

Except where BKB and the Customer have entered into a contract or agreement signed by both parties, in which case the terms of that contract/agreement apply to the Purchase Order, the Customer acknowledges that these Terms and Conditions will apply to all Customer's Purchase Orders and together constitute the entire Contract between the parties.

BKB can change or amend these Terms and Conditions from time to time, in which case the version of Terms and Conditions current at the date of Purchase Order placement applies. Customer must familiarize itself with the version of Terms and Conditions current at the date of Purchase Order placement.

### 1. DEFINITIONS

**Australian Consumer Law** means the law as set out in the Schedule 2 of the Competition and Consumer Act 2010.

**Business Day** means any day that is not a Saturday or Sunday or a public holiday or bank holiday in the place concerned.

**Consumer Contract** means a contract for the acquisition of Products and Services by a 'consumer' as that term is defined in the section 3 of the Australian Consumer Law.

**Contract** means a contract for sale by BKB to the Customer of the Products and Services incorporating these Terms and Conditions.

**Credit Claim** is a claim raised by the Customer in relation to BKB invoice.

**Credit Limit** means a maximum unpaid amount for Products sold and/or services rendered that BKB allows to the Customer at any particular moment. Credit Limit is determined by BKB based on Customer's credit screening and payment history and can be reduced or cancelled at BKB discretion if Customer is in default of BKB payment terms.

**Customer** means the person or legal entity identified in BKB Quotation, Order Confirmation or Tax Invoice.

**Force Majeure** means a credible threat of or act of terrorism, act of God, fire, explosion, atmospheric disturbance, lightning, flood, (other than any flood which should be reasonably anticipated), earthquake, war or warlike conditions, maritime or aviation disaster, civil commotion or civil disturbance, political unrest and demonstrations, national strikes, embargoes, blockades, riots, epidemic, ionising radiation or contamination by radioactivity, all of which must be beyond the reasonable control of, and must not be caused by, the party claiming Force Majeure.

**BKB** means BKB Building Solutions Pty Ltd ABN 56 087 097 783 of 109-111 Wedgewood Road Hallam VIC 3803, Australia.

**Place of Delivery** means the place for delivery of Product designated by the Customer and agreed to by BKB.

**Price** means the price as per BKB Quotation, Order Confirmation or Tax Invoice and the latter will have precedence.

**Products** means the Products as described in the Quotation, Order Confirmation, or Tax Invoice and may include Service offerings.

**Purchase Order** means a Customer-generated document that authorizes a purchase transaction as per BKB Quotation and indicates types, quantities, and prices for Products or Services. When accepted by BKB, it becomes a Contract binding on both parties.

**Order Confirmation** means formal acknowledgement of Customer's Purchase Order by BKB.

**Quotation** means a formal statement submitted by BKB in response to Customer's request for Quotation and setting out the estimated cost for Products or Service Offerings. Quotations are subject to final approval of drawings, technical confirmations etc.

**Service Offerings** means the different service options offered by BKB for the Products or any part of them and for varying periods, as described in BKB Quotations and/or BKB Service Description.

**Warranty** means the warranty protection that comes standard with purchases from BKB, as set out in clause 15 of these Terms and Conditions. Certain legislation in force in Australia at each given time may provide consumer guarantees or impose obligations on BKB which cannot be excluded, restricted or modified, or only to a limited extent. These Terms and Conditions are subject to such legislation, including, without limitation the Australian Consumer Law.

### 2. PRODUCT ORDERS AND CONTRACT

**2.1** Customer must submit a Purchase Order that is consistent with the terms of the Quotation and these Terms and Conditions to [bkb@bkggroup.com.au](mailto:bkb@bkggroup.com.au) or to the respective BKB Account Manager.

**2.2** Once a Purchase Order is submitted by the Customer it will be accepted by BKB in its sole and absolute discretion. BKB may reject the Purchase Order if the Customer has exceeded their Credit Limit or otherwise breached these Terms and Conditions.

**2.3** The Products sold and/or Services rendered are subject to these Terms and Conditions to the exclusion of any other terms and conditions stipulated or referred to by the Customer. Any promotions and bargains offered by BKB to the Customers are subject to these Terms and Conditions.

