

**BRE WA SERVICES PTY LTD ACN 606 401 781  
ACCOUNT APPLICATION**

**HEAD OFFICE** [REC 18272]  
T 03 9466 2601 F 03 9466 2597  
110 Northgate Drive, Thomastown VIC 3074

**WESTERN AUSTRALIAN OFFICE** [EC 008380]  
T 08 9240 5686 F 08 9240 5687  
4/12 Macadam Pl, Balcatta WA 6021

Please provide us with the following details so that we can process your account application. We will confirm in writing whether your account application has been approved.

**APPLICANT:**

REGISTERED COMPANY NAME AND ACN: .....

REGISTERED ADDRESS: ..... POSTCODE: .....

ABN: ..... NUMBER OF YEARS TRADING: .....

TRADING NAME (IF DIFFERENT):  
.....

TRADING ADDRESS:  
.....  
..... POSTCODE: .....

TELEPHONE NO: ..... FAX NO: .....

CONTACT: ..... E-MAIL: .....

ACCOUNTS PAYABLE CONTACT: ..... PHONE NUMBER: .....

ACCOUNTS PAYABLE EMAIL: .....

**PROPRIETOR(S) / DIRECTOR(S):**

FULL NAME: .....

ADDRESS: ..... POSTCODE: .....

FULL NAME: .....

ADDRESS: ..... POSTCODE: .....

**TWO CURRENT CREDIT REFERENCES:**

1: ..... TEL: ..... FAX: .....

2: ..... TEL: ..... FAX: .....

BANK NAME: ..... BRANCH: .....

CREDIT LIMIT REQUIRED: ..... (ANTICIPATED MONTHLY PURCHASES)

**GUARANTOR/S:**

FULL NAME: ..... FULL NAME: .....

ADDRESS: ..... POSTCODE: ..... ADDRESS: ..... POSTCODE: .....

**AGREEMENT:**

**THE APPLICANT**

- (1) Hereby makes application for credit and warrants the information contained in this application is true and correct.
- (2) Hereby authorises BRE WA Services Pty Ltd to seek any information from third parties, of a commercial or consumer nature for the purpose of processing this Credit Application, as governed by the Privacy Act, 1988.
- (3) Agrees that any change which affects the trading address, legal entity, structure of management or control of the Applicant will be notified to BRE WA Services Pty Ltd in writing within 7 days of the change becoming effective.
- (4) Agrees that the terms of payment are strictly 30 days from the date of issue of each invoice.
- (5) Acknowledges that the credit facility may be withdrawn if payment has not been received by the due date.
- (6) Acknowledges receipt of, understands and agrees to observe and be bound by BRE WA Services Pty Ltd's "Terms and Conditions for Sale of Goods and Services".
- (7) Agrees that if any amount is not paid within the agreed terms of payment, interest may be charged calculated at monthly rests at the rate of the maximum per annum Reference Lending Rate published by the Commonwealth Bank of Australia Limited from time to time on the interest date plus 2% on the amount overdue from the due date until payment is made in full.
- (8) Agrees that in the event of any recovery action or litigation arising out of the applicant's purchases from BRE WA Services Pty Ltd of any goods or services, BRE WA Services Pty Ltd shall be entitled to all costs and expenses (including mercantile agent's fees and legal fees on an indemnity basis and costs of suit) incurred or charged in relation thereto.
- (9) Where the applicant is a natural person, the applicant warrants and declares that the credit provided is to be applied wholly or predominantly for business or investment purposes (or for both purposes) and not for personal, domestic or household purposes.

**THE GUARANTOR:**

- (1) Has requested that BRE WA Services Pty Ltd offer to the Applicant stated herein to trade on the terms of the BRE WA Services Pty Ltd credit account outlined herein and contained in BRE WA Services Pty Ltd's "Terms and Conditions for Sale of Goods and Services".  
In the event that BRE WA Services Pty Ltd accepts this application, the Guarantor covenants with BRE WA Services Pty Ltd as follows:
  - (a) To guarantee the performance of the applicant pursuant to the terms outlined herein and contained in BRE WA Services Pty Ltd's "Terms and Conditions for Sale of Goods and Services"; and
  - (c) to pay on demand any amount which BRE WA Services Pty Ltd is entitled to recover from the applicant under the said terms; and
  - (b) To indemnify BRE WA Services Pty Ltd against all losses, costs and expenses which may be incurred as a result of any default by the applicant pursuant to the said terms.
- (2) Acknowledges and agrees that:
  - (a) This guarantee will be enforceable against the guarantor notwithstanding any action which may be taken by BRE WA Services Pty Ltd against the applicant.
  - (b) The guarantor's obligations are continuing and shall in no way be avoided or affected by any time or indulgence or agreement not to sue given by BRE WA Services Pty Ltd to the applicant or another guarantor.
  - (c) Any claim which BRE WA Services Pty Ltd may have against the applicant shall take priority over any competing right of the guarantor.
  - (d) If more than one guarantor, their liability is joint and several and the failure by one guarantor to execute this guarantee does not affect the liability of the other.
  - (e) If any of the applicant's obligations are unenforceable against it, then clause 1 above and this clause is to operate as a separate indemnity and the guarantor indemnifies BRE WA Services Pty Ltd against all loss resulting from BRE WA Services Pty Ltd's inability to enforce performance of those obligations. The guarantor must pay BRE WA Services Pty Ltd the amount of the loss resulting from the unenforceability.
  - (f) the credit provided is to be applied wholly or predominantly for business or investment purposes (or for both purposes) and not for personal, domestic or household purposes.

