the Goods, only as BMG's bailee;
 - (ii) keep the Goods in its possession and control;
 - (iii) keep the Goods in good repair and condition, excluding fair wear and tear;
 - (iv) ensure the Goods are easily identifiable as the property of BMG and if requested, promptly inform BMG of the location of the Goods;
 - (v) not remove, deface or obliterate any identifying plate, mark or number on the Goods;
 - (vi) not allow any third party to acquire any interest, including a Security Interest, in the Goods; and
 - (vii) not sell, transfer, assign, lease or otherwise dispose of the Goods or any interest in them, or permit any charge, pledge, lien or other encumbrance to be created in relation to them.
- (c) Despite this clause 5, if the Customer sells, transfers, assigns, leases or otherwise disposes of the Goods to any person before all money payable by the Customer has been paid to BMG, the Customer agrees:
 - (i) it holds the proceeds of the Goods on trust for and as agent for BMG immediately when they are receivable or are received;
 - (ii) it must either pay the amount of the proceeds to BMG immediately when they are received or pay those proceeds into an account with a bank or deposit-taking institution as trustee for BMG; and
 - (iii) any accessory or item which accedes to the Goods by an act of the Customer or of any person at the direction or request of the Customer becomes and remains the

property of BMG until BMG is paid and title to the Goods (including the accessory) passes to the Customer.

- (d) To the extent the Goods consists of more than one identifiable item of personal property, this clause 5 applies to each component as if it were the Goods.

5.4 Services lien

- (a) The Customer must, if requested by BMG, make full payment for Services prior to the Serviced Equipment leaving the possession of BMG or on such further or other terms as BMG may agree in writing.
- (b) The Customer agrees that BMG has a lien over, and may in its absolute discretion, retain possession of the Serviced Equipment until such time as all amounts which are owing by the Customer to BMG in connection with the Services have been paid in full.
- (c) If any person (other than the Customer) claims right, title or interest in Serviced Equipment and tenders full payment of the amounts owing to BMG in connection with the Services, then subject to BMG giving the Customer 48 hours' Notice, BMG may accept that payment and release the Serviced Equipment to that person and the Customer waives all liability of BMG in respect of the release of the Serviced Equipment.

5.5 BMG's right to repossess and suspend Delivery

- (a) If the Customer fails to pay to BMG all monies due under this Contract by the due date, BMG has the right and irrevocable licence from the Customer, to at any time and without notice, via its representatives, take any or all of the following actions:
 - (i) Enter and repossess the Goods.
 - (ii) Keep or sell the repossessed Goods.
 - (iii) Hold the repossessed Goods in safe custody pending payment of the Price.
 - (iv) Suspend any other Delivery or performance of Service to the Customer without liability until any breach of this Contract is rectified by the Customer.
- (b) In the event that BMG repossesses the Goods, the Customer remains bound by its obligations to BMG in accordance with the Contract, including its obligation to pay the Price.
- (c) BMG is not liable for any loss, damage or liability suffered as a result of exercising its rights under this clause 5.
- (d) The parties irrevocably acknowledge and agree that in the event of repossession of Goods in accordance with clause 5.5, BMG is not required to give notice in accordance with section 135 of the PPSA.

6. PPSA

6.1 Security Interest

- (a) The Customer acknowledges that the retention of title in clause 5 gives rise to a Purchase Money Security Interest under the PPSA in favour of BMG in respect of the Goods and their proceeds.
- (b) The Customer undertakes to:
 - (i) promptly do all things, execute all documents and/or provide any information which BMG may reasonably require to enable BMG to attach, enforce, register, protect and maintain the perfection of its first priority security interest;

- (ii) give BMG not less than 14 days' prior Notice of any proposed change in its name and/or any other change to its details; and
 - (iii) immediately on request by BMG (and at the Customer's expense) obtain from any third party such agreements and waivers of any Purchase Money Security Interest that any third party has in the Goods, to ensure that the retention of title in clause 5 provides BMG with a first priority security interest in the Goods.
- (c) If the Customer defaults on payment of any monies due under this Contract, then BMG has the irrevocable right to seize the Goods without notice.
- (d) The Customer must give BMG Notice if another party with a security interest in the Goods seizes or otherwise deals with the Goods in a way that might impact BMG's Purchase Money Security Interest.

