



BOURNEDRILL PTY. LTD.

A.B.N. 75 009 863 094
(Incorporated in Queensland)

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INVOICE TERMS AND CONDITIONS

These terms and conditions apply to each and every transaction between BOURNEDRILL PTY LTD ABN 75 009 863 094 ('we' or 'us' or 'Bournedrill') and

('the purchaser') on and from the date hereof. These terms and conditions are incorporated by reference into each Tax Invoice, unless varied by agreement between the parties, which variation shall be recorded in writing.

WHEREAS:

1. We agree to supply the goods described on each particular Tax Invoice to the purchaser ('the goods').
2. The purchaser agrees to buy the goods on the terms and conditions herein contained.

NOW THESE TERMS AND CONDITIONS PROVIDE AS FOLLOWS:

- 1 In this document:
 - (a) 'Account Customer' means a purchaser who has an account with Bournedrill;
 - (b) 'New Customer' means a purchaser who is not an Account Customer; and
 - (c) 'Tax Invoice' has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 2 The purchaser may from time to time, request a quote for the price of goods from Bournedrill either verbally or in writing ('Quote Request').
- 3 Upon receipt of a Quote Request, we may provide the purchaser with a sales quotation recording the description, quantity, itemised price and total price of the goods as set out in clause 8 ('Sales Quotation').
- 4 The purchaser has fourteen (14) days (unless stated otherwise in the Sales Quotation or otherwise agreed in writing by Bournedrill) from the date of the Sales Quotation to accept the quotation. The Sales Quotation is open to variation, until such time as it has been formally accepted by the purchaser. Acceptance of a Sales Quotation is notified by the purchaser, or any officer duly authorised by it (if a company) so to do, by providing a written purchase order or signing the Sales Quotation and returning it to us.
- 5 If the purchaser's terms and conditions are attached to a purchase order supplied pursuant to clause 4, those terms and conditions shall have no validity and will not constitute part of these terms and conditions (even if any representative of Bournedrill signs those terms or conditions or annexes the terms and conditions to an invoice or other document). Any supply of the goods by Bournedrill to the purchaser will be subject to these terms and conditions.
- 6 Following the purchaser's acceptance of the Sales Quotation:
 - (a) where the purchaser is a New Customer:
 - (i) we will provide the purchaser with a confirmation of order in the form of a pro forma invoice ('Confirmation of Order');
 - (ii) the purchaser must pay for the goods:
 - (A) upon placement of order; or
 - (B) within 5 business days of the date of the Confirmation of Order;
 - (iii) following the issuance of the Confirmation of Order and receipt of payment for the goods, said order will be processed by Bournedrill; and
 - (iv) upon delivery or collection of the goods, we will provide a Tax Invoice to the purchaser.

