



Terms and Conditions

1 SCOPE AND FEES

1.1 Engagement

- (a) BWA has provided as attached to these terms and conditions (**T&Cs**) where it is:
- (i) on our website located at builderswarehouseaustralia.com.au (**Website**), upon selection of Goods and Services (if applicable) contained in a basket and upon being prompted to open a Customer's account prior to proceeding to checkout on our Website; or
 - (ii) by email, on paper by Customer's interaction with BWA and its Personnel from BWA's locations (**Interaction**), a quotation for the Goods and Services (if applicable) as set out in the particulars page of the proposal;
- specifying, amongst other things, the Goods to be delivered and the scope of the Services (if applicable) to be provided to Customer (each a party) and an estimate of the fees involved in providing those Goods and Services (if applicable) (**Proposal**).
- (b) These T&Cs form part of the Proposal and Privacy Policy, as if incorporated into the Proposal and Privacy Policy (together the **Agreement**).
- (c) The parties agree that they are bound by the Agreement and any later version of T&C's which may be amended from time to time on builderswarehouseaustralia.com.au (**Website**).
- (d) Customer agree that in the absence of any new Agreement being duly executed by the parties, any future dealings with us with respect to any new or amended Proposal in respect of any future purchase order for Goods and Services (if applicable) will be bound by the Agreement.
- (e) BWA does not represent that it will provide any Goods and Services (if applicable) unless they are included in the Agreement.

1.2 Acceptance

- (a) The offer in the Proposal remains open for acceptance, where it is:
- (i) on our Website, until 11:59pm that day; or
 - (ii) by Interaction, for a period of 30 days;
- after which time the offer expires.
- (b) Customer accepts the agreement (**Acceptance**) by:
- (i) executing the Agreement;
 - (ii) accessing any part of BWA's Website;
 - (iii) creating a Customer's account on BWA's Website;
 - (iv) paying any Fee specified in the Agreement to BWA;
 - (v) BWA completing an order subject to Customer's purchase order or an online order from our Website for the delivery of Goods and Services (if applicable) (**Order**);
 - (vi) accepting delivery of Goods and Services (if applicable);
 - (vii) their willing participation through oral, written, or electronic communication.
- (c) If Customer cancels the Agreement after Acceptance and prior to commencement of Services or provision and up to delivery of Goods, Customer must pay BWA the cost (if any) of any disbursements and any BWA's Personnel reasonably procured in anticipation of commencing the Services or providing and up to delivery of Goods.

2 CUSTOMER ACCOUNT

2.1 Application

- (a) BWA requires Customer to create a Customer's account on BWA's Website to access the provision of its Goods and Services (if applicable).
- (b) Customer must:
- (i) as a natural person, be at least 18 years of age; and
 - (ii) comply with the representation and warranties under clause 14 of this Agreement;
- to be eligible to apply for a Customer's Account on BWA's Website.
- (c) Customer must not permit any person who is a minor to use the Customer account and the Customer will be solely responsible and liable for any unauthorised use.
- (d) Unless permitted in writing by BWA, each Customer may only possess one Customer Account.
- (e) In establishing and setting up a Customer's account, Customer must create a password, or other secure login method to access the Website for the provision of Goods and Services (if applicable). Customer must also provide valid Payment Card details in respect of the Fee due for an Order. Amongst other Customer's information that will be required by BWA will be the Customer's full name, entity name, and details such as ABN and ACN, date of birth, age, address of Customer Site, telephone contact number, and email address.
- (f) In as much as BWA complies with the privacy of its Customer, Customer is solely responsible for the safeguard of the account details including login details and password and preventing any third-party from accessing the username, password, email account, telephone contact number. Where a third-party gains access to Customer's account details and proceeded to place an Order for the Goods and Services (if applicable) on BWA's Website, Customer will be liable for any Order paid with the Token of the Payment Card details. Customer indemnifies BWA for any loss suffered by Customer unless there is a breach of Privacy by BWA in failing to secure Customer's login details and password.

- (g) Customer is responsible to maintain and to ensure that all details contained on Customer's account are accurate, complete, and up to date information. Any failure by Customer to ensure of this may result in access to the provision of Goods Services and (if applicable) being suspended or not being accessible to Customer.
- (h) Customer agrees and consents to BWA sending of commercial electronic messages (including email, SMS, or push notifications) as part of the normal BWA's business operation for the provision and delivery of its Goods and Services (if applicable). Customer may opt out of receiving commercial electronic messages from BWA at any time from Customer's account subscription preferences. Customer further acknowledges that opting out from receiving commercial electronic messages may impact Customer's experience in dealing with BWA for the provision of Goods and Services (if applicable).

2.2 Suspension and Closure

- (a) Customer may voluntarily close a Customer's account at any time through our Website or by contacting us at BWA.
- (b) BWA may suspend Customer access to a Customer's account, or close it permanently, where BWA believes that Customer's account has been used by a third party.
- (c) BWA will equally close a Customer's account where BWA holds the view that Customer:
- (i) has breached the T&C's, Proposal, and Agreement;
 - (ii) does not, or is not likely to, qualify under applicable law or standards and policies of BWA to access and use the Website

in a manner consistent with the delivery of its Goods and Services (if applicable);

- (iii) has not acted lawfully with respect to the BWA's Goods and Services (if applicable); and
 - (iv) is abusing the relationship in their dealings with BWA (e.g. by applying for refunds or credit to which BWA does not consider Customer is entitled, making repeated unreasonable complaints, mistreating BWA's Personnel, or any other good reason).
- (d) If BWA closes Customer's account permanently, BWA may refund any remaining account credit validly obtained by applying a credit to Customer's Payment Card, or if that is not possible for any reason, by way of a bank transfer using bank details provided to BWA by Customer.