6.2 Security agreement

- (a) These terms and conditions are a security agreement for the purposes of the PPSA.
- (b) For the purposes of section 20(2) of the PPSA, the collateral are the Goods.

6.3 Customer disposal of Goods

If the Customer disposes of any of the Goods while they remain BMG's property, or if any of the Goods becomes part of another product sold by the Customer, then the Customer holds the proceeds on trust for BMG up to the amount it owes BMG in respect of those Goods, and must immediately pay that amount to BMG.

6.4 Finance

The Customer may finance the purchase of the Goods through a separate agreement entered into between it and a finance company selected by the Customer. In the event that the Customer elects to finance the purchase of the Goods in this manner, the Customer may direct BMG to transfer title to the Goods directly to the finance company and in the event of such a direction being provided title will transfer directly to the finance company upon full payment of the Price. These terms and conditions will apply as between BMG and the Customer that finances the purchase of the Goods even if the Invoice records the finance company as the purchaser of the Goods.

6.5 Copy of this Contract

The Customer hereby acknowledges receipt of a copy of this Contract, and, to the extent permitted by the PPSA, waives any right it may have to receive a copy of the financing statement, a financing change statement or a verification statement, as those terms are defined in the PPSA, relating to it.

6.6 Contracting out of the PPSA

To the maximum extent permitted by law, the Customer and BMG agree that the following provisions of the PPSA do not apply to the enforcement by BMG of its security interest in the Goods: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143.

6.7 Disclosure of information

Unless otherwise agreed in writing and to the extent permitted by the PPSA, the Customer agrees not to disclose information of the kind referred to in section 275(1) of the PPSA to an interested person, or any other person requested by an interested person. The Customer waives any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of the above information.

6.8 Meanings

In this clause 6, "proceeds" has the meaning given to that expression in the PPSA.

7. Warranties and exclusions

7.1 Warranty – manufacturer's warranty

- (a) In relation to Goods supplied by BMG to which a manufacturer's warranty applies, BMG warrants and the Customer agrees that:
 - (i) the benefits and obligations of the manufacturer's warranty apply in all respects;
 - (ii) the Customer must comply with all applicable warranty terms in the manufacturer's warranty statement, copies of which are available upon request; and
 - (iii) in relation to Hydrema machinery, BMG will honour the manufacturer's warranty for a period up to 12 months or 1,000 hours from the date of Delivery (whichever occurs sooner) on the whole machine. BMG will also offer an extended warranty up to 24 months or 2,000 hours from the date of Delivery (whichever occurs sooner) on engine and transmission components subject to BMG performing the 1,000 hour service on the machine as per the manufacturer's logbook and the Customer completing oil analysis on the engine every 250 hours.

7.2 Warranty – new Goods, no manufacturer's warranty

- (a) In relation to new Goods supplied by BMG to which a manufacturer's warranty does not apply, BMG warrants and the Customer agrees that for a three month period (unless otherwise specified) from the Invoice date, those Goods will be free from defects in materials and workmanship.
- (b) Subject to clause 7.2(a), if a new Good with no manufacturer's warranty is found to have a Defect in materials or workmanship, BMG shall at its cost or option, repair the defective Good or replace the defective Good.

7.3 Warranty – used or second-hand Goods

- (a) In relation to used or second-hand Goods supplied by BMG (except those Goods to which clause 7.1(a) applies), the Customer agrees that:
 - (i) all used or second-hand Goods are sold on an "as is where is" basis with all existing or future inadequacies, faults or defects, if any, whether known or unknown;
 - (ii) BMG does not warrant the accuracy of machine meter readings, service meter unit hours or the service and repair history; and
 - (iii) to the extent permitted by law, the Customer releases BMG from all liability arising or in connection with any defects, faults or inadequacies in such Goods.

