



TERMS OF BUSINESS

PART 1 – GENERAL TERMS AND CONDITIONS

1 Definitions and interpretation

1.1 In these Terms of Business, capitalised terms have the following meanings unless otherwise indicated:

BFI means BFI Fire Pty Ltd ACN 627 171 313 trading as BFI Fire or DAFO Australia (ABN 71 627 171 313), its related bodies corporate and all of its trading divisions.

Claim means any demand, claim, action, proceeding, judgment, damage, loss, cost expense, or liability incurred by or against a party, however arising and whether present, unascertained, immediate, future or contingent and whether or not arising in relation to matters which occurred in the past.

Commencement Date means the date on which a Contract commences as described in clause 2.4.

Confidential Information means any of BFI's information (regardless of the form of disclosure or the medium used to store or represent it) and includes all information which:

- (a) related to any Contract Material;
- (b) is the property of BFI or a related company of BFI;
- (c) is disclosed in writing, orally or by any other means by BFI or its employees, or by any person on behalf of BFI to the Customer or employees or contractors of the Customer by any means; or
- (d) otherwise comes to the knowledge of the Customer or its employees or contractors by any means, including through the Customer's involvement with BFI and its business operations,

but does not include information which becomes generally available to the public rather than as a result of disclosure by the Customer.

Consulting and Professional Services means the consulting and professional services BFI may provide the Customer pursuant to Part 3 and as further described in the applicable Quote or Invoice.

Consumable means any consumable used in the operation and maintenance of the Equipment.

Contract means the contract between BFI and the Customer for the provision of Services and/or Equipment and includes these Terms of Business and all applicable, Proposals, Quotes and Invoices between BFI and the Customer.

Contract Material means all documents, specifications, drawings, designs, writings, samples, layouts, proposals, reports, inspection & testing record, checklist, assessment statement and other material, in whatever format or embodiment, created or provided by BFI to the Customer under a Contract.

Credit Account Application Terms means any document or material provided to the Customer in connection with its application for credit to BFI.

Customer means the party named in the applicable Credit Account Application, Quote or Invoice.

Delivery Date means the date for delivery of Equipment as specified in an applicable Quote or Invoice or otherwise notified in writing to the Customer by BFI.

Economic Loss means loss of revenue, loss of profit, loss of custom, loss of goodwill, loss of overhead recovery, loss of business opportunity, loss of the use of money, loss of use of property, loss of contract, loss of production, loss or payment of financing charges or cost recovery, opportunity cost, payment of liquidated sums, payment of damages (whether under any other agreement or otherwise).

Equipment means any item of goods, plant and equipment (including any accessories) which BFI agrees to provide or sell to the Customer

pursuant to Part 2; including any Equipment that replaces any original Equipment sold.

Indicia means, in relation to the Equipment, BFI or the manufacturer's identification, trade name, trade mark, and any other signage on the Equipment including warning signs or signs relating to the proper and safe operation and maintenance of the Equipment.

Inspection Services means inspections, audits and other related services to determine compliance with relevant laws and standards, including the creation and provision of related Contract Material, which BFI may provide the Customer pursuant to these Terms of Business and as further described in the applicable Quote or Invoice.

Insolvency Event means, in relation to a party:

- (a) that party stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts;
- (b) that party makes an arrangement, compromise or composition with, or assignment for, the benefit of its creditors or a class of them;
- (c) a receiver, receiver and manager, administrator, provisional liquidator, trustee, controller, inspector or analogous person is appointed in relation to, or over, all or any part of that party's business, assets or securities;
- (d) a presumption of insolvency has arisen under legislation because of the party's failure to comply with a statutory demand or analogous process;
- (e) an application for the winding up of, or for the appointment of a receiver to, that party, other than winding up for the purpose of solvent reconstruction or re-amalgamation, is presented and not withdrawn or dismissed within [21] days (or such longer period agreed to by the parties), or an order is made or an effective resolution is passed for the winding up of, or for the appointment of a receiver to, that party, or any analogous application is made or proceedings initiated;
- (f) any shareholder or director of that party convenes a meeting for the purpose of considering or passing any resolution for the winding up or administration of that party;
- (g) that is an individual, a creditor's petition or a debtor's petition is presented to the Official Receiver or analogous authority in relation to that party;
- (h) an execution or analogous process is levied or enforced against the property of that party;
- (i) that party ceases or suspends, or threatens to cease or suspend, the conduct of all or a substantial part of its business;
- (j) that party disposes of, or threatens to dispose of, a substantial part of its assets; or
- (k) that party is unable to pay the party's debts as and when they become due and payable

Instructions means all relevant information for Equipment including operating manuals, instructions, safe operating procedures, manufacturer's instructions and other directions provided by BFI for the Equipment whether or not in writing.