**PRIVACY ACT CONSENT – CREDIT REPORTS:**

- The applicant (and each of its individual directors, partners or proprietors) and each person signing as guarantor of the applicant's obligations under the credit application (each a "Guarantor") acknowledges and agrees that BRE and any related bodies corporate:
- a. may give certain information about them to related bodies corporate of BRE, a credit reporting agency, other credit providers, collecting agencies of legal firms (some being located in foreign countries) in order to obtain a credit report about them or to recover money which is due and payable from them. (The information which may be given is covered by s18E(1) of the Privacy Act 1988 (Cth)(the "Privacy Act") and may include, as relevant, identity particulars and the fact that the purchaser has applied for credit or the Guarantor has offered to act as a guarantor); and
  - b. may in assessing whether to grant the applicant's credit application or whether to accept the Guarantor as a guarantor, seek and obtain information about them from a credit reporting agency or another credit provider and may give information about them to another credit provider. (The information may include anything about credit worthiness, history, standing or capacity (including information about commercial credit) which credit providers are permitted by the Privacy Act to obtain or receive.)

**SIGNED:**

..... DIRECTOR/PROPRIETOR DATE: ..... ..... WITNESS (to director signature, must be over 18 and independent)	..... PRINT DIRECTOR NAME ..... PRINT WITNESS NAME
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..... DIRECTOR/PROPRIETOR DATE: ..... ..... WITNESS (to director signature, must be over 18 and independent)	..... PRINT DIRECTOR NAME ..... PRINT WITNESS NAME
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..... GUARANTOR DATE: ..... ..... WITNESS (to director signature, must be over 18 and independent)	..... PRINT GUARANTOR NAME ..... PRINT WITNESS NAME
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..... GUARANTOR DATE: ..... ..... WITNESS (to director signature, must be over 18 and independent)	..... PRINT GUARANTOR NAME ..... PRINT WITNESS NAME
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## 1. Application of Terms and Conditions

- a. These terms and conditions of sale apply to and govern all tenders and quotations submitted by, all orders placed with, and all contracts entered into by BRE WA Services Pty Ltd ACN 005 056 173 ("BRE") whereby goods and/or services are supplied, provided and/or delivered ("supply" or "supplied") by BRE ("Agreement").
- b. Any Agreement may be varied only with BRE's prior written consent.
- c. To the extent that any conflict exists between these terms and conditions of sale (or as they may be varied in accordance with this clause (1) and any other documentation or correspondence forming part of any Agreement these terms and conditions of sale (or as they may be varied in accordance with this clause 1) shall be paramount and prevail.
- d. Any order or offer made by any purchaser shall not be binding on BRE until accepted by BRE in writing or in such manner as BRE in its sole discretion determines.
- e. A tender or quotation submitted by BRE may at any time prior to acceptance of an offer by BRE in respect of the supply of goods and/or services be varied or withdrawn by BRE. Clerical, typing or other errors made in, or in respect of, any tender or quotation shall be subject to correction by BRE and the corrected tender or quotation shall apply.
- f. To the extent that there is any inconsistency existing between any terms and conditions appearing in a purchaser's order or any other document and these terms and conditions of sale then these terms and conditions shall only apply and the acceptance by a purchaser of the supply by BRE of goods and/or services the subject of such an order shall constitute an acceptance by the purchaser of the supply by BRE of such goods and/or services solely on these terms and conditions of sale.
- g. These terms and conditions for sale of goods and services replace in their entirety any previous terms and conditions of sale published, issued or used by BRE or any division or subsidiary of BRE.

## 2. Period of the Quotation or Tender

Subject to clause 1(e) a quotation or tender submitted by BRE shall remain valid for 30 days from the date of such quotation or tender.

## 3. Price

- a. The prices quoted by BRE for the supply of goods include, as appropriate but subject to the other provisions of this clause 3 and clause 5(a), the cost of transport to the agreed place of delivery.
- b. The prices quoted by BRE for the supply of goods and/or services exclude goods and services tax ("GST") and the purchaser must also pay to BRE an additional amount in respect of the impact of the GST on BRE, calculated by multiplying the price by the prevailing GST rate.
- c. Any additions or increases in the cost of the supply of goods and/or services as a result of any additions or increases in charges, taxes (including the rate of GST) or costs associated with manufacture or supply of goods and/or services by BRE, including without limitation increases due to variations in exchange rates, the cost of materials or labour and/or the cost of conforming with any relevant legislation, court orders, regulations or bylaws, between the date of BRE's relevant quotation or tender or, where there is no such quotation or tender, from the date of BRE's acceptance of the purchaser's order, as the case may be, and the date of supply of the relevant goods and/or services shall be borne by the purchaser. In addition, any credit card fees or bank charges associated with any payment by the purchaser to BRE for goods and/or services shall be borne by the purchaser.
- d. The prices quoted by BRE shall only apply to the specific goods and quantities of goods specified in such quotation or tender or accepted order.
- e. Unless otherwise stipulated all references to dollars are references to the lawful currency of Australia.

## 4. Payment

- a. The purchaser shall be invoiced at the time of delivery of goods or supply of services as stated in BRE's quotation or tender from time to time or, as BRE in its sole discretion considers appropriate.
- b. All invoices shall be due and payable within 14 days of the date of invoice, or as BRE in its sole discretion considers appropriate.
- c. The purchaser shall pay interest to BRE on all moneys outstanding from the date 14 days after the date of invoice or, for a purchaser who has a line of credit/account with BRE, after the date of statement/account issued by BRE (as the case may be) ("the interest date") calculated at monthly rests at the rate of the maximum per annum Reference Lending Rate published by the Commonwealth Bank of Australia Limited from time to time on the interest date plus 2%. Payments received by BRE shall be credited first against any interest accrued. At the option of BRE in its absolute discretion, interest may be capitalised monthly. Interest on overdue accounts shall not merge with interest recoverable under a judgment in respect of an action for any overdue account monies.
- d. The purchaser shall not (nor shall it be entitled to) set off or deduct from any amount payable to BRE under any Agreement, any amounts payable by BRE to the purchaser under these terms and conditions of sale or any Agreement.