7.4 Warranty – Services

- (a) In relation to Services, BMG warrants and the Customer agrees that for a three month period following the date of completion of any of those Services, that those Services were carried out and completed with due care and skill, in a proper and workmanlike manner and in accordance with the relevant law.

7.5 Freight

- (a) Subject to the inclusions and exclusions as provided by the manufacturer's warranty, freight charges on Goods covered by warranty under this clause 7 are governed by the following clauses:
- (i) Freight of the defective Good and/or the replacement Good (if applicable) shall be at the cost of BMG.
 - (ii) If the Good is not found to have a Defect in material or workmanship, then the freight of the Good shall be at the cost of the Customer.

7.6 Exclusion or limitation of warranties

- (a) The warranties in this clause 7 do not apply if any Defect is caused by or contributed to by the Customer (or its agent, officer or employee) through:
- (i) misuse, negligence, accident or failure to maintain, repair, use or store the Good in accordance with the manufacturer's specifications;
 - (ii) continued use of a defective Good;
 - (iii) unreasonable delay in returning the defective Good to BMG; or
 - (iv) if BMG in its sole discretion, determines any use, installation or modification of the Good has caused or contributed to the Defect.
- (b) Subject to the inclusions and exclusions as provided by the manufacturer's warranty, any warranty under this clause 7 excludes liability for costs in connection with:
- (i) the removal or reinstallation of parts and components, unless BMG carried out the original installation, and does the removal and installation of the replacements; and
 - (ii) travel and travel time.
- (c) BMG accepts no responsibility whatsoever for the suitability or otherwise of the Goods or equipment to which the Goods are fitted to.
- (d) BMG shall not be held liable for injury or damage caused to any person, place or machine by reason of the installation, use or mechanical failure of any Good.
- (e) BMG specifically disclaims any implied warranty of Merchantable Quality and/or any implied warranties of fitness for a particular purpose.
- (f) If otherwise applicable, the Vienna Convention does not apply to the warranties provided under this clause 7, or the Goods, and is excluded in its entirety.
- (g) The warranties provided under clause 7 are not transferrable.

7.7 Warranty claim procedure

- (a) The Customer must provide BMG Notice of any event or circumstance which may give rise to a warranty claim by the earlier of:
- (i) the time expressly required by the manufacturer's warranty for the notification of claims, if any such time applies; or

- (ii) if no such time applies, within 30 days of the event or circumstance occurring that gave rise to the warranty claim, and in any event, within the relevant warranty period stipulated in clause 7.
- (b) If the Customer fails to notify in accordance with clause 7.8(a), BMG may, in its sole discretion, rectify the defect but otherwise has no liability to do so.
- (c) The Customer warrants that any claim made by it on warranty is valid and one to which the warranty responds.
- (d) To the extent that the Customer makes an invalid warranty claim, it must reimburse BMG for that work at list rates and prices.

8. Delivery

- (a) Delivery occurs and risk of Loss to Goods will pass to the Customer on the earlier of:
- (i) collection of the Goods by the Customer;
 - (ii) delivery of the Goods to the Customer;
 - (iii) delivery of the Goods by BMG to a carrier nominated by the Customer or arranged by BMG for the purpose of delivering Goods to the Customer; and
 - (iv) in the event Services are being performed on Site, the completion of the Service, or if the Service is commenced but not completed on the same day, each time BMG's personnel leaves the Site without completing the Service.
- (b) BMG will use all reasonable efforts to ensure Delivery of the Goods and/or Services by any delivery date specified by it. To avoid doubt, time is not of the essence and BMG is not liable for:
- (i) any failure to deliver the Goods and/or Services by any Delivery date agreed by BMG;
 - (ii) any failure to deliver the Goods and/or Services in accordance with any particular requirements of the Customer; or
 - (iii) any delay in Delivery of Goods and/or Services occasioned by any cause whatsoever, whether or not beyond the control of BMG.
- (c) Failure to Deliver all or part of the Goods and/or Services by any agreed delivery date will not entitle the Customer to terminate its Purchase Order with BMG or to claim compensation of any nature.
- (d) The Customer is not entitled to reject Goods and/or Services on the basis of late Delivery.

