



Terms and conditions of sale

1 Definitions and interpretation

- 1.1 In these terms and conditions:
- (1) **Goods** means the goods and/or services to be supplied by BA Equipment Group to the Purchaser in accordance with these terms and conditions;
 - (2) **Purchaser** means the entity named on the quotation, purchase order and/or tax invoice purchasing the goods and/or services from BA Equipment Group upon these terms and conditions; and
 - (3) **BA Equipment Group** means BA Equipment Group Pty. Ltd. ACN 158 428 632 of 27 Montgomery, Malaga, Western Australia and any related body corporate of BA Equipment Group within the meaning of section 50 of the *Corporations Act 2001* (Cth).
- 1.2 The only terms which are binding upon BA Equipment Group are:
- (1) those set out in these terms and conditions or otherwise agreed to in writing by BA Equipment Group; and
 - (2) those, if any, which are imposed by law and which cannot be excluded.
- 1.3 For the avoidance of any doubt, any terms or conditions specified by the Purchaser and not agreed to in writing by BA Equipment Group will not apply.
- 1.4 Time is of the essence of these terms and conditions. Any agreement to vary a time requirement must be in writing.

2 Orders and Price

- 2.1 BA Equipment Group reserves the right to accept or reject in its absolute discretion any orders which may be received by it.
- 2.2 The prices shown in any price list are subject to alteration without notice and do not include taxes, duties or other charges which must be paid by the Purchaser and must not be deducted from the price.
- 2.3 If prices shown in a price list or quotation are not in Australian dollars, BA Equipment Group reserves the right to increase the price if there is a fluctuation in the relevant currency rate.
- 2.4 Any agreement to vary an order must be in writing.

3 Goods and services tax

- 3.1 In this clause 3:
- (1) **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended (**GST Act**) or any replacement or other relevant legislation and regulations;
 - (2) words or expressions used in this clause which have a particular meaning in the **GST law** (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires;
 - (3) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member;
 - (4) any reference to an input tax credit entitlement by a party includes any corresponding input tax credit entitlement by the representative member of any GST group of which that party is a member; and
 - (5) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.



- 3.2 Unless GST is expressly included, the consideration to be paid or provided under any other clause of these terms and conditions for any supply made under or in connection with these terms and conditions (including the price at which the goods are sold) does not include GST.
- 3.3 To the extent that any supply made under or in connection with these terms and conditions (including the supply of the Goods) is a taxable supply, the GST exclusive consideration otherwise to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is otherwise to be paid or provided. A party's right to payment under this clause is subject to a valid tax invoice being delivered to the recipient of the taxable supply.
- 3.4 To the extent that 1 party is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.
- 3.5 To the extent that any consideration payable to a party under these terms and conditions is determined by reference to a cost incurred by a party, or is determined by reference to a price, value, sales, revenue or similar amount, the GST exclusive amount of that cost, price, value, sales, revenue or similar amount must be used.

4 Delivery

- 4.1 Unless otherwise specified in writing, delivery is at BA Equipment Group's premises, and the cost of transportation of the Goods must be paid by the Purchaser.
- 4.2 Where a place of delivery other than at BA Equipment Group's premises is specified in writing, the Purchaser must pay the costs of transportation of the Goods to the place of delivery at the same time as, and in addition to, the price unless otherwise agreed in writing.
- 4.3 If a delivery date is specified, that date is an estimate only and BA Equipment Group is not liable for any delay in delivery.
- 4.4 If BA Equipment Group is unable to supply the Purchaser's total order, these terms and conditions continue to apply to the Goods supplied.

5 Acceptance

- 5.1 The Purchaser must inspect the Goods immediately upon delivery and must within 7 days after the date of inspection give written notice to BA Equipment Group, with particulars, of any claim that the Goods are not in accordance with the contract. If the Purchaser fails to give that notice, then to the extent permitted by law the Goods must be treated as having been accepted by the Purchaser and the Purchaser must pay for the Goods in accordance with these terms and conditions.