Intellectual Property Rights means all present and future rights to:

- (a) trade marks, trade names, domain names, logos, get-up, patents, inventions, registered and unregistered design rights, copyrights, circuit layout rights, and all similar rights in any part of the world (including know-how); and
- (b) where the rights referred to in paragraph (a) are obtained or enhanced by registration, any registration of such rights and applications and rights to apply for such applications.



Invoice means an invoice for Equipment or Services issued by BFI to the Customer.

Law means any requirement of any statute, regulation, proclamation, ordinance, by-law or common law, present or future and whether state, federal or otherwise.

Loss means damage, loss, cost, expense or liability (whether actual or contingent).

Part means a Part of these Terms of Business.

PPSR means the Personal Property Security Register as defined in the Personal Property Securities Act 2009 (Cth) as amended (PPSA). The following words in clause 16 have the respective meanings given to them in the PPSA: "collateral", "financing change statement", "financing statement", "interested person", "purchase money security interest", "register", "registration", "security agreement", "security interest" and "verification statement".

Price means the amount payable by the Customer to BFI for the performance of a Service or provision of Equipment, which will be calculated with reference to the applicable Schedule of Rates.

Proposal means a proposal issued by BFI to the customer in relation to a request for Equipment or Services.

Quote means a job quotation issued by BFI to the Customer in relation to a request for Equipment or Services.

Schedule of Rates means the applicable BFI schedule of rates for a relevant Service as amended from time to time.

Services means any services performed by BFI for the Customer under a Contract, including, but not limited to, Consulting and Professional Services, plus Testing, Repair, Maintenance and Installation Services.

Site means, in relation to:

- (a) Part 1, the meaning assigned to that term in any or all of paragraphs below, as the context dictates;
- (b) Part 2, the location at which the Equipment will be delivered; and
- (c) Part 3, the location at which the Services will be performed.

Term means the term of a Contract as described in clause 3.

Terms of Business means these Terms of Business including all Parts.

Testing, Repair, Maintenance and Installation Services means any testing, repair maintenance and installation of Equipment or mechanical, electrical or other assets, including the creation and provision of related Contract Material, which BFI may provide the Customer pursuant to these Terms of Business and as further described in the applicable Quote or Invoice.

1.2 In these Terms of Business, unless the context otherwise requires:

- (a) **(headings)** headings are for convenience only and do not affect interpretation;
- (b) **(singular)** the singular includes the plural and vice versa;
- (c) **(includes)** a reference to "includes" means "includes, but is not limited to";
- (d) **(corresponding meanings)** where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) **(other entities)** a reference to a person, trust, partnership, joint venture, association, corporation, organisation, society, firm, authority or other entity includes any of them;
- (f) **(successors and assigns)** a reference to a Party to a document includes that Party's permitted successors, assigns, administrators and substitutes;
- (g) **(rules of construction)** no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of a Contract;

(h) **(joint and several)** an agreement on the part of 2 or more persons binds them jointly and severally; and

(i) **(writing)** a reference to a notice from, consent or approval of a party and agreement between the parties, means a written notice, consent, approval or agreement.

1.3 If there is any inconsistency or conflict between any of the documents forming part of a Contract, those documents will be interpreted in the following order of priority to the extent of the inconsistency or conflict:

- (a) Credit Account Application Terms;
- (b) Invoice;
- (c) Quote;
- (d) Proposal and
- (e) Terms of Business.

The above apply to all transactions in which the Customer is supplied Equipment &/or Services by BFI. If any future Contract between BFI & the Customer is inconsistent with the above stated terms of BFI, then the BFI terms will apply.

1.4 If there is any inconsistency or conflict between any Credit Account Application Terms, Invoices, Quotes or Proposals issued to the Customer in connection with a Contract, then the later dated Credit Account Application Terms, Invoice, Quote or Proposal takes priority and will apply to the extent of the inconsistency or conflict.

2 Formation of Contract

2.1 Following its receipt of the Customer's request for Services or Equipment, BFI will issue the Customer a Quote or Proposal that sets out:

- (a) the estimated Price for the requested Services or Equipment calculated with reference to the applicable Schedule of Rates; and
- (b) any other relevant details or information regarding the requested Services or Equipment.

