

## TERMS AND CONDITIONS OF SALE

### BLAKE MACHINERY GROUP PARTS PTY LTD

#### THE PARTIES AGREE

##### 1. Definitions

- 1.1 **Agreement** means this Agreement.
- 1.2 **BMG Parts** means Blake Machinery Group Parts Pty Ltd ACN 603 200 835 of 327 Mons Road, Forest Glen, Queensland, Australia.
- 1.3 **Customer** means the person or entity placing an order for the Goods including Customer Representatives.
- 1.4 **Customer Representative** means a duly authorised representative of the Customer advised by the Customer to BMG Parts in writing
- 1.5 **Default Rate** means an interest rate of 10% per annum above the Reserve Bank of Australia target cash rate.
- 1.6 **Defects (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.
- 1.7 **Delivery** has the meaning given in clause 9(a).
- 1.8 **Dispute Notice** means a notice given under clause 16.
- 1.9 **Goods** collectively or severally means all goods, parts, components, chattels, plant, equipment and machinery described in the invoice or quotation given to the Customer for the purposes of supply by BMG Parts to the Customer.
- 1.10 **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 Agreement
- 1.11 **GST Act** means A New Tax System (Goods & Services Tax) Act 1999.
- 1.12 **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.
- 1.13 **Insolvency Event** means any of the following event in respect of a Customer:
- (a) 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.
  - (b) 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).
  - (c) a receiver or receiver and manager is appointed in respect of any property of the Customer.
  - (d) 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.
  - (e) 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.
  - (f) A controller is appointed to take over or takes possession of all or a substantial part of the assets or undertakings of the Customer.
  - (g) The Customer is or is deemed or presumed by law or a court to be insolvent.
- (h) If the Customer is a corporation, it is deregistered under the Corporations Act or notice of its proposed deregistration is given to the corporation.
- (i) 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.
- (j) 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.
- 1.14 **Intellectual Property** includes:
- (a) trade marks;
  - (b) logos;
  - (c) images;
  - (d) designs;
  - (e) copyright; and
  - (f) patents.
- 1.15 **Manufacturer** means the maker of the Goods (or any part of component of the Goods) sold by BMG Parts.
- 1.16 **Merchantable Quality** has the meaning given to it in the Sale of Goods Act 1923.
- 1.17 **Notice** means a written notice, consent, approval, direction, order or other communication.
- 1.18 **Price** means the total monetary amount for the Goods (excluding GST).
- 1.19 **PPSA** means the Personal Property Securities Act 2009 for the time being in force, including the Personal Property Securities Regulations 2010.
- 1.20 **PPSR** means the Personal Property Securities Register established pursuant to the PPSA.
- 1.21 **Purchase Money Security Interest** has the meaning given to it in the PPSA.
- 1.22 **Security Interest** has the meaning given to it in the PPSA.
- 1.23 **Service Exchange** means the exchange of the Customer's own part for a new, reconditioned or used Good supplied by BMG Parts.
- 1.24 **Terms and Conditions** means the terms and conditions set out in this Agreement.
- 1.25 **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.
- 1.26 **Vienna Convention** means the United Nations Convention on Contracts for the International Sale of Goods.

##### 2. Application of this Agreement

- 2.1 Unless otherwise agreed in writing, the Terms and Conditions apply to the supply of all Goods and Service Exchange. To avoid doubt, any terms and conditions contained in any written order provided by the Customer are expressly excluded.
- 2.2 These Terms and Conditions are deemed to have been read and agreed to by the Customer upon the Customer placing an order with BMG Parts for the supply of Goods and/or Service Exchange.
- 2.3 BMG Parts may vary this Agreement from time to time and will provide the Customer with a replacement Agreement. The subsequent placing of an order by the Customer is deemed as acceptance of the Agreement.
- 2.4 Any of the following actions by the Customer is deemed to be an offer by the Customer to purchase the Goods or participate in the Service Exchange on the Terms and Conditions set out in this Agreement:
- (a) The Customer's request to buy Goods or participate in a Service Exchange, however received by BMG Parts.