6 Payment

- 6.1 Payment for Goods must be tendered:
- (1) as agreed in writing by BA Equipment Group and the Purchaser;
 - (2) if not agreed in writing by BA Equipment Group and the Purchaser, no later than 30 days from the invoice date if BA Equipment Group has agreed in writing to grant the Purchaser credit; or
 - (3) if BA Equipment Group has not agreed in writing to grant the Purchaser credit, prior to delivery of the Goods.
- 6.2 Time is of the essence in respect of the Purchaser's obligation to make payment for the Goods.
- 6.3 BA Equipment Group may issue an invoice and require payment of a partially delivered order.
- 6.4 If the Purchaser defaults in making payment to BA Equipment Group in accordance with these terms and conditions BA Equipment Group may in its absolute discretion and without liability:



- (1) charge the Purchaser interest calculated on the portion of the Purchaser's account overdue at the rate of 2.5% per month from the date on which the default arose and charge the Purchaser an administration fee of the greater of \$20 or 10% of the amount outstanding;
 - (2) require the Purchaser to reimburse BA Equipment Group for all collection costs including legal costs incurred by BA Equipment Group calculated on a solicitor and client basis as a consequence of BA Equipment Group instructing its solicitor to provide advice to it in connection with the default and/or to institute such recovery process as BA Equipment Group in its discretion decides;
 - (3) suspend or terminate the supply of Goods and cancel and/or withhold delivery of any of the Purchaser's outstanding orders; and
 - (4) sell any of the Purchaser's equipment held by BA Equipment Group and apply the proceeds to the Purchaser's overdue account.
- 6.5 Any payments tendered by the Purchaser to BA Equipment Group must be applied as follows:
- (1) first as reimbursement for any collection costs incurred by BA Equipment Group in accordance with clause 6.4(2);
 - (2) secondly, in payment of any interest charged to the Purchaser in accordance with clause 6.4(1); and
 - (3) thirdly, in satisfaction or part satisfaction of the oldest portion of the Purchaser's account.
- 6.6 BA Equipment Group may cease providing credit to the Purchaser at any time and is not obliged to give reasons for doing so.
- 6.7 The Purchaser must not set off against any amount due for payment to BA Equipment Group any amount owed by BA Equipment Group to the Purchaser.

7 Returns

- 7.1 The Purchaser must not return any goods which the Purchaser claims are not in accordance with the contract (whether or not the goods are treated as accepted by the Purchaser) unless BA Equipment Group has first given its written approval to their return and if requested by BA Equipment Group, BA Equipment Group has had a reasonable opportunity to inspect the Goods. Their return must then be within 30 days of delivery and with freight and cartage prepaid by the Purchaser.
- 7.2 If BA Equipment Group has given its written approval to the return of Goods treated as accepted under clause 7.1:
- (1) BA Equipment Group will only give credit for the Goods returned if they are in a saleable condition; and
 - (2) BA Equipment Group may charge a handling fee equivalent to 25% of the price of the Goods returned.
- 7.3 If BA Equipment Group has given its written approval to the return of Goods which are not treated as accepted by the Purchaser under clause 7.1, BA Equipment Group will refund the freight and cartage to the Purchaser if the Purchaser's claim that the Goods are not in accordance with the contract is found to be valid.
- 7.4 BA Equipment Group will not give approval and the Purchaser must not return Goods which are custom made unless required by law.

8 Risk and insurance

- 8.1 Goods supplied by BA Equipment Group to the Purchaser are at the Purchaser's risk immediately on delivery to the Purchaser or into the Purchaser's custody (whichever is the sooner). The Purchaser must insure the Goods at its cost from delivery of the Goods until they are paid for in full against such risks as it thinks appropriate and must note the interest of BA Equipment Group on the policy and produce a certificate to this effect to BA Equipment Group on request.



9 Retention of title

9.1 In this clause 9:

- (1) **PPSA** means *Personal Property Securities Act 2009 (Cth)*; and
- (2) a term that is used in italics in this clause 9 has the same meaning as in the PPSA.

9.2 Property in the Goods does not pass to the Purchaser until the money owing for those Goods, and any other money owing by the Purchaser to BA Equipment Group, has been paid. The Purchaser in the meantime takes custody of the Goods and retains them as the fiduciary agent and bailee of BA Equipment Group.

9.3 Where the Purchaser does not make payment in respect of specific Goods, payment must be treated as having been made first in respect of Goods which have passed out of the possession of the Purchaser, and then in respect of whatever Goods still in the possession of the Purchaser BA Equipment Group elects.