**2.4** The Customer acknowledges that it is aware of the contents of and agrees to be bound by these Terms and Conditions. If Customer seeks to amend these Terms and Condition, they have to provide its

comments to BKB within 5 business days after receiving the Quotation, or prior to issuing BKB a Purchase Order. Any changes to become effective they must be accepted by BKB, executed in writing and duly signed by both parties. Neither BKB acknowledgement of a Purchase Order nor its failure to object to conflicting, different, or additional terms and conditions in a purchase order will be deemed an acceptance of such terms and conditions or a waiver of the provisions.

### 3. PRICE AND PAYMENT

**3.1.** BKB Quotation is valid for a period of 30 calendar days from the date of issuance unless other is specified in the Quotation. BKB reserves the right to alter any Quotations for which a Purchase Order has been placed after the expiry date.

**3.2.** Customer's changes to specifications, after acceptance of a Purchase Order by BKB, may incur additional costs.

**3.3.** The Customer must pay GST on all BKB goods and services in addition to any other amount that is required to be paid by the Customer to BKB under these Terms and Conditions. The GST payable by the Customer will appear as a separate line on the invoice.

**3.4.** The Customer must make payment for Products and Services within 30 calendar days after the end of the month in which the price for the Products and/or Services has been invoiced by BKB to the Customer, unless other is specified on the invoice.

**3.5.** Any legal or collection costs incurred in the recovery of any overdue amounts will be recoverable from the Customer. If the Customer fails to pay BKB any sum when due, BKB shall be entitled to charge legal costs incurred to collect the debt.

### 4. PURCHASE ORDER CANCELLATION

**4.1.** A Purchase Order may be cancelled by the Customer only with BKB consent in writing or as per clause 5.4 of these Terms and Conditions. Customer must notify BKB in writing at [bkb@bkggroup.com.au](mailto:bkb@bkggroup.com.au) of any Purchase Order cancellations.

BKB will charge a minimum cancellation fee of 20% of the Purchase Order value when the Customer cancels a Purchase Order. A further charge may be passed on to the Customer based on the level of funds committed by BKB and the progress of works performed towards the Purchase Order execution at the time of cancellation.

**4.2.** BKB shall be permitted to cancel Customer's Purchase order in case of delayed or faulty delivery from a sub-supplier or Force Majeure, and in the event of such incidents BKB will not be liable to pay damages or any other form of compensation to the Customer. BKB without delay will inform the Customer about any such event.

### 5. DELIVERY

**5.1.** BKB will deliver Products FCA or CIP (Incoterms 2010) as mutually agreed by the parties. Delivery terms for Products supplied overseas will be specified in a Quotation and a relevant Purchase Order. Offloading of Products is Customer's, or Customer's agent's, responsibility and at their expense.

**5.2.** Any dates provided by BKB for the delivery of the Products are estimates only and will not form part of the Contract. Actual delivery date will be affected by factors such as clearance of payment, Customer's location and availability of parts for the Product. BKB without delay will inform the Customer if delivery is delayed. BKB will not be liable for any damage or consequential loss caused by delay in delivery of the Products and/or Services.

**5.3.** For the efficiency of BKB production and fulfilment procedures, it may be necessary for BKB to deliver the Products by instalments in any sequence. Except as provided in clause 5.4, the Customer may not cancel the Contract where Products are delivered by instalments.

**5.4.** Customer may cancel a Purchase Order as per clause 4.1 if BKB is unable to deliver the Products within a reasonable period from the estimated delivery date.

**5.5.** Where the Customer fails and/or are unable and/or refuse to accept Delivery on the Delivery Date, then the Products will be deemed delivered on the Delivery Date as per Customer's Purchase Order, notwithstanding the Products still being on BKB site. BKB will issue a Tax invoice and demand payment for the Products.

**5.6.** Any changes to deliveries may be accepted at BKB discretion but may incur an extra fee and/or delay of delivery.

**5.7.** BKB reserves the right to deliver Products where the Customer is in default of BKB payment terms or has exceeded its Credit Limit, or otherwise is in breach of these Terms and Conditions.

### 6. RISK AND OWNERSHIP

**6.1** Risk in the Products will pass to the Customer upon delivery of the Products to the Customer as per agreed terms (clause 5.1) or collection of the Products (if agreed by BKB) by the Customer's agent or courier.