- (b) The submission of a written order or purchase order.
  - (c) The Customer providing delivery instructions or accepting delivery of Goods or a Service Exchange.
- 2.5 Each offer placed by the Customer is deemed to include a representation that the Customer is solvent and able to pay all debts as and when they fall due.
- 2.6 BMG Parts may accept or reject a Customer's order or request at its sole discretion.
- 2.7 An order once accepted by BMG Parts may only be cancelled or modified with the written consent of BMG Parts.
- 2.8 If BMG Parts gives its consent to cancel or modify the order, any costs already incurred by BMG Parts in relation to filling the order will be payable by the Customer.
- 2.9 Variations or additions to this Agreement by the Customer are only effective if agreed in writing by BMG Parts.
- 2.10 Any description, dimensions, weight advertised or supplied by BMG Parts are indicative only and do not form part of this Agreement.

### 3. Price

- 3.1 Unless otherwise stated, all quoted Prices are for supply of the Goods only and do not include delivery or freight.
- 3.2 In addition to the Price, the Customer is responsible to the Seller for:
- (a) Any packaging costs.
  - (b) All taxes, duties and charges imposed by any government or authority on the sale or Delivery of the Goods.
  - (c) Any increase in the cost of supply and/or Delivery of the Goods which occurs after the quotation or order date for any reason whatsoever including but not limited to, a change in the Manufacturer's price, rates of exchange, landing charges and the cost of carriage, insurance and handling.
  - (d) Any increase in cost arising from the Delivery of the Goods to a place or at a time or in a manner other than that specified in the quote or order or any other reason beyond the control of BMG Parts.
  - (e) Any amount over that quoted by BMG Parts due to the error or omission of BMG Parts or any of its officers, agents, contractors or employees.

### 4. Payment

- 4.1 BMG Parts will invoice the Customer for each offer it receives in accordance with clause 2.4.
- 4.2 The invoice will set out the Price and the quantity of the Goods to be supplied.
- 4.3 Time is of the essence in relation to payment for Goods and if the Customer fails to pay BMG Parts any amount when due, BMG Parts is, without limitation, entitled to payment of 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.
- 4.4 Subject to clause 4.5, the Customer must pay the invoiced amount without deduction or set-off, on a cash on delivery basis.
- 4.5 If the Customer has a trading account with BMG Parts, then payment is due within 30 days of the end of the month in which the invoice was generated.
- 4.6 The Goods remain the property of BMG Parts until such time as all amounts owing by the Customer to BMG Parts from time to time have been paid for in full in cleared funds.
- 4.7 Until all amounts owing by the Customer to BMG Parts from time to time are paid for in full, the Customer must:
- (a) act, with respect to the Goods, only as BMG Part's bailee;
  - (b) keep the Goods in its possession and control;
  - (c) keep the Goods in good repair and condition, excluding fair wear and tear;
  - (d) ensure the Goods are easily identifiable as the property of BMG Parts and if requested, promptly inform BMG Parts of the location of the Goods;
  - (e) not remove, deface or obliterate any identifying plate, mark or number on the Goods;
  - (f) not allow any third party to acquire any interest, including a Security Interest, in the Goods; and
  - (g) 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.
- 4.8 Despite this clause 4, 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 Parts, the Customer agrees-

- (a) it holds the proceeds of the Goods on trust for and as agent for BMG Parts immediately when they are receivable or are received
  - (b) it must either pay the amount of the proceeds to BMG Parts immediately when they are received or pay those proceeds into an account with a bank or deposit-taking institution as trustee for BMG Parts, and
  - (c) 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 Parts until BMG Parts is paid and title to the Goods (including the accessory) passes to the Customer.
- 4.9 If the Customer fails to pay all or any monies due under this Agreement by the due date, then BMG Parts or its representatives has the right and irrevocable licence from the Customer to enter the Customer's premises and repossess the Goods, at any time, and without notice, via its representatives.
- 4.10 To the extent the Goods consist of more than one identifiable item of personal property, this clause 4 applies to each component as if it were the Goods.