9.4 Until the Goods have been paid for in full the Purchaser:

- (1) must properly store, protect and insure the Goods, including storing them in a manner that shows clearly that they are the property of BA Equipment Group;
- (2) may sell the Goods, in the ordinary course of its business, but only as fiduciary agent of BA Equipment Group. The Purchaser has no authority to bind BA Equipment Group to any liability by contract or otherwise and must not purport to do so. The Purchaser receives all proceeds, whether tangible or intangible, direct or indirect, of any dealing with the Goods (including any proceeds from insurance claims) in trust for BA Equipment Group and must keep the proceeds in a separate bank account until the liability to BA Equipment Group is discharged; and
- (3) agrees not to sell, assign, charge or otherwise encumber or grant any interest over any obligations which any third party may owe to the Purchaser as a result of the use, manufacture or resale of the Goods.

9.5 If the Purchaser uses any of the Goods in a manufacturing or construction process of its own or a third party and sells the product of the manufacturing or construction process (**Manufactured Product**), then the Purchaser holds such part of the proceeds of the sale of any Manufactured Product as relates to any Goods sold by BA Equipment Group to the Purchaser and used in the manufacturing or construction process in trust for BA Equipment Group. That part must be treated, for the purpose of quantifying how much the Purchaser holds in trust for BA Equipment Group but for no other purpose, as being equal in dollar terms to the amount owing by the Purchaser to BA Equipment Group at the time of the receipt by the Purchaser of the proceeds of sale for all Goods sold by BA Equipment Group to the Purchaser.

9.6 If the amount owing by the Purchaser to BA Equipment Group is greater than the proceeds of sale of the Manufactured Product the balance remains owing by the Purchaser to BA Equipment Group.

9.7 If the sale price of all Goods sold by BA Equipment Group to the Purchaser is greater than the sum of:

- (1) the proceeds actually received by BA Equipment Group in respect of all dealings by the Purchaser with the Goods (including the sale of Manufactured Product referred to in clause 9.5); and
 - (2) all other payments received by BA Equipment Group in respect of the Goods;
- the difference remains a debt owing by the Purchaser to BA Equipment Group.

9.8 BA Equipment Group is entitled to reclaim possession of the Goods, even if they have been paid for in full, in satisfaction of all debts owing to BA Equipment Group and cancel and/or withhold delivery of any of the Purchaser's outstanding orders, if any of the following events occurs (**Insolvency Event**):

- (1) the Purchaser defaults under these terms or conditions;
- (2) the Purchaser commits an act of bankruptcy;
- (3) a receiver is appointed to the Purchaser;
- (4) the Purchaser goes into liquidation, administration, or some other form of insolvency administration whether formal or informal;
- (5) the Purchaser ceases to carry on business; or

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- (6) the Purchaser enters into a scheme or compromises with its creditors; without prejudice to any other rights of BA Equipment Group.
- 9.9 The Purchaser irrevocably authorises BA Equipment Group at any time, to enter any premises:
- (1) upon which BA Equipment Group's goods are stored to enable BA Equipment Group:
 - (a) to inspect the goods; and/or
 - (b) if the Purchaser has breached the contract, or has committed an Insolvency Event, to reclaim possession of the goods; and
 - (2) upon which the Purchaser's records pertaining to the goods are held to inspect and copy the records.
- 9.10 BA Equipment Group's property in the Goods is not affected by the fact that the Goods become fixtures attached to premises of the Purchaser or a third party, and if BA Equipment Group enters those premises for the purpose of reclaiming possession of the Goods, and incurs any liability to any person in connection with the entry or reclamation, the Purchaser indemnifies BA Equipment Group against that liability.
- 9.11 The provisions of this clause 9 apply despite any arrangement between the parties under which BA Equipment Group grants the Purchaser credit. Where BA Equipment Group grants the Purchaser credit for a specific period the credit period is for that period or until the resale of the Goods by the Purchaser or their use by the Purchaser in a manufacturing or construction process of its own or a third party, whichever is the earlier.
- 9.12 BA Equipment Group may commence legal action against the Purchaser if the Goods are not paid for within BA Equipment Group's usual credit terms or any separate arrangement for credit made by BA Equipment Group with the Purchaser although property in the Goods has not passed to the Purchaser.
- 9.13 The Purchaser acknowledges and agrees that:
- (1) this clause 9 creates a *security interest* in all present and after acquired goods as security for the Purchaser's obligations to BA Equipment Group;
 - (2) BA Equipment Group is a *secured party* in relation to the goods and any *proceeds* of the goods, and is entitled to register its interest on the *register* as a:
 - (a) *security interest*; and
 - (b) if applicable, a *purchase money security interest*;
 - (3) BA Equipment Group may, by notice to the Purchaser, require the Purchaser to take all steps requested by BA Equipment Group to ensure its *security interest* in the goods is enforceable, and to perfect, or better secure the position of BA Equipment Group as a first ranking security and the Purchaser must comply with that notice; and
 - (4) BA Equipment Group is not obliged to give any notice, document or information under the PPSA, unless the provision of the notice, document or information is required by the PPSA and cannot be excluded.
- 9.14 The Purchaser may not disclose any information of a kind referred to in section 275(1) of the PPSA that is not in the public domain.

