



BWFC PTY LTD
TERMS OF TRADE

1. Definitions

In these Terms:

"ACL" means the Australian Consumer Law Schedule of the Competition and Consumer Act;

"Agreement" means any agreement for the provision of goods or services by the Company to the Client;

"consumer" is as defined in the ACL and in determining if the Client is a consumer, the determination is made if Client is a consumer under the Agreement;

"Client" means the person, jointly and severally if more than one, acquiring goods or services from the Company;

"goods" means goods supplied by the Company to the Client;

"GST" means the Goods and Services tax as defined in A New Tax System (Goods and Services Tax) Act 1999 as amended;

"PPSA" means the *Personal Property Securities Act 2009* as amended;

"Company" means BWFC Pty Ltd (ACN 628 040 175);

"services" means services supplied by the Company to the Client; and

"Terms" means these Terms and Conditions of Trade.

2. Basis of Agreement

2.1 Unless otherwise agreed by the Company in writing, the Terms apply exclusively to every Agreement and cannot be varied or replaced by any other terms, including the Client's terms and conditions of purchase (if any).

2.2 Any quotation provided by the Company to the Client for the proposed supply of goods or services is:

(a) valid for 14 days;

(b) an invitation to treat only; and

(c) only valid if in writing.

2.3 The Terms may include additional terms in the Company's quotation, which are not inconsistent with the Terms.

2.4 An Agreement is accepted by the Company when the Company accepts, in writing or electronic means, an offer from the Client or provides the Client with the goods or services.

2.5 The Company has absolute discretion to refuse to accept any offer.

2.6 The Client must provide the Company with its specific requirements, if any, in relation to the goods and services.

2.7 The Company may vary or amend these Terms by written notice to the Client at any time. Any variations or amendments will apply to orders placed after the notice date.

3. Pricing

3.1 The Company agrees to supply the goods and services on the terms and at the rates provided in the Quotation.

3.2 Unless stated otherwise, prices quoted for the supply of goods and services exclude GST and any other taxes or duties imposed on or in relation to the goods and services.

3.3 If the Client requests any variation to the Agreement, the Company may increase the price to account for the variation.

3.4 Where there is any change in the costs incurred by the Company in relation to goods or services, the Company may vary its price to take account of any such change, by notifying the Client.

4. Payment

4.1 Unless otherwise agreed in writing:

(a) Subject to 4.1(b), full payment for the goods or services must be made within 30 days of the end of the month in which delivery of the goods to the Client's premises was effected.

(b) The Company reserves the right to require payment in full on delivery of the goods or completion of the services.

4.2 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

4.3 Payment terms may be revoked or amended at the Company's sole discretion immediately upon giving the Client written notice.

4.4 The time for payment is of the essence.

5. Payment Default

5.1 If the Client defaults in payment by the due date of any amount payable to the Company, then all money which would become payable by the Client to the Company at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Client, and the Company may, without prejudice to any of its other accrued or contingent right :

(a) charge the Client interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983 (Vic)* plus 4 per cent for the period from the due date until the date of payment in full;

(b) charge the Client for, and the Client must indemnify the Company from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Agreement or to recover any goods;

- (c) cease or suspend supply of any further goods or services to the Client;
 - (d) by written notice to the Client, terminate any uncompleted contract with the Client.
- 5.2 Clauses 5.1(c) and (d) may also be relied upon, at the Company's option:
- (a) where the Client is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
 - (b) where the Client is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Client.

6. Passing of Property

- 6.1 Until the Company receives full payment in cleared funds for all goods and services supplied by it to the Client, as well as all other amounts owing to the Company by the Client:
- (a) title and property in all goods remain vested in the Company and do not pass to the Client;
 - (b) the Client must hold the goods as fiduciary bailee and agent for the Company;
 - (c) the Client must keep the goods separate from its goods and maintain the Company's labelling and packaging;
 - (d) the Client acknowledges that any equipment supplied by the Company is not a fixture;
 - (e) in addition to its rights under the PPSA, the Company may without notice, enter any premises where it suspects the goods are and remove them, notwithstanding that they may have been attached to other goods not the property of the Company, and for this purpose the Client irrevocably licences the Company to enter such premises and also indemnifies the Company from and against all costs, claims, demands or actions by any party arising from such action.

7. Personal Property Securities Act

- 7.1 Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.
- 7.2 For the purposes of the PPSA:
- (a) terms used in clause 7 that are defined in the PPSA have the same meaning as in the PPSA;
 - (b) these Terms are a security agreement and the Company has a Purchase Money Security Interest in all present and future goods supplied by the Company to the Client and the proceeds of the goods;
 - (c) The security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Client at any particular time; and
 - (d) the Client must do whatever is necessary in order to give a valid security interest over the goods which is able to be registered by the Company on the Personal Property Securities Register.
- 7.3 The security interest arising under this clause 7 attaches to the goods when the goods are collected or dispatched from the Company's premises and not at any later time.
- 7.4 Where permitted by the PPSA, the Client waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.
- 7.5 To the extent permitted by the PPSA, the Client agrees that:
- (a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Client or which place obligations on the Company will apply only to the extent that they are mandatory or the Company agrees to their application in writing; and
 - (b) where the Company has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- 7.6 The Client must immediately upon the Company's request:
- (a) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and
 - (b) procure from any person considered by the Company to be relevant to its security position such agreements and waivers (including as equivalent to those above) as the Company may at any time require.
- 7.7 The Company may allocate amounts received from the Client in any manner the Company determines, including in any manner required to preserve any Purchase Money Security Interest it has in goods supplied by the Company.