### 5. PPSR

- 5.1 **Security Interest**
- (a) The Customer agrees and acknowledges the retention of title in clause 4.6 constitutes a Security Interest in the Goods in favour of BMG Parts. The Customer consents to BMG Parts affecting and maintaining a registration of the Security Interest on the PPSR at its absolute discretion as a Purchase Money Security Interest or otherwise.
  - (b) The Customer agrees to do all things which BMG Parts considers necessary for the purposes of registering its Security Interest, including providing consents, signing and producing documents, or supplying information.
- 5.2 **Other Security Interests**
- The Customer will not create or permit to be created any Security Interest over the Goods other than BMG Part's Security Interest under this Agreement.
- 5.3 **Copy of this Agreement**
- The Customer acknowledges receipt of a copy of this Agreement, 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. Returns

- 6.1 No Good is returnable without the authorisation of BMG Parts.
- 6.2 Goods supplied to the Customer as used Goods or reconditioned Goods are non-returnable, unless specifically agreed to by BMG Parts.
- 6.3 Any goods authorised for return must be returned in "as new" re-saleable condition.
- 6.4 An invoice number must accompany an authorised Goods return.
- 6.5 The Customer is liable for any freight on returns.
- 6.6 Goods approved and returned within 14 days of receiving such approval will receive full credit.
- 6.7 Goods returned after 14 days will incur a handling fee of up to 20% at the discretion of BMG Parts.

### 7. Service Exchange

- 7.1 BMG Parts may, at its sole and absolute discretion provide a Customer with a Service Exchange on such terms as BMG Parts may determine, from time to time.
- 7.2 The Customer warrants it has or will have unencumbered title to any used part provided by it to BMG Parts for the purpose of Service Exchange.
- 7.3 Upon stripping down a core provided by a Customer for a Service Exchange, BMG Parts may, in its sole discretion, determine the core is not suitable for rebuild and reject the Service Exchange.
- 7.4 If BMG Parts rejects the Service Exchange in accordance with clause 7.3, the Customer:
- (a) may elect, at its expense, to collect the core from BMG Parts within 30 days of being rejected or reimburse BMG Parts for the cost of disposing of the core; and
  - (b) must pay the full list price for the new or rebuilt component provided by BMG Parts.
- 7.5 If BMG Parts does provide a Service Exchange, then the Customer agrees to return the core and any frame or packaging supplied by BMG Parts as part of the Service Exchange within 14 days and at the Customer's expense. Failure to do so will result in the Customer incurring a penalty of 1% per day of the new value of the purchased component calculated from 14 days after the Customer took delivery of the purchased component until the day the core and any frame or packaging is returned to BMG Parts.

## 8. Warranty

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- 8.1 **Manufacturer's warranty**  
New Goods are supplied in accordance with the manufacturer's specific warranty (if any). Copies of the applicable manufacturer's warranty statements are available on request.
- 8.2 **Reconditioned or re-built Goods**  
(a) BMG Parts warrants the Customer for six months from Delivery that any reconditioned Good is sold free from Defects in material and workmanship.  
(b) If a reconditioned Good is found to have a Defect in materials or workmanship, BMG Parts shall at its cost or option, repair the defective Good or replace the defective Good.
- 8.3 **Used Goods**  
Used Goods are sold in an "as is" condition. No warranty of any kind is supplied or given by BMG Parts in relation to used Goods.
- 8.4 **Freight costs**  
(a) Subject to the inclusions and exclusions as provided by the manufacturer's warranty, freight charges on Goods covered by warranty under clauses 8.1 and 8.2 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 Parts.  
(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.
- 8.5 **Exclusion or limitation of warranties**  
(a) The warranties in clauses 8.1 and 8.2 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 Parts; or  
(iv) if BMG Parts 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 under clause 8.1, any warranty under this clause 8 excludes liability for costs in connection with:  
(i) the removal or reinstallation of Goods, unless BMG carried out the original installation, and does the removal and installation of the replacements; and  
(ii) travel and travel time.  
(c) BMG Parts accepts no responsibility whatsoever for the suitability or otherwise of the carrier machine or equipment to which the Goods are fitted to.  
(d) BMG Parts 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 Parts 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 clauses 8.1 and 8.2, or the Goods, and is excluded in its entirety.  
(g) To the extent permitted by law, the warranties provided under clauses 8.1 and 8.2 are exclusive and in lieu of all other express or implied warranties, conditions and representations in relation to the reconditioned Good.  
(h) The warranties provided under clauses 8.1 and 8.2 are not transferrable.
- 8.6 **Warranty claim procedure**  
(a) The Customer must provide BMG Parts 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 14 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 clauses 8.1 and 8.2.

