

## **Build Run Repair – Terms and Conditions of Sale of Goods**

### **1 INCORPORATION:**

These terms and conditions of sale apply to every sale of Goods made by BRR. Any terms or conditions incorporated into any purchase order or other document furnished by the Customer in connection with its request to purchase Goods shall not bind BRR, unless otherwise expressly agreed in writing by BRR. Purchase Orders shall not become binding on BRR until BRR has communicated its acceptance in writing.

### **2 PRICES AND PAYMENT:**

The Price for the Goods shall be set out in the Price List and, unless otherwise agreed, shall be payable in Australian dollars. Terms of payment are cash on order unless an alternate arrangement has been agreed in writing with the Customer. The Price does not include GST or any government taxes, charges or duties applicable to the supply, which shall be paid by the Customer. BRR reserves the right to charge interest at the rate of 10% per annum calculated daily on any overdue amounts.

### **3 DELIVERY:**

Unless otherwise agreed in writing all Prices shall be ex works. Where terms for delivery to Site are agreed, BRR shall use reasonable endeavours to ensure delivery of the Goods to the Customer on the date advised by BRR. However BRR shall not be liable to the Customer in the event that any such date for delivery is not met. Delivery shall be deemed to be effected by providing the Goods to the Customer at the Site or by BRR making the Goods available for collection by the Customer or its agent or carrier. If BRR is required to deliver the Goods to the Site, the Customer shall be responsible for uncrating and unloading the Goods at the Site, placing the Goods in the appropriate position at the Site and providing all infeed and out feed services and connecting required services. If the Customer is unwilling or unable to take delivery of the Goods on the date advised by BRR, BRR shall be entitled to reimbursement of all direct costs and expenses incurred by BRR arising from the delay, including any storage costs incurred by BRR.

### **4 INSTALLATION:**

Where BRR has agreed in writing to provide installation services, BRR shall only be required to make technicians available to assist the Customer with installation of the Goods. The Customer shall provide all access to the premises and all assistance required by BRR's technician in relation to installation, including providing services such as lifting Goods and utilities required by BRR's technician.

### **5 RISK AND TITLE:**

Risk to the Goods shall pass to the Customer upon the delivery of the Goods to the Customer or delivery of the Goods to the Customer's agent or carrier. The Customer agrees that title to and property in all components of the Goods is retained by BRR until payment by the Customer of the purchase price for all of the Goods and all other amounts outstanding ("Unpaid Goods"). The Customer must store the Unpaid Goods so that they are identifiable as those supplied by BRR, and ensure they are properly stored and adequately insured.

If the Customer sells or purports to sell any of the Unpaid Goods supplied by BRR in which property has not passed to the Customer, then the Customer does so as a fiduciary for BRR. The proceeds of such sale are the property of BRR to the extent of any money owed to it by the Customer and are to be held on trust for BRR. The Customer must account to BRR for that portion of the proceeds of sale on demand.

### **6 SPECIFICATIONS AND WARRANTY:**

- (a) BRR warrants to the Customer that at the time of delivery the Goods will meet the Specifications in all material respects. BRR may vary the Specifications of the Goods in accordance with its policy of continual product improvement.
- (b) Subject to paragraphs (c) and (d), BRR warrants that the Goods will for a period of 12 months from the date of delivery be free from defects in materials and workmanship. All claims must be received in writing during this period. BRR shall be responsible for the cost of repair or replacement of damaged or defective parts of the Goods during this period. BRR shall not be liable for any labour or travel costs associated with replacement and installation of parts in accordance with this warranty. Unless otherwise agreed, such costs and expenses shall be payable by the Customer.
- (c) The warranty set out in paragraph (b) shall not apply in respect of any defects which arise from or in connection with (i) any failure by the Customer to properly operate or maintain the Goods in accordance with manufacturer's or BRR's instructions or in accordance with law (ii) incorrect handling or modification of the Goods by the Customer (iii) any defective products or materials used by the Customer in conjunction with the Goods or (iv) fair wear and tear arising from normal operation of the Goods.
- (d) In the case of Goods that are manufactured by third parties then BRR's warranty will in all cases be further limited by the warranty provided by such third party manufacturer.