## 5. Credit

- a. Any purchaser wishing to trade with BRE on any form of credit must fully read and agree to the terms of this Agreement, and complete the application for credit form used by BRE from time to time in a true and accurate way and return it to BRE.
- b. BRE may agree to provide credit or may decline to provide credit to the purchaser without reasons.
- c. All financial and other information provided by the purchaser to BRE must be fully

accurate and up to date and the purchaser acknowledges confirms and agrees that BRE will rely upon all information provided to it. BRE is authorised to make all enquiries about the purchaser in relation to their application for credit and their continued request for credit from time to time.

- d. Any purchaser who is a corporation agrees that its directors and or shareholders may, at BRE's unfettered discretion, be required to guarantee the purchase of any goods and/or services from BRE and agrees to provide such a guarantee if the purchaser executes the relevant application for credit form used by BRE from time to time. Where the purchaser is a natural person, the purchaser warrants and declares that the credit provided is to be applied wholly or predominantly for business or investment purposes (or for both purposes) and not for personal, domestic or household purposes.
- e. Disruption to supply (without liability to BRE) will occur if the purchaser's account is overdue at any time whether in whole or part or the credit limit is exceeded. In this case, the account may be placed on hold at the sole and unfettered discretion of BRE. Any acceptance by BRE of payment or part payment by the purchaser shall not prejudice BRE's rights in relation to recovery of any other unpaid monies owing by the purchaser to BRE.

## 6. Delivery

- a. Unless otherwise agreed, where the purchaser has nominated in writing an address to BRE ("the nominated address"), BRE shall deliver the goods to the nominated address.
- b. BRE shall not be responsible for unloading goods at the point of delivery.
- c. Where goods are to be delivered to a nominated address BRE shall be deemed to have delivered the goods in accordance with the contract if it obtains a receipt or signed delivery docket for the goods from any person at that address.
- d. If a nominated address is unattended or if delivery cannot otherwise be effected or the goods cannot be dispatched due to any act, matter or thing beyond the control of BRE, BRE in its sole discretion may store the goods at the purchaser's risk and expense or take such other steps as it considers appropriate.
- e. BRE reserves the right to refuse to supply goods and/or services under an Agreement if a purchaser is in default of any of its payment obligations under any one or more Agreements.
- f. BRE reserves the right to choose or vary the means, route and procedure of delivery, transport and handling of goods. If the purchaser requires a different means, route or procedure, the cost of delivery shall be borne by the purchaser notwithstanding any other provision of these terms and conditions of sale.
- g. BRE may supply goods and/or services in instalments and these terms and conditions of sale shall apply to each supply of goods and/or services by instalments as if each instalment constituted supply under a separate Agreement and in particular the purchaser shall pay BRE for each instalment of goods and/or services so supplied irrespective of any failure or delay in the supply of any other instalment of goods and/or services.
- h. The risk of loss or damage to goods shall pass to the purchaser at the time of delivery or when the purchaser is notified that the goods are available for dispatch, as the case may be.
- i. BRE shall make all reasonable efforts to meet any date for supply of goods and/or services agreed between BRE and the purchaser. Where a delay in supply is caused by any act, matter or thing beyond the control of BRE, including without limitation a variation requested by the purchaser, the time for supply shall be extended by a period agreed between BRE and the purchaser or, failing such agreement, by a reasonable period. In no event shall BRE incur any liability due to any failure on its part to supply goods and/or services by an agreed date.
- j. BRE may in its discretion supply goods and/or services prior to any agreed date for such supply (including any extensions of that date).

## 7. Claims

- a. No claim in relation to damaged goods or shortage of volume, length, quantity or weight may be made unless such claim is made by the purchaser in writing to BRE within 7 days of delivery of the goods to the purchaser.
- b. BRE's only liability for any such loss or damage shall be, in its sole discretion, to replace or repair goods lost or damaged or pay for such goods to be replaced or repaired.
- c. (i) Goods may only be returned for credit upon the written agreement of BRE and in any event after the expiration of the earlier of a reasonable time after the purchaser has had a reasonable opportunity to inspect the goods and 60 days from the date of original invoice. In all cases the original invoice or delivery docket must be quoted and return freight must be prepaid by the purchaser.  
(ii) Goods specifically ordered by BRE for the purchaser will not be accepted for credit.  
(iii) BRE reserves the right to charge a restocking fee on goods accepted for credit.  
(iv) All goods returned for credit must be in their original pack and in a completely resalable condition.  
(v) BRE reserves the right to impose special conditions on the return of cable.

## 8. Packing

The prices include the cost of packing the goods in accordance with BRE's standard practice. If the purchaser requires the goods to be provided in any other manner the cost of the packing shall be the responsibility of the purchaser.

