Brown Brothers Engineers Australia Pty Ltd
Member of AxFlow Group

TERMS AND CONDITIONS OF TRADE

To the fullest extent legally possible all contracts, dealings and/or arrangements made between BBEA and the Customer relating to the Goods are subject to the following Terms and Conditions of Trade unless otherwise agreed in writing by BBEA and the Customer.

1. Definitions:

In these Terms, unless the context otherwise requires:

(a) "**Accession**" means any of the Goods which are installed in, or affixed to, other goods, and excludes Processed Goods;

(b) "**ACL**" means Australian Consumer Law Schedule of the Competition and Consumer Act 2010 (C'th);

(c) "**Amount Owing**" means at any time all amounts payable by the Customer to BBEA at that time in connection with the Goods whether or not due for payment under these Terms;

(d) "**BBEA**" means Brown Brothers Engineers Australia Pty Ltd ABN 79 064 496 813;

(e) "**BBEA Group**" means BBEA and each of its subsidiaries, associated companies and related entities;

(f) "**Contract**" means:

(i) the 'Application for Commercial Credit Amount' on page 1 (if applicable);

(ii) the Order;

(iii) the quotation issued under clause 6;

(iv) these Terms; and

(v) (v) the 'Agreement to Guarantee and Indemnity' attached to these Terms (if applicable);

(g) "**Consequential Loss**" means any:

(i) loss or damage, not arising naturally or directly (that is, according to the usual course of things) from the relevant breach, act or omission, whether or not that loss or damage may reasonably be supposed to have been in the contemplation of the parties, when they entered the Contract, as the probable result of that breach, act or omission; or

(ii) loss of revenue, profit, opportunity, business, goodwill or reputation; failure to realise anticipated savings; loss or corruption of data; downtime costs; damage to credit rating; or penalties payable under contracts other than Contract (in each case, whether direct or indirect).

(h) **"Control"** has the meaning given to that term in Section 50AA(1) of the *Corporations Act 2001 (Cth)*;

(i) "**Customer**" means the customer specified in the 'Application for Commercial Credit Amount' on page 1 (or if there is no such application, the person or entity placing the Order, or on whose behalf the Order is placed, with BBEA);

(j) **"Estimated Delivery Timeframe"** means the estimated delivery timeframe for the Goods agreed between the Customer and BBEA in writing;

(k) "**Goods**" means any goods, products and/or materials supplied, or to be supplied, by BBEA to the Customer pursuant to a binding Order;

(l) "**Order**" has the meaning given to it in clause 5(c);

(m)"**PPSA**" means the Personal Property Securities Act 2009 (C'th);

(n) "**Processed Goods**" means Goods which after their delivery, become part of a product or mass by being manufactured, processed, assembled, commingled or otherwise dealt with in such a way that their identity is lost in the product or mass;

(o) "**Terms**" means these terms and conditions of trade;

(p) the terms "financing statement", "proceeds", "purchase money security interest", "security agreement", "security interest" and "verification statement" have the respective meanings given to them under, or in the context of, the PPSA.

2. Payments:

(a) Payment is to be by cash, cheque, or electronic funds transfer without set-off or deduction of any kind, within 30 days from the end of month in which the invoice was issued.

(i) BBEA will apply a payment received from the Customer to the specific Amount Owing indicated by the Customer when making the payment, or otherwise to the oldest debt (if applicable).

(ii) The Customer will be charged a dishonour fee equal to the actual fee charged by a bank to BBEA if a payment made by the Customer under this clause is dishonoured due to the fault of the Customer.

(iii) Interest is payable on overdue accounts at a rate prescribed under the Penalty Interest Rates Act 1983 (Vic) on a simple interest basis.

(b) **Warranties:**

(a) To the extent permissible at law (including under ACL) all Goods sold by BBEA carry a warranty against defects and unless otherwise specified before an Order becomes binding under these Terms, this warranty shall extend for a period:

(i) of 12 months from the date of invoice; or

(ii) such longer contractual warranty period as provided to BBEA by the supplier of the Goods to BBEA.