**6.2** In the event of clause 5.5, all risks to pass to Customer on deemed delivery date and the Customer accepts that BKB will charge reasonable storage costs (if applicable) until such time BKB deliver the Products at the Delivery Place.

**6.3.** The Customer will insure the Products for their full replacement value from the time that risk in the Products passes to the Customer until the time that title to the Products passes to the Customer.

**6.4.** Title in and to any Products will pass to the Customer after all amounts owed by the Customer to BKB in respect of those Products have been paid in full.

**6.5.** The Customer acknowledges that BKB has a 'purchase money security interest' for purpose of the Personal Property Security Act 2009(Cth) (the PPSA) in the Goods to the extent that it secures payment of the amount owing in relation to the Goods until the title passes to the Customer in accordance with clause 6.4. BKB is entitled to take any actions, ensuring the security interest is enforceable, perfected and otherwise effective. BKB do not need to give any notice under the PPSA (including the notice of a verification statement) unless notice is required under the PPSA and cannot be excluded. The parties agree that they are not required to disclose any information of the kind referred to in section 275(1) of the PPSA. In case of repeated supply, BKB may make a single registration against the Customer, which will be valid for one or more security interests arising from all Goods supply under these Terms and Conditions.

### 7. FREIGHT CHARGES

**7.1** Price in BKB Quotations is based on the agreed delivery terms as per clause 5.1, offloading excluded, unless other is explicitly specified.

**7.2** Additional airfreight charges will be applied to domestic and international deliveries depending on the weight and delivery location. Applied freight charges will be indicated in the Quotation and Tax Invoice.

**7.3** BKB reserves the right to introduce other charges and fees and to vary these at any time with 7 days prior written notice.

### 8. ACCEPTANCE AND RETURN OF PRODUCTS

**8.1** Unless the Customer notifies BKB to the contrary on the day of delivery, the Products is deemed to have been accepted by the Customer. The Customer will not be entitled to withhold payment of all or any of the Price of the Products whilst any claim is being investigated by BKB.

**8.2** Customer shall notify BKB in writing at [bkb@bkggroup.com.au](mailto:bkb@bkggroup.com.au) of any Product return and await BKB written consent accompanied by an official approval document number.

BKB is not under any obligation to accept the return of Products of proper quality.

**8.3.** Nothing in this clause 8 affects Customer's right to claim against BKB for a faulty Product under BKB warranty or under the Australian Consumer Law.

### 9. FORCE MAJEURE

Neither party will be liable for any delay in performing any of its obligations under these Terms and Conditions if such delay is caused by Force Majeure, and such party will be entitled to a reasonable extension of time for the performance of such obligations. Parties must immediately inform each other if they are affected by Force Majeure.

### 10. COPYRIGHT AND DOCUMENTS

**10.1** BKB is the exclusive owner of all of BKB Intellectual Property in the Products. The Customer will not challenge or dispute BKB ownership of the Intellectual Property. The Customer will not do anything or omit to do anything which could detrimentally affect the ownership of BKB Intellectual Property.

**10.2** All drawings and descriptions supplied to the Customer with or in relation to Products will remain the property of BKB and may not be copied, reproduced, passed onto or in any other way communicated to a third party without BKB writing permission. The ownership of drawings and descriptions necessary for the proper installation, starting, operation and maintenance of the supplier Products shall pass to the Customer together with Product's ownership. However, BKB may demand that these data are treated as confidential information.

**10.3** Unless otherwise agreed upon by BKB in writing, standard BKB operating and manual documentation will be provided with all Products. A variation to standard operating documentation requires prior written approval and may be subject to additional costs.

**10.4** Any information of weight, dimensions, price, technical and other data given on BKB website or in catalogues, leaflets, circular letters, advertisements, pictures and pricelists is approximate and shall only be binding on BKB when specific reference is made to a particular piece of information in contractual documents.

### 11. INSTALLATION AND COMMISSIONING

**11.1** Unless specifically mentioned in BKB Quotation, installation and commissioning is not included in the Product Price. Installation and commissioning can be requested from BKB and will be charged at a fee.