8. Risk and Insurance

- 8.1 The risk in the goods and all insurance responsibility for theft, damage or otherwise will pass to the Client immediately on the goods being delivered to the Client and/or while in the possession and/or control of the Client.
- 8.2 The goods are sold to the Client on the basis that the Client has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the operation of the goods.
- 8.3 The Client assumes all risk and liability for loss, damage or injury to persons or to property of the Client, or third parties arising out of the operation, installation or possession of any of the goods sold by the Company, unless recoverable from the Company on the failure of any statutory guarantee under the ACL.

9. Performance of Agreement

- 9.1 Any period or date for delivery of goods or provision of services stated by the Company is an estimate only and not a contractual commitment.
- 9.2 The Company will use its reasonable endeavours to meet any estimated dates for delivery of the goods but will not be liable for any loss or damage suffered by the Client or any third party for failure to meet any estimated date.
- 9.3 If the Company cannot complete the services by any estimated date, it will complete the services within a reasonable time.

10. Delivery

- 10.1 Subject to clause 10.2, the Client must nominate a freight company for the Company to arrange for the delivery of the goods to the Client at the Client's premises. The Client must pay for the freight of the goods and freight costs do not form part of these Terms, unless the Client and the Company agree to include freight costs into the Quotation.
- 10.2 The Client is responsible for all costs associated with delivery, including freight, insurance and other charges arising

from the point of dispatch of the goods to the Client to the point of delivery, unless otherwise agreed in writing.

- 10.3 The Company may make part delivery of goods or provision of services and the Company may invoice the Client for the goods or services provided.
- 10.4 The Client indemnifies the Company against any loss or damage suffered by the Company, its sub-contractors or employees as a result of delivery, except where the Client is a consumer and the Company has not used due care and skill.
- 10.5 If delivery is attempted and is unable to be completed the Client is deemed to have taken delivery of the goods. The Client is liable for storage charges payable weekly on demand.
- 10.6 If agreed that the Client will collect the goods:
- (a) the Client must collect the goods within 7 days of being advised they are ready;
 - (b) if the Client does not collect the goods within this time, the Client is deemed to have taken delivery of the goods and is liable for storage charges payable weekly on demand.

11. Liability

- 11.1 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the goods or services, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for their failure.
- 11.2 If the Client is a consumer nothing in these Terms restricts, limits or modifies the Client's rights or remedies against the Company for failure of a statutory guarantee under the ACL.
- 11.3 If the Client on-supplies the goods to a consumer:
- (a) if the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) is the absolute limit of the Company's liability to the Client;
 - (b) otherwise, payment of any amount required under section 274 of the ACL is the absolute limit of the Company's liability to the Client;
- howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Client or any third party.
- 11.4 If clause 11.2 or 11.3 do not apply, then other than as stated in the Terms or any written warranty statement the Company is not liable to the Client in any way arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Client or any third party.
- 11.5 The Company is not liable for any indirect or consequential losses or expenses suffered by the Client or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.
- 11.6 The Client acknowledges that:
- (a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by the Company in relation to the goods or services or their use or application.
 - (b) it has not made known, either expressly or by implication, to the Company any purpose for which it requires the goods or services and it has the sole responsibility of satisfying itself that the goods or services are suitable for the use of the Client.
- 11.7 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.

12. Cancellation

- 12.1 If the Company is unable to deliver or provide the goods or services, then it may cancel the Client's order (even if it has been accepted) by written notice to the Client.
- 12.2 No purported cancellation or suspension of an order or any part of it by the Client is binding on the Company once the order has been accepted.

13. Exchange of goods

- 13.1 Subject to clause 13.4, the Company will not under any circumstances accept goods for return that:
- (a) have been specifically produced, imported or acquired to fulfil the Agreement;
 - (b) are discontinued goods or no longer stocked by the Company;
 - (c) have been altered in any way;
 - (d) have been used; or
 - (e) are not in their original condition and packaging.
- 13.2 The Client must, no later than 14 days after receiving the goods, notify the Company of any defect found in the goods. The Company will, at its cost, replace the defective goods as soon as practicable.
- 13.3 In the event that the Client seeks to exchange goods where no defect is found, the Client must pay to the Company a restocking fee as follows:
- (a) Between 14 and 21 days from delivery – 10% of the total cost of the goods;
 - (b) Between 22 and 30 days from delivery – 20% of the total cost of the goods;
 - (c) After 30 days from delivery – no exchange of goods will be offered.
- 13.4 If the Client is a consumer, nothing in this clause 13 limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.

14. Force Majeure

- 14.1 The Company is not liable in any way howsoever arising under the Agreement to the extent that it is prevented from acting by events beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism or war. If an event of force majeure occurs, the Company may suspend or terminate the Agreement by written notice to the Client.

15. Miscellaneous

- 15.1 The law of Queensland from time to time governs the Terms. The parties agree to the non-exclusive jurisdiction of the courts of Queensland, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 15.2 The Company's failure to enforce any of these Terms shall not be construed as a waiver of any of the Company's rights.
- 15.3 If a clause is unenforceable it must be read down to be enforceable or, if it cannot be read down, the term must be severed from the Terms, without affecting the enforceability of the remaining terms.
- 15.4 A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received the next business day after posting. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.
- 15.5 The Client must comply with the Australian Privacy Principles in connection with any personal information supplied to it in connection with this Agreement.