(b) BBEA shall not be liable under clause 3(a)

(i) where the Customer has altered or modified the Goods, misapplied the Goods, or has subjected them to any unusual or non-recommended use, servicing or handling;

(ii) for loss caused by any factors beyond BBEA's reasonable control;

(iii) for second hand goods (provided that the Customer is made aware that the Goods it is acquiring are second hand goods);

(iv) where the terms of any written warranty or any manufacturers' handbook provided to the Customer has not been complied with and such non-compliance has contributed to the loss;

(v) where electrical Goods have not been used on the correct electrical current or not in the manner or not for the duty recommended by BBEA;

(vi) for failure or damage to pumping equipment caused by sand or any abrasive material; or

(vii) for repairs or jobs using Customer supplied material.

4. Returns:

BBEA may in its absolute discretion accept non-defective goods for return within fifteen (15) days of the Delivery date in which case BBEA may require the Customer to pay handling and /or a restocking fee up to twenty percent (20%) of the value of the returned Goods plus any freight costs.

5. Placement of Orders:

(a) The Customer acknowledges that each binding Order constitutes a security agreement on the terms set out in these Terms, and that BBEA may register a financing statement (or comparable notice in any other relevant jurisdiction) on behalf of itself in respect of the security interests provided for by the Orders and these Terms.

(b) An order or an offer to purchase Goods ("**Order**") can be made by the Customer in writing or verbally.

(c) The Customer agrees that if the Goods which are the subject of an Order, are being acquired for a purpose other than the stated

or usual purpose (including, but not limited to, use as a component part of another product) or are required by the Customer to possess special characteristics, the Customer must specify that purpose or those characteristics in any such Order.

(d) These Terms apply to every Order that becomes binding under clause 6 unless otherwise agreed in writing by BBEA and the Customer.

6. Purchase Price and Quotations:

(a) Following receipt of an Order under clause 5, BBEA will provide the Customer with a written quotation under this clause 6 setting out the fees, charges, collection point (if applicable), confirmation of delivery address (if applicable) and Estimated Delivery Timeframe applicable to the Order.

(b) In the quotation, BBEA must also notify the Customer on writing if any or all of the following will apply to the Order:

(i) payment in advance;
(ii) a deposit;
(iii) progress payment; or
(iv) a letter of credit.

(c) An Order becomes binding on the Customer and BBEA if the Customer accepts the quotation in writing or verbally.

(d) The price for Goods will be as quoted to the Customer in writing under clause 6(a) unless otherwise agreed by the parties in writing.

(e) BBEA may withdraw any quotation before it is accepted by the Customer in accordance with this clause 6, and in any event, any quotation will lapse without notice 30 days after it is issued to the Customer in writing if not accepted prior.

(f) Unless otherwise specified, BBEA's prices and charges stated in the quotation are exclusive of sales tax, GST and government imposts and do not include delivery.

7. Delivery:

(a) If a Customer requests that BBEA delivers the Goods to the Customer, BBEA may, in its discretion, provide a quote to the Customer to deliver the Goods to the Customer at a specified address, and such quote will be included in the quotation provided by BBEA under clause 6.

(b) BBEA will use its best endeavours to deliver the Goods (if BBEA's quote for delivering the Goods has been accepted by the Customer) or make the Goods available for collection by the Customer within the Estimated Delivery Timeframe. However, the Customer acknowledges and agrees that the Estimated Delivery Timeframe is an estimate only and may need to be updated by BBEA. If the Estimated Delivery Timeframe does need to be updated by BBEA, BBEA will notify the Customer in writing as soon as is practicable. If the Goods cannot be delivered within 14 days of the Estimated Delivery Timeframe, the Customer may cancel the Order and in such circumstances the Customer will be entitled to a full refund of all amounts paid to BBEA in respect of the Order.

(c) Goods will be delivered to the Customer if:

(i) the Customer and BBEA have agreed for BBEA to deliver the Goods to the Customer, on receipt of the Goods by the Customer; or
(ii) if the Customer will collect the Goods from BBEA, on collection of the Goods by the Customer.

(d) If the Customer is to collect the Goods from BBEA, BBEA will notify the Customer in writing of the date on which the Goods will be ready for collection, or when BBEA will be able to provide an estimate (if they require confirmation from the manufacturer).

(e) If the Customer does not collect the Goods within 15 days of the notified date or, if BBEA is to deliver the Goods and the delivery address is unattended at the agreed date (and is not attended upon BBEA taking reasonable steps to contact the Customer) or the Customer unreasonably refuses to take delivery of the Goods, the Customer agrees to pay BBEA's reasonable costs of holding or handling Goods until such time as the Goods are collected by the Customer or alternative arrangements for delivery are agreed by the Customer and BBEA. Such costs:

(i) must be reflective of BBEA's actual costs incurred in holding and handling the Goods; and
(ii) will be capped at $20 per day.

