

# Conditions of Sale

**BG of Australia Pty Ltd, ABN 28 262 724 568**

## **Standard Conditions**

### **1. Definitions and Interpretation**

1.1 In this Agreement:

Agreement means the terms and conditions contained in this document.

Australian Consumer Law has the meaning given to it in the *Competition and Consumer Act 2010* (Cth).

Collection Time means the date and time that the Goods are collected by, or on behalf of, the Customer or notified as being ready for collection from BG of Australia's premises or any location at which the Goods are situated.

Customer means the party to whom a Quotation is provided by BG of Australia or by whom a Purchase Order is placed with BG of Australia for Goods.

Force Majeure Event means any event outside the reasonable control of BG of Australia including acts of God, war, riots, strikes, lock outs, trade disputes, fires, break downs, mechanical failures, interruptions of transport, Government action or any other cause whatsoever, whether or not of a like nature to those specified above.

Goods mean any product, item, equipment or materials sold or to be sold by BG of Australia to the Customer.

GST means the tax imposed by *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Invoice means the written invoice issued by BG of Australia to the Customer upon acceptance of a Purchase Order setting out the Price.

Purchase Order means a written order to purchase Goods placed by the Customer with BG of Australia.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Price means the price of Goods determined under clause 2.

Product Specifications means any standard specifications for Goods current at the time Goods are delivered to the Customer. Copies of the Product Specifications are available on request from BG of Australia.

Quotation means a written quotation (if any) issued by BG of Australia for the sale of Goods to the Customer.

1.2 In this Agreement:

- (a) any reference to a party includes its successors and permitted assigns;
- (b) headings are for convenience only and have no legal effect;
- (c) the singular includes the plural and vice versa;
- (d) "including" and similar words do not imply any limitation;
- (e) a reference to \$ is to the Australian currency;
- (f) a reference to legislation or a legislative provision includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (g) if the performance of an obligation under this Agreement falls due on a weekend or public holiday day it must be performed on the next business day.

### **2. Quotations and Purchase Orders**

2.1 Quotations are valid for a period of 30 days and may be amended or withdrawn at any time by BG of Australia before a Purchase Order is placed by the Customer.

2.2 Subject to clause 2.3, placing a Purchase Order constitutes a contract between BG of Australia and the Customer on the terms and conditions contained in this Agreement.

2.3 A Purchase Order for Goods is not binding until accepted in writing by BG of Australia.

2.4 Once accepted by BG of Australia, Purchase Orders cannot be cancelled by the Customer under any circumstances without BG of Australia's prior written consent (which consent may include a requirement that the Customer indemnify BG of Australia against any loss or expense suffered by it as a result of the cancelled Purchase Order).

### **3. Price**

3.1 The Price for Goods is either:

- (a) the price indicated in BG of Australia's initial Quote (or any subsequent Quote if varied); or
- (b) if no prices specified in any initial Quote or any subsequent Quote, the price listed in BG of Australia product list current at the date a Purchase Order is placed.

3.2 Prices do not include applicable taxes or statutory charges (such as GST).

### **4. Payment**

4.1 BG of Australia may require payment of a deposit for Goods on placing a Purchase Order. BG of Australia may also require that the Goods be paid for in instalments.

4.2 Unless BG of Australia has agreed to extend credit to a Customer (by opening a credit account in the Customer's name), the total amount of an Invoice (less any deposit paid) is payable by the Customer on delivery of the Goods.

4.3 If the Customer has an approved credit account or is an approved distributor of BG of Australia, an Invoice (less any deposit paid) is payable by the Customer 30 days from end of month following delivery of the Goods.

4.4 Payment must be made by cash, bank cheque, credit card (which may include provider surcharge), direct credit into BG of Australia's bank account or by any other method agreed between the Customer and BG of Australia. Receipt of any form of payment other than cash will not constitute payment until that form of payment has been honoured, cleared or recognised.

4.5 If the Customer disputes any Invoice it must still pay the undisputed amount of that Invoice by the relevant due date and the dispute as to the balance will be dealt with in accordance with clause 17.

4.6 Subject to clause 7, payment will constitute acceptance by the Customer of all Goods.

### **5. GST**

5.1 If GST is imposed on any taxable supply under this Agreement then the recipient of that taxable supply must pay the supplier an additional amount equal to the GST payable on the taxable supply at the same time as payment for the taxable supply is due.

### **6. Collection**

6.1 Unless BG of Australia has separately arranged delivery (which will be charged separately to the Customer), the Customer must (at its cost) organise for collection of the Goods from BG of Australia's premises (or any location at which the Goods are situated) and delivery to the Customer's own warehouse or required site.