- (b) where the purchaser is an Account Customer:
- (i) upon receipt of purchaser's acceptance of the Sales Quotation, we will proceed to process the order for the goods or prepare the goods for collection by the purchaser (as applicable);
 - (ii) upon delivery or collection of the goods, we will provide a Tax Invoice to the purchaser; and
 - (iii) the purchaser must pay for the goods within thirty (30) days from the end of the month from the date of the Tax Invoice.
- 7 The purchaser must pay for the cost of variations within seven (7) days of the notification required by paragraphs 8(c) and 8(d) of this document.
- 8 The price contained in our Sales Quotation shall include:
- (a) material and labour costs as at the date of the Sales Quotation;
 - (b) the Goods and Services Tax applicable to the transaction as at the date of the Sales Quotation, and
 - (c) in the event that the effectual provision of the goods takes place over a period of time and there occur variations in the rates applicable to either (a) or (b) hereof, or both, such variations will be notified to the purchaser and shall be added to the price by noting the respective cost additions upon the Tax Invoice and both parties shall initial the amendments made consequent thereupon; and
 - (d) in the event that there are imported components of the goods which attract freight, additional insurance, agency fees, wharfage fees, storage charges, Customs charges or duties (however lawfully raised), primage, telegraphic transfer selling rates or additional costs of whatever nature, these costs are included in the price as at the date of the Sales Quotation. If those costs vary over the time required for the transaction to be completed, such variation shall be treated in the manner set out in sub-paragraph (c) hereof.
- 9 If the purchaser cancels or purports to cancel, an order and any part thereof after acceptance of the Sales Quotation, for any reason, we at our option can agree to such cancellation on such terms and conditions as we in our discretion think fit, including the payment of cancellation charges by the purchaser which we shall notify to the purchaser upon request. We acknowledge that payment of cancellation charges as notified shall operate to release the purchaser from any further liability in regard to the particular transaction. Should we not agree to cancellation of the order or part thereof, we expressly reserve our rights to claim loss and damage as a result of the cancellation or purported cancellation, including any costs (which includes legal costs) occasioned by the cancellation or purported cancellation.
- 10 If there are any attendances, tests, manufacture of items and the like required in any transaction to be done to complete the effectual provision of the goods e.g. site installations, testing, monitoring and the like, they:
- (a) shall be detailed upon the Tax Invoice and shall be included in the quotation ;and
 - (b) the purchaser agrees to provide and maintain at its own cost all necessary facilities, permits, approval, licences, services and the like that may be required to enable the above to take place; and
 - (c) the purchaser shall ensure that we have access at all reasonable and necessary times to perform the work required to complete the effectual provision of the goods; and
 - (d) the purchaser hereby indemnifies and keeps us indemnified against any claim of whatever nature that arises because of a failure to maintain the facilities etc. as required by (b) hereof; and
 - (e) the purchaser shall maintain any public risk and other applicable insurances to cover the attendances and shall upon request provide a copy of the applicable policy or certificate of currency.
- 11 Insurance of goods in transit to the purchaser shall be at all times the purchaser's responsibility and whether or not we make request to view a current policy in regard to such insurance, the purchaser hereby indemnifies us against any loss or damage it may incur as a result of such transit and it agrees that these terms and conditions maybe exhibited as a bar to any claim it may otherwise have been entitled to make.
- 12 Freight and packing of the goods shall be at all times the purchaser's responsibility and at the purchaser's costs which is a cost excluded from the quotation we provide.
- 13 We may in our unfettered discretion extend credit to a purchaser. Extension of credit shall mean that:
- (a) Terms of payment shall be thirty (30) days from the end of the month in which the particular Tax Invoice is drawn; and

- (b) Failure to pay an outstanding account in whole or in part by the due date shall accrue interest upon the then outstanding amount at the bank overdraft rate adopted by the Australia and New Zealand Banking Group Limited for business customers, as at the date of the Tax Invoice; and
- (c) Continued failure to pay the outstanding amount plus accrued interest shall result in withdrawal of credit, in addition to any rights or remedies otherwise available following the default.

14 We warrant that the equipment that we manufacture or supply in fulfilling an order made pursuant to a Tax Invoice is free from defects in workmanship and materials ('the warranty').

The warranty is limited to repair or replacement of any component, or part thereof, of such equipment which our examination discloses to be defective and is furthermore subject to the terms and conditions hereinafter appearing, namely:

- (a) if the defective goods or components are not manufactured by us, the purchaser is entitled only to such benefits as we may receive in respect of any guarantee provided to us in respect of those particular goods or components;
- (b) the warranty does not apply to defects caused by accident, misuse or normal wear and tear;
- (c) the warranty is conditional upon the equipment being operated under normal conditions and with competent supervision;
- (d) the warranty will not extend to repairs or replacements undertaken by the purchaser without our authority;
- (e) repairs under the warranty will be carried out at our authorised service shop;
- (f) the purchaser will bear the cost of freight and/or cartage to or from our service shop;
- (g) the purchaser will pay any costs that we reasonably incur in gaining access to the components that are under warranty that we are required to repair or replace pursuant to the warranty e.g. removal and refitting of canopies, trailers etc. which have been fitted by others to the original equipment;
- (h) the only costs payable by us pursuant to the warranty are those costs of correcting defects in the equipment or replacing defective product and we do not accept responsibility for costs, either direct or consequential, howsoever else arising out of the supply of equipment or its use by the purchaser;
- (i) the warranty applies to all new equipment from the date of sale by us or by our authorised outlet to the initial purchaser and it does not extend to, and indeed is void upon, any resale to a subsequent buyer;
- (j) full payment of the goods is a condition precedent to the inception of our liability under the warranty;
- (k) where goods supplied pursuant to those terms and conditions have explicit warranty and/or guarantee periods, this warranty does not in any way extend beyond such period.