(f) BBEA may invoice the Customer for Goods that are ready for delivery, notwithstanding that the Customer may have requested BBEA to delay delivery or collection.

(g) Subject to clause 3 and clause 5 , the Customer must take reasonable steps to inspect the Goods upon delivery, and must notify BBEA of any claim for defective Goods in writing within seven days of becoming aware of the defect.

8. Credit Limit:

BBEA can vary or withdraw a Customer's credit facility or limit on 30 days prior written notice. However, if BBEA has reasonable grounds to be concerned about the Customer's ability or willingness to pay its debts as and when they fall due, BBEA can vary or withdraw a Customer's credit facility or limit on a shorter notice period, provided the shorter notice period is reasonable in the circumstances.

9. Variation and Cancellation:

(a) Subject to (b), variation or cancellation of any Order, Contract, dealing or arrangement by the Customer must be on terms agreed in writing by BBEA (acting reasonably).

(b) A Customer may, without charge or penalty, cancel an Order by written notice to BBEA if BBEA has not commenced fulfilling the Order. In such circumstances, all amounts paid by the Customer to BBEA in respect of the cancelled Order must be refunded.

10. Partial Delivery, Forward Orders:

If the Customer places forward Orders or requests partial or instalment delivery, the Customer agrees to pay for so m u c h of any Order as is from time to time delivered by BBEA subject to receipt of a valid invoice.

11. Product:

BBEA may update, modify, make substitution or alter any of its Goods or any component or raw material incorporated in or used in forming any part of any Goods as part of its ongoing business on 10 days written notice to the Customer. The Customer is not obliged to accept updated, modified, substituted or altered Goods in substitution of any Goods ordered by the Customer unless the Customer has consented to receiving the updated, modified, substituted or altered Goods in writing.

(b) To the extent permissible at law (including under the ACL), BBEA disclaims any responsibility or liability relating to any Goods to the extent that the loss is caused by:

(i) designs, drawings, specifications or measurements etc. or materials provided or approved by or on behalf of the Customer; and/or
(ii) the Customer, or a third party authorised by the Customer, incorrectly using, sorting or handling the Goods .

(c) The Customer must not alter, modify or use Goods in contravention of BBEA's instructions, or manufacturer guidelines.

12. Intellectual Property:

(a) The Customer must not advertise, use or represent any intellectual property of BBEA or of any Goods themselves in any way without the prior written consent of BBEA.

13. Default:

(a) If a party (**Defaulting Party**):

(i) becomes insolvent or ceases to conduct its business as a going concern, or applies for or consents to or otherwise obtains the appointment of a receiver, trustee, administrator, liquidator or similar appointment to the Defaulting Party or assets of the Defaulting Party, or if proceedings are instituted under any applicable insolvency law; or
(ii) commits any breach of the Terms and such breach has

not been cured within 10 Business Days (or such longer period as may be reasonable in the circumstances) from the date of the other party (Non-Defaulting Party) providing written notice of such breach to the Defaulting Party,

(iii) then the Non-Defaulting Party may terminate the Contract with immediate effect.

(b) If the Contract ends:

(i) all amounts due to BBEA for Goods delivered are immediately due, and are payable on the later of 5 Business Days of the end of the Contract and BBEA issuing a final invoice;

(ii) in relation to Goods ready for delivery, the Customer must collect the Goods within 5 Business Days, and pay for the Goods on the later of 5 Business Days of the end of the Contract and BBEA issuing a final invoice;

(iii) in relation to Goods that are subject to binding Orders but are not ready for delivery, BBEA will cease preparing those Goods and the relevant Orders will be cancelled;

(iv) where BBEA is storing the Customer's Goods which are ready for collection, the Customer must collect the Goods within 5 Business Days; and

(v) each party may pursue any other remedy available to it at law or in equity, and each such right and remedy may be enforced concurrently with any other right or remedy.

(vi) Guarantee:

Unless otherwise agreed in writing by BBEA, the Customer agrees to procure each of its directors to execute an agreement to guarantee and indemnify in favour of BBEA and in the form attached to these Terms to be returned to BBEA at the same time as the signed 'Application for Commercial Credit Amount' on page 1 (if applicable).