### **7 DEFAULT AND LIMITATION OF LIABILITY:**

The Customer acknowledges that it has not relied on and BRR has not provided to the Customer any representation or warranty relating to the Goods other than the warranties set out in these terms and conditions. Except for the warranties in clause 6, all warranties, representations or conditions (express or implied) in relation to the Goods including the provision of services are excluded to the full extent permitted by law. If at the time of delivery the Goods do not meet the relevant Specification or fail to comply with the terms of the Agreement, as the case may be, BRR shall, at its option and at its cost, repair or replace the non-complying Goods or refund the invoiced Price of such Goods (where this has already been paid by the Customer to BRR), provided that the Customer has provided BRR written notice of the non-compliance promptly (and within 12 months of delivery), and has permitted BRR to inspect the Goods (or if requested by BRR has provided the component of the Goods referred to in the notice to BRR, at BRR's cost). Any claims for short delivery shall only be considered where advised in writing to BRR within 7 days of arrival at the Site. If BRR is required to replace any component of the Goods it shall ensure that the relevant item is delivered to the Customer. The remedies set out in clauses 6 and 7 are the Customer's entire remedies in respect of any failure by BRR to comply with the terms of the Agreement. Under no circumstances shall BRR be liable for any consequential, indirect or special loss or injury of any kind suffered or incurred by the Customer or any of its employees, agents, contractors or customers or any other third party in connection with the supply of the Goods, including any loss of profit, goodwill, business opportunity, production time or production capacity.

### **8 INTELLECTUAL PROPERTY RIGHTS:**

- (a) Unless the Customer and BRR agree otherwise in writing, the Customer agrees that all intellectual and industrial property including, without limitation, any invention, discovery, patent, trade mark, copyright, design, trade secret or know-how, including "works" as that term is defined in section 10(1) of the Copyright Act 1968 (Cth) such as computer programs ("Intellectual Property") produced or developed by or on behalf of BRR in relation to the supply of the Goods, any services or otherwise in relation to the Agreement shall be the sole and absolute property of BRR and/or its licensors.
- (b) The Customer assigns all such Intellectual Property to BRR and agrees to execute any document required to evidence such assignment or to perfect BRR's ownership of such Intellectual Property.
- (c) Without limiting the above, the Customer acknowledges that all Intellectual Property in drawings made available by BRR vests in BRR and that the Customer shall not make any copies of such drawings without the approval of BRR. Any specifications, descriptions, weights, dimensions or performance figures set out in the drawings are approximations.
- (d) BRR does provide any Software to the Customer in connection with the supply of the Goods, BRR grants to the Customer a non-exclusive, perpetual (unless terminated in accordance with clause 10) licence to use the Software in connection with the Goods. This licence does not permit the Customer to sub-licence or rent to Software or use the Software to provide services to any third party without the written approval of BRR.
- (e) The Customer warrants that any design or instruction furnished to BRR shall not be such as will cause BRR to infringe any third party rights relating to Intellectual Property, and the Customer agrees to indemnify BRR in respect of all such claims of infringement.

### **9 CANCELLATION:**

BRR may agree to a Customer's request to cancel any order for the Goods in its absolute discretion. In the event of cancellation, the Customer must reimburse

BRR for any costs or expenses incurred or committed by BRR in preparation for and in execution of the order, which shall include without limitation an amount equal to the net profit relating to the supply of the Goods to the Customer.

#### **10 DEFAULT AND TERMINATION:**

If the Customer:

- (a) fails to make a payment due to BRR, within 7 days of notice from BRR specifying such payment is due;
- (b) is in breach of any other obligation set out in the Agreement, provided that BRR has provided a notice to the Customer setting out the circumstances of the breach and at least 14 days have elapsed from the date of such notice; or

(c) suffers an Insolvency Event,

then BRR without prejudice to any other remedy that may be available to it, has the immediate right to do one or more of the following:

- (d) demand that the Customer immediately account to BRR for any money or property owed to BRR under this Agreement or on any other account (and the Customer shall comply with such demand);
- (e) withhold further deliveries;
- (f) re-take possession of the Goods (or any components thereof delivered) in relation to which title has not passed under clause 5, without notice to the Customer and for that purpose the Customer authorises BRR to enter upon any premises occupied by the Customer or any other place that the Goods (or any components thereof) are stored, free from trespass; and

(g) terminate the Agreement and recover from the Customer, at a minimum, reasonable compensation for materials purchased or ordered, and labour expended, in complying with the Agreement.