6.2 BG of Australia will give the Customer at least 24 hours notice that the Goods are ready for collection by the Customer or its carrier. BG of Australia will use reasonable endeavours to meet the Customer's desired timeframe but accepts no responsibility for costs or charges resulting from a delay in collection and delivery due to factors outside BG of Australia's reasonable control.

### **7. Defects and returns**

7.1 The Customer must inspect the Goods on delivery and notify BG of Australia in writing within 7 days of delivery of any alleged defect, damage or failure of the Goods. If no notice is given within 7 days of delivery the Customer will be deemed to have accepted the Goods.

7.2 If a notice of defect or damage is given the Customer must allow BG of Australia access to inspect the Goods and determine whether or not that notice is valid. If BG of Australia accepts that Goods are

defective or damaged the parties acknowledge that the Customer has remedies available to it as a consumer under the Australian Consumer Law.

7.3 BG of Australia will not be liable for Goods damaged in transit or which have not been stored or used in a proper manner.

7.4 BG of Australia may, at its discretion, accept the return of non-defective Goods for credit subject to a handling fee of 20% of the value of the returned Goods plus freight costs.

7.5 Goods will not be accepted for return in any circumstances other than those specified in this clause or required by law.

## **8. Ownership and risk**

8.1 Risk in the Goods passes to the Customer at the Collection Time or the time of delivery (whichever applies).

8.2 The parties agree that ownership of, and title to, the Goods does not pass to the Customer until the Customer has paid the entire Invoice amount in respect of those Goods and met all of its other obligations to BG of Australia in respect of all contracts it has with BG of Australia.

8.3 The Customer must, from the date risk in the Goods passes to it until the date that title to the Goods passes to it, insure the Goods for their full replacement value and, if required by BG of Australia, store the Goods separately from any other goods and in a way that enables the Goods to be clearly identifiable as the property of BG of Australia.

8.4 The Customer must provide BG of Australia with evidence of such insurance if so requested by BG of Australia.

## **9. Personal Property Securities Act 2009 ("PPSA")**

9.1 Capitalised terms used in this clause but not defined in clause 1 have the meanings given to them in the PPSA.

9.2 The Customer acknowledges and agrees that:

- (a) this Agreement constitutes a Security Agreement in respect of the Goods;
- (b) the Goods are Collateral for the purposes of the PPSA;
- (c) BG of Australia holds (as Secured Party) a Security Interest over all of the present and after acquired Goods supplied by BG of Australia to the Customer and any Proceeds of the sale of those Goods;
- (d) that any purchase by the Customer on credit terms from BG of Australia or retention of title under clause 8 will constitute a Purchase Money Security Interest;
- (e) the Purchase Money Security Interest granted will continue to apply to any Goods coming into existence or proceeds of sale of Goods coming into existence;
- (f) BG of Australia 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;
- (g) any BG of Australia Security Interest will be a continuing and subsisting interest in the Collateral with priority to the fullest extent permitted by law over all registered or unregistered Security Interests;
- (h) until title in the Goods passes to the Customer, it will keep all goods supplied by BG of Australia 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 BG of Australia under this Agreement or the PPSA; and
- (i) in addition to any other rights under this Agreement or otherwise arising, BG of Australia may exercise any and all remedies afforded to it as a Secured Party under Chapter 4 of the PPSA, including entry into any building or premises owned, occupied or used by the Customer to search for and seize, dispose of or retain those Goods over which BG of Australia holds a Security Interest.

9.3 The Customer undertakes to:

(a) sign any further documents and provide such information which BG of Australia may reasonably require to register, amend or update a Financing Statement or Financing Change Statement in relation to a Security Interest on the Personal Property Securities Register;

(b) indemnify, and on demand reimburse, BG of Australia for all expenses incurred in registering a Financing Statement or Financing Change Statement on the Personal Property Securities Register or releasing any Security Interests;

(c) not register or permit to be registered a Financing Change Statement in the Collateral without the prior written consent of BG of Australia; and

(d) provide BG of Australia not less than 7 days prior written notice of any proposed change in the Customer's name, address, contact numbers, business practice or other change in the Customer's details registered on the Personal Property Securities Register to enable BG of Australia to register a Financing Change Statement if required.

9.4 BG of Australia and the Customer agree that sections 96, 125 and 132(3)(d) and 132(4) of the PPSA do not apply to the Security Agreement created under this Agreement.

9.5 The Customer waives its rights:

(a) to received notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA; and

(b) as a Grantor and/or a Debtor under sections 142 and 143 of the PPSA; and

(c) to receive a Verification Statement in accordance with section 157 of the PPSA.