9. Inspection

- (a) Upon Delivery of the Goods to the Customer, the Customer must:
- (i) promptly inspect the Goods to ensure they comply with and fulfil the terms of the Contract; and
 - (ii) notify BMG of any non-compliance with the Contract in writing within fourteen days of Delivery.
- (b) Upon satisfaction of clause 9(a), the Customer is deemed to have inspected and approved of the Goods, and the Goods are then accepted as being in compliance with the Contract, and BMG's obligations pursuant to the Contract are deemed satisfied.
- (c) If the Customer does not comply with its obligations according to clause 9(a), the Customer is deemed to have approved of the Goods, and the Goods are then deemed to be accepted

as being in compliance with the Contract, and BMG's obligations pursuant to the Contract are deemed satisfied.

10. Assumption of risk and release from liability

- (a) The Customer releases, waives and agrees to hold harmless BMG (including its officers, agents, contractors and employees) from any and all liability, claims, demands and actions which may be made by the Customer on its own behalf or by other parties, against BMG, its officers, agents, contractors or employees, with respect to any injury or harm (including loss of life) suffered by any person or loss or damage to personal property of any person arising from the Goods and/or Services whether such loss arises directly or indirectly, and whether by negligence, breach of contract or in any way whatsoever.
- (b) The Customer acknowledges it has not relied upon any representation made by BMG which has not been expressly stated in this Contract.
- (c) Any claims for any loss or damage of any kind, arising directly or indirectly from the Goods and/or Services, or failure of the Goods and/or Services, including but not limited to direct, indirect, economic or special loss or consequential loss are expressly excluded.
- (d) Notwithstanding anything else in these Sales Terms, subject to provisions of the Australian Consumer Law which cannot be excluded, any liability of BMG to the Customer which is not be excluded, restricted or modified by this Contract is limited to the cost of:
 - (i) replacing the Goods;
 - (ii) obtaining an equivalent product; or
 - (iii) having the Goods repaired, whichever BMG may elect.
- (e) To avoid doubt, nothing in these Sales Terms is intended to exclude, restrict or modify rights which the Customer may have under Australian Consumer Law or otherwise which may not be excluded, restricted or modified by this Contract.

11. Indemnity and insurance

11.1 Indemnity

- (a) The Customer indemnifies and keeps indemnified BMG, its officers, agents, contractors and employees:
 - (i) against all claims, demands, losses, costs, liabilities and expenses arising out of injury to or death of any person, or damage to or destruction of any property, to the extent caused by BMG or the Customer, and their officers, agents, contractors or employees;
 - (ii) for any loss suffered as a result of the Customer breaching this Contract;
 - (iii) for any act, omission, negligence or default of the Customer or its agents or employees;
 - (iv) a breach of any law by the Customer or its agents or employees; and
 - (v) for any loss suffered by BMG in relation to the Goods or Services provided where risk has passed to the Customer according to clause 8, but title remained with BMG.
- (b) BMG, including any agents or employees of BMG, is indemnified to the fullest extent permissible by law and accepts no liability for:

- (i) any consequence arising from any delay, failure or inability to deliver any Goods or perform any Services;
 - (ii) any consequential, direct, indirect, special or punitive damages arising whether due to BMG's negligence or otherwise; and
 - (iii) the Customer's use of the Goods from the date of delivery from BMG.
- (c) The Customer indemnifies BMG for any costs pursuant to clause 16.2.

11.2 Insurance

- (a) From the time that risk in the Goods transfers to the Customer and continuing until title also transfers in accordance with these terms, the Customer must insure the Goods with an insurance company with an S&P Financial rating of not less than "A" for their full replacement value against loss or damage including but not limited to fire, malicious damage, theft and transit risks.
- (b) Whenever requested by BMG, the Customer will promptly provide BMG with copies of the certificates of currency for insurances required under this Contract.