**11.2** For warranty to be valid, installation and commissioning must be undertaken in accordance with BKB installation-, operation-,

maintenance- or service manual, subject to the issue of a Certificate of practical Completion and Warranty by BKB.

**11.3** Any commissioning by BKB is to be done after installation is complete, power and water is available. Customer's failure to meet these commissioning requirements resulting in a futile visit may incur an extra fee to the Customer.

### 12. DEFAULT

**12.1** If the Customer makes default in payment or otherwise fails to carry out its obligations under these Terms and Conditions or repudiates a contract for the purchase of Products, or if the Customer exceeds its Credit Limit, or if the Customer stops payment, calls a meeting of its creditors or becomes insolvent or subject to bankruptcy laws, or being a company calls a meeting for the purpose of or goes into liquidation or has a winding up summons presented against it or has a receiver, controller or administrator appointed, BKB at its option and notwithstanding any waiver of such default or failure (and without prejudice to its rights under these terms), may suspend or cancel any Contract with the customer, any Customer's Purchase Order or Product delivery or require payment in cash before or on delivery.

**12.2** If title has not passed to the Customer under the clause 6, BKB may take possession of Products and dispose of them in its own interest, without prejudice to any claim it may have for any loss resulting from such re-sale, and the Credit Limit available to the Customer may be withdrawn by BKB at any time thereafter.

### 13. LIABILITY

**13.1** Subject to clauses 13.2 and 13.3, if BKB breaches its obligations under these Terms and Conditions, the Customer is entitled to claim damages in accordance with applicable law.

**13.2** Subject to Clause 13.4, for Products and Service Offerings which are not supplied under a Consumer Contract BKB total aggregate liability in respect of all losses or damages arising out of or in connection with the purchase, use or performance of Products or Services or in connection with these Terms and Conditions or a breach hereof, whether in contract, tort (including negligence), breach of statutory duty or otherwise, in respect of each event or series of connected events will not exceed the total price paid by the Customer for the purchase of Products/Services in dispute.

**13.3.** Subject to Clause 13.4, BKB shall not be liable, in contract, tort (including negligence), breach of statutory duty or otherwise, for loss of production, loss of turnover, loss of profit, loss of business opportunity, loss of data, loss of savings, loss of goodwill or any other indirect or consequential losses of any kind whatsoever arising under or in connection with the agreement or a breach hereof.

**13.4** The limitations set out herein shall not apply in case of wilful misconduct or gross negligence.

**13.5** BKB shall not be held liable for damage caused by Products modified or in any other way changed by the Customer after supply.

**13.6** The Customer will indemnify BKB and keep BKB fully and effectively indemnified against any loss of or damage to any property or injury to or death of any persons caused by any negligent act or omission or wilful misconduct of the Customer, its employees, agents or sub-contractors or by breach of its contractual obligations under these Terms and Conditions.

**13.7** In the event that BKB is held liable to compensate a third party for any damage or loss which is exempted from BKB liability, BKB shall be indemnified by the Customer for any expenses hereto.

**13.8.** To the extent permitted by law, any delivery and service response times stated by BKB are approximate only and BKB will not be liable for any direct or indirect loss or damage arising from its failure to meet such response times.

**13.9** Any typographical, clerical or other error or omission in sales literature, Quotation, Price List, Purchase Order Confirmation, invoice or other documents or information issued by BKB will be subject to correction without any liability on the part of BKB.

### 14. USE OF PRODUCTS

**14.1** BKB Products are designed for specific applications and purposes to work under certain operating conditions, including, but not limited to, site/environmental conditions (if any) and water quality (if applicable). The Customer agrees to only use the Product in accordance with Product manual and any specified operating conditions. Customer's use of the Product other than in accordance with BKB installation-, operation-, maintenance- or service manual may damage the Product. Such use may adversely affect the Customer's rights.

**14.2** BKB is not responsible for the design of the hydraulic systems in which the Product is installed, and, therefore, cannot guarantee the Product will be able to meet its specifications in the actual application or its fitness for purpose. Any reference to the fitness for intended purpose or suitability with respect to Products or Services in any of contract documents shall be understood as compliance with BKB specifications in stipulated operating conditions, including water quality (if applicable). Material compatibility is not the responsibility of BKB. BKB will supply standard material if material request is not specified by the Customer.