9.8 The Customer must unconditionally ratify any actions taken by BG of Australia under this clause 9.

9.10 The Customer appoints and authorises BG of Australia to be its attorney to sign in the Customer's name all documents which BG of Australia reasonably considers necessary to protect, preserve and enforce its rights and powers under this Agreement and the PPSA.

## **10. Charge**

10.1 The Customer charges in favour of BG of Australia all the Customer's personal property including, without limitation, all the stock, motor vehicles, plant and equipment and debtors that the Customer owns (or subsequently acquires) as security for any and all moneys owing to BG of Australia and authorises BG of Australia to register, with any competent authority, including the Personal Property Securities Register, the charge over the property if the Customer defaults in making payment of any amount due to BG of Australia.

10.2 Nothing in this clause limits anything in clause 9.

## **11. Default and termination**

11.1 In relation to any Invoice that has not been paid by the due date:

(a) interest will accrue daily at the rate of 2% per calendar month; and

(b) the Customer agrees to indemnify BG of Australia from and against all costs and disbursements incurred by BG of Australia in pursuing the debt (including legal costs on a solicitor and own client basis and collection agency costs).

11.2 In the event that the Customer's payment is dishonoured for any reason the Customer will be liable for any dishonour fees incurred by BG of Australia.

11.3 If the Customer:

(a) is in default of any payment obligation;

(b) fails to remedy a breach of any non-payment related obligation within 14 days of having been given written notice to remedy the breach by BG of Australia;

(c) becomes unable to pay its debts as and when they fall due; or

(d) commits an act of bankruptcy or, being a company, enters into liquidation or provisional liquidation whether compulsory or voluntary or compounds with its creditors generally or has a

receiver or receiver manager or administrator appointed over all or part of its assets or passes a resolution for winding-up or a petition is presented for its winding-up, then BG of Australia may, without prejudice to any other rights or remedies available to it under this Agreement or otherwise, by notice in writing to the Customer:

- (e) suspend further supply and require payment in advance for future supply;
- (f) recover possession of any Goods for which payment has not been made (in which case the Customer authorises BG of Australia to access any premises where Goods are situated);
- (g) terminate all or any Purchase Orders which have been accepted by BG of Australia;
- (h) change the terms and conditions that will apply to any future sale of Goods to the Customer;
- (i) claim immediate payment of all moneys due by the Customer in respect of all Goods which will then be immediately due and payable notwithstanding the due date or dates for payment; and/or
- (j) continue to enforce its rights and recover from the Customer such payments and any other amounts owing as and when they fall due.

## **12. Warranties and limitation of liability**

12.1 BG of Australia warrants that the goods when delivered to the Customer will comply with any description for the Goods contained in the Quote and with the Product Specification (if any) for the Goods.

12.2 BG of Australia accepts no responsibility for damage caused by the misuse or incorrect application of its parts, products or services.

12.3 The Customer warrants that in placing a Purchase Order it has:

- (a) satisfied itself as to the description and condition of the Goods and their fitness for the purpose for which the Customer will use them; and
- (b) not relied on any statement, representation, warranty, guarantee, condition, advice, recommendation, information, assistance or service provided or given by BG of Australia or anyone on BG of Australia's behalf in respect of the Goods, other than those expressly contained in this Agreement, the Quote or Product Specification (if any).

12.4 Where the Customer buys Goods as a consumer, this Agreement is subject to the Australian Consumer Law which governs the rights of consumers and nothing in this Agreement affects the Customer's statutory rights the Australian Consumer Law.

12.5 BG of Australia will not be liable to the Customer for any indirect or consequential damages, loss of profit, loss of bargain or liability to any third party.

12.6 BG of Australia's products are sold subject to any manufacturer's product warranties provided by the manufacturer to BG of Australia.

## **13. Indemnity**

13.1 The Customer agrees to indemnify and keep indemnified BG of Australia against all costs, claims, demands, expenses and liabilities of whatsoever nature (including claims of death, personal injury, damage to property and consequential loss (including loss of profit)), suffered or incurred by, or made against, BG of Australia as a result of a breach of this Agreement by the Customer, the Customer's use of the Goods, or any other conduct of the Customer, except where those costs, claims, demands, expenses or liabilities are directly and solely attributable to the gross negligence or wilful default of BG of Australia or any of its duly authorised employees or agents.

## **14. Privacy**

14.1 In connection with its application for credit with BG of Australia, the Customer consents to BG of Australia giving information about the Customer to a credit reporting agency to obtain a credit report and obtaining that credit report containing personal credit information about the Customer,

14.2 The information given to the credit reporting agency may include personal particulars; details concerning the Customer's application for credit; the amount of credit requested; advice that BG of Australia is a current credit provider to the Customer; advice of any overdue accounts, loan repayments, or any outstanding monies for which debt collection action has been started; advice that cheques drawn by the Customer for \$100 or more have been dishonoured more than once; information that, in the opinion of BG of Australia, the Customer has committed a serious credit infringement; and advice that credit provided to the Customer by BG of Australia has been paid.