3 TRADE REFERENCE & CREDIT ACCOUNT

- (a) The National Credit Code does not apply to BWA's credit account facility provided to its Customers.
- (b) Customer may submit a credit account application with BWA under the Agreement by providing full and frank disclosure of the financial position of Customer including, but not limited to, assets, real property, solvency, bankruptcy, judgment, trade reference, and personal guarantee for a Customer as may be required by BWA.
- (c) BWA may, at its own discretion, requests for at least two (2) trade references from a Customer and Customer must provide the requested trade references to BWA under the Agreement.
- (d) Customer agrees and consents to BWA carrying out any verification and check of the trade referees and to communicating with the trade referees under the Agreement.
- (e) Customer agrees and consents to BWA carrying out an evaluation and assessment of the Customer's credit capacity, credit history, and creditworthiness from a credit account agency or other credit provider for information about the Customer's credit arrangements, any order for default judgment against the Customer, any security or charges registered or recorded against the Customer or its real property at Customer's Site, and if and when required by BWA to provide personal guarantee for Customer.
- (f) BWA reserves its right to undertake ongoing enquiries of the Customer's credit credentials from time to time to better assess the Customer's creditworthiness and credit capacity to maintain a credit account with BWA
- (g) BWA may, at its own discretion, reject, cancel, or approve a credit account of a Customer, without any prior written notice or explanation provided to Customer.
- (h) BWA will only supply Goods and Services (if applicable) to Customer who has been approved as a holder of a credit account based on the Credit Account Terms and the Agreement.
- (i) Any of the Credit Account Terms and the Agreement may only be varied and approved by BWA.
- (j) Customer agrees that the Credit Account Terms and the Agreement apply to each Order where Customer seeks to make use of its credit account to make payment of Fee for provision of Goods and Services (if applicable).
- (k) Where a Customer is a Credit Account holder, Customer must comply with all Credit Account Terms and the Agreement and Customer must attend to payment of Fee as set out in clause 5.1(c) in full settlement of the issued Tax Invoice (**Settlement**) in respect of that Order where Customer has provided written confirmation for the delivery of Goods and performance of Services (if applicable) at Customer Site.
- (l) If Customer fails to attend to Settlement of the Tax Invoice, BWA may do all things necessary in accordance with clauses 10.2 and 10.3 of the Agreement to recover the debt owed by Customer.
- (m) Customer agrees and consents to BWA to apply any charge to secure its interest in respect of its Goods and Services (if applicable) under T&C's clause 10. Customer acknowledges that any cost incurred by BWA is to be paid by Customer as a Fee (where applicable) under T&C clause 5.1(a)(iv).

4 PROVISION OF GOODS AND SERVICES

4.1 BWA's rights and obligations

- (a) BWA will commence provision of Goods and Services (if applicable) on the Commencement Date, subject to any variation agreed by the parties, and provide the Goods and Services (if applicable) during the Term until Completion Date unless terminated earlier in accordance with clause 16.
- (b) BWA adhere to the privacy of Customer in accordance with its [Privacy Policy](#) under this Agreement.
- (c) BWA, may at its sole discretion, only upon accepting an Order from a Customer, determine the most suitable manner how and when it will supply and deliver the Goods and perform the Services (if applicable) to Customer at Customer Site.
- (d) BWA may follow all reasonable directions given by Customer for the supply and delivery of Goods and performance of Services (if applicable), subject to Customer paying for any reasonable additional costs or expenses incurred by BWA.
- (e) Any failure by Customer to make payment of any amount of the Fee, BWA may, at its discretion:
 - (i) decline to provide the requested Goods and Services (if applicable); or
 - (ii) postpone or cancel the Goods and Services (if applicable).
- (f) Customer acknowledges that BWA will not be liable for any loss or damage arising as a result a cancellation under clause 4.1(e).
- (g) BWA does not warrant that it will be able to supply and deliver the Goods and Services (if applicable) at specific times, unless expressly specified in the Proposal or otherwise by BWA in writing.
- (h) BWA will ensure that the Goods and Services (if applicable) comply with all applicable laws, regulations, standards, and guidelines in accordance with the:
 - (i) Building Regulatory Framework;
 - (ii) Building Code of Australia;
 - (iii) National Construction Code; and
 - (iv) Victorian Building Authority;
- (i) Nothing in the Agreement will affect BWA's right to use its own judgment with reasonable care and skills to achieve compliance with any laws, regulations, code, standards, directions, resolutions, or other obligations in relation to the delivery of its Goods and performance of its Services (if applicable) to Customer.

4.2 Customer's obligations

- (a) Customer must:
 - (i) only use Goods at Customer Site;
 - (ii) only use Goods in accordance with the Agreement;
 - (iii) comply with the obligations of a Customer as detailed in the Proposal;
 - (iv) co-operate with BWA as reasonably required;
 - (v) ensure that the Customer's Personnel cooperate with BWA;
 - (vi) provide sufficient information, including, but not limited to, measurements and specifications, as requested by BWA in a timely manner to enable BWA to fulfill an Order, deliver, and locate the Goods;
 - (vii) ensure that data, information, specification, documentation, permit, approvals, licences, materials supplied by Customer, comply with the applicable laws, regulations, and standards;
 - (viii) ensure access to the Customer's Site to enable BWA and BWA's Personnel to deliver the Goods and perform the Services;
 - (ix) provide at its own expense, connection for services such as electricity as well as prerequisite works such as plumbing works, stable (safe and firm) flooring base, and any other required materials (not otherwise purchased from BWA) as