### 15. WARRANTY

**15.1** BKB warrants that the Products are free from defects. A Product is defective if it is not delivered in accordance with the agreement of the parties due to faulty material, design or workmanship.

**15.2** Not covered by the warranty is damage due to ordinary wear and tear; use of Product for applications for which they are not intended; modifications, alterations or repair of the Product undertaken by the Customer or a third party (not acting on BKB behalf); failure to follow BKB instructions (whether oral or in writing); installation, commissioning, operation (e.g. use of the Product outside its specifications) or maintenance not in accordance with BKB installation-, operation-, maintenance- or service manual; use of faulty or inadequate ancillary equipment in conjunction with the Product; the application of spare parts of poor quality (excluding the application of any BKB original spare parts); accidental or wilful damage or misuse of the Product by Customer or third party (not acting on BKB behalf); and Customer/end user's or its own Product's non-compliance with applicable law and regulation.

**15.3** This is a limited manufacturer's warranty which starts from the date when the Product is delivered to the Customer.

Each component may have a different warranty period in line with manufacturer's/supplier's warranty. The warranty period on supplied Products is set out in the Certificate of Practical Completion and Warranty issues by BKB as per clause 11.2.

**15.4** Customer must give notice to BKB at [bkb@bkggroup.com.au](mailto:bkb@bkggroup.com.au) or in writing at 109-111 Wedgewood Road Hallam VIC 3803, Australia of any defects without undue delay after the Customer became or should have become aware hereof. The notice shall include a description of the problem, Product number, serial number (if applicable) and a date of purchase.

BKB must remedy defective (parts of) Products by - at its discretion repairing or replacing (in whole or part) the defective (part of) Product within reasonable time depending on the nature of the defect. The defective Product must be returned to BKB workshop at 109-111 Wedgewood Road Hallam VIC 3803, Australia with a proof of purchase if requested by BKB. BKB may decide - at its discretion - to repair or replace defective Products at Customer or a third party's site. In this case, the Customer shall pay for a service visit to the site.

**15.5** Repair or replacement will be at BKB own cost, however:

i) All cost and expenses related to transport of (parts of) Products from place of delivery or from Customer's or third party's site to BKB workshop as well as any costs and expenses for dismounting and mounting and de-/re-installation and transport of BKB personnel to Customer's or third party's site shall be at Customer's account.

ii) All cost and expenses related to transport of BKB personnel and (parts of) Products from BKB workshop back to Customer's or third party's site shall be at BKB account if it shows that the Product subject to repair or replacement suffers from defects covered by BKB warranty.

iii) All costs and expenses related to defect rectification and transport of BKB personnel and (parts of) Products to and from BKB workshop back to Customer or third party's site shall be at Customer's account, irrespective of who is the owner in fact of the Product, if it shows that the Product subject to repair or replacement did not suffer from any defects covered by BKB warranty. In these circumstances, BKB will await a Purchase Order from the Customer, which shall cover any costs and expenses related to defect rectification, prior to service. Such payment is to be based on BKB pricelists and shall cover any costs and expenses related to such service.

**15.6** The Product may not be disassembled prior to remedy. Any failure to comply herewith will render the warranty null and void. Customer must at its expense clean the Goods and inform BKB about all poisonous media or other dangerous liquids which have been in contact with the returned Goods. BKB reserves the right not to remedy Products polluted by poisonous media or other liquids injurious to the environment or people.

**15.7** In case of remedy of defects, the warranty period related to the Product as such remains the same after remedy, however this may vary for each component, which may have a different warrant period in line with manufacturer's/supplier's warranty set out in the Certificate of Practical Completion and Warranty issues by BKB as per clause 11.2.

**15.8** To the extent permitted by law, the remedy of repair or replacement is the sole and exclusive remedy of the Customer with respect to defective Products. Subject to BKB obligations as regards BKB liability, BKB will have no other or further liability to the Customer whether for breach of agreement, negligence or otherwise in respect of any defect in a Product.

**15.9** If BKB breaches its obligations under the agreement, the Customer is entitled to claim damages in accordance with applicable law, subject to limitations in Clause 13 of these Terms and Conditions.