2.2 The Customer's acceptance of a Quote or execution of a Proposal also constitutes:

- (a) acceptance of these Terms of Business and their application to the Services or Equipment supplied or sold to the Customer by BFI; and
- (b) formation of the Contract between the Customer and BFI.

2.3 Each accepted Quote or signed Proposal constitutes a separate Contract for Services or Equipment between the Customer and BFI which incorporates these Terms of Business.

2.4 The Commencement Date for a Contract will be:

- (a) the date on which the Customer notifies BFI that it accepts the first Quote issued by BFI;
- (b) the date of execution of a Credit Account Application; or
- (c) the date of the first Proposal signed by the parties; whichever is applicable.

3 Term

A Contract commences on the Commencement Date and will continue until:

- (a) completion of all applicable Services; and
- (b) completion of any sale of Equipment to the Customer, whichever applies unless terminated earlier in accordance with the Contract.



4 Equipment & Services Generally

- 4.1 Subject to the Customer's payment of all applicable Invoices, BFI will provide Equipment and/or Services to the Customer in accordance with the applicable Contract.
- 4.2 BFI may, without penalty or liability to the Customer, refuse to provide any part or all of the Equipment and/or Services if, in its reasonable opinion, providing the relevant part or all of the Equipment and/or Services may present a safety hazard for any person involved in providing the Goods and/or Services.
- 4.3 Any times for the performance of Goods and/or Services made known to, or requested by, the Customer are estimates only and BFI will not be liable for any Claim for late or non-performance.
- 4.4 If:
- (a) BFI is ready to perform Services in accordance with the applicable Quote or Proposal but the Customer is unable or unwilling to allow BFI to commence performance of the Services; or
 - (b) the performance of the Services is delayed or suspended for any reason other than the default of BFI,
- BFI may provide an Invoice for, and the Customer must pay, BFI's reasonable costs and expenses of the delay or suspension.
- 4.5 All Quotes remain current for 14 days only from date of the Quote or as otherwise stated on Quotation

5 Contract Material prepared by BFI

- 5.1 BFI will prepare Contract Material:
- (a) in connection with its performance of the relevant Services in accordance with the applicable Contract;
 - (b) based on the Customer's instructions and information provided by the Customer or on its or on the Customer's behalf;
 - (c) taking into account information known to BFI at the issue date of, or any earlier effective date specified in, the relevant Contract Material (**Effective Date**);
 - (d) solely for the specific purpose set out in the agreed scope of work to which a Contract applies or otherwise confirmed in writing by BFI (**Agreed Purpose**); and
 - (e) that may contain content that diverges from applicable standards (including Australian Standards) or is applicable to only some or parts of standards, and while all reasonable endeavours have been made to adhere to relevant standards, the Contract Material may not have 100% adherence, and the Customer hereby agrees and accept such, and agrees that it is the Customer's responsibility to independently verify their required or intended compliance with relevant specific standards for their intended application
- 5.2 Without prejudice to any other exclusion or limitation of liability in any Contract and to the maximum extent permitted by Law, neither BFI nor any of its officers, employees, agents or contractors will accept any liability or responsibility of any kind arising out of or in connection with:
- (a) the use of, or reliance on, any Contract Material (or any part of the Contract Material) by any person other than the Customer;
 - (b) the use of, or reliance on, any Contract Material (or any part of the Contract Material) by the Customer for any purpose other than the Agreed Purpose;
 - (c) reliance on inaccurate or misleading information provided by the Customer or on the Customer's behalf or obtained from any third party source, except to the extent it is not reasonable in all the circumstances for BFI to rely on that information;

- (d) any fact or circumstance arising after the Effective Date; or
- (e) the matters, disclosures and acknowledgements set out in clause 5.1(e)