## 9. Warranty

- a. Subject to clause 8(b) BRE warrants that goods or services supplied by it:
- where the Agreement is one for the supply of goods only, for a period of 12 months from the date of delivery or dispatch, as the case may be, or where such delivery or dispatch is delayed due to any act, matter or thing beyond the control of BRE a period of 12 months from the date on which the purchaser is notified that the goods are ready for delivery or dispatch, as the case may be, whichever is the earlier; or
  - where the Agreement includes services for installation, erection or commissioning, for a period of 12 months from the time of taking over; or
  - where the Agreement includes services for repairs, for a period of 3 months from the date of completion of such services will under proper use in the case of goods, be free from any defects in construction or operation arising solely from faulty design, manufacture or workmanship on the part of BRE and, in the case of services, be free from defects in design, performance, workmanship and materials used in providing such services.
- b. The warranty referred to in clause 8(a) does not apply to goods where:
- the defect arises from materials supplied by the purchaser or a design or drawings provided by the purchaser;
  - the defect arises from ordinary wear and tear, excessive heating, neglect or misuse by the purchaser, accident, lack of care, incorrect installation by a party other than BRE including connecting goods to an incorrect power supply, insufficient maintenance or improper use of goods;
  - the defect arises from any act, matter or thing beyond the control of BRE;
  - the purchaser has in any way modified, serviced or repaired the goods without BRE's prior written consent;
  - the purchaser has not complied with any written or oral instructions from BRE concerning the operation and maintenance of the goods; or
  - the purchaser is in default in the observance or performance of any other provisions of the Agreement to which such goods relate.
- c. The goods or any parts or components used in providing the services shall be warranted by BRE only to the extent that they are warranted by the supplier or manufacturer of them and BRE is able to pass on the benefit of such warranty to the purchaser. The period of such warranty shall not in any event, however, exceed the applicable period set out in clause 8(a).
- d. Subject to clause 8(e), BRE warrants that the services supplied by it shall be provided with due care and skill and that any materials supplied in connection with those services will be reasonably fit for the purpose for which they are supplied. e. Where such a course is permitted by law, the warranty referred to in clause 8(d) will not apply where:
- BRE's ability to supply services is adversely affected by:
    - defects in any materials supplied by the purchaser or a design or drawings provided by the purchaser; or
    - any act, matter or thing beyond the reasonable control of BRE; or
  - the purchaser is in default in the observance or performance of any provision of the Agreement to which such services relate.
- f. Where the purchaser acquires goods under an Agreement for the purpose of resupply (including by way of hire or rental) to a consumer within the meaning of the TPA, the purchaser shall ensure that at or before the time such goods are acquired by the consumer it has provided to the consumer a written notice of the current period, if any, during which BRE's warranty in respect of such goods, as set out in the relevant provisions of this clause 8, is available to the consumer.
- g. Subject to clauses 8(a), 8(b) and 8(c), BRE shall:
- where the Agreement is for the supply of goods at its option repair or replace defective goods at its own expense but BRE shall have no liability for the cost of the delivery to BRE and/or removal of the defective goods nor for the cost of re-installation of the goods.
  - where the Agreement includes services re-provide defective services at its own expense.
  - where the Agreement includes services for repairs, replace any defective parts supplied by BRE during the course of such repair without charge for parts or labour; and
    - BRE will effect any further repair work found to be necessary to satisfy the purchaser's original instructions/complaints without charge for labour but any additional parts required will be charged at BRE's then prevailing prices.

## 10. Limitation of Liability

- a. Subject only to clauses 6, 8 and 9(d) and notwithstanding any other provision of this or any Agreement or otherwise, if any liability on the part of BRE arises to or in favour of the purchaser (whether in contract, tort or otherwise) for any loss, damage, harm or injury arising out of or in any way connected with the supply of or failure in the provision of or the purported supply of goods and/or services by BRE, BRE's liability for all such loss, damage, harm or injury in all and any circumstances shall be limited in aggregate to the payment by BRE of a sum not exceeding 5% of the monies payable to BRE pursuant to the relevant Agreement.
- b. Any purchaser of goods or services from BRE agrees to release, hold, harmless and indemnify BRE from and against all liabilities, claims, damages, losses, costs and expenses of whatsoever nature and howsoever occurring including without limitation loss of market, loss of profit, loss of use, loss of production or for any financial or economic loss including indirect or consequential loss or damage which may be suffered by the purchaser or by any third party arising out of or in any

way connected with the supply of the goods or the performance of services by BRE, by reason of breach of these terms and conditions of sale, or of statutory duty or by reason of tort (including but not limited to negligence).

- c. Except as otherwise expressly provided in these conditions and subject to clause 9(d), all statements, representations, provisions, conditions, promises, undertakings, covenants and other provisions, express or implied (and whether implied by law or otherwise) relating to any quotations or tenders submitted by BRE, orders accepted by BRE, goods (whether as to their quality or merchantability, fitness for any purpose, correspondence with any description or sample or otherwise) and/or services or their supply, being provisions which might otherwise form part of these terms and conditions of sale or any Agreement or be collateral to form part of any agreement that is collateral to these terms and conditions of sale or any Agreement, are hereby excluded in their entirety and are of no effect whatsoever.
- d. **These terms and conditions of sale do not, and no provision of these terms and conditions of sale will or purports to exclude, restrict or modify or have the effect of excluding, restricting or modifying:**
- the application in relation to the supply of goods and/or services of any provision of the TPA;**
  - the exercise of any right conferred by any such provision; or**
  - any liability of BRE for breach of a condition or warranty implied by any such provision.**
- e. Where BRE is permitted under the TPA to limit its liability for breach of a condition or warranty that is implied by the TPA, BRE's liability shall be limited at BRE's sole discretion to:
- in the case of goods:
    - the replacement of the goods or the supply of equivalent goods; or
    - the repair of the goods; or
    - the payment of the cost of replacing the goods or of acquiring equivalent goods; or
    - the payment of the cost of having the goods repaired;
  - in the case of services:
    - the supply of the services again by BRE; or
    - the payment of the cost of having the services supplied again.
- f. To the full extent permitted by law:
- the purchaser acknowledges that it relies on its own skill and judgment in relation to goods and/or services supplied to it by BRE; and
  - BRE shall be under no liability for any unsuitability for any purpose of the goods irrespective of any knowledge which it may possess as to the purpose for which the goods were required by the purchaser unless that purpose has been specifically notified to BRE in writing prior to the formation of the relevant Agreement.
  - All liability of BRE shall cease at the end of the warranty period as stated in clause 8(a) and no claim shall be made against BRE after that date.