12. General representations and Customer warranties

12.1 Reliance

The Customer acknowledges that BMG is relying on the representations and warranties made to it in connection with this Contract.

12.2 Representations

The Customer represents and warrants to BMG that:

- (a) if it is a company:
 - (i) it is duly incorporated and validly existing under the laws of its place of incorporation; and
 - (ii) it has the corporate power to own its own assets and to carry on its business as it is now being conducted;
- (b) the Customer Representatives have authority to bind the Customer in respect of any matters stated in the Contract;
- (c) it has taken all necessary action to authorise the execution, delivery and performance of the Contract, in accordance with its terms;
- (d) it has power to enter into and perform its obligations under the Contract and to carry out the transactions contemplated by the Contract;
- (e) its obligations under the Contract are valid and binding and are enforceable against it in accordance with their respective terms subject to any necessary stamping and registration, the availability of equitable remedies and laws relating to the enforcement of creditor's rights;
- (f) the execution, delivery and performance of the Contract and the transactions under them do not:
 - (i) if applicable, breach its constitution or other constituent documents or any relevant trust deed or partnership agreement;
 - (ii) breach any law or decree of any court or official directive which is binding on it;

- (iii) violate any other document or agreement to which it is expressed to be a party or which is binding on it or any of its assets; or
- (iv) cause a limitation on its powers or the powers of its directors or other officers to be exceeded;
- (g) no litigation, arbitration, tax claim, dispute or administrative or other proceeding (which has not been disclosed to the other party in writing) has been commenced, is pending or, to its knowledge, threatened in writing against it which is likely to have an adverse effect upon it or its ability to perform its financial or other obligations under the Contract;
- (h) an Insolvency Event has not occurred in relation to it; and
- (i) unless expressly stated, it does not enter into the Contract as a trustee.

12.3 Representations by Customer Representatives

The individual(s) whose name(s) appear on the Contract:

- (a) represents that the Customer is a currently existing legal entity;
- (b) warrants that the matters in clause 12.2 are true and accurate; and
- (c) warrants that s/he has the actual authority of the Customer to enter the Contract.

13. Trade-in

13.1 Restrictions

- (a) If any amount is allowed by way of Trade-in, the credit or value given to the Trade-in is conditional upon the following:
 - (i) BMG accepting an order for the Goods by any stated quotation validity date; and
 - (ii) delivery of the Trade-in to BMG at the Customer's expense at a location nominated by BMG and in the same condition as it was on the date of BMG's appraisal or inspection (if any) and there being no undisclosed defect or damage.
- (b) If the Customer does not deliver the Trade-in to BMG within the time nominated by BMG or fails to deliver the correct Trade-in or fails to disclose any material condition, deficiency or defect in the Trade-in, then the difference between the Price for the Trade-in and the cost of BMG purchasing a replacement Trade-in is a debt owing by the Customer to BMG.
- (c) If upon inspection of the Trade-in by BMG, the Trade-in is in such a state that it cannot be reconditioned for resale or is otherwise not of merchantable quality then any value attributed to the sale of the Trade-in will be reduced accordingly and the difference becomes a debt owing by the Customer to BMG.
- (d) Risk in the Trade-in remains with the Customer until inspection and acceptance of delivery of the Trade-in at BMG's nominated point of delivery, such delivery to be at the Customer's risk and expense.
- (e) The Customer warrants that it has or will have unencumbered title to any Trade-in at the time of completion of the sale.
- (f) The Customer authorises BMG to pay any monies given to it for the purposes of removing any encumbrance on the Trade-in or Exchange.
- (g) BMG may without obligation to the Customer, refuse to purchase any Trade-in at any time until inspection and acceptance of delivery of the Trade-in at BMG's nominated point of delivery, and may recover the credit or value given in the Trade-in and any loss arising thereof as a debt due from the Customer to BMG.

14. Intellectual Property

- (a) The Customer must not use any of BMG's Intellectual Property, other than with the permission of BMG.
- (b) All Intellectual Property rights in the Goods and/or Services provided by BMG shall at all times remain vested with BMG.