15 If the purchaser defaults in the due observance or performance of any or all of its obligations hereunder or any of the following events ('Insolvency Event') occur:

- (a) a controller (as defined in the *Corporations Act 2001* (Cth)) is appointed to the purchaser, or over any of the property of the purchaser;
- (b) the purchaser becomes bankrupt;
- (c) a controlling trustee is appointed to the purchaser, or over any of the property of the purchaser;
- (d) the purchaser or the purchaser's property becomes subject to a personal insolvency arrangement under part X *Bankruptcy Act 1966* (Cth) or a debt agreement under part IX *Bankruptcy Act 1966* (Cth);
- (e) the purchaser is unable to pay its debts when they become due and payable;
- (f) the purchaser ceases to carry on business; or
- (g) any event happens in Australia or any other country or territory in respect of a party that is similar to any of the events or circumstances referred to in sub-clauses 15(a) to (f),

then, without prejudice to any other rights or remedies that we may have available to us, we may:

- (h) terminate this agreement by written notice to the purchaser in which case this agreement will terminate on the date specified in that written notice or, if no date is specified, immediately;
- (i) refuse to complete delivery of goods pursuant to the Tax Invoice or acceptance and/or suspend manufacture or delivery, installation, commissioning or testing of any goods then outstanding;

- (j) retain any security given or monies paid by the purchaser or available through the enforcement of guarantee or security bonds lodged and apply this against the assessed loss or damages incurred by us owing to the default or winding-up or other act noted at the commencement of this clause;
- (k) enter upon the purchaser's premises or elsewhere to take possession of and/or remove any goods that we have supplied;
- (l) take such steps as we deem necessary to mitigate our damages including putting to use, hiring out, selling or disposal of any goods supplied or to be supplied to the purchaser pursuant to this Tax Invoice and the acceptance of the Sales Quotation.

16

- (a) We retain title in the goods delivered under this agreement until the purchaser has paid both the purchase price of the goods (as specified in the Tax Invoice) and all other money owed by the purchaser to us.
 - (b) The parties intend clause 16 to secure the purchase price of the goods (as specified in the Tax Invoice) and create a purchase money security interest in the goods. This agreement may also create a security interest in the goods that is not a purchase money security interest.
 - (c) We may allocate payments made by the purchaser to us under this agreement, or any other agreement with us, to any obligation owed by the purchaser to us.
 - (d) Once the purchaser takes possession of the goods, the purchaser must store the goods:
 - (i) separately from other goods of the purchaser, so that the goods are not mixed with those other goods; and
 - (ii) in such a way that the goods are recognisable as the property of Bournedrill.
 - (e) Risk in the goods passes to the purchaser when the goods leave Bournedrill's premises for delivery to the purchaser and the purchaser must adequately protect the goods, including by way of insurance, until title has passed to the purchaser.
 - (f) While the goods remain the property of Bournedrill, the purchaser must not sell, lease, or otherwise dispose of the goods.
 - (g) While the goods delivered under this agreement remain the property of Bournedrill, the purchaser must not grant or allow another to hold a security interest in:
 - (i) the goods;
 - (ii) the proceeds of the goods; or
 - (iii) any goods to which the goods are installed or affixed.
- It is a condition of this agreement that the purchaser comply with this clause 16(g).