## 11. Passing of Title

- a. Notwithstanding that the purchaser has possession of the goods, title to the goods remains with BRE, and no legal or equitable interest or property in the goods whatsoever will pass to the purchaser, until:
- the full amount for the goods has been paid to BRE; and
  - there is no money owing by the purchaser to BRE for any other goods delivered by BRE or on any account whatsoever;
  - the purchaser has met all other obligations due by the purchaser to BRE and paid all monies due by the purchaser to BRE in respect of all contracts for goods and/or services between the purchaser and BRE.
- b. Payment is not deemed to have occurred until funds have cleared in BRE's account. Until title and property in the goods passes:
- the purchaser must hold the goods as bailee for BRE, mark the goods or store them separately and keep all necessary records so that the goods can at all times be identified and distinguished as the property of BRE, and refrain from mixing or intermingling the goods with any goods owned by the purchaser or by any other person;
  - the purchaser acknowledges that a fiduciary relationship exists between the purchaser and BRE whereby, subject to the provisions of this clause, the purchaser holds the goods and/or service and/or any other proceeds, rights and claims to the goods and/or services, or any new product created by the purchaser using the goods and/or services, in a fiduciary capacity for BRE.
- c. Where title and property in any particular goods has not passed, the purchaser may nevertheless dispose of those goods to a bona fide sub-purchaser ("sub-purchaser") provided that:
- such disposals are in the ordinary course of the purchaser's business; and
  - no event as specified in clause 15(a) has occurred. The purchaser must not deal with those goods if both conditions are not met. It is agreed that by the disposal of such goods, the purchaser assigns to BRE (the assignment being absolute and not by way of security) all monetary proceeds received by or on behalf of the purchaser in respect of the goods.
- d. The purchaser must observe the following fiduciary obligations with respect to any disposal of goods to a sub-purchaser authorised by clause 11(c):
- the purchaser must maintain records of all disposals of the goods and must permit inspection of these records by BRE promptly upon

request; and

- (ii) the purchaser must hold the assigned proceeds on trust for BRE and separate from its own monies, and must account to BRE for those proceeds. The total debts owing by the purchaser to BRE will be reduced by the proceeds of sales for which the purchaser has accounted to BRE in accordance with this clause 11(d). If these proceeds exceed the total debts owing by the purchaser to BRE at any time, the purchaser is entitled to receive an amount equivalent to the amount of this excess as commission.
- e. If the purchaser produces a product ("the Product") that utilizes or incorporates any of the goods as a component of the Product, the terms of this clause 11(e) pertaining to title and proceeds apply in the following manner:
  - (i) in the case of goods that can be removed from the Product without destroying or seriously injuring the goods or other components of the Product, the terms of clause 11 apply to the relevant goods without modification except for the references in clause 11(c) and (d) to proceeds, which are to be read as if these references were to the portion of each Product's proceeds attributable to the value of the incorporated good;
  - (ii) in the case of goods that cannot be removed from the Product without destroying or seriously injuring the goods or other components of the Product, the terms of this clause 11 apply subject to the modification that BRE becomes a co-owner of the Product at the time the relevant goods are incorporated into the Product, and BRE's co-ownership share being in the proportion that the value of the goods bears to the value of the other components of the Product. The terms of this clause 11 apply subject to the references to the goods in clause 11 being read as references to BRE's co-ownership share of the Product.
- f. In the event that the purchaser fails to make payment to BRE in accordance with this Agreement, or if the purchaser is a company which has made an application for and been granted a line of credit with BRE and commits any breach of the terms of that credit application with BRE, then BRE may revoke the right of the purchaser to sell, dispose of, or in any way deal with or use the goods and/or services, and request the purchaser to deliver immediately any goods and/or services in its possession or under its control directly to BRE or take possession of the goods and/or services from the purchaser in whatever manner it might think fit including but not limited to holding a lien over any item whatsoever of the purchaser's relating to the goods and/or services provided by BRE and in the possession from time to time of BRE at the time of the breach of any term of this Agreement by the purchaser or its termination (without prejudice to any of BRE other rights or remedies).
- g. The purchaser indemnifies BRE against any claim, action, damage, loss, liability, cost, expense, outgoing or payment which BRE suffers, incurs or is liable for in respect of BRE's exercise of its rights under this clause 11.
- h. In the event that legal proceedings are instituted for the recovery of monies held in trust in accordance with this clause, the purchaser irrevocably acknowledges the existence of monies held on trust as described in this Agreement.

## 12. Drawings, Documentation and Information

- a. Any descriptive and shipping specifications, illustrations, drawings, data, dimensions and weights, either submitted by BRE with a quotation or tender or otherwise provided by BRE to the purchaser, are illustrative and approximate only and do not form part of any Agreement entered into between BRE and the purchaser unless expressly agreed in writing by BRE.
- b. Following BRE's acceptance of the purchaser's order BRE shall, if applicable and at the request of the purchaser, supply the purchaser with certified drawings. The cost of BRE providing such drawings will be borne by the purchaser.
- c. Drawings which are provided by BRE to the purchaser for the purchaser's approval shall be returned to BRE within 7 days from the date of supply to the purchaser.
- d. If BRE's quotation or tender requires BRE to provide initial detailed drawings to the purchaser for approval, except for design errors or omissions on the part of BRE, any extra costs arising from or as a result of any changes to such drawings or subsequent revisions of them or the provision of new drawings requested by the purchaser shall be borne by the purchaser.
- e. Any drawings or other documents submitted and any information supplied by BRE to the purchaser remains the property of BRE and constitutes confidential information of BRE (to the extent that it is not in the public domain) and the purchaser shall keep all such confidential information confidential and shall not use such drawings, documents and information for any purpose other than that stipulated by BRE nor provide the same to third parties.
- f. Where any drawings or other documents submitted by BRE with or as a part of a quotation or tender are not incorporated into an Agreement between BRE and the party to which such quotation or tender was submitted they shall be returned to BRE within 7 days of expiry of the quotation or tender or otherwise as reasonably required by BRE.
- g. Where drawings and/or other materials referred to in clause 12(a) form part of an Agreement they shall be subject to recognized tolerances.