14. No Merger:

Termination of these Terms, a Contract and/or dealings between the Customer and BBEA will not end those provisions of these Terms that are capable of surviving termination.

15. Jurisdiction:

All Contracts are governed by the laws of the state of Victoria and the parties submit to the non-exclusive jurisdiction of the appropriate courts in Victoria.

16. Force Majeure:

A party (**Affected Party**) will not be in default or breach of any dealings with the other party as a result of a force majeure event (i.e. anything beyond that party's reasonable control) (**Force Majeure Event**). While the Force Majeure Event is continuing the Affected Party must take all reasonable steps to minimise the duration of the Force Majeure Event and avoid or mitigate the effects of, and any loss suffered or incurred by it or the other party as a result of, the Force Majeure Event. If that failure or delay the Force Majeure Event prevents performance under this Agreement for a period that exceeds 90 days, either party may terminate the Contract by giving written notice. This clause does not apply to any obligation to pay money.

17. Waiver:

If a party elects not to exercise any rights arising as a result of breach of these Terms or a Contract it will not constitute a waiver of any rights relating to any subsequent or other breach.

18. Severability:

If a provision of these Terms or a Contract would but for this clause, be unenforceable, that provision must be read down to that extent necessary to avoid that result and if that provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of these Terms and Contract.

19. Privacy disclosure and consent:

The Customer authorises BBEA to:

(a) obtain credit information about its personal, consumer and commercial credit worthiness from any bank or trade referee disclosed in any an application for commercial credit with BBEA completed by it and provided to BBEA and from any other credit provider or credit reporting agency for the purpose of assessing its application, or in connection with any guarantee given by the Customer;

(b) use, disclose or exchange with other credit providers and other members of the BBEA Group information about the Customer's credit arrangements as reasonably required to assess its application for credit, monitor credit worthiness and collect overdue accounts; and

(c) disclose the contents of any credit report on the Customer to any related entities of BBEA, and any of their solicitors, professional advisors or mercantile agents (on a confidential and need to know basis, in connection with the execution or enforcement of this Contract), in accordance with BBEA's privacy policy.

20. All Divisions:

The Customer agrees that these Terms will apply to all dealings between the Customer and BBEA and any part or member of the BBEA Group and will be deemed incorporated into all Contracts unless expressly agreed in writing otherwise by BBEA.

21. Recalls:

In the event of a product recall the Customer must promptly give BBEA such assistance as BBEA reasonably requires in relation to that recall at BBEA's cost.

22. Exclusions:

(a) The Customer must make its own enquiries in relation to the suitability of the Goods for the Customer's purposes.

Neither party is liable to the other party for any Consequential Loss incurred by it in connection with these Terms, the Contract or the Goods.

23. Retention of Title and liability for Goods:

(a) Immediately upon delivery, the Customer accepts risk and liability for the Goods.

(b) BBEA retains legal and equitable title in any Goods supplied, or to be supplied, to the Customer until full payment of the purchase price of the Goods has been received by BBEA. Until such full payment has been received, the following terms apply:

(i) Notwithstanding that title in the Goods remains with BBEA until full payment, the Customer may sell or use the Goods in the ordinary course of the Customer's business. As between the Customer and the purchaser of any item of the Goods, the Customer sells as principal and not as agent of BBEA.

(ii) Until Goods are sold (if applicable), the Customer must take all reasonable steps to keep the Goods safe and free from deterioration, destruction, loss or harm, clearly designate the Goods as the property of BBEA, store them in such a way they are clearly identified as the property of BBEA and keep full and complete records, firstly, of the physical location of the Goods and, secondly, the ownership of the Goods by BBEA.

(iii) If BBEA is entitled to terminate the Contract, BBEA may, on prior written and reasonable notice to the Customer, and before the sale of any item of Goods by the Customer, recover and retake possession of such Goods and otherwise exercise in relation to the Goods, any of its rights whether those rights are as owner and/or unpaid seller or otherwise and whether those rights are conferred by common law, contract, statute or in any other way. In order to exercise such entitlement, BBEA and its agents are authorised by the Customer to enter any of the Customer's premises on prior written and reasonable notice to the Customer. BBEA and its agents agree to follow all reasonable directions provided by the

Customer in relation to accessing its premises, and safety at its premises. BBEA and its agents agree to take all reasonable care in removing the Goods from such premises.