10 Insolvency of Purchaser

- 10.1 A breach of contract must be treated as having occurred if:
- (1) an application or order is made to or by a court or a resolution is passed for the winding up of the Purchaser or notice of intention to propose such a resolution is given; or
 - (2) a controller (as defined in section 9 of the *Corporations Act 2001* (Cth)) or an administrator under Part 5.3A of the *Corporations Act 2001* (Cth) is appointed in respect of the Purchaser, or the whole or any part of its undertaking or property;
- and BA Equipment Group may immediately suspend or terminate the supply of Goods and cancel and/or withhold delivery of any of the Purchaser's outstanding orders and all amounts outstanding to BA Equipment Group whether or not due for payment are immediately due and payable.
- 10.2 The provisions of clause 10.1 apply despite any arrangement between the parties under which BA Equipment Group grants the Purchaser credit.



11 Warranty

- 11.1 Subject to the conditions set out in clause 11.2 and the exclusions and limitations set out in clause 12, BA Equipment Group warrants that if any defect in any workmanship manufactured by BA Equipment Group becomes apparent and is reported to BA Equipment Group in writing within the earlier of 12 months from the date of the purchase order for the Goods, or in the case of repaired or replaced Goods, within 3 months from the date of the purchase order for the Goods, then BA Equipment Group will at BA Equipment Group's option, repair or replace the defect.
- 11.2 The conditions applicable to the warranty given by clause 11.1 are:
- (1) the warranty will not cover any defect which may be caused or partly caused by or arise through:
 - (a) failure by the Purchaser to properly install or maintain any Goods;
 - (b) failure by the Purchaser to follow any instructions or guidelines provided by BA Equipment Group;
 - (c) any use of any Goods otherwise than for the original intended application for which the Goods has been specifically designed, including modifications to the Goods or changes in operation which have not been specifically approved by BA Equipment Group in writing;
 - (d) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user;
 - (e) ingress of tramp or extraneous material; or
 - (f) fair wear and tear, any accident, or act of God;
 - (2) the warranty will cease and BA Equipment Group will thereafter in no circumstances be liable if the workmanship is repaired, altered or overhauled without BA Equipment Group's approval in writing;
 - (3) the Purchaser must afford BA Equipment Group an opportunity to inspect the Goods within a reasonable time if the Purchaser believes the Goods are defective in any way;
 - (4) the defective part must be promptly returned to BA Equipment Group's designated service centre and expenses incurred in transport of Goods or travel by personnel to or from the installation site will be to Purchaser's expense;
 - (5) any defective part replaced will become BA Equipment Group's property and the repaired or new part will be delivered to the Purchaser's site via means selected by BA Equipment Group;
 - (6) BA Equipment Group will not be liable to compensate the Purchaser for any delay in either replacing or repairing the Goods or in properly assessing the Purchaser's claim;
 - (7) where BA Equipment Group elects to replace faulty parts, this warranty covers the supply of the replacement parts only and does not cover the change over costs of replacement parts;
 - (8) warranties will be conditional upon carrying out the site pre-commissioning inspection and commissioning in accordance with BA Equipment Group's requirements as detailed in the I,O&M manuals as a minimum, and the timely submission of properly completed forms to BA Equipment Group prior to any warranty claims.
- 11.3 BA Equipment Group does not provide any warranty with regard to any goods or materials not manufactured, repaired or replaced by BA Equipment Group and BA Equipment Group shall be under no liability under any third party supplier or manufacturer warranty.
- 11.4 In the case of second hand Goods, the Purchaser acknowledges that it has had full opportunity to inspect the same and accepts the same with all faults. No warranty is given by BA Equipment Group as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. BA Equipment Group will not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.