- (b) Notice under clause 8.6(a) must be accompanied by evidence supporting the warranty claim.  
(c) If the Customer fails to notify in accordance with clause 8.6(a), BMG Parts may, in its sole discretion, rectify the defect but otherwise has no liability to do so.  
(d) The Customer warrants that any claim made by it on warranty is valid and one to which the warranty responds.  
(e) To the extent that the Customer makes an invalid warranty claim, it must reimburse BMG Parts for that work at list rates and prices.

## 9. Delivery

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- (a) Delivery occurs and the risk of any loss, damage to, or deterioration of the Goods passes to the Customer on the earlier of:  
(i) collection of the Goods by the Customer;  
(ii) delivery of the Goods to the Customer; or  
(iii) delivery of the Goods by BMG Parts to a carrier nominated by the Customer or arranged by BMG Parts for the purpose of delivering the Goods to the Customer.  
(b) The Customer must fully insure the Goods, and hold the benefit of any claim on trust for BMG Parts, from the time risk in the Goods passes to the Customer until title in the Goods passes from BMG Parts to the Customer.  
(c) BMG Parts will use all reasonable efforts to ensure Delivery of the Goods by any delivery date specified by it. To avoid doubt, time is not of the essence and BMG Parts is not liable for:  
(i) any failure to deliver the Goods by any Delivery date agreed by BMG Parts;  
(ii) any failure to deliver the Goods in accordance with any particular requirements of the Customer; or  
(iii) any delay in Delivery of Goods occasioned by any cause whatsoever, whether or not beyond the control of BMG Parts.  
(d) Failure to Deliver all or part of the Goods by any agreed delivery date will not entitle the Customer to terminate its purchase order with BMG Parts or to claim compensation of any nature.  
(e) The Customer is not entitled to reject Goods on the basis of late Delivery.

## 10. Inspection

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- 10.1 Upon Delivery of the Goods to the Customer, the Customer must:  
(a) promptly inspect the Goods to ensure they comply with, and fulfil the terms of, the Agreement; and  
(b) notify BMG Parts of any non-compliance with the Agreement in writing within 14 days of Delivery.
- 10.2 Upon satisfaction of clause 10.1, the Customer is deemed to have inspected and approved of the Goods, and the Goods are then accepted as being in compliance with the Agreement, and BMG Parts' obligations pursuant to the Agreement are deemed satisfied.
- 10.3 If the Customer does not comply with its obligations according to clause 10.1, 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 Agreement, and BMG Parts' obligations pursuant to the Agreement are deemed satisfied.
- 10.4 Until such time that clause 10.1 is complied with, or the Customer is deemed to have approved and accepted the Goods according to clause 10.3:  
(a) title in the Goods will remain with BMG Parts;  
(b) BMG Parts will retain its Security Interest over the Goods; and  
(c) BMG Parts will not be liable for any defects in the Goods.

## 11. Assumption of risk and release from liability

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- 11.1 The Customer releases, waives and agrees to hold harmless BMG Parts (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 Parts, 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 whether such loss arises directly or indirectly, and whether by negligence, breach of contract or in any way whatsoever.

- 11.2 The Customer acknowledges it has not relied upon any representation made by BMG Parts which has not been expressly stated in this Agreement.
- 11.3 Any claims for any loss or damage of any kind, arising directly or indirectly from the Goods or failure of the Goods including but not limited to direct, indirect, economic or special loss or consequential loss are expressly excluded.
- 11.4 Notwithstanding anything else in these Terms and Conditions, subject to provisions of the Australian Consumer Law which cannot be excluded, any liability of BMG Parts to the Customer which is not excluded, restricted or modified by this Agreement is limited to the cost of--
- (a) replacing the Goods
  - (b) obtaining an equivalent product, or
  - (c) having the Goods repaired, whichever BMG Parts may elect.
- 11.5 To avoid doubt, nothing in these Terms and Conditions 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 Agreement.