15. Uncontrolled Event

To the extent permitted by law, if BMG is prevented from performing its duties under the Contract due to the occurrence of an Uncontrolled Event, then BMG is not liable to the Customer for any loss or damage suffered.

16. Default and termination

16.1 Customer must pay interest if payment late

- (a) The Customer must pay BMG interest at the Default Rate, calculated on daily balances of unpaid amounts and capitalised daily, on any amount not paid from when payment falls due until payment in full is received.
- (b) BMG may demand payment of interest by the Customer at any time. Failure to demand interest does not constitute a waiver of the entitlement to interest.

16.2 BMG's right to end Contract

- (a) BMG may, by Notice to the Customer, end the Contract immediately in any of the following circumstances:
 - (i) the Customer fails to perform any of its obligations under this Contract or otherwise;
 - (ii) the Customer dies or becomes incapacitated, or ceases, or indicates that it is about to cease to trade; or
 - (iii) the Customer suffers an Insolvency Event.
- (b) If the Contract is ended by BMG under clause 16.2(a), BMG is entitled (without prejudice to any other right or remedy) to immediately do any one or more of the following:
 - (i) declare all amounts actually or contingently owing by the Customer to BMG, whether or not due and payable, to be immediately due and payable;
 - (ii) refuse to supply Goods to the Customer; or
 - (iii) repossess and remove all Goods for which title has not passed to the Customer in accordance with clause 5.5.

17. Disputes

17.1 Dispute Notice

- (a) A party asserting a dispute must give the other party a Dispute Notice.
- (b) The Dispute Notice must state:
 - (i) what is in dispute;
 - (ii) the arguments of the party giving the Dispute Notice, and
 - (iii) what should be done to rectify the dispute.

17.2 Notice in response

The party receiving the Dispute Notice must respond in writing within seven days of receiving the Dispute Notice.

17.3 Settlement conference

- (a) If the dispute is not resolved by the exchange of Notices, then the parties must confer in the presence of an Independent Person to attempt to resolve the dispute.
- (b) The conference with the Independent Person must be held within 14 days (or at a later time to meet the convenience of the Independent Person) from a Notice convening the conference being sent by one of the parties.
- (c) The Independent Person is to act as a mediator at the conference.

17.4 Negotiations without prejudice

Evidence of anything said or done in the course of attempting to settle a dispute is not admissible in subsequent proceedings.

17.5 Continued performance

During the dispute resolution process the parties must continue to perform their obligations under the Contract.

17.6 Arbitrator's determination

If the parties are unable to resolve the dispute by the exchange of Notices or conference with the Independent Person and both parties agree, then they may require the dispute to be submitted to and settled by an arbitrator. Each party may make submissions to the arbitrator. The decision of the arbitrator will be final and binding on the parties. The arbitrator must also determine which party or parties pays the costs of and incidental to the resolution of the dispute. The arbitrator will be subject to the provisions of the Commercial Arbitration Act Queensland.

17.7 Payment during disputes

If an amount claimed by BMG is in dispute:

- (a) The amount not in dispute must be paid by the Customer in accordance with this Contract.
- (b) Any disputed amount that is ultimately determined to have been payable to BMG must be paid by the Customer with interest at the Default Rate calculated on daily balances of unpaid amounts and capitalised daily, on any amount not paid from when payment falls due until payment in full is received.

18. General provisions

18.1 Delivery as a deed

Subject to express provisions in this Contract to the contrary, each party by signing or executing this Contract is deemed to unconditionally sign, seal and deliver this Contract as a deed, with the intention of being immediately legally bound by this Contract.

18.2 Variation

BMG may, in its absolute discretion, vary the Sales Terms at any time by Notice to the Customer by any of the following methods:

- (a) by Notice to the Customer; or
- (b) by uploading the varied Sales Terms onto the public website of BMG.

18.3 Further assurances

Each party to this Contract must promptly do all further acts and execute and deliver all further documents required by law or reasonably requested by the other party to give effect to this Contract.