6 Payment

- 6.1 Subject to any other payment terms specified in a subsequent Part of these Terms of Business or a Contract, the Customer must pay BFI all amounts stated in an Invoice 30 days from the end of the month of Invoice.
- 6.2 The Customer authorises BFI to complete and submit all documentation on behalf of the Customer required to enable payment through any credit card or direct debit system. BFI may, in addition to the Price, charge a credit card surcharge equal to, or less than, their average cost of accepting cards in line with the Competition and Consumer Amendment (Payment Surcharges) Act 2016, of the total Price for payment by credit card. BFI reserves the right to refuse payment by credit card, including where payment is not made in accordance with any Part of these Terms of Business or otherwise in accordance with the applicable Contract.
- 6.3 The Customer must pay interest, where requested, to BFI at the rate of 2% per month on any Invoice amount which is overdue, where such interest will be calculated from the date it became due until the date it is paid.
- 6.4 All Prices exclude GST and stamp duty unless otherwise expressly specified in an Invoice, Quote or Proposal and the Customer must pay all GST and Stamp Duty on the Price (where applicable).
- 6.5 It is at the complete discretion of BFI as to whether it shall provide the Customer any form of credit. The credit limit approved by BFI and advised to the Customer must not be exceeded. BFI periodically reviews its credit limits. By agreeing to these Terms of Business the Customers agrees that BFI may review and revise the applicable credit limit from time to time. If the Customer requests in writing that BFI increase the credit limit such decision shall be at BFI complete discretion. BFI may reduce the credit limit at the Customer's specific request in writing.
- 6.6 BFI may reduce the credit limit or withdraw credit facilities to the Customer at any time without notice. Without limiting BFI's rights to withdraw credit, BFI reserves the right to stop supply & place the account on hold until the account is returned to the agreed trading terms, and BFI agrees to recommence supply.

7 Intellectual Property Rights

- 7.1 All Intellectual Property Rights in relation to all Contract Material:
- (a) produced by BFI in connection with a Contract immediately vests in BFI; or
 - (b) which is otherwise disclosed or made accessible by BFI to the Customer remains the sole property of BFI.
- 7.2 Subject to the Customer's payment of all Invoices in accordance with a Contract, BFI grants the Customer a non-exclusive, non-transferrable licence to use the Contract Material during the Term to the extent directly required to obtain benefit from a Service or operate the Equipment.

8 Non-poach

- 8.1 The Customer must not:
- (a) Employ;
 - (b) Solicit the employment; or
 - (c) Assist in any way (either directly or indirectly) a third party to employ or solicit the employment;



of any individual member of BFI's employees while they are engaged in the performance of the Services or employed by BFI or within 12 months following completion of the Services or the cessation of their employment with BFI.

8.2 If any of BFI's employees cease to work for BFI as a result of the Customer's breach of clause 8.1, the Customer must:

- (a) pay BFI the applicable Placement Fee; and
- (b) allow any further reasonable time that may be required by BFI to replace the individual employee of BFI in relation to the provision of the Services.

8.3 If BFI is unable to perform the Services due to the Customer's breach of clause 8.1, or as a result of the employment of any of BFI employees by any other contractor at the Site, then BFI may:

- (a) suspend performance of the Services until such time as the individual employee is replaced; and
- (b) provide the Customer an Invoice for, and the Customer must pay, the reasonable costs and expenses of the suspension.
- (c) The Placement Fee will be \$5,000.00 unless otherwise agreed with BFI. Staff Member Performance Concerns

9 Staff Member Performance Concerns

The Customer should advise BFI as soon as is practical if it is not satisfied with the work, performance of service, or behaviour of BFI staff.

10 Indemnity

The Customer indemnifies BFI and its officers, employees and agents from and against all Claims that may arise as a result of or in connection with:

- (a) a breach of a Contract (including a breach of warranty) by the Customer or its officers, employees and agents;
- (b) any unlawful act of the Customer or its officers, employees and agents;
- (c) any improper, careless or negligent act or omission of the Customer or its officers, employees and agents;
- (d) BFI's entry upon the Site; or
- (e) contact with underground, overhead or other located pipes or wires on the Site.

11 Warranties

11.1 To the maximum extent permitted by Law, BFI excludes all warranties and conditions in relation to Equipment or Services imposed by statute or otherwise implied.

11.2 To the extent that a term implied by Law cannot be excluded, BFI's liability to the Customer for a breach of a Contract or any defective Equipment or Service is limited (at BFI's option) to:

- (a) in the case of Equipment, either replacing, repairing or paying the cost of replacing or repairing the Equipment (and which option shall be at the discretion of BFI); or
- (b) further in the case of Equipment, to the extent of any Warranty (if any) provided by the manufacturer of the Equipment; or
- (c) in the case of Services, either supplying the Services again or paying the cost of having the Services supplied again (and which option shall be at the discretion of BFI).

11.3 Despite any other provision of a Contract and to the fullest extent permitted by law, BFI, its officers, employees, agents and contractors will not be liable to the Customer for any amount, liability or other Claim in connection with the Contract to the extent that the amount, liability or Claim is for Economic Loss or any special, indirect or consequential loss.

11.4 The Customer must at all times comply with the terms of all manufacturer warranties for Equipment provided including but not limited to adhering to installation, use and maintenance requirements.