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- may be required by BWA to deliver its Services for the installation of Goods at Customer Site;
- (x) ensure that Customer's Site is a safe working environment for BWA and its Personnel;
 - (xi) always during Term, store Goods safely and securely on Customer's Site;
 - (xii) use all due care to prevent damage, loss, or destruction to Goods;
 - (xiii) use or permit use of Goods by properly qualified and licensed Personnel only; and
 - (xiv) use, keep, and permit use of Goods in accordance with BWA's instructions;
 - (xv) during Term, permit and give access to BWA to Customer Site to inspect and maintain Goods at any time during BWA's Business Hours;
 - (xvi) take up and maintain insurance as directed by BWA, in BWA's sole discretion, from time to time, in respect of Goods stored at Customer's Site;
 - (xvii) provide a certificate of currency to confirm that BWA is the beneficiary of the insured Goods should there be a claim of insurance to ensure that any payment claim is for the benefit of BWA;
 - (xviii) where Goods stolen, lost, or damaged, notify BWA in writing immediately and cooperate fully with any insurer nominated by BWA, including, but not limited to, supplying all information as required and indemnifying BWA for any excess payable under any insurance policy in respect of the lost, stolen, or damaged Goods; and
 - (xix) indemnify BWA from any claim arising from any third-party, including, but not limited to, Customer's agents from any claim, loss, or damage arising from Customer's or Customer's agent's failure to service and maintain or misuse giving cause to serious injury, illness, and loss of life of a third-party.
- (b) If Customer does not comply with clause 4.2, then any additional costs and expenses which are reasonably incurred by BWA will be paid by Customer and BWA will not be responsible for any delay in provision of the Services resulting from a breach of clause 4.2.
- (c) If Customer cancels the Agreement after Acceptance, Customer must pay to BWA the cost (if any) of any BWA personnel or contractors reasonably procured in anticipation of commencing and providing the Services.
- ### 5 FEES, INVOICES, & PAYMENT
- #### 5.1 Fees
- (a) Customer must pay the Fee for the Goods and Services (if applicable) in respect of an Order and the Agreement being for:
 - (i) fee for Goods and Services;
 - (ii) Delivery Fee of Goods (if applicable);
 - (iii) payment processing fee applied by BWA's third-party payment gateway provider for an Order on our Website or by BWA's financial institution for an Order by Interaction (**Order Processing Fee**); and
 - (iv) any other additional fee including, but not limited to, such cost incurred by BWA to perfect any security as a secured party or apply a charge to secure the Goods and Customer additional specifications and delivery requirements (collectively the '**Fee**').
 - (b) Subject to clause 5.1(c), BWA requires payment of Fee for the Goods and Services (if applicable) prior to supply and delivery of Goods and performance of Services at Customer's Site:
 - (i) on our Website, upon proceeding with checkout and having been requested to complete payment by BWA's third party payment gateway provider to complete the Order; or
 - (ii) by Interaction, at the time of placing an Order with BWA unless otherwise agreed in writing by BWA.
- (c) BWA requires Customer, who is an approved Credit Account holder in accordance to clause 3, to pay the Fee for the Goods and Services within fourteen (14) days of the issue date of the Tax Invoice once Customer has provided written confirmation of delivery of the Goods or performance of Services (if applicable) at Customer Site.
- (d) Customer must pay the Fee either on our Website to BWA's third-party payment gateway provider once directed by our Website or by Interaction with any customised link issued by BWA, where either:
 - (i) Customer submits details of a credit, corporate, debit, prepaid, card that may or may not be stored on a mobile wallet application (**Payment Card**); or
 - (ii) where the details of a Payment Card has been previously provided by Customer to BWA's third-party payment gateway provider and has opted to save a preferred Payment Card, by way of a token ('**Token**') stored on BWA's Website as part of the Customer's account details. The Token does not contain any of the Customer's personal financial information but rather a reference link to the Customer's financial information retained by BWA's third-party payment gateway provider as directed and agreed by Customer. Customer may opt to cancel the Token with the BWA's third-party payment gateway provider at any time by requesting for the removal of the stored preferred Payment Card from the records of the BWA's third-party payment gateway provider. BWA adheres to the privacy of its Customer in accordance with its [Privacy Policy](#) under this Agreement.
- (e) BWA may charge and Customer will pay for all disbursements properly incurred in supplying the Goods and performing the Services.
- (f) Prior to payment of Fee by Customer for Goods and Services (if applicable), BWA may, at its discretion:
 - (i) decline to supply Goods and perform Services; or
 - (ii) postpone or cancel the delivery of Goods and performance of Services.
- (g) Customer must pay each tax invoice in full without set-off deduction or counterclaim and Customer acknowledges that this clause may be produced in bar of any proceeding to set-off, deduction or counterclaim.
- #### 5.2 Services Rate
- (a) BWA may, at its sole discretion, for the Services, charge hourly rates *in lieu* of a fixed agreed Fee for the Services as expressed in Proposal.
- #### 5.3 Variation
- (a) Any Fee estimate provided by BWA for Goods and Services (if applicable) is only an estimate of the likely costs of supplying the Goods and providing the Services (if applicable) and does not bind BWA for any period after it advises a change of that estimate. The estimate may be revised by us at our discretion prior to Acceptance, and Customer will be notified of any revision of the Fee estimate within thirty (30) days.
- (b) BWA may, at its sole discretion, vary its
 - (i) price of Goods prior to BWA accepting a submitted Order;
 - (ii) hourly rate during the performance of Services; orsubject to providing with a written notice of no less than 14 days to Customer.

- (c) If Customer makes changes to Customer Site after issue of Proposal, Customer must promptly inform BWA of all changes, so that the Proposal can be revised. Customer's failure to notify BWA may:
 - (i) cause a delay in provision of the Goods and the completion of the Services until a revised Proposal is issued by BWA and accepted by Customer;
 - (ii) result in BWA not being able to proceed with the initial Proposal to supply the Goods and perform the Services (if applicable)
- (d) If Customer Site experience delays from third party builder or contractor and Customer fails to notify BWA in writing of such delays at least seven (7) days prior to the delivery of Goods and performance of Services (if applicable), Customer may have additional Fee where BWA may have incurred costs to re-schedule its Personnel for the performance of Services and to re-schedule for the delivery of the Goods.
- (e) Where Customer requires variation to the Proposal, Customer must promptly notify BWA in writing of those variations and should such variation amount to variation to the supply of Goods or variation to the performance of Services by BWA, Customer agrees to pay any variation in the applicable Fee as may be amended in the revised Proposal.
- (f) Where Customer requires BWA to take further measures above and beyond the usual scope of the Agreement and the Standards, Customer must pay BWA's additional Fees and for any other costs incurred by BWA in providing the Goods and Services.
- (g) BWA will charge a Cancellation Fee to Customer should Customer fail to comply with the BWA's cancellation policy as set out in the Proposal.

5.4 Invoices

- (a) BWA will issue a Tax Invoice to Customer either:
 - (i) on our Website, upon payment of Fee has been processed by BWA's payment gateway provider; or
 - (ii) by Interaction, once BWA makes delivery of the Goods in accordance to clause 6.1(a).
- (b) Unless Customer holds a Credit Account, BWA accepts cash, direct deposit, bank cheque, and electronic fund transfer (EFT), debit card payment card, EFTPOS, Visa, and Mastercard as acceptable method of payment of the Fee as set out in the Invoice (**Payment Method**). BWA does not accept payment from Customer over the telephone. Customer who holds Credit Account must settle all Fees and monies owed to BWA under the same Payment Method.
- (c) Customer must pay each Invoice in full without set-off, deduction or counterclaim and Customer acknowledges that this clause may be produced in bar of any proceeding for set-off, deduction or counterclaim.

5.5 Payment

- (a) Customer must attend to full payment of all Fee as set out in the issued Tax Invoice by BWA as and when due.
- (b) If Customer fails to pay the full amount owing for any invoices on the relevant due date BWA is entitled to do any or all of the following:
 - (i) require Customer to make payment in full settlement of the Fee owed to BWA for all outstanding tax invoices;
 - (ii) apply a late payment fee in the amount specified in the reminder Tax Invoice;
 - (iii) reserve the rights to negotiate with Customer a payment plan acceptable to all parties;
 - (iv) withhold the supply and delivery of any further Goods or perform any further Services to Customer;
 - (v) charge interest on the outstanding amount may be charged and compounded monthly at the rate prescribed under the *Penalty Interest Rates Act 1983* (Vic) from the due date until the account and any interests and costs are fully paid;

- (vi) require Customer to pay, in advance, for any Goods and (any part of the) Services (if applicable), which are yet to be performed by BWA;
- (vii) exercise a *lien* over the Services and Goods in the control, possession and custody of Customer relating to the Proposal that remains unpaid until payment is made in full to the satisfaction of BWA;
- (viii) terminate a credit account facility of a Customer previously approved as a holder of a credit account;
- (ix) terminate this agreement under clause 16;
- (x) collect BWA's Goods from Customer Site; and
- (xi) charge Customer for any incurred expenses, administrative costs, and disbursement costs for the Returns of Goods under clause 9 of the Agreement.

5.6 Further costs

- (a) If an outstanding account is referred to a law firm and/or debt collection agency for recovery, Customer will be liable for:
 - (i) any recovery costs incurred; and
 - (ii) any commission payable by BWA.
- (b) If an outstanding account is referred to a legal practitioner, Customer must pay all costs reasonably claimed by the legal practitioner on a solicitor/customer basis.