- (h) The purchaser must pay all costs, expenses and other charges incurred or payable by Bournedrill in relation to the filing of a financing statement or financing change statement on the Personal Property Securities Register in connection with this agreement.
- (i) If the purchaser fails to comply with any obligation under this agreement, or an Insolvency Event occurs in relation to the purchaser, then without limiting the remedies available to Bournedrill:
 - (i) upon request by Bournedrill, the purchaser must immediately return the goods on which there are outstanding amounts owing;
 - (ii) the purchaser authorises Bournedrill and any person authorised by Bournedrill to enter premises where the goods may be located to take possession of the goods; and
 - (iii) Bournedrill may retain, sell or otherwise dispose of the goods.
- (j) The purchaser agrees to the extent permitted under the PPSA, the purchaser has no right:
 - (i) to receive notice of removal of an accession under the PPSA;
 - (ii) under Chapter 4 of the PPSA; or
 - (iii) under the PPSA to receive a copy of any verification statement or financing change statement under the PPSA.

(k) The purchaser must unconditionally ratify any actions taken by Bournedrill under clause 16(i) and the waiver under clause 16(j).

(l) In this clause 16:

(i) 'PPSA' means the *Personal Property Securities Act 2009* (Cth); and

(ii) 'financing statement', 'financing change statement', 'proceeds', 'security interest', 'purchase money security interest' and 'verification statement' have the respective meanings given to those terms by the PPSA.

17

(a) In this clause 17, 'PPSA Information' means any information or documents of the kind mentioned in section 275(1) *Personal Property Securities Act 2009* (Cth) in relation to a security interest in the goods or the proceeds of the goods.

(b) Each party must keep the PPSA Information in the strictest confidence and not disclose that information.

(c) Each party must not request PPSA Information or authorise disclosure of the PPSA Information.

(d) Despite clause 17, if a party is required to disclose PPSA Information, that party must give all available notice to the other party to allow the other party to:

(i) legally challenge the required disclosure; and

(ii) take all available steps to keep that PPSA Information confidential.

18

In the event of any dispute between the parties, either party may be given written notice of the existence of such dispute and the dispute shall then be referred to the arbitration of a single arbitrator to be mutually agreed upon, or failing agreement, to an arbitrator appointed by the President for the time being of the Institute of Arbitrators and Mediators (Queensland Chapter) and the award of such Arbitrator shall be final and binding on the parties. In any proceedings before an Arbitrator the parties may, but only if they mutually agree to do so, be represented by solicitor or Counsel.

19

Acceptance by the purchaser shall be conclusive evidence of the delivery of the goods to the purchaser and we shall not be called upon to prove that our goods were actually received by the purchaser.

20

After delivery and acceptance of the goods to the purchaser, we will not accept the goods being returned for any reason, unless we give the purchaser prior written permission to return the goods and such return is at the cost and expense of the purchaser. Request to return goods must be made within seven (7) days from receipt of goods and a re-stocking fee may apply should said request to return goods be approved.

21

(a) Service of any document or notice in connection with any matter arising from these terms and conditions shall be sufficient if sent by either party to the other by pre-paid post to the last known address of the other party, and for the purposes of noting the date of such service, such service shall be deemed to have been effected forty-eight (48) hours after such notice has been posted to the receiving party, unless the contrary is proved.

(b) Service of notices will also be sufficient if sent by facsimile transmission to a party that has fax capabilities and service will be deemed to have been effected in the normal course of transmission unless the contrary is proved.

22

If we choose at any time to waive our rights in a particular circumstance, such waiver will not affect our full rights and remedies, which arise in any subsequent circumstance.

23

The purchaser must not assign, in whole or in part, or novate the purchaser's rights and obligations under this agreement without Bournedrill's prior written consent.

24

The governing law relating to these terms and conditions is the law of the State of Queensland and the parties hereto agree to submit to the exclusive jurisdiction of that State as regards interpretation or any other matter arising from these terms and conditions.

25

DATE: 01 September 2015