12 Limitation of liability

12.1 The Customer is solely liable and responsible for any Claims arising from or in connection with:

- (a) the Services; or
- (b) its use of the Equipment other than in accordance with any specification or instruction provided by BFI in relation to the Equipment.

12.2 Notwithstanding any other provision of a Contract, BFI's total liability to the Customer in connection with the Contract is limited to an amount equal to the Price.

12.3 BFI is not liable to the Customer for, and the Customer indemnifies and releases BFI from and against all liability in respect of:

- (a) all Economic Loss and indirect or consequential loss whether under contract, in tort (including negligence), in equity, under statute or otherwise that may arise directly or indirectly in relation to a Contract;
- (b) failure to deliver the Equipment in accordance with the delivery instructions;
- (c) loss, damage or injury to any person, property, animal or thing resulting from the delivery, installation, inspection, use, dismantling and collection of the Equipment;
- (d) breakdown or failure of the Equipment;
- (e) failure by the Customer to comply with these Terms of Business; and
- (f) defects in the installation of the Equipment at the Site.

13 Confidentiality

13.1 The Customer covenants with BFI that it:

- (a) will only use the Confidential Information for the purpose approved by BFI in writing; and
- (b) will not disclose, or permit to be disclosed Confidential Information to any person without the prior written consent of BFI, except:
 - (1) as required by Law; or
 - (2) to bona fide independent consultants or advisers of the Customer, provided they are subject to equivalent confidentiality obligations.

13.2 The Customer must, upon written request by BFI, and in any event at the end of the Term, return to BFI all Confidential Information including all copies and duplicates in whatever form.

13.3 Nothing in this clause 13 derogates from any obligation which the Customer may have either under the *Privacy Act 1988* (Cth) or equivalent state laws as amended from time to time, or under a Contract, in relation to the protection of personal information.

13.4 This clause 13 survives the expiration, termination or frustration of a Contract.

14 Termination and Breach

14.1 BFI may terminate a Contract:

- (a) at any time without cause or liability to the Customer by giving 14 days prior written notice of termination; or
- (b) immediately by written notice if:



- (1) the Customer breaches the Contract and has failed to remedy the breach within 14 days of being notified of the breach by BFI;
- (2) the Customer commits an irremediable breach of the Contract; or
- (3) the Customer experiences an Insolvency Event.

14.2 If the Customer breaches these Terms of Business or a Contract, the Customer shall indemnify BFI from and against any and all costs, fees and disbursements incurred by BFI in respect to or arising from the breach including legal costs on a full indemnity basis.

14.3 Without prejudice to any other remedies that BFI may have, if at any time the Customer is in breach of any obligation under these Terms of Business or a Contract (including those related to payment), BFI may suspend any of its obligations under these Terms of Business or any Contract and retain any payments made by the Customer to date. BFI will not be liable to the Customer for any Loss the Customer suffers because BFI has exercised its rights under this clause.

14.4 **CAVEATABLE INTEREST CLAUSE.** If at any time the Customer is in breach of any obligation under these Terms of Business or a Contract (including those related to payment), then the Customer by its Director(s)/Guarantors/Partners/Individual(s), stated in any Credit Account Application hereby charge all their Right, Title of Interest (if any) to any or all property(ies) now owned or partly owned or may in the future become owned, solely or jointly by the said Customer/Director(s)/Guarantors/Partners/Individual(s) in favour of BFI, to better secure the monies outstanding, with the due and punctual observance and performance of all of the obligations of the Customer hereunder. Such Customer acknowledges that BFI may at its discretion, register a caveat on such property in respect of the interest conferred on it under this clause. In the event that BFI is required to exercise its right under this clause, then the Customer grants to BFI the right to appoint a Receiver and sell the property(ies).

15 Dispute resolution

15.1 If an issue, dispute or difference between or among any of the parties arises out of, or in relation to, a Contract (**Dispute**), a party to the Dispute (**Disputant**) must not commence any court proceedings relating to the Dispute unless the Disputants have complied with this clause except where a Disputant seeks urgent interlocutory relief.

15.2 A Disputant may give written notice (**Notice of Dispute**) to the other Disputants specifying:

- (a) the nature of the Dispute;
- (b) the alleged basis of the Dispute; and
- (c) the position which the Disputant issuing the Notice of Dispute believes is correct.

15.3 If the Dispute is not resolved within 7 days after the last date on which a Notice of Dispute is given, each Disputant must nominate a suitable senior executive as its representative with the authority to settle the Dispute.