6 DELIVERY

6.1 Delivery

- (a) Customer is deemed to have accepted the Goods upon delivery and inspection of Goods at delivery. Customer is required to sign to confirm the receipt of Goods at Customer Site to be in a merchantable quality being without damage and defects.
- (b) Unless otherwise notified in writing, Customer requests BWA to act as its agent for the purpose of arranging transportation of Goods from BWA's location to Customer Site and conversely;
- (c) Customer is liable to pay for the transportation costs of such Goods (**Delivery Fee**);
- (d) BWA will only deliver the Goods on the ground floor of Customer Site where it is a secure and safe flat and even surface which is accessible within 10 metres of where the transportation vehicle at the Customer Site. Where Customer requires delivery to a part of the Customer Site, other than as stated, Customer will be liable to pay additional Fee immediately at delivery. Where Customer refuses to pay such additional Fee, BWA reserves the right not to complete delivery and organise for a re-delivery of the Goods. Customer will be liable for a double Delivery Fee plus any additional Fee for the additional delivery requirement.
- (e) in all cases Customer shall be liable for any loss, damage, or injury caused to or sustained by any person or persons by any reason of or arising out of or in any way connected with delivery and accessing the Customer Site and the delivered Goods. BWA shall be indemnified by Customer in respect of any such liability.

6.2 Title to Goods

- (a) All Goods supplied or installed by BWA shall be at Customer's risk from the time of deliver/installation.
- (b) The legal and equitable title to and property in the Goods will not pass to Customer until Customer has paid all Fees and costs owed to BWA on any account whatsoever. Payment shall not be deemed to occur until all cheques in payment of moneys owing to BWA have been presented and cleared in full in BWA's nominated bank accounts.
- (c) BWA reserves its right to enter upon any premises for the purpose of repossessing Goods which have not been paid for. The right to repossess is without prejudice to any other rights of recovery otherwise available.
- (d) Until all Goods are paid for in full, the relationship of Customer to BWA shall be as a fiduciary in respect of the Goods and accordingly, Customer, if required by BWA, shall store and insure the Goods in such a way that they can be recognised as the

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property of BWA and, if the Goods are sold by Customer, BWA shall have the right to trace the proceeds thereof.

7 INSTALLATION

- (a) Where Customer requests for BWA's Services for the installation and fittings of its Goods at Customer Site:
- (i) Customer must provide access to BWA and BWA's Personnel to Customer Site during the Term as agreed by the parties;
 - (ii) BWA will be under no liability or responsibility for any loss, damage, or expense howsoever incurred by Customer as the result of;
 - A. any failure or delay by BWA in performing any of its obligations under the Agreement due to any reason beyond the control of BWA or resulting from Customer not meeting its obligations under clause 4.2; or
 - B. any prohibitions or restrictions under any applicable statutes, bylaws, or regulations;
 - (iii) any existing defects discovered by BWA during the installation and fittings of its Goods is and remains the sole responsibility of Customer. BWA shall notify Customer of such defects that requires rectification to ensure its Goods are installed safely and securely at Customer Site;
 - (iv) BWA shall have full discretion and be the sole judge in determining what rectification might be required to resolve any defects. BWA will require Customer to attend to the prerequisite works to be completed to acceptable building standards prior to commencing or continuing with the installation and fittings of its Goods at Customer Site;
 - (v) BWA may terminate the Agreement where the remedial and rectification works are not completed or undertaken as instructed by BWA within the Term or any other agreed extension of time agreed by the parties, without prejudice to BWA's existing rights. Any additional expense or cost incurred by BWA due to such delays must be borne and paid by Customer;
 - (vi) any warranty period provided by BWA for its Goods and Services are void where Customer uses an unlicensed tradesperson as installer and fitter or where the Goods have been installed and fitted in a defective manner, not fit for purpose, not comply with the building and construction standards, not installed in a safe and secure manner, is repaired, overhauled, or modified by any party other than BWA; and
 - (vii) Customer is responsible and liable to ensure that any necessary permits, licence, permissions, or authorisations are obtained for the work prior to being carried out.

8 GOODS' MANUFACTURER'S WARRANTY

Subject to clause 11.2:

- (a) BWA supplies Goods to Customer based on the warranty conditions and duration provided by the manufacturer (or as represented by the wholesaler of the Goods);
- (b) Manufacturer's warranty information, product care, and installation instructions are contained in the packaging of the Goods. Customer is responsible to read these instructions prior to making use of the Goods to ensure that the use and installation of Goods complies with the manufacturer's warranty. Where Customer fails to comply with these conditions in using the Goods, this will void any manufacturer's warranty of the Goods; and
- (c) BWA will not accept a return of Goods under the manufacturer's warranty where Customer has not complied with clause 8(b) or that either a wholesaler or manufacturer has determined that Customer caused damage, deficiency, defect, or has void the manufacturer's warranty to the Goods.

9 RETURNS & CANCELLATION

9.1 Returns

- (a) BWA will, at its sole and an unfettered discretion, only accept return of Goods from Customer where:
 - (i) Goods are unopened and in a 'brand new in box' condition; and
 - (ii) Customer returns the Goods within thirty (30) days of delivery of Goods.
- (b) BWA may, at its sole discretion, accept return of Goods from Customer where Goods (such as trims, quads uncut, underlay to the nearest square metre) are still classified as new condition and not used by Customer on the basis of a reduction of fifty per centum (50%) of its value to be paid to Customer.
- (c) Subject to Clause 9(b), BWA does not accept return of Goods from Customer where:
 - (i) Customer determines there was an excess of Goods;
 - (ii) Customer's change of mind on the Goods; or
 - (iii) Customer determines Goods was not required to be used; upon opening or making use of Goods.
- (d) Subject to Clause 9(a)(ii), BWA may accept a return in respect of a deficiency or defect in the Goods where Customer provide written notice of such defects and deficiency accompanied with relevant high-resolution photographs or/and videos as may be required by BWA to make claim of the Goods' manufacturer's warranty under clause 8.
- (e) BWA reserves its right to inspect the Goods at Customer Site and makes its own assessment of any Goods notified under clause 9(d) at an agreed date and time with Customer.
- (f) Subject to clause 8, BWA may provide a return or exchange of the Goods notified under clause 9(d) where either the manufacturer or wholesaler agrees with BWA for a valid claim under the Good's manufacturer's warranty on behalf of Customer.
- (g) BWA may facilitate the return of Goods for Customer by collecting such Goods from Customer Site back to BWA's location at the request of Customer. The transportation will be provided on the same terms as set out in clause 6 subject to Customer giving BWA at least three (3) Business Days' notice prior to collection of returned Goods. Goods are returned in accordance to this clause must be stacked and inspected at collection by BWA and BWA Personnel before confirming acceptance of return of Goods and Customer must ensure access to the return Goods in a free and accessible part of the Customer Site.