#### **11 FORCE MAJEURE:**

Neither party is liable for any loss, liability or damage incurred by the other party as a result of any delay or failure to observe any obligation under the Agreement (other than an obligation to pay money) as a result of any circumstance beyond the party's control, including but not limited to any strike, lock-out, labour dispute, act of God, fire, flood, accidental or malicious damage, breakdown in machinery or delay or failure of a supplier to supply. The party affected must notify the other party as soon as possible of such circumstance. During the continuance of such circumstances the obligations of the party affected, to the extent that they are affected by the force majeure event, are suspended and resume as soon as practical after the circumstances have ceased to have effect.

#### **12 RETURNS AND CREDITS:**

Unused and resaleable standard Goods may, at the sole discretion of BRR, be returned for credit. BRR will apply the following principles when considering a return request:

- (a) requests for a return must be made within 7 days of delivery and accompanied by BRR delivery docket and state the reason for the return;
- (b) if BRR agrees to a return the Goods must be delivered to BRR's nominated premises within 7 days of BRR's confirmation it will accept the return;
- (c) no Goods will be accepted for return under any circumstances unless the invoiced value is greater than \$1000 (excluding GST);
- (d) where Goods which have been supplied by BRR on a manufactured/assembled to order or indent only basis, BRR will not accept them for return;
- (e) BRR may from time to time develop further policies in connection with the return of Goods, which will be notified to the Customer;
- (f) if BRR accepts a return and provided the above conditions are adhered to by the Customer, BRR will issue a credit within 14 days; and
- (g) the above does not apply to Goods returned under clauses 6 and 7.

#### **13 PPS LAW:**

(a) In this clause PPSA means the *Personal Property Securities Act 2009 (Cth)* and terms defined in the PPSA have the same meaning in this clause (unless otherwise defined in this clause).

(b) The Customer agrees that the Agreement constitutes a security agreement for the purposes of the PPSA.

(c) The Customer grants to BRR, VIA and each of their Related Bodies Corporate (each a "Secured Party"), a security interest in all Unpaid Goods supplied to the Customer by BRR and any proceeds in respect of those Unpaid Goods ("Proceeds") to secure the amounts outstanding to BRR. The Customer acknowledges that such security interest shall be held jointly and severally by the Secured Parties and agrees that such security interest may be enforced by any one or more of the Secured Parties. To the extent that any Secured Party is not a party to the Agreement, the Agreement shall take effect as a deed poll by the Customer in favour of that Secured Party and shall be enforceable by that Secured Party.

(d) The Customer agrees that a Secured Party may register, in any manner it considers appropriate, any security interest on the Personal Property Securities Register which in its opinion is created by or contemplated under the Agreement and, for the avoidance of doubt, may include any or all of the Secured Parties as the secured party in such registration. The Customer agrees not to lodge any Amendment Demand with respect to any registration made by a Secured Party.

(e) The Customer agrees, at its own cost, to do anything (such as obtaining consents, signing and producing documents and supplying information) which a Secured Party reasonably requires for the purposes of: (i) ensuring that any security interest is enforceable, perfected with the highest priority and otherwise effective; or (ii) enabling a Secured Party to apply for any registration, or give any notification, in connection with a security interest; or (iii) enabling a Secured Party to exercise rights in connection with a security interest.

(f) The Customer agrees that until ownership of the Unpaid Goods has passed to the Customer under clause 5, it will not enter into any agreement or arrangement which gives rise to, or permits any other person to register, any security interest in respect of the Unpaid Goods or the Proceeds without the Supplier's prior written consent, and will not otherwise deal with the Unpaid Goods or Proceeds in a way that will or may prejudice any rights of a Secured Party under the Agreement.

(g) To the maximum extent permitted by law, the Customer waives:

(i) its rights to receive any notice or statement that is required by: (A) any provision of the PPSA (including a notice of a verification statement); or (B) any other law before a secured party exercises a right, power or remedy; and

(ii) any time period that must otherwise lapse under any law before a Secured Party exercises a right, power or remedy.

If the law which requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse of time is one day or the minimum period the law allows to be agreed (whichever is the longer). However, nothing in this clause prohibits a Secured Party from giving a notice under the PPSA or any other law.