15.4 If the Dispute is not resolved within 21 days of referral to senior executives under clause 15.3, the Disputants must mediate the Dispute in accordance with the mediation rules of the Law Society of New South Wales, and unless otherwise agreed in writing by the parties the President of the Law Society of New South Wales (or the President's nominee) will select the mediator and determine the mediator's remuneration.

16 Personal Property Securities Act 2009 (PPSA)

16.1 Upon acceptance of any Quote or Proposal by the Customer, the Customer acknowledges and agrees that this document:

- (a) constitutes a Security Agreement; and
- (b) creates a Security Interest in all goods supplied, whether by sale or hire, pursuant to this Agreement (**Goods**):

16.2 The Customer undertakes to:

- (a) promptly sign any further documents and provide any further information (such information to be complete, accurate and up-to-date in all respects) which BFI may reasonably require to:
 - (1) register a Financing Statement or Financing Change Statement on the PPS Register in relation to a Security Interest over the Goods;
 - (2) register any other document on the PPS Register which is necessary to perfect BFI's Security Interest over the Goods; or
 - (3) correct a defect in any document referred to in clause 16.2(a)(1) and 16.2(a)(2);
- (b) indemnify, and upon demand reimburse, BFI for all expenses incurred in registering a Financing Statement or Financing Change Statement on the PPS Register;
- (c) not register a Financing Statement or a Financing Change Statement in respect of the Goods without the prior written consent of BFI;
- (d) not register, or permit to be registered, a Financing Statement or a Financing Change Statement in relation to the Goods in favour of a third party without the prior written consent of BFI;
- (e) keep full and complete records of the Goods; and
- (f) without limiting any other right BFI may have, immediately return the Goods if requested to do so by BFI following non-repayment of any amount owing by the Customer to BFI or following the breach of any other obligation of the Customer.

16.3 BFI and the Customer agree that sections 96 and 125 of the PPSA do not apply to this Agreement.

16.4 The Customer waives its right to receive notices or statements under sections 95, 118, 121(4), 129, 130, 132(2), 132(3)(d), 132(4), 135, and 137(2) of the PPSA.

16.5 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

16.6 Unless otherwise agreed to in writing by BFI, the Customer waives its right to receive a Verification Statement in accordance with section 157 of the PPSA.

16.7 The Customer grants BFI a Security Interest in all of the Customer's present and after-acquired property.

17 General

17.1 No amendment to a Contract will be binding on any party unless made in writing properly and duly executed by that party.

17.2 BFI reserves the right to amend these terms, provided such amendments are conveyed to the Customer in writing. The Customer further acknowledges that such writing will be by email to the email address set out in the Customer's Credit Account Application or the email address commonly used by the Customer to communicate with BFI, unless the Customer advises in writing to BFI a new email address, and this new email address is acknowledged by return in writing by BFI.

17.3 The failure of BFI to exercise any right arising as a result of a breach by the Customer of a Contract will not waive that right, nor will any practice developed between the parties waive or lessen BFI's rights under the Contract.



17.4 The Customer must not assign, novate or otherwise encumber its rights under a Contract unless the Customer is subject to a change in control, in which case the Contract may be assigned with BFI written consent.

17.5 BFI may assign, novate, encumber or otherwise deal with its interest in or rights and obligations under these Terms of Business or any Contract made hereunder in its complete discretion and without the prior written consent of the Customer.

17.6 A Contract will be construed in accordance with the law of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

17.7 Clauses 1,5, 6, 7, 8, 10, 11, 12, 13, and 17 continue to apply after termination or expiration of a Contract

17.8 If any provision of a Contract is, for any reason, considered or found by a court of competent jurisdiction or any competent Government authority to be invalid, illegal or unenforceable, that provision is to be severed from the remainder of the provisions of the Contract. The remainder of the provisions of the Contract will remain in full force and effect unless the basic purposes of the Contract are defeated.

17.9 Any person signing or purporting to sign a document on behalf of the Customer warrants that they have the authority of the Customer to sign and indemnifies BFI against all losses incurred if that person does not have such authority.

17.10 If the Customer is more than one person the Customer is jointly and severally liable under a Contract.

17.11 The laws of New South Wales govern a Contract and the parties submit to the non-exclusive jurisdiction of the New South Wales courts.

17.12 If the Customer is the trustee of a trust (whether disclosed to BFI or not), the Customer warrants to BFI that:

- (a) the Customer enters into this agreement in both its capacity as trustee and in its personal capacity;
- (b) the Customer has the right to be reasonably indemnified out of trust assets;
- (c) the Customer has the power under the trust deed to sign this agreement; and
- (d) the Customer will not retire as trustee of the trust or appoint any new or additional trustee without advising the BFI.