9.2 Cancellation

- (a) If Customer cancels the Agreement more than Three (3) Business Days after BWA has accepted an Order from Customer and Customer has failed to notify BWA in writing at least Five (5) Business Days prior to delivery of Goods or performance of Services at Customer Site, BWA will charge a Cancellation Fee to Customer for the cancellation;
- (b) If Customer cancels the Agreement upon delivery of Goods at Customer Site but prior to Completion Date of performance of Services for the installation and fittings, all Fee become immediately due and payable in full by Customer, including, but not limited to, all delivered Goods, Services performed, equipment, supplies, and materials used by BWA at Customer Site until the cancellation date and a Cancellation Fee in respect of the Goods and Services.
- (c) BWA reserves its rights to cancel the Agreement as well as provision and supply of Goods and performance of the Services at any time prior to, at the commencement of, or during the Term where Customer has breached their obligations or the Agreement, by giving written notice to Customer.

- (d) Where BWA has cancelled the Agreement, BWA will repay to Customer any (part of) Fee paid by Customer for the Goods and Services (if applicable). However, BWA will not be liable for any loss or damages caused from the cancellation.

10 SECURITY

10.1 Personal Property Securities Register

- (a) For the purposes of this clause, terms defined in the Agreement have the same meanings given in the PPSA.
- (b) Customer and Guarantor acknowledge and agree that by accepting these T&Cs, as part of the Agreement, constitute a security agreement (**Security Agreement**) that covers the Collateral for the purposes of the PPSA;
- (i) BWA, as secured party (Secured Party), holds a Security Interest over all Goods and all other present and after acquired Goods supplied by BWA to Customer and any Proceeds of the sale of those Goods;
- (ii) that any purchase by Customer on credit terms from BWA will constitute a purchase money security interest as defined under section 14 of the PPSA (PMSI);
- (iii) the PMSI granted herein will continue to apply to any Goods coming into existence or proceeds of sale of Goods coming into existence;
- (iv) BWA may apply any money received from Customer first to satisfy any portion of the debt owed to BWA that arises in respect of Goods no longer held by Customer, second to satisfy any portion of debt that is unsecured, third to satisfy any portion of debt that is secured but not by a PMSI and then to all other debts due and payable to BWA in the order that BWA determines.
- (v) BWA will continue to hold a Security Interest in the Goods in accordance with and subject to the PPSA, notwithstanding that the Goods may be processed, commingled, or become an accession with other Goods;
- (vi) any BWA's Security Interest will be a continuing and subsisting interest in the Collateral with priority to the fullest extent permitted by law over all other registered or unregistered Security Interests;
- (vii) until title in the Goods passes to Customer, it will keep all Goods supplied by BWA free and ensure all such Goods are kept free of any charge, lien, or Security Interest and not otherwise deal with the Goods in a way that will or may prejudice any rights of BWA under the Agreement or the PPSA; and
- (viii) in addition to any other rights under these T&Cs or otherwise arising, BWA may exercise any and all remedies afforded to it as a Secured Party under Chapter 4 of the PPSA including, without limitation to, entry into any building or premises owned, occupied, or used by Customer, to search for and seize, dispose of or retain those Goods in respect to which Customer has granted a Security Interest to BWA.
- (c) The parties acknowledge that BWA is entitled to register its interest as a Security Interest in the Goods supplied or to be supplied to Customer under these T&Cs on the PPSA Register as Collateral and that Customer and Guarantor grants a Security Interest as may be required by the Secured Party.
- (d) Customer and Guarantor undertake to assist the Secured Party to register and perfect any Security Interest by:
- (i) signing any further documents and provide such information which BWA may reasonably require to register, amend, or update a Financing Statement or Financing Change Statement in relation to a Security Interest on the PPS Register;
- (ii) indemnifying and upon demand reimburse BWA for all expenses incurred in registering a Financing Statement or Financing Change Statement on the PPS Register or releasing any Security Interests;
- (iii) not registering or permitting to be registered a Financing Change Statement in the Collateral without the prior written consent of BWA; and

- (iv) providing BWA with not less than seven (7) days' prior written notice of any proposed change in Customer's name, address, contact numbers, business practice or such other change in Customer's details registered on the PPS Register to enable BWA to register a Financing Change Statement if required.

- (e) The parties agree that sections 96, 125 and 132(3)(d) of the PPSA do not apply to the Security Agreement created under the Agreement and further that the provision of section 115(1) of the PPSA that may be excluded are excluded in relation to the Security Interest created under the Agreement.
- (f) Customer and Guarantor hereby waives its right to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- (g) The parties agree to waive each of their respective rights to receive each notice which, under section 157(3) of the PPSA for which it is permitted to waive and waives its rights to receive anything from one party to any other party under section 275 of the PPSA.
- (h) Customer and Guarantor waive their right as a Grantor and/or a Debtor under sections 142 and 143 of the PPSA.
- (i) Unless otherwise agreed in writing by BWA, Customer and Guarantor waives its right to receive a verification statement in accordance with s 157 of the PPSA.
- (j) Customer and Guarantor shall unconditionally ratify any actions taken by BWA under this clause 10.
- (k) Upon termination or cessation of a Security Interest in favour of BWA under this Agreement, the Secured Party must, on request from the Customer and Guarantor, do all things necessary to remove or withdraw the registration of the Security Interest from the PPSR as soon as practicable and in any event within fourteen (14) days of receiving the request from the Customer and Guarantor.

10.2 General Charge

Customer and any Guarantor:

- (a) under clause 10.3 hereby charge all property both equitable and legal, present, or future of Customer in respect of any Fee and monies that may be owing by Customer to BWA under the Agreement;
- (b) for valuable consideration, irrevocably appoints BWA and each of its officers and agents severally as the attorney of the Customer and Guarantor to do anything which the Customer and Guarantor must do directly or indirectly under the Agreement and the Deed or under any security given in favour of BWA on the Customer's and Guarantor's behalf and in the name of the Company or Guarantor otherwise;
- (c) declare the power of attorney conferred under this Agreement and the Deed is irrevocable until such time as BWA by notice in writing certifies that all Fee and monies owing under the Agreement have been paid in full;
- (d) hereby authorises BWA or its nominated solicitors to execute any consent form as its attorney for the purpose of registering a caveat over any real property owned by Customer at any time, which will be withdrawn once all payments and obligations payable to BWA have been met; and
- (e) Indemnify and hold indemnified any attorney appointed from and against all losses, actions, claims, demands, costs, and expenses incurred in connection with anything done as the attorney of the Customer and Guarantor.