## **12. Indemnity**

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- 12.1 The Customer indemnifies and keeps indemnified BMG Parts, its officers, agents, contractors and employees:
- (a) 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 Parts or the Customer, and their officers, agents, contractors or employees;
  - (b) for any loss suffered as a result of the Customer breaching this Agreement;
  - (c) for any act, omission, negligence or default of the Customer or its agents or employees;
  - (d) a breach of any law by the Customer or its agents or employees; and
  - (e) for any loss suffered by BMG Parts in relation to Goods where risk has passed to the Customer according to clause 9(a), but title remained with BMG Parts.
- 12.2 BMG Parts, including any agents or employees of BMG Parts, is indemnified to the fullest extent permissible by law and accepts no liability for:
- (a) any consequence arising from any delay, failure or inability to deliver any Goods;
  - (b) any consequential, direct, indirect, special or punitive damages arising whether due to BMG Parts' negligence or otherwise; and
  - (c) the Customer's use of the Goods from the date of delivery from BMG Parts.
- 12.3 The Customer indemnifies BMG Parts for any costs pursuant to clause 15.2.
- 12.4 BMG Parts may alter any or all specifications of any Goods without prior notice, and the Customer cannot claim for any costs incurred by the Customer by such change/s.

## **13. Intellectual Property**

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- 13.1 The Customer must not use any of BMG Parts Intellectual Property, other than with the permission of BMG Parts.
- 13.2 All Intellectual Property rights in the Goods provided by BMG Parts shall at all times remain vested with BMG Parts.

## **14. Uncontrolled Event**

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

## **15. Default and Termination**

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- 15.1 BMG Parts may terminate this Agreement with the Customer at any time, in its absolute and complete discretion, prior to payment being received.
- 15.2 Termination of the Agreement does not affect any accrued rights or remedies of BMG Parts, including to ceasing or suspending the delivery of any Goods (and, without limitation, to invoice for all work undertaken and costs incurred) and to take proceedings for the collection of outstanding amounts.

## **16. Disputes**

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- 16.1 **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.

### **16.2 Notice in response**

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

### **16.3 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.

### **16.4 Negotiations without prejudice**

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

### **16.5 Continued performance**

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

### **16.6 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.

### **16.7 Payment during disputes**

If an amount claimed by BMG Parts is in dispute:

- (a) The amount not in dispute must be paid by the Customer in accordance with this Agreement.
- (b) Any disputed amount that is ultimately determined to have been payable to BMG Parts 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.

## **17. General Representations and Customer Warranties**

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- 17.1 The Customer acknowledges that BMG is relying on the representations and warranties made to it in connection with this Contract.
- 17.2 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.
- 17.3 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 17.2 above are true and accurate; and
  - (c) warrants that s/he has the actual authority of the Customer to enter the Contract.

#### **18. General Provisions**

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- 18.1 The non-exercise of or delay in exercising a right of a party will not operate as a waiver of that right, nor does a single exercise of a right preclude another exercise of it or the exercise of other rights. A right may only be waived by Notice, signed by the party to be bound by the waiver.
- 18.2 Each party to the Agreement 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 the Agreement.
- 18.3 If a party consists of more than one person:
- (a) an obligation of those parties is a joint obligation of all of them and a several obligation of each of them;
  - (b) a right given to those parties is a right given jointly and severally to each of them, and if exercised by one of them, is deemed to be exercised jointly; and
  - (c) a representation, warranty or undertaking made by those parties is made by each of them.
- 18.4 Part or all of a provision of the Agreement that is illegal or unenforceable may be severed from the Agreement and the remaining parts of the provision or provisions of the Agreement continue in force.
- 18.5 The Customer is not entitled to assign or subcontract any of its rights, duties or obligations under the Agreement
- 18.6 The rights, powers and remedies provided in the Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of the Agreement.

#### **19. Goods and Services Tax**

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- 19.1 Unless otherwise specified, any amount to be paid by a party (the recipient) to the other party (the supplier) pursuant to this Agreement is exclusive of any GST in which case the provisions of this clause 18 apply.
- 19.2 This clause does not apply if a payment is expressly stated to include GST.
- 19.3 If any supply, as that term is defined in the GST Act, made by the supplier to the recipient under this Agreement 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 Agreement, 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. Choice of law**

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- 20.1 The terms and conditions set out in this Agreement 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.