## 13. Test and Performance.

- a. BRE shall at its own expense carry out its standard tests on the goods together with any tests required by any government or regulatory authorities. Any additional tests required by the purchaser shall be at the purchaser's expense.
- b. After 7 days' notice that BRE is ready to conduct any test the test may be conducted by BRE in the absence of the purchaser who shall be deemed to have been present.

- c. If the results of the tests are outside any performance limits specified in the agreement BRE shall be given a reasonable time within which to rectify performance.
- d. BRE does not guarantee the performance limits stated in the quotation or tender unless such limits are expressly guaranteed by BRE in writing.

## 14. Subject and Limit of the Offer

- a. Following its submission of a quotation or tender or its acceptance of an order BRE shall not be required to comply with any additional standards, specifications, rules or other requirements whatsoever whether proposed by the purchaser or otherwise and if any such additional standards, specifications, rules or other requirements are proposed to apply to such quotation or tender or order BRE reserves the right to decline to proceed with the quotation or tender or fill the order, vary the quotation or tender or order, or adjust the price of the goods and/or services the subject of the quotation or tender or order, in its sole discretion.
- b. BRE shall use all reasonable endeavours to comply with all relevant legislation, court orders, requirements or bylaws having application to the manufacture, delivery and/or supply of goods or services by it.
- c. Unless expressly stated in a quotation or tender, the price of goods does not include installation, erection or commissioning.
- d. Any technical assistance provided by BRE shall be at the purchaser's expense provided that if an Agreement is one for or includes installation, erection or commissioning any technical assistance provided by BRE pursuant to such installation, erection or commissioning shall be at BRE's expense.
- e. Unless expressly stated in a quotation or tender the price of goods and/or services does not include training of the purchaser's employees, servants or agents by BRE.
- f. Unless otherwise notified in writing by BRE to the purchaser goods are of standard design and BRE shall not be obliged to comply with tender specifications of minor importance to the operation of the goods.
- g. Drawings and documentation supplied by BRE shall be standard technical commercial literature.

## 15. Termination

- a. BRE may terminate any Agreement without notice if the purchaser:
  - (i) is in breach of any term of the Agreement and fails to remedy the breach within 14 days of notice in writing by BRE specifying the breach and requiring the purchaser to remedy it;
  - (ii) fails to make payment to BRE in accordance with this Agreement or a payment or amount payable by the purchaser to BRE is overdue in whole or part;
  - (iii) has failed or refused to take delivery of goods the subject of the Agreement and such failure or refusal continues for a period of 14 days after BRE has notified the purchaser that the goods are ready for delivery or dispatch, as the case may be, and/or the purchaser has failed or refused to allow BRE to supply services the subject of the Agreement and such failure or refusal continues for a period of 14 days after BRE has notified the purchaser that it is ready, willing and able to supply such services; or
  - (iii) is declared bankrupt, resolves to go into liquidation or has a petition for bankruptcy or winding up presented against it or enters into a scheme of arrangement with its creditors or if any liquidator, provisional liquidator, administrator, receiver, receiver and manager or official manager is appointed in respect of the purchaser or if anything analogous occurs in respect of the purchaser.
- b. In the event of such termination:
  - (i) notwithstanding any provision of this Agreement to the contrary and notwithstanding that any period of credit previously granted by BRE may not have expired, all amounts payable to BRE in respect of any goods and/or services supplied by it to the purchaser shall be immediately due and payable; and
  - (ii) BRE shall, after taking into account payments made by the purchaser to BRE, be entitled to be paid by the purchaser for work done and expenditure made under the Agreement up to and including the date of termination; and
  - (iii) the purchaser shall be liable for and shall pay to BRE on demand any direct and indirect loss suffered by BRE including without limitation BRE's loss of profit on the Agreement and all costs and expenses incurred or charged to BRE (in the case of legal costs on a full indemnity basis) in relation to the termination and any prior breach and in exercising any rights and remedies as a consequence of the termination and any prior breach including but not limited to costs and expenses as a result of attempts and/or actual recovery of any overdue amount or interest (including costs charged by any mercantile collection agency on lodgment of an overdue account); and
  - (iv) the purchaser expressly and irrevocably authorises BRE to enter the premises of the purchaser and remove any goods and/or services that are owned by BRE equal to but not in excess of all monies owing at any given time to BRE by the purchaser;
  - (iv) BRE may terminate this agreement, terminate any credit terms; and/or refuse to supply any goods to the purchaser.
- c. Termination of the Agreement pursuant to this clause 14 shall be without prejudice to the rights of BRE accruing up to the date of termination.

## 16. Intellectual Property

- a. BRE's offer, tender or quotation and any subsequent contract may contain information for the purchaser's secret and confidential use based on BRE's own design and development work and that of BRE's technical collaborators. The purchaser is hereby bound not to disclose this

information to any third party without BRE's consent in writing. The purchaser is further bound not to make nor have made by any third party any goods described in the offer, tender or quotation and in any drawings, designs, design proposals, photographs, plans, reports, recommendations, specifications or any other visible data accompanying or relating to the offer, tender, quotation and any subsequent contract.