10.3 Guarantee

- (a) Should BWA deem it necessary to request a guarantee in relation to the supply of Goods and Services (if applicable), BWA will withhold the supply until Customer has effected the necessary guarantee.
- (b) If Customer is a corporate entity, Customer will procure that each of its directors provides an unlimited, unconditional, and irrevocable continuing guarantee in favour of BWA and guarantees to BWA the performance by Customer of all its obligations under the Agreement and indemnify and hold BWA harmless on a continuing basis from and against all and any Loss arising out of the breach or non-performance by Customer in not:



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- (i) paying the Fee as and when due and any monies owed to BWA;
 - (ii) meeting the Customer's obligations under the Agreement;
 - (iii) avoiding an insolvency event;
 - (iv) ensuring money owing (or which would be owing but if it were not recoverable) under the Agreement by Customer to BWA is not recoverable; or
 - (v) ensuring that a liability of the Customer to pay the Fee or any moneys owing to BWA under the Agreement which may not be enforceable against the Customer or the Guarantor (as a surety) for any reason, whether, or not, BWA knew or ought to have known about it.
- (c) Guarantor indemnifies BWA for all taxes (other than the income of BWA), costs and expenses, including, but not limited to, legal costs and expenses on a full indemnity basis which BWA pays or is liable to pay in connection with any one or more of the T&C's and the Deed where the Guarantor will pay BWA on demand the sums payable under the indemnity given in this clause.
- (d) The guarantee and indemnity referred to in clause 10.3(b) survives the obligations of the Agreement and until all obligations have been paid, satisfied, and performed at the discretion of BWA by Guarantor in respect of:
- (i) payment of Fees as and when due and any monies owed by Customer to BWA; and
 - (ii) observe and perform the Customer's obligations under the Agreement and the Deed.
- (e) Guarantor's liability under this guarantee, indemnity, and charge is not limited or affected, and the rights of BWA against Customer and Guarantor remain fully enforceable notwithstanding whether:
- (i) BWA grants any indulgence of time or concession of time to Customer;
 - (ii) any variation of the Deed with or without the Guarantor's prior knowledge; and
 - (iii) any compromise, release, discharge, waiver, or variation of any right by BWA;
 - (iv) the fact that monies payable by Customer may not be recoverable or may cease to be recoverable in whole or in part;
 - (v) the existence now, or at any future time, of any legal disability by Customer, Guarantor or any person named as Guarantor;
 - (vi) the death of the person named as a Guarantor (in which case his or her estate shall have continuing liability under the Agreement or the Deed);
 - (vii) the bankruptcy of a person named as Guarantor or any deed of arrangement, or composition entered into for the benefit of creditors of such a person; or
 - (viii) the fact that one or more persons named as Guarantor may not execute the Agreement and the Deed, or incorrectly execute the Agreement and the Deed, or that the execution becomes unenforceable.
- (f) This guarantee, indemnity, and charge binds the personal representative, assignees, transferees, or successors of the Guarantor.
- (g) The Guarantor acknowledges that it has been advised to obtain independent legal advice to assist the Guarantor to fully understand the nature and effect of this guarantee, indemnity, and charge under the Agreement and the Deed before signing it.
- (h) This guarantee, indemnity, and charge continues to bind the Guarantor notwithstanding any changes that may take place in the directors or shareholders of the Customer's corporate entity.
- (i) Guarantor acknowledges and agrees that multiple transaction over the Term and any other unspecified duration that may be contemplated by Customer and BWA under the Agreement and the Deed and further that the Guarantor's obligations under this guarantee, indemnity, and charge apply to each transaction under the Agreement. Guarantor agrees that BWA is not obliged to contact the Guarantor each time a transaction is entered into under the Agreement.
- (j) This guarantee and indemnity may be enforced against any or all of the Guarantors without BWA first taking action against Customer or pursuing any other available recourse and may be enforced despite any neglect or omission to enforce and rights against Customer or if any of the agreements between BWA and Customer are wholly or partially unenforceable or if Customer goes into liquidation.
- (k) Customer and any Guarantor owner of real property mortgage all of their interest in that property in favour of BWA to secure all amounts arising and performance of all obligations to BWA under the Agreement.

11 LIMITATION OF LIABILITY AND INDEMNITIES

11.1 Force Majeure Event

- (a) Customer releases BWA from any liability for any Claim arising as a result of delay or failure to provide the Goods and Services (if applicable) or to comply with this Agreement to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party (including a Force Majeure Event), and which by its nature could not have been foreseen or, if it could have been foreseen, was unavoidable, provided that the affected party has used all reasonable endeavours to promptly cure such an event or circumstance.
- (b) If by reason of a Force Majeure Event, the delay or non-performance of BWA's obligations continues for more than 90 consecutive days, BWA may refund any Fee paid for Goods and Services (if applicable) that have not been provided.

11.2 Statutory warranties

- (a) The provisions of this agreement do not exclude or limit the application of any laws, (including the *Competition and Consumer Act 2010* (Cth)) where to do so would contravene those laws or cause any part of this agreement to be void.
- (b) To the maximum extent permitted by law, the provisions of this agreement exclude all implied conditions and warranties except any implied condition or warranty, the exclusion of which would contravene any laws or cause this condition to be void.

11.3 Limitation of Liability

- (a) To the extent permitted by law and subject to clause 11.3(b), the liability of BWA in connection with the provision of the Goods and Services (if applicable) whether arising in contract, tort, negligence, breach of statutory duty or otherwise will, to the extent permitted by law, be limited to:
 - (i) the re-supply of the respective item for the Goods and the respective task for the Services (if applicable);
 - (ii) the payment of costs to have the respective item for the Goods and the respective task for the Services (if applicable) provided again, the amount of which must not exceed the Fee for the specific item or the specific task; or
 - (iii) the reimbursement of any Fee paid by Customer to BWA the respective item for the Goods and the respective task for the Services (if applicable) under the Agreement;
- (b) To the fullest extent permitted by law, BWA will not be liable for any Consequential Loss of Customer in contract, tort, negligence, breach of statutory duty or otherwise.

- (c) BWA will not be liable to Customer to the extent that Customer or its agents, employees or subcontractors has caused or contributed to any loss or damage.

11.4 Indemnity and Release

- (a) Customer will indemnify, keep indemnified and hold BWA harmless from and against all Claims and Loss or damage:
- (i) to the extent caused or contributed to by Customer; and
 - (ii) caused by BWA's Goods used at Customer Site.
- (b) Customer shall indemnify and keep indemnified BWA for all losses, claims, actions, demands, proceedings, damages, costs, changes and expenses in respect of or in relation to the death of or injury to or illness of any person or persons in connection therewith which may include Consequential Loss and damages.
- (c) Subject to any term, condition, warranty, and indemnity applied by law which by law cannot be excluded, restricted, limited, or modified, Customer shall release BWA from any liability for loss or damage of any kind whatsoever (including injury or death to persons or damage to property), including any information or assistance or other services supplied by BWA including without limiting the generality of the foregoing, any financial losses or damage.