The Customer must give BFI a copy of the trust deed upon request.

17.13 The Customer shall not be entitled to set off against, or deduct from amount payable, any sums owed or claimed to be owed to the Customer by BFI nor to withhold payment of any invoice because part of that invoice is in dispute.

18 Privacy

BFI collects personal information to assist it in providing the goods or Services the Customer has requested and to improve its products and Services. BFI and all related companies may be in touch to let the Customer know about goods, Services or promotions which may be of interest to the Customer. The Customer should let BFI know if it objects to this and if it would prefer not to be contacted with special offers or in relation to BFI's other goods and Services.

19 Environment

The Customer undertakes to comply with all Environmental Laws and regulations. The Customer agrees to indemnify BFI against all liability, claims, damage, loss, costs and expenses (including legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against BFI) which we may incur as a result of

the Customer's failure to comply with any environmental law or regulation.

PART 2 – SALE OF EQUIPMENT

20 Application

The provisions described in this Part 2 apply to a Contract if the Customer has accepted a Quote for the purchase of, or otherwise has agreed in writing to purchase, Equipment from BFI.

21 Sale of Equipment

21.1 BFI will supply the Equipment to the Customer as described in the applicable Quote.

21.2 Risk in the Equipment passes to the Customer on delivery in accordance with clause 45.4

21.3 Title in the Equipment does not pass to the Customer until the Customer has paid for the Equipment in full in accordance with the applicable Contract.

21.4 Delivery will be taken to have occurred:

- (a) at the time when the Equipment is delivered to the Site (including by collection by or on behalf of the Customer); or
- (b) if a Customer's representative is not able to take delivery of the Equipment at the Site at a delivery time made known to the Customer by BFI for any reason, BFI may return the Equipment to BFI's premises or leave the Equipment at the Site and delivery will be taken to have occurred if the Equipment is:
 - (1) returned to BFI's premises, at 5:00 pm (local time) on the date of such attempted delivery; or
 - (2) left at the Site, at the time when the Equipment is left at the Site.

21.5 The Customer acknowledges and accepts:

- (a) it is liable for all costs incurred in returning the Equipment to BFI's premises under clause 21.4(b)(1); and
- (b) BFI is not liable for any Claim arising as a result of or in connection with the Equipment being left at the Site under clause 21.4(b)(2).

21.6 Any Delivery Date is an estimate only and BFI is not liable to the Customer for any Claim arising from late or non-delivery of Equipment. Any Delivery Date requested by the Customer must not be earlier than any delivery lead time made known by BFI to the Customer.

21.7 BFI may deliver Equipment by instalments and each instalment will be deemed to be sold by BFI to the Customer under a separate Contract. Failure of BFI to deliver any instalment will not entitle the Customer to cancel the balance of the instalments. If the Customer defaults in payment for any instalment, BFI may elect to treat the default as a breach of all Contracts related to the applicable Equipment.

21.8 BFI will use reasonable endeavours to ensure the Customer receives the full benefit of all warranties provided by any manufacturer of any Equipment but, except as otherwise expressly stated in a Contract, does not make any warranties or representations in relation to the Equipment.

21.9 Special orders attract a 50% deposit which will be debited to the Customer's account upon receipt of a written order for goods outside our normal stock line or for goods specifically modified to the Customer's requirements. No return of or cancellation of special orders will be accepted.

21.10 In the event the Customer elects to return Equipment or cancel Equipment on order, BFI at its absolute discretion reserves the right to charge a 10% handling fee on the amount involved. Further no



return of Equipment will be accepted, without prior approval of BFI in writing.

22 Storage

22.1 At the request of BFI, the Customer must pay storage charges to BFI at commercial rates reasonably determined by BFI for the period of time during which any Equipment is stored at BFI's premises after Delivery.

22.2 Storage of Equipment at BFI's premises after the Delivery Date will be at the Customer's risk.

22.3 The Customer expressly acknowledges that insurance of all Equipment is the responsibility of the Customer upon despatch.

PART 3 – SERVICES

23 Application

The provisions described in this Part 3 apply to a Contract if the Customer has accepted a Quote for the purchase of, or otherwise has agreed in writing to acquire Services from BFI.

24 Services

24.1 BFI will:

- (a) provide the Services, in a diligent and professional manner and to the standard of skill and care expected of a person experienced in the provision of such Services; and
- (b) ensure its employees, contractors and agents are competent and have the necessary skills to carry out the Services.