- b. The supply of goods or services to the purchaser does not constitute a transfer of any intellectual property rights in the goods or services or any part thereof. The purchaser shall not do anything inconsistent with or in infringement of such intellectual property rights including but not limited to the decompilation, disassembly and re-engineering thereof. Where BRE has designed, drawn or written anything relating to the goods or services for the purchaser, then the copyright in those designs, drawings and documents shall remain vested in BRE and shall only be used by the purchaser at BRE's discretion.
- c. BRE does not warrant that the supply by it and the use by the purchaser of the goods or services does not and will not infringe any patent, registered design, trademark or intellectual property rights of any third party whether such rights take the form of letters patent, registered designs, copyright, trade mark rights, or any other similar right.
- d. Where BRE or its contractor manufactures the goods or any part thereof or provides the services to the purchaser's instructions, design or specifications the purchaser agrees to indemnify and keep indemnified BRE and its related corporations against all actions, claims, loss, damages, costs and fines that BRE and/or its related corporations may incur or suffer as a result of a claim by a third party that the manufacture and sale by BRE of the goods or any part thereof or the provision of the services infringes any patent, registered design, trademark or intellectual property rights of such third party.

#### 17. BRE's Obligations

Notwithstanding any other provision of these terms and conditions of sale if the purchaser breaches a term of an Agreement BRE shall not be bound to perform its obligations under that Agreement until the breach is remedied by the purchaser.

#### 18. Severance

If any provision or part of any provision of these terms and conditions of sale is unenforceable, such unenforceability shall not affect any other part of such provision or any other provision of these terms and conditions of sale.

#### 19. Waiver

Any waiver or purported or implied waiver by BRE of strict compliance with these terms and conditions of sale shall not be deemed a waiver unless it is in writing and signed by an authorised officer of BRE and shall not prejudice the rights of BRE in respect of any breach of these terms and conditions of sale to which such waiver does not specifically relate.

#### 20. Proper Law

All Agreements shall be governed by the laws of Victoria and the parties agree to submit to the nonexclusive jurisdiction of the courts of that State and the courts of the Commonwealth of Australia having jurisdiction therein.

#### 21. Vienna Convention

The United Nations Convention on Agreements for the International Sale of Goods ("the Vienna Convention") shall not apply to any Agreement entered into between BRE and the purchaser.

#### 22. Dispute Resolution

Any dispute between the purchaser and BRE arising out of or in any way connected with an Agreement which is not resolved by the purchaser and BRE within 14 days of a notice by either party to the other advising that it is a notice pursuant to this clause 21 shall be referred for determination to a person agreed between BRE and the purchaser or, failing such agreement, to the nominee of BRE, who shall act as an independent expert and not as an arbitrator and the experts written determination is final and binding on the parties.

#### 23. Export

Goods the subject of an Agreement may have been authorised for export from Australia under a restricted distribution licence on condition that such goods may not be re-exported to certain destinations, or at all, without the prior approval of Australian authorities. The purchaser shall not export goods the subject of any such restrictions without first having obtained all necessary consents and approvals, including those of such Australian authorities.

#### 24. Survivorship

Clauses 6, 8, 9, 10, 15, 19, 21, 23, 26, 27 and 28 shall not merge but survive completion of the Agreement.

#### 25. Force Majeure

Should BRE be delayed, hindered, or otherwise prevented from complying with the terms of this Agreement by reason of events or circumstances beyond the reasonable control of BRE including but not limited to Acts of God, wars, riots, acts of terrorism, strikes, lockouts, trade disputes or labour disturbances, breakdown of plant or machinery, accident, storm, fire, flood, difficulties in obtaining materials, transport or labour or any other circumstances affecting the supply of goods or services, then BRE shall not be liable to the purchaser for any loss or damage which may be suffered by the purchaser whether as a direct or indirect result of any such occurrences.

#### 26. Privacy Act Consent – Credit Reports

The purchaser (and each of its individual directors, partners or proprietors) and each person signing as guarantor of the purchaser's obligations under the credit application (each a "Guarantor") acknowledges and agrees that BRE and any related bodies corporate:

- a. may give certain information about them to related bodies corporate of BRE, a credit reporting agency, other credit providers, collecting agencies of legal firms (some being located in foreign countries) in order to obtain a credit report about them or to recover money which is due

and payable from them. (The information which may be given is covered by s18E(1) of the Privacy Act 1988 (Cth)(the "Privacy Act") and may include, as relevant, identity particulars and the fact that the purchaser has applied for credit or the Guarantor has offered to act as a guarantor); and

- b. may in assessing whether to grant the purchaser's credit application or whether to accept the Guarantor as a guarantor, seek and obtain information about them from a credit reporting agency or another credit provider and may give information about them to another credit provider. (The information may include anything about credit worthiness, history, standing or capacity (including information about commercial credit) which credit providers are permitted by the Privacy Act to obtain or receive.)

#### 27. Personal Property Security Act

The purchaser agrees and undertakes to do anything BRE requires (such as obtaining consents and signing and producing documents) in connection with the registration of this document or any other document on any register established pursuant to the Personal Property Securities Act 2009 (Cth) (the "PPSA"). In the event the purchaser neglects or fails to deliver such document(s), the purchaser hereby appoints BRE to be the purchaser's lawful attorney for the purpose of executing and registering such document(s).