12 PRIVACY AND CONFIDENTIAL INFORMATION

- (a) Customer acknowledges and agrees BWA may be required to collect Confidential Information from Customer.
- (b) Customer agrees to provide BWA with all necessary records, including Confidential Information, as reasonably required by BWA for the purpose of providing and supplying the Goods and performing the Services.
- (c) Confidential Information received by BWA while providing the Goods and Services (if applicable) will not be disclosed to persons other than Customer except as disclosed in the [Privacy Policy](#) or as required or allowed for by law or with the Customer's express consent.
- (d) Each party must ensure that to the extent it shares any data with the other party, it is compliant with all relevant privacy and data protection laws and regulations.

13 SUB-CONTRACTING

13.1 Right to sub-contract

BWA reserves the right to sub-contract for the Services in respect of the installation and fittings of the Goods.

14 REPRESENTATIONS AND WARRANTIES

14.1 By each party

Each party represents and warrants to the other party that:

- (a) the execution of the Agreement has been properly authorised by all necessary action;
- (b) it has full power and authority to execute the Agreement and to perform or cause to be performed its obligations under the Agreement;
- (c) the Agreement constitutes a legal, valid and binding obligation on it;
- (d) the Agreement does not conflict with, or result in the breach of, or default under, the provision of the constitution or other constituent documents of the party or any material term or provision of any agreement or any writ, order or injunction, judgment, law, rule, or regulation to which it is a party or is subject or by which it is bound;
- (e) it is solvent, no controller, administrator, or statutory manager has been appointed in respect of it or in respect of any of its assets and it has not entered into any voluntary arrangement with one or more creditors; and
- (f) if it is a trustee of a trust:
 - (i) it is the sole trustee of the trust and no action has been taken to remove or replace it;
 - (ii) it has the power under the trust deed to execute and perform its obligations under this agreement;

- (iii) all necessary action has been taken to authorise the execution and performance of this agreement under the constituent documents of the trust;
- (iv) this agreement is executed and all transactions relating to this agreement are or will be entered into as part of the due and proper administration of the trust and are or will be for the benefit of the beneficiaries;
- (v) no controller, liquidator or statutory manager has been appointed in respect of the trust or any part of the assets or undertaking of trust; and
- (vi) to its knowledge, there are no actions, claims, proceedings, or investigations pending or threatened against it which could have a material effect upon the subject matter of this agreement

15 GST

- (a) Unless the contrary intention appears, any amount specified in the Proposal is exclusive of GST.
- (b) For the purposes of this clause, the terms words defined in the GST Law, have the same meaning in the Agreement.
- (c) If GST has any application to any supply made under or in connection with the Agreement, the party making the supply (for the purposes of this clause only, **Supplier**) may in addition to any amount or consideration expressed as payable elsewhere in the Agreement, recover from the recipient of the supply (for the purposes of this clause only, **Recipient**) an additional amount on account of GST, such amount to be calculated by multiplying the amount or consideration payable by the Recipient for the relevant supply by the prevailing GST rate.
- (d) Any additional amount on account of GST recoverable from the Recipient under this clause shall be calculated without any deduction or set-off of any amount and is payable by the Recipient at the same time and in the same manner as paying the amount or consideration for the relevant supply under the Agreement.
- (e) The Supplier must issue to the Recipient a tax invoice and must do anything else which may be reasonably required to enable or assist the Recipient to claim or verify any input tax credit, set off, rebate, or refund in relation to any GST payable under the Agreement or in respect of any supply under the Agreement.
- (f) Where an adjustment event in relation to a supply under the Agreement has occurred, the Supplier must issue an adjustment note to the Recipient no later than 30 days after that adjustment event.

16 TERMINATION

16.1 Termination for breach

Either party may terminate the Agreement by giving 7 days' notice in writing to the other, if the other party has:

- (a) failed to comply with the terms and conditions of the Agreement; and
- (b) failed to rectify that breach, to the satisfaction of the notifying party, following the expiration of 7 days' notice of the breach.

16.2 Immediate termination

BWA may terminate the Agreement immediately on notice to Customer if:

- (a) Customer:
 - (i) is no longer able to perform its obligations under the Agreement, including by failing to pay any amount when due to BWA;
 - (ii) where it is a body corporate, any officer or employee:
 - A. is charged with or found guilty of any criminal offence;
 - B. by their conduct, act or omission brings the BWA or any of its officers, employees or agents into disrepute; or
 - C. commits fraud or is alleged to have committed any impropriety in their financial dealings;
 - (iii) breaches a material term (or persistently breaches any term) of the Agreement; or



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- (iv) refuses any additional costs for an alternate delivery of Services; or
- (b) BWA is unable to perform its obligations under this agreement:
 - (i) where delivery of the Goods and Services to Customer is not to the best interest of Customer; or
 - (ii) as a result of TPD or death of BWA Affiliate.

16.3 Consequences of Termination

Upon termination of the Agreement:

- (a) any fee, expenses or reimbursements (whether invoiced or not) payable by Customer to BWA in respect of any period prior to termination must be paid by Customer within seven (7) days of termination;
- (b) each party retains the rights it has against the other party, including in respect of any breach of this agreement that arose before termination or out of the events that caused termination;
- (c) the rights and obligations of each party under the Agreement which are expressed to survive termination will remain in force; and
- (d) neither party may represent to any other person, whether directly or indirectly, that it remains associated with the other party;

17 GENERAL

17.1 Assignment

BWA may assign its rights and obligations under the Agreement to a third party without the consent of Customer. Customer may not assign or transfer its rights and obligations under the Agreement to a third party unless it has obtained BWA's written consent.

17.2 Amendment

The Agreement may only be amended by written consent of BWA.

17.3 Counterpart

The Agreement may be executed in any number of counterparts, all of which to be taken together constitute one and the same document. This executed counterpart by each party may be exchanged with the other party in person, by post, facsimile, or electronic means.

17.4 Severability

If any provision in the Agreement is void, invalid, illegal or unenforceable the existence, validity, legality and enforceability of the residual provisions will not be affected, prejudiced or impaired and the offending provision will be deemed severed from the Agreement.

17.5 Waiver

No failure or delay by a party in exercising any right, power or privilege in the Agreement will impair the same or operate as a waiver of the same nor may any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.

17.6 Joint and several liability

If more than one person is the Customer, each will be jointly and severally liable, regardless of the person to whom the invoice is addressed to and regardless of which person received the benefit of the Services.

17.7 No reliance

Each of the parties acknowledges that, in entering into the Agreement, it does not do so in reliance on any representation, warranty or other provision except as provided in writing. Any conditions, warranties or other terms implied by statute or common law are excluded from the Agreement to the fullest extent permitted by law.

17.8 Priority of documents

- (a) Subject to clause 17.8(b), if there are any inconsistencies between the Agreement and any other document, the Agreement will prevail.
- (b) If there are inconsistencies between these T&Cs and the Proposal, these T&Cs will prevail.

17.9 Survival of obligations

The obligations accepted by the parties under clauses 10, 11, and 12, survive termination or expiry of the Agreement or the provision of the Goods and Services.