25 Customer's obligations

25.1 The Customer must:

- (a) provide BFI with all materials and information (**Materials**) required by BFI to adequately perform the Services;
- (b) ensure that the Materials provided to BFI are virus free, accurate and complete in all respects;
- (c) ensure that the Materials are provided to BFI in sufficient time to enable BFI to perform its obligations under a Contract;
- (d) answer BFI's questions related to the provision of the Services in a timely manner;
- (e) promptly make any decisions needed by BFI to perform the Services; and
- (f) provide any other facilities, resources or access reasonably required by BFI in order to perform the Services.

25.2 The Customer acknowledges:

- (a) BFI does not inspect or check the accuracy of any Material provided to it by the Customer; and
- (b) it is solely responsible for the accuracy and completeness of the Material.

25.3 The Customer warrants:

- (a) it has complied with all Laws relating to the collection, use and transfer, under a Contract, of any Material which contains personal information including without limitation the Australian Privacy Principles contained in the *Privacy Act 1988* (Cth);
- (b) it has the authority to allow BFI and its personnel to use any facilities, equipment and resources which the Customer provides to BFI and its personnel for use in connection with performing the Services;
- (c) it owns, or otherwise has the right to licence, the Intellectual Property Rights to BFI and its personnel for use in connection with performing the Services;

- (d) its provision of the Material to BFI does not infringe the Intellectual Property Rights of any third party;
- (e) the use, distribution or publication of any Material by BFI necessary for the proper performance of any Service will not infringe the rights of any third party; and
- (f) all Material it will provide BFI will not contain any offensive, pornographic, defamatory, morally reprehensible or illegal content.

26 Establishment costs including inductions

All costs associated with site inductions, etc will be charged to the Customer at cost plus 10%. The Customer will also be charged the appropriate hourly rate set out in the applicable Contract for the time taken to complete the inductions.

27 Travel, accommodation and vehicles expenses

27.1 Travel time to and from the Customer's Site will be charged to the Customer at the applicable hourly rate set out in the Quote or Schedule of Rates, and will be calculated based on the travel time between the Customer's Site and:

- (a) the employee's normal place of work; or
- (b) if the employee is working away, the employee's place of accommodation.

27.2 Travel (air fares, hire car etc), accommodation and meal costs will be charged to the Customer at cost price plus 10%. At times BFI will apply the ATO Taxation Determination in relation to reasonable travel and overtime meal allowance expense amounts to reimburse employees for travel and accommodation and that amount will be charged to the Customer at cost plus 10%.

27.3 In addition to travel time charged at applicable hourly rates, travel using a BFI vehicle exceeding a 70km radius from the employee's normal place of work or accommodation (as the case may be) will be charged to the Customer at the rate per kilometre specified in the Quote or Proposal.

27.4 The rates described in this clause do not include provision of site vehicles. A daily rate will apply to site vehicles based on the vehicle type and the nature of the Customer's use of the vehicle.

PART 4 – GENERAL

28 Modern Slavery

28.1 The Customer warrants that it does not use any labour practices involving, Modern Slavery.

28.2 If the Customer is a 'reporting entity' for the purposes of any state or federal Modern Slavery legislation, including the Modern Slavery Act 2018 (Cth), it must provide BFI with a copy of any report it is required to prepare under that legislation at BFI's request.

28.3 For the purposes of this clause, "Modern Slavery" has the meaning given in section 4 of the Modern Slavery Act 2018 (Cth), and includes any form of slavery, servitude, debt bondage, deceptive recruitment practices, or forced labour to exploit children or other persons.

29 No Exclusivity

29.1 Entering these Terms of Business or a Contract with BFI does not:

- (a) give the Customer the right to be the sole recipient of any such Equipment and/or Work or Services from BFI; or
- (b) prevent BFI from providing obtaining Equipment, goods, work or Services that are the same as, or similar to, the Equipment, Goods or Work or Services to other Customers.



30 Anti-Corruption

30.1 In this clause, "Public Official" includes any person representing or employed by a government department or enterprise

30.2 The Customer must always comply with all laws, rules, regulations and other legally binding measures imposed in the State of New South Wales relating to bribery, corruption, money laundering, fraud or similar activities and not offer, promise or give (either directly or indirectly) any financial or other advantage, payment, gift, promise or transfer of anything of value:

- (a) to any person with the intention of inducing that person to breach a position of trust or duty of good faith or impartiality; or
- (b) to any Public Official intending to influence that official with the aim that either party should benefit as a result.