The purchaser agrees and acknowledges that:

- a. these terms and conditions constitute a security agreement for the purposes of section 20 of the PPSA and that a security interest exists in all goods (and their proceeds) previously supplied by BRE to the purchaser (if any) and in all in future goods (and their proceeds) including commingled goods;
- b. where the purchaser is paid in respect of the goods so delivered, the purchaser must, as BRE's fiduciary, keep any such proceeds in a separate account and account to BRE in respect of those proceeds;
- c. the purchaser contracts out of and waives its rights under the following provisions of Chapter 4 of the PPSA:
  - (i) to receive a notice of intention of removal of accession (section 95);
  - (ii) to receive a notice that BRE decides to enforce its security interest in accordance with land law (section 118);
  - (iii) to receive notice on enforcement of security interests in liquid assets (section 120);
  - (iv) to receive a notice of enforcement action against liquid assets (section 121(4));
  - (v) to receive a notice to seize collateral (section 123);
  - (vi) to receive notice on enforcement of security interests in liquid assets (section 125);
  - (vii) to receive a notice of disposal of goods by BRE purchasing the goods (section 129);
  - (viii) to receive a notice to dispose of goods (section 130);
  - (ix) to receive a statement of account following disposal of goods (section 132(2));
  - (x) to receive a statement of account if no
  - (xi) disposal of goods for each 6 month period (section 132(4));
  - (xii) to receive notice for BRE to retain goods (section 134(2));
  - (xiii) to receive notice of any proposal of BRE to retain goods (section 135(2));
  - (xiv) to object to any proposal of BRE to either retain or dispose of goods (section 137(2));
  - (xv) to redeem the goods (section 142);
  - (xvi) to reinstate the security agreement (section 143); and
  - (xvii) to receive a notice of any verification statement (see section 157(1) and section 157(3)).

- d. Where BRE has rights in addition to those under Chapter 4 of the PPSA, those rights will continue to apply.
- e. Until ownership of the goods passes, the purchaser must not give BRE a written demand or allow any other person to give BRE a written demand requiring BRE to register a financing change statement under the PPSA or enter into or allow any other person to enter into the register of personal property securities a financing change statement under the Act.
- f. It has received value as at the date of first delivery of the goods and has not agreed to postpone the time for attachment of the security interest (as defined in the Act) granted to BRE under these terms and conditions.
- g. The purchaser irrevocably grants to BRE the right to enter upon the purchaser's property or premises, without notice, and without being in any way liable to the purchaser or to any third party, if BRE has cause to exercise any of BRE's rights under section 123 and/or 128 of the Act, and the purchaser agrees to indemnify BRE from any claims made by any third party as a result of BRE exercising such right.

#### 28. Confidentiality

- a. Except as required by law, this Agreement and subject to the PPSA, BRE and the purchaser agree to treat these terms and conditions as confidential.
- b. BRE and the purchaser acknowledge and agree that sub-clauses 27(a), 27(c) and this sub-clause 27(b) constitute a confidentiality agreement pursuant to section 275(6) of the PPSA.
- c. Neither BRE or the purchaser will disclose, send or make available any of the information referred to in section 275(1) of the PPSA to any person except as required by law, these terms and conditions and subject to the PPSA.

#### 29. Refund Policy

- a. BRE will refund a purchaser when
  - (i) The claim for refund is made within 14 days of the invoice date;
  - (ii) In the case where the refund relates to a return of goods, the goods must not have been purchases by BRE specifically to fill a

purchaser's order, the goods must be returned in the original packaging (if applicable), the goods must not be damaged, the goods must not have been used or exhibit, in the opinion of a BRE Manager, any evidence of use the

goods must be accompanied by the original BRE invoice under which they were purchased by the purchaser;

- b. In the case where the refund relates to a claim for incorrect invoicing, the claim must be accompanied by the original invoice which evidences the incorrect pricing. In all cases the final judgment as to whether a claim for a refund should be allowed rests with the sole discretion of the BRE Manager or Director.

**Additional Conditions Applicable To Contracts Relating To Or Including Installation, Erection Or Commissioning Of Plant**

**30. Access To Site**

- a. The purchaser shall permit BRE such access to the site as BRE requires to perform its work under the Agreement and shall take all reasonable measures to avoid interference with the work of BRE including, without limitation, coordinating BRE's work with that of others on the site.
- b. The purchaser shall provide without cost to BRE every facility for the performance of BRE's work under the Agreement including, without limitation, providing proper foundations to receive the goods the subject of the agreement (in clauses 30, 31 and 32 called "the plant"), adequate cranes, lifting tackle and scaffolding and suitable protection for the plant from the time of delivery until the time of taking over and the proper fencing, lighting and guarding of the plant until the time of taking over.
- c. The purchaser shall provide without cost to BRE all electricity, water, gas, fuel and any other supplies necessary for the installation, erection or commissioning of the plant.
- d. Prior to BRE commencing any work the purchaser must advise BRE of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the purchaser must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, Telstra and telecommunications cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- e. Whilst BRE will take all care to avoid damage to any underground services the purchaser agrees to indemnify BRE in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 30(d).

**31. Tests On Site**

- a. Where a relevant Agreement provides for tests on site the purchaser shall provide without cost to BRE all labour, materials, electricity, water, gas, fuel and any other supplies, facilities and/or apparatus necessary to carry out such tests, including without limitation instruments and other such items as may be required by BRE.
- b. Site tests shall be carried out within 30 days after completion of installation or erection.

**32. Time Of Taking Over**

- a. A certificate shall be issued to BRE by the purchaser when satisfactory tests have been completed in accordance with the provisions of the Agreement or when the plant is put into commercial use, whichever is the earlier, and the plant shall be deemed to be taken over by the purchaser at that time.
- b. Notwithstanding any other provision of these terms and conditions of sale or otherwise the plant shall be deemed to have been taken over by the purchaser at the earlier of the issuing of the certificate referred to in clause 32(a) or the expiry of 2 calendar months after BRE has given the purchaser written notice that installation and/or erection and/or commissioning (as the case may be) is complete unless site tests carried out by BRE demonstrate that the plant does not comply with the provisions of the Agreement, except for minor omissions or defects.

Office use only			
Date Approved	Checks completed	Entered	Account Manager