17.10 Application of law

The rights and remedies provided in the Agreement are cumulative and not exclusive of any rights and remedies provided by law.

17.11 Electronic Transaction

Each party consents to the execution of the Agreement by electronic communication, as contemplated by the *Electronic Transactions (Victoria) Act 2000 (Vic)*.

17.12 Governing law

- (a) The Agreement will be governed by and construed in accordance with the laws of Victoria.
- (b) The parties irrevocably submit to the exclusive jurisdiction of the courts of Victoria.

18 DEFINITIONS AND INTERPRETATION

18.1 Definitions

In the Agreement, unless the context otherwise requires capitalised works have the meaning set out below or in the schedule:

- (a) **Affiliate** means in relation to a person, any BWA or other entity, whether, or not, with legal personality, which directly or indirectly controls, is controlled by or is under joint control with that person as described in the Proposal;
- (b) **Business Day** means a day that the banks are open for business in Victoria, that is not a weekend or public holiday;
- (c) **Cancellation Fee** means the fee that BWA charges Customer in the event of a cancellation of an Order or the Agreement under clause 9.2 as set out in Item 2 of the Proposal;
- (d) **Claims** means all demands, claims, proceedings, penalties, loss, damages, fines and liability (whether criminal or civil, in contract, tort or otherwise);
- (e) **Collateral** means the Customer's property that remains unpaid in relation to Goods and Services supplied by BWA. It includes anything in respect of which the Customer has at any time a sufficient right, interest, or power to grant a Security Interest.
- (f) **Commencement Date** means the execution date of the Agreement or as set out in Item 2 of the Proposal;
- (g) **Completion Date** means the date upon which BWA has completed the supply and delivery of Goods to Customer Site or performance of its Services at Customer Site or as set out in Item 2 of the Proposal;
- (h) **Confidential Information** means all information (whether written or oral) disclosed by a party to another party which is either:
 - (i) identified as confidential by the discloser at the time of disclosure; or
 - (ii) of a nature which should reasonably be regarded by the recipient as confidential,

but does not include information which:

- (iii) is in the public domain without fault of the discloser;

- (iv) was in the recipient's lawful possession at the time of disclosure;
 - (v) is disclosed to obtain the consent of any third party to any requirement of, or to any act pursuant to, this agreement; or
 - (vi) is required by law, by an order of a court or tribunal or by the requirements of a stock exchange to be disclosed;
- (i) **Consequential Loss** means all indirect, special and/or consequential losses, damages, costs or expenses of any nature whatsoever incurred or suffered, including any economic loss or other loss of turnover, any loss of reputation or goodwill, any loss of value of intellectual property, any legal costs and other expenses of any nature whatsoever in respect of them;
 - (j) **Customer** means any named natural person or entity identified in item 1 of the Proposal or who has registered a Customer's account on the BWA's Website and proceeded with completing payment of Fee for an Order for supply and delivery of Goods and performance of Services and Goods by BWA;
 - (k) **Customer Site** means the Customer's premises or address location where Goods are being delivered and used by Customer as well as performance of Services in respect of the supplied Goods as identified in item 2 of the Proposal;
 - (l) **Fee** means the Fee payable for the Goods and Services (if applicable) in accordance to clause 5 and as expressed in terms of Total Fee in Item 2 and the breakdown of Fee for the Goods and Services in Item 3 of the Proposal, or any Tax Invoice issued by BWA from time to time;
 - (m) **Force Majeure Event** means an event, or series of events, outside the reasonable control of the Company including (but not limited to) death or TPD of a Company Affiliate, fire, lightning, explosion, flood, earthquake, storm, hurricane, action of the elements, riots, civil commotion, malicious damage, armed conflicts, acts of terrorism, war (declared or undeclared), blockade, revolution, government action, sabotage, radioactive contamination, toxic or dangerous chemical contamination, pandemic, or any other catastrophes;
 - (n) **Goods** means any goods supplied and delivered by BWA to Customer Site as set out in Item 3 of the Proposal;
 - (o) **GST Law** means the same as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
 - (p) **Guarantor** means, where Customer is a corporate entity, each director of Customer as identified in Item 1 of the Proposal;
 - (q) **Loss** means loss, damage, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers;
 - (r) **Order** means any written purchase order that is accepted for supply and delivery of Goods and performance of Services by BWA or otherwise any item of Goods and Services contained in the Customer's account basket contained at checkout and having been paid by Customer with BWA third party payment gateway provider;
 - (s) **Order Processing Fee** means the fee payable by Customer for the use of third-party payment gateway provider to process payment of an Order through the BWA's Website of the fee processing payment of an Order by financial institution services for an Order by Interaction, which is currently set at 2.6% of Order total price including the Delivery Fee (if applicable) + AUD\$0.30 per transaction, but may be varied from time to time by BWA as set out in any future versions of the T&C's available on BWA's Website;
- (t) **Personnel** means in respect of the relevant party, that party's employees, agents, directors, officers, representatives, contractors, sub-contractors, and nominees;
 - (u) **Proposal** means the proposal as defined in clause 1.1(a) and the page referred to as the "Proposal" to this Agreement;
 - (v) **PPSA** means the *Personal Property Securities Act 2009* (Cth);
 - (w) **Security Interest** has the meaning given to that term in Section 12 of the PPSA;
 - (x) **Services** means the services provided by Services to be performed by BWA at Customer Site for Customer as set out in Item 3 of the Proposal;
 - (y) **Term** means the duration of term from Commencement Date to Completion Date set out in Item 2 the Proposal. In the absence of any expressed date for the Term in the Proposal, this Agreement will take effect from execution date of the Agreement till the date that the Goods and Services (if applicable) have been supplied, delivered, and performed to completion by BWA at Customer Site; and
 - (z) **TPD** means the total and permanent disability (whether physical or mental) for a period (or anticipated period) of at least three months; and

18.2 Interpretation

In this agreement, unless the context otherwise requires:

- (a) a reference to any law includes any subordinate legislation as amended, replaced, re-enacted or consolidated;
- (b) the singular includes the plural and vice versa;
- (c) where a party is to determine a matter they are to do so acting reasonably;
- (d) a reference to 'person' includes:
 - (i) a corporation, partnership, joint venture, association, authority, trust, state or government authority; and
 - (ii) their executors, administrators, substitutes, successors and permitted assigns;
- (e) a reference to a clause or schedule is to a clause or schedule of this agreement;
- (f) headings are included for convenience only and do not affect interpretation;
- (g) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (h) a reference to a matter being written includes that matter being in any mode of representing or reproducing words, figures or symbols capable of written form;
- (i) a reference to dollars or \$ is to Australian currency;
- (j) if a period of time starts from a given day (or event), it is calculated exclusive of that day (or the day the event occurs);
- (k) "includes", "including", or similar expressions, are not words of limitation.

18.3 Neutral interpretation

Nothing in this agreement is to be interpreted against a party solely on the ground that the party put forward this agreement or a relevant part of it.