(iv) The Customer may only install or affix the Goods to other goods (so that they become an Accession to those other goods) or use or permit the Goods to be manufactured, processed, assembled, commingled or otherwise dealt with (so that they become Processed Goods) in the ordinary course of its normal business.

(v) The reservation of title and ownership under this clause 23 is effective whether or not the Goods have been altered from their supplied form, or commingled with other goods.

24. Security:

(a) The Customer grants to BBEA a security interest in the Goods to secure payment of the Amount Owing. The security interest extends to and continues in all proceeds, Accessions and Processed Goods, and is a purchase money security interest to the extent to which it secures payment of that part of the Amount Owing which comprises the aggregate unpaid purchase price of the Goods.

The Customer consents to BBEA effecting a registration on the PPSA register (in any manner BBEA considers appropriate) in relation to any security interest contemplated by these Terms and further agrees:

(i) to do all things reasonably necessary and required by BBEA to make sure that the security interest is registerable; and

(ii) that it must not do, or permit anything to be done by its affiliates, that may result in the purchase money security interest granted to BBEA ranking in priority behind any other security interest.

(b) To the extent that the Goods are for the Customer's business use, the Customer agrees to the extent permitted under the PPSA, that the Customer has no right:

(i) to receive notice of removal of an accession under the PPSA; or

(ii) under Chapter 4 of the PPSA.

(c) Unless otherwise agreed to in writing by BBEA, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.

(d) The Customer must not assign or grant a security interest in respect of any accounts owed to it in relation to the Goods where there is an Amount Owing without BBEA's prior written consent.

25. Building and General:

The rights, powers and remedies available to either party under these Terms are in addition to and are not in derogation of the parties' powers, rights and remedies existing at common law, or given by any law at any time in force (including but not limited to the Building and Construction Industry Security of Payment Act 2002 (Vic)).

26. Pallets:

Where reasonably requested by BBEA, the Customer will return pallets and any re- useable packaging provided with Goods.

27. Exports:

Exports of any Goods are governed by these Terms and all international trade conventions and/or terms including but not limited to the United Nations Convention on Contracts for the International Sale of Goods (known as the Vienna Sales Convention 1980) are expressly excluded unless otherwise stipulated in these Terms or on BBEA's invoice for the Goods.

28. Compliance with Acts and Regulations:

(a) Where the Customer grant access to BBEA to the Customer's property for the purposes of BBEA delivering Goods to the Customer, the Customer must ensure the property is in a safe state for BBEA and its employees to undertake the delivery.

(b) If BBEA has reasonable concerns regarding the safety of BBEA's employees or contractors in relation to accessing the Customer's property for deliveries, BBEA shall be entitled to halt the delivery until such time as BBEA's safety concerns have been resolved to BBEA's reasonable satisfaction.

29. Customer Material:

The Customer agrees that:

(a) it has sole responsibility to ensure that materials, designs, drawings, specifications, procedures etc. which are provided by or on behalf of the Customer, to be used by BBEA in meeting any Orders, are correct and appropriate; and

(b) any of the Customer's materials or property used by BBEA in the production of any Goods must be of merchantable quality and fit for the purpose.

30. Change of Control:

Either party must not transfer (either by assignment or novation), allow a change in Control to occur to it, or otherwise deal with this Contract except with the prior written consent of the other party, which consent must not be unreasonably withheld.

31. Specifications:

(a) To the extent permissible under law (including the ACL), any illustration drawing or specification supplied by BBEA are drafts and approximates and are for illustration purposes and the Customer should not rely on the accuracy of such specifications in any way.

(b) Any tangible or intellectual property rights in specifications remain the property of BBEA.

(c) Specifications are to be treated at all times as confidential and not made use of without the prior written consent of BBEA.

32. Change to Terms:

BBEA may vary or replace these Terms by notifying the Customer in writing, including by email. Any amended or new terms and conditions take effect from the date of the Customer's next Order. BBEA agrees to provide the Customer with 30 days' written notice of the changes, unless the change is required to comply with a legal requirement, in which case, BBEA will provide the Customer with as much notice as is reasonable in the circumstances.

Notices:

Any notice under these Terms or any Contract must be in writing, and may be delivered by email or posted to a party at their postal address (as applicable) last notified by them to the other party. A party may change its email address or postal address for notices by notifying the other party in writing.