**15.10** BKB Products come with consumer guarantees that cannot be excluded under the Australian Consumer Law. Consumers under the Consumer Contracts are entitled to a replacement or refund for a major failure and compensation for reasonably foreseeable loss or damage. Consumers are also entitled to have Products repaired or replaced if Products fail to be of acceptable quality and the failure does

not amount to a major failure. To the extent the Product is not of a kind ordinarily acquired for personal, domestic or household use or consumption, BKB liability under this warranty is limited to repair or replacement of the Product in accordance with section 64A of the Australian Consumer Law.

**15.11** Customer acknowledges that any warranty given by the Customer to its buyers in relation to the Products (other than the warranty provided in these Terms and Conditions) is not BKB warranty and is full responsibility of the Customer. BKB will not accept claims under any such warranty and will not be liable to the Customer or any third party with respect to any Customer warranty.

**15.12** Where possible, the Customer must assist its buyers with respect to consumer guarantees and warranty. Customer must inform BKB at [bkb@bkggroup.com.au](mailto:bkb@bkggroup.com.au) or in writing at 109-111 Wedgewood Road Hallam VIC 3803, Australia of any claim received under consumer guarantees. Any actions with regard to consumer guarantees and this warranty requested by a third party can be undertaken by the Customer only after BKB provides written approval.

**15.13** The terms of this warranty may be inconsistent with the warranty statement in the Product manual. To the extent of any inconsistency, the terms of these Terms and Conditions shall prevail.

### 16. SPECIAL CONDITIONS

**16.1** BKB Privacy Policy is available at [www.bkggroup.com.au](http://www.bkggroup.com.au) and will apply to all personal information collected and processed by BKB with respect to, or in connection with conclusion or execution of any Contract under these Terms and Conditions.

**16.2** The Customer undertakes to comply with applicable export control and trade sanction laws and regulations, including but not limited to those of the European Union (EU) and the United States of America (U.S.) and delivery from BKB is conditioned upon such compliance.

**16.3** BKB shall not have any direct or indirect liability whatsoever (in contract, tort (including negligence), breach of statutory duty or otherwise), if and to the extent i) BKB due to any export control and trade sanctions rules (including any action executed as a consequence hereof) is prevented from doing business with the Customer or any end-user or ii) any export control and trade sanctions rules (including any action executed as a consequence hereof) restricts or delays BKB delivery of the Products.

### 17. GOVERNING LAW AND DISPUTE RESOLUTION

**17.1.** Any Contract made between BKB and the Customer under these Terms and Conditions shall be deemed to have been made in Victoria and will be governed by the laws of Victoria. The parties submit to the exclusive jurisdiction of the courts of Victoria.

**17.2** If any dispute or difference arises in connection with the Contract or these Terms and Conditions, then the parties will use their best endeavours to resolve the dispute or difference expeditiously before initiating any court or arbitration proceedings.

**17.3** If the dispute has not been resolved as per clause 17.2, either Party may commence legal proceedings in connection with that dispute in any Victorian court of competent jurisdiction.

### 18. GENERAL

**18.1** The Customer must not assign or otherwise transfer any of its rights and obligations under these Terms and Conditions whether in whole or in part without the prior written consent of BKB. Any such unauthorised assignment will be deemed null and void.

**18.2** If any provision of these Terms and Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms and Conditions and the remainder of the provisions in question will not be affected.

**18.3** No failure or delay on BKB part in exercising any power or right under these Terms and Conditions operates as a waiver, nor does any single or partial exercise of any power or right preclude any other or further exercise, or the exercise of any other power or right.

**18.4.** The relationship between the Customer and BKB is that of independent contractors.

**18.5** In the interpretation of these Terms and Conditions or any part of it, no rule of construction shall apply to the disadvantage of the party on the basis that that the party: (a) prepared these Terms and Conditions or any part of it; or (b) seeks to rely on these Terms and Conditions or any part of it.

**18.6** All notices, approvals, consents, requests or demands required or permitted to be given under these Terms and Conditions shall be in writing and shall be deemed sufficiently given three (3) business days after sent by registered mail or certified mail return receipt requested, or one (1) business day after transmitted by telefax, or the same business day if sent via [bkb@bkggroup.com.au](mailto:bkb@bkggroup.com.au) before 5.00pm on a business day, otherwise on the next business day.