- 11.5 If the Australian Consumer Law applies to the supply of the Goods, the Goods come with guarantees that cannot be excluded, the Purchaser is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage and the Purchaser is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.

12 Exclusions and limitations

- 12.1 The only conditions and warranties which are binding on BA Equipment Group in respect of:
- (1) the state, quality, condition, operating performance or fitness for purpose of the Goods; or
 - (2) advice, recommendations, information or services supplied by it, its employees, servants or agents to the Purchaser regarding the Goods and/or any ancillary goods and/or their use, suitability, performance, capacity and/or application;
- are those included in these terms and conditions and imposed and required to be binding by statute (including the *Competition and Consumer Act 2010* (Cth)).
- 12.2 To the extent permitted by statute, the liability (if any) of BA Equipment Group arising from the breach of the conditions or warranties referred to in clause 12.1 is, at BA Equipment Group's option, limited to and completely discharged:
- (1) in the case of goods, by either:
 - (a) the supply by BA Equipment Group of equivalent goods; or
 - (b) the repair or replacement by BA Equipment Group of the Goods; and
 - (2) in the case of advice, recommendations, information or services, by supplying the advice, recommendations, information or services again; and
- in any event, will not exceed the order value in correcting any failure, defect or deficiency of any kind in the Goods supplied.
- 12.3 Except as provided in these terms and conditions, all conditions and warranties implied by law in respect of the state, quality, condition, operating performance or fitness for purpose of the Goods which may apart from this clause be binding on BA Equipment Group are excluded.
- 12.4 The Purchaser acknowledges that:
- (1) the Purchaser does not rely and it is unreasonable for the Purchaser to rely on the skill or judgment of BA Equipment Group as to whether the Goods are reasonably fit for any purpose for which they are being acquired and that the sale is not a sale of goods by description or sample;
 - (2) BA Equipment Group does not give any warranty as to operating performance of the Goods where performance of the Goods is conditional upon factors outside BA Equipment Group's control (including without limitation empirical factors, the whole installation, the individual or overall operation, or the skills of the operator);
- 12.5 Except to the extent provided in these terms and conditions, BA Equipment Group has no liability (including liability in negligence or for a breach by BA Equipment Group of these terms and conditions) to any person for:
- (1) any direct or indirect loss or damage, consequential or otherwise suffered or incurred by that person in relation to the Goods or advice, recommendations, information or services; and
 - (2) in particular without limiting clause 12.5(1) any direct or indirect loss or damage, consequential or otherwise suffered or incurred by that person caused by or resulting directly or indirectly from any failure, defect or deficiency of any kind of or in the Goods or advice, recommendations, information or services;
- and in any event, any such liability will not exceed the value of the Goods supplied.



13 Indemnity

- 13.1 The Purchaser indemnifies BA Equipment Group, regardless of any negligence on the part of BA Equipment Group, against:
- (1) all losses incurred by BA Equipment Group;
 - (2) all liabilities incurred by BA Equipment Group; and
 - (3) all costs actually payable by BA Equipment Group to its own legal representatives (whether or not under a costs agreement) and other expenses incurred by BA Equipment Group in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal);
- arising directly or indirectly as a result of or in connection with the supply of Goods unless caused by wilful misconduct on the part of BA Equipment Group or any of its employees or agents acting within the scope of their employment.
- 13.2 The Purchaser must pay to BA Equipment Group all liabilities, costs and other expenses referred to in clause 13.1, whether or not BA Equipment Group has paid or satisfied them.

14 Testing

- 14.1 All the Goods are manufactured from high-grade materials and to rigid specifications, but since BA Equipment Group has no control over the conditions under which the Goods are applied, used, stored, transported or handled the Purchaser is advised to test the Goods thoroughly before adapting them to its own use.