18.4 Assignment

- (a) The Customer must not assign, sub-contract or otherwise deal with this Contract or any right or obligation under it except with the prior written consent of BMG (which BMG is entitled to withhold in its absolute discretion). Failure to obtain the consent of BMG constitutes a fundamental breach of these terms and conditions.
- (b) BMG shall be entitled to assign this Contract to a Related Body Corporate of BMG which is financially sound and capable of performing all of the obligations of BMG under this Contract by giving Notice of such assignment to the Customer but otherwise shall not be entitled to assign this Contract or any right under it without the prior written consent of the Customer (which must not be unreasonably withheld or delayed).

18.5 Cancellation

- a) A Purchase Order may not be cancelled. BMG is entitled to insist on completion of the Contract or at its sole discretion elect to charge the Customer BMG's direct and indirect costs and expenses in connection with the cancellation (including without limitation, works required on the Goods, transport and holding costs of the Goods, standby of personnel until such time as the Goods are re-sold, any demobilisation costs, third party costs for attachments, foreign exchange variances, loss of profit and administration expenses) as reasonably determined by BMG ("**Cancellation Costs**") and as a condition of consent to any Purchase Order cancellation. BMG may, at its sole discretion, apply any Cancellation Costs against any credit account for Goods and Services provided by BMG to the Customer or its Related Body Corporate.

18.6 Description of Goods

- (a) The description of the Goods is given for identification only and does not create a Contract of sale by description.
- (b) All photographs, brochures, weights, illustrations, dimensions or other particulars as to the Goods are indicative only. BMG has no liability to the Customer for any deviations or inaccuracy in such documentation.
- (c) Any representation, promise, statement or description or other information of whatever nature not included in the Contract documentation or made in writing by an authorised company representative of BMG is expressly excluded. The Customer shall rely solely upon its own inspection skill and judgment.

18.7 Counterparts

- (a) This Contract may be executed in one or more counterparts and all counterparts taken together constitute one agreement.
- (b) The parties further agree communication of execution of this Contract by a party may, as an alternative to any other lawful method, be completed by successfully transmitting an attachment to an email (provided the sender has not received a notification that, for any reason, the email and attachment were not received by the recipient) of this Contract bearing execution by that party to all other parties.

18.8 Trustee provision

In the event that any party is a trustee of any trust or enters into this Contract as trustee of any trust and whether or not every other party has notice of any such trust or trusts the party entering into this Contract as trustee of a trust covenants and warrants that:

- (a) despite the existence of the trust, that party will be liable for the performance of all covenants contained in this Contract, and
- (b) that party has full complete and valid authority pursuant to the trust to execute and enter this Contract and the consent of the beneficiaries is not required or if required has been obtained.

18.9 Severability

If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this document, but the rest of this document is not affected.

18.10 Waiver

The fact that either party fails to do, or delays in doing, something it is entitled to do under the Contract, does not amount to a waiver of its right to do it. Any waiver must be in writing. A written waiver by BMG is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach, or as an implied waiver of that obligation or breach in relation to any other occasion.

18.11 Entire agreement

This Contract replaces all previous agreements between the parties concerning its subject matter and contains the entire agreement between the parties.

19. Goods and Services Tax

- (a) Unless otherwise specified, any amount to be paid by a party (the recipient) to the other party (the supplier) pursuant to this Contract is exclusive of any GST in which case the provisions of this clause 19 apply.
- (b) This clause does not apply if a payment is expressly stated to include GST.
- (c) If any supply, as that term is defined in the GST Act, made by the supplier to the recipient under this Contract or any variation to it, is a taxable supply for the purposes of the GST Act, then, in addition to any amount or consideration expressed as payable to the supplier

entity elsewhere in this Contract, but subject to issuing a valid tax invoice, the supplier will be entitled to recover from the recipient an additional amount on account of GST. This additional amount must be equal to the amount of the supplier's GST remittance liability in respect of each supply and will be recoverable at the same time as the amount of consideration is payable for each supply.

20. Governing law and jurisdiction

The terms and conditions set out in the Sales Terms are governed and construed in accordance with the law of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of Queensland.