#### **14 GENERAL:**

(a) The Agreement represents the entire agreement between BRR and the Customer relating to the supply of the Goods and any modification or variation to the Agreement must be agreed in writing by BRR.

(b) The Customer may not assign any right or obligation under the Agreement without the written consent of BRR.

(c) The Customer may not exercise any right of withholding, deduction or set off.

- (d) The Customer agrees that BRR may apply payments to Amounts Outstanding as it sees fit, notwithstanding any contrary appropriation by the Customer.
- (e) If any provision of the Agreement is unenforceable or void either in whole or in part for any reason then that provision (or part) is deemed to be deleted without in any way affecting the validity or enforceability of any other provision.
- (f) This Agreement shall be governed by the law in force in Victoria and the parties submit to the non-exclusive jurisdiction of the courts of Victoria in relation to any dispute arising under the Agreement.
- (g) The Customer will not divulge to any person the forms of the Agreement or any information provided by BRR in relation to the Agreement without the prior written consent of BRR, except as required by law or for the purposes of obtaining professional, legal, financial or taxation advice.
- (h) If and to the extent that the supply of Goods and/or services to the Customer under this Agreement is a taxable supply within the meaning of the GST Law, the Price for the Goods will be increased to include GST payable by the Customer in respect of the supply. BRR and the Customer agree that they will be registered persons within the meaning of the GST Law, and that BRR shall provide tax invoices to the Customer in the form prescribed by the GST Law.

## **15 DISPUTE RESOLUTION:**

BRR and the Customer agree that any dispute arising under the Agreement shall be determined in accordance with this clause. Prior to a party commencing any legal proceedings in respect of any matter arising under the Agreement, the party must issue a written notice to the other party outlining the circumstances of the dispute. Following issue of a notice by a party, as soon as reasonably practicable, but in any event no longer than 14 days from the date of the notice, appropriately authorised representatives of each of the parties must meet to discuss the matters set out in the notice provided under this clause. In the event that the parties cannot resolve the dispute within 14 days of the discussions between the authorised representatives, either party may commence litigation in respect of the matters in dispute, provided it has given notice to the other party of its intention to do so.

## **16 DEFINITIONS:**

"*Agreement*" means each Purchase Order accepted by BRR, and these terms and conditions.

"*Amounts Outstanding*" means, at any time, all amounts owed by the Customer at that time whether arising under the Agreement or otherwise.

"*BRR*" means Build Run Repair (Australia) Pty Ltd (ACN 155 555 052).

"*Customer*" means the person (including its successors and permitted assigns) acquiring the Goods from BRR.

"*Goods*" means all equipment and other goods, and also any services, ordered by Customer from BRR.

"*GST*" means has the meaning in the GST Law.

"*GST Law*" means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

"*Insolvency Event*" means the occurrence of any event which results in BRR holding the reasonable belief that the Customer has become unable to pay its debts as and when they fall due, including the Customer proposing any arrangements with its creditors, the Customer being placed in administration, a resolution is passed or proposed or a petition is presented or application filed or an order is made for the winding up or liquidation of the Customer or a receiver or controller is appointed over any property of the Customer.

"*Intellectual Property*" has the meaning set out in clause 8(a);

"*Price*" means the amount payable by the Customer to BRR for the supply of the Goods, as set out in the Price List.

"*Price List*" means the most recent price list relating to the Goods, published by BRR from time to time.

"*Proceeds*" has the meaning set out in clause 13 (f).

"*Purchase Order*" means the purchase order or similar document placed by the Customer with BRR which evidences the Customer's request for the Goods.

"*Related Body Corporate*" has the meaning given to that term in the *Corporations Act 2001 (Cth)*, and Related Bodies Corporate has a corresponding meaning

"*Site*" means the premises at which the Goods will be installed or utilised.

"*Software*" means all software specified in the Specifications that will be provided to the Customer and any software developed by BRR or provided to the Customer for use in connection with the Agreement.

"*Specifications*" means the specifications for the Goods published by BRR from time to time, such other document as may be agreed by the Customer and BRR.

"*Unpaid Goods*" has the meaning set out in clause 5.

"*VIA*" means Visy Industries Australia Pty Ltd (ACN 004 337 615).