15 Privacy

- 15.1 Where Goods are supplied to the Purchaser on credit the Purchaser irrevocably authorises BA Equipment Group, its employees and agents to make such enquiries as it considers necessary to investigate the credit worthiness of the Purchaser including (without limitation) making enquiries from persons nominated as trade referees, the bankers of the Purchaser or any other credit providers (**Information Sources**) and the Purchaser authorises the Information Sources to disclose to BA Equipment Group all information concerning the Purchaser which is within their possession and which is requested by BA Equipment Group.

16 Vienna Sales Convention

- 16.1 The application of the *Sale of Goods (Vienna Convention) Act 1986* (WA) is excluded.

17 Force majeure

- 17.1 If a party is prevented from or delayed in complying with an obligation (other than to pay money) by an event beyond its reasonable control, performance by it of that obligation is suspended during the time, but only to the extent that, compliance is prevented or delayed.

18 Intellectual Property

- 18.1 The Purchaser acknowledges and agrees that:
- (1) all BA Equipment Group's intellectual property rights are at all times the property of BA Equipment Group and the Purchaser does not acquire any right, title or interest in such rights;
 - (2) any intellectual property rights that are created during the production and supply of the Goods by BA Equipment Group are the property of BA Equipment Group and the Purchaser does not acquire any right, title or interest in such rights.



18.2 The Purchaser warrants that any instructions, directions or materials it gives to BA Equipment Group to produce and supply Goods do not infringe the intellectual property rights of any third party and indemnifies BA Equipment Group against all losses and liabilities incurred by BA Equipment Group and all costs actually payable by BA Equipment Group and other expenses incurred by BA Equipment Group in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal) in connection with any claim relating to the infringement or alleged infringement of a third party's intellectual property rights.

19 Entire understanding

19.1 These terms and conditions:

- (1) are the entire agreement and understanding between BA Equipment Group and the Purchaser on everything connected with the subject matter of these terms and conditions; and
- (2) supersede any prior agreement or understanding on anything connected with that subject matter.

19.2 BA Equipment Group and the Purchaser have entered into these terms and conditions without relying on any representation by the other or any person purporting to represent the other.

20 Waiver

20.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

20.2 The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

20.3 A waiver is not effective unless it is in writing.

20.4 Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

21 Notices

21.1 A notice or other communication connected with these terms and conditions (**Notice**) has no legal effect unless it is in writing.

21.2 In addition to any other method of service provided by law, the Notice may be:

- (1) sent by prepaid post to the address of the addressee set out in these terms and conditions or subsequently notified;
- (2) sent by facsimile to the facsimile number of the addressee; or
- (3) delivered at the address of the addressee set out in these terms and conditions or subsequently notified.

21.3 If the Notice is sent or delivered in a manner provided by clause 21.2, it must be treated as given to and received by the party to which it is addressed:

- (1) if sent by post, on the 2nd Business Day (at the address to which it is posted) after posting;
- (2) if sent by facsimile before 5pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or
- (3) if otherwise delivered before 5pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.

21.4 Despite clause 21.3(2):

- (1) a facsimile is not treated as given or received unless at the end of the transmission the sender's facsimile machine issues a report confirming the transmission of the number of pages in the Notice;



(2) a facsimile is not treated as given or received if it is not received in full and in legible form and the addressee notifies the sender of that fact within 3 hours after the transmission ends or by 12 noon on the Business Day on which it would otherwise be treated as given and received, whichever is later.

21.5 A Notice sent or delivered in a manner provided by clause 21.2 must be treated as validly given to and received by the party to which it is addressed even if:

(1) the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent; or

(2) the Notice is returned unclaimed.

21.6 Any Notice by a party may be given and may be signed by its solicitor.

21.7 Any Notice to a party may be given to its solicitor by any of the means listed in clause 21.2 to the solicitor's business address or facsimile number.

21.8 For the purpose of this clause 21 **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made.

22 Governing law and jurisdiction

22.1 The law of Western Australia governs these terms and conditions.

22.2 The parties submit to the non-exclusive jurisdiction of the courts of Western Australia and of the Commonwealth of Australia.