14.3 The Customer agrees that BG of Australia may exchange information about the Customer (including anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the *Privacy Act 1988* (Cth)) with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the purposes of:

- (a) assessing an application by the Customer;
- (b) notifying other credit providers of a default by the Customer;
- (c) exchanging information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- (d) assessing the creditworthiness of the Customer.

14.4 The Customer agrees that personal credit information provided may be used and retained by BG of Australia in relation to the provision of the Goods; the marketing of Goods by BG of Australia, its agents or distributors; analysing, verifying or checking the Customer's credit, payment or status in relation to the provision of Goods; processing any payment instructions, direct debit facilities or credit facilities requested by the Customer; enabling the daily operation of the Customer's account and the collection of amounts outstanding in the Customer's account in relation to the Goods; and/or for any other purposes agreed between the parties or required by law from time to time.

## **15. Force Majeure**

15.1 A party will not be liable for the consequences of any failure or delay in performing any of its obligations under this Agreement to the extent that such failure or delay is due directly or indirectly to any Force Majeure Event.

15.2 If a Force Majeure Event arises, the affected party must notify the other party in writing of the Force Majeure Event and the likely impact it will have on the affected party's performance under this Agreement.

15.3 If the Force Majeure Event affects the capacity of BG of Australia to complete its material obligations under this Agreement in a timely manner, BG of Australia may by notice to the Customer terminate this Agreement without any liability whatsoever on its part arising from that termination.

## **16. Confidentiality**

16.1 The Customer will treat as confidential all information, data, manuals, drawings, specifications, samples and documentation supplied by BG of Australia relating to the Goods, and will not disclose them to any third party without the prior written consent of BG of Australia.

## **17. Dispute resolution**

17.1 If there is a dispute in relation to any aspect of the supply of the Goods either party may notify the other in writing of the dispute.

17.2 Following any such notification, there will be a period of 30 days during which both parties must participate in good faith in any negotiations or discussions regarding the dispute which BG of Australia requests the Customer to participate in.

17.3 If the dispute has not been resolved by the end of this 30 day period, BG of Australia may require that the dispute be submitted to mediation in accordance with, and subject to, the Institute of Arbitrators & Mediators Australia and its applicable rules.

17.4 Neither party is permitted to commence any court proceedings or other similar actions relating to a dispute unless it has complied with the procedure set out in this clause. However, nothing in this clause 17 prevents BG of Australia bringing enforcement proceedings for any amounts unpaid by the Customer under this agreement.

## **18. General provisions**

18.1 The Customer must not assign or otherwise deal with any of its rights or obligations under this Agreement without the prior written consent of BG of Australia.

18.2 BG of Australia may assign or deal with any of its rights or obligations under this Agreement at any time and without any requirement to notify the Customer. BG of Australia reserves the right to subcontract the performance of any of its obligations under this Agreement to any other person it so determines.

18.3 This Agreement will apply (without further notice) to all future supplies of Goods by BG of Australia to the Customer.

18.4 BG of Australia may vary this Agreement from time to time and any variation takes effect in relation to subsequent Purchase Orders placed after the Customer has received written notice of the variation from BG of Australia.

18.5 No failure to exercise or delay in exercising any right under this Agreement constitutes a waiver and any right may be exercised in the future. A waiver of any right under this Agreement must be in writing and is only effective to the extent set out in that written waiver.

18.6 If any provision of this Agreement is void, unenforceable or illegal and would not be so if words were omitted, then those words are to be severed and if this cannot be done, the entire provision is to be severed from this Agreement without affecting the validity or enforceability of the remaining provisions.

18.7 This Agreement (including Quotations, Purchase Orders, Invoices and the Distribution Agreement (in the case of authorised distributors)) constitutes the entire agreement between the parties in respect of the sale of Goods and supersedes all previous communications, representations, understandings or agreements.

18.8 This Agreement is governed by the laws in force in New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

18.9 Any notice to be given to a party must be in writing.

18.10 Clauses 9, 13 and 16 (and any other clauses by which their nature are intended to have application after termination or make provision for continued operation) survive termination or completion of this Agreement.

18.11 Any intellectual property rights in the Goods and any instructions relating to them remain with BG of Australia and do not pass to the Customer. BG of Australia grants to the Customer a nonexclusive, royalty free licence to use BG of Australia's intellectual property to the extent such materials form part of, or are integral to, the Goods.