

## TERMS and CONDITIONS OF TRADE

**To the fullest extent legally possible, all dealings between Brown Brothers Engineers Australia Pty Ltd ABN 79 064 496 813 ("BBEA") and any Customer are subject to these Terms and Conditions of Trade ("these Terms") unless otherwise agreed in writing.**

Goods" means all goods supplied from time to time by us to you and (unless the context otherwise requires) includes all proceeds of such goods, provided that: (a) where the Goods supplied are your Inventory, then all references to Goods in these Terms shall, in respect of those Goods, be read as references to Inventory; and

(b) where the Goods supplied are not Inventory then all references to Goods in these Terms shall, in respect of those Goods, mean the Goods described in any one or more of the relevant order form, packing slip or invoice (or its equivalent, whatever called) relating to those Goods, on the basis that each such order form, packing slip or invoice (or its equivalent) shall be deemed to be incorporated in, and form part of, these Terms.

Any Goods or services supplied to you shall be subject to these Terms unless we agree in writing to change them. If you accept goods or services from us, or deliver Goods to us for servicing, those actions by you will be deemed to be acceptance of these Terms, notwithstanding anything that may be stated to the contrary in your enquiries or your order.

**1. Price:** 1.1 The price for goods and services will be either as quoted to you in writing or, if no written quote is provided, at our standard charges applying at the time. Unless otherwise agreed in writing any quoted price may be altered prior to delivery of Goods or provision of services to you, if our costs fluctuate materially. We may withdraw any quotation before it is accepted, and in any event any quotation will lapse without notice 30 days after it is given. All prices and charges are exclusive of any sales tax and government imposts (including any GST or equivalent.) BBEA price book excludes any sales tax and government imposts (including GST or equivalent).

1.2 Quotations for the installation of pumps are based on the assumption that the well is clean and in good order. They do not cover any cleaning of the well nor any servicing required due to grit or other foreign matter being drawn from the well.

1.3 Unless otherwise agreed in writing all freight, insurance and delivery charges will be additional to any price quoted.

**2. Payment:** 2.1 Payment for goods and services must be made within 30 days from the end of month each invoice is issued without deduction. Payments will not be credited until cleared.

2.2 If full payment for the Goods or services is not made on the due date, then without prejudice to any other remedies available to us:

- (a) we may cancel or withhold supply of further Goods or services;
- (b) interest on monies overdue shall be charged on a daily basis and be calculated at the rate of 15% per annum during such default, and interest shall continue to accrue both before and after judgment; and
- (c) you shall be responsible for all costs incurred by us in recovering such monies.

2.3 We may from time to time vary your credit limit with us at our discretion, in relation to further purchases of Goods or services. If any purchase would be in excess of your credit limit, we reserve the right to require, prior to delivery of the Goods or services, payment in cash of the amount by which the cost exceeds your credit limit. Before supplying you with Goods or services, we may at our discretion require all or any of the following:

- (a) payment in advance;
- (b) a guarantee of payment;
- (c) a deposit;
- (d) progress payment;
- (e) a letter of credit.

(f) the Customer agrees on written request to charge in favour of BBEA (i) by way of a fixed charge all its books of account, financial records, goodwill, documents of title and current and later acquired real property and intellectual property; and (ii) by way of a floating charge, the whole of the Customers other undertaking, property and assets, with payment of all monies owed to BBEA

2.4 We may set off against any monies owed by us to you any monies which you owe to us or any of our subsidiaries, related companies or shareholders so that our obligation to you shall be to pay the net balance only.

2.5 If any of our subsidiaries, related companies or shareholders owe monies to you then they may set off against those monies any monies owed by you to us in respect of any Goods or services. They will only be liable to pay the net balance owing. You agree that this provision is made for the benefit of our subsidiaries, related companies and shareholders and may be enforced directly by them in their own respective names.

2.6 Your obligation under these Terms shall be to pay the full amount owing.

2.7. If the Customer places a forward order, the Customer agrees **a)** to pay for so much of any order as is from time to time invoiced by BBEA **b)** no delay or failure to fulfil any part of any order shall entitle the Customer to cancel or vary any order or delay or reduce any payment; **c)** to pay any GST applicable to any part of any forward order

**3. Property:** **a)** Property in products shall not pass until payment in full of all monies owed by the Customer to BBEA who reserves the right to take possession and dispose of products as it sees fit at any time until full payment **b)** The Customer grants permission to BBEA to enter any property where any product is in order to do so and with such force as is necessary **c)** Immediately upon delivery the Customer accepts liability for the safe custody of the products and agrees to indemnify BBEA for any losses relating thereto **d)** Upon sale or disposition of any products prior to full payment, the Customer agrees to deposit all proceeds in a separate bank account, agrees not to mix proceeds with any other monies and will forthwith account to BBEA therefore notwithstanding that BBEA may have granted any credit facility and/or time to pay **e)** Until payment in full the Customer agrees:- (i) to keep all products as fiduciary for BBEA and store them in a manner which shows BBEA as owner (ii) only to sell products in

the usual course of its business on condition that the Customer holds all proceeds in trust for BBEA. (iii) sale on terms, at cost or for less than cost shall not be "in the usual course" **f)** This clause 3 is not intended to create a charge over any products and shall be read down to the extent necessary to avoid creating a charge **g)** The Customer agrees that a certificate purporting to be signed by an officer of BBEA identifying products shall be conclusive evidence of BBEA' title to the goods **h)** If the Customer uses product in any manufacture, construction or process ("process") the Customer agrees to hold such part of proceeds of disposition which relates to the cost of products used in the process, upon trust for BBEA until payment in full of all monies owed to BBEA.

**4. Limitation of Liability:** **a)** The Customer agrees to limit any claim it makes to the cost of supply of equivalent products or the supply of services again **b)** BBEA shall not be liable for any claim loss or expense arising which is made after 14 days from date of delivery of product or services (or at all once products have been unpacked, on-sold or otherwise used or applied) after which there shall be deemed to have been unqualified acceptance **c)** BBEA will not be liable for any contingent consequential direct indirect special or punitive damage arising whether due to BBEA negligence or otherwise and the Customer acknowledges this express limit of liability and agrees to limit any claim accordingly **d)** No other term, condition, agreement, warranty, representation or understanding whatsoever whether express or implied in any way extending to, otherwise relating to or binding upon BBEA, other than these Terms, is made or given.

**5. Exclusions:** **a)** Sample: Nothing between BBEA and the Customer shall be or be deemed a sale by sample **b)** If BBEA publishes material, anything so published which is incompatible with these Terms is expressly excluded **c)** The Customer will rely on its own knowledge in selecting any product or services and any advice or assistance given for or on behalf of BBEA shall be accepted at the Customer's risk and shall not be or be deemed given as expert or adviser nor to have been relied upon by the Customer.

**6. Customer Material etc:** 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 in every particular **(b)** any of its materials or property used by BBEA in the production of any product or the provision of any services shall be at the Customer's risk in all things and be of merchantable quality and fit for the purpose

**7. Placement of Orders:** The Customer agrees **a)** if any dispute arising concerning any order (and including any question of identity or authority or any telephone, facsimile e-mail or computer generated order) that the internal records of BBEA will be conclusive evidence of what was ordered in all respects **b)** each order it places shall be and be deemed to be a representation by it, made at the time that it is solvent and able to pay all of its debts as and when they fall due **c)** failure to pay BBEA in accordance with these Terms shall be and be deemed to be conclusive evidence that the Customer had no reasonable grounds for making the representation referred to in 7.b) that the representations were unconscionable, misleading and deceptive **d)** when any order is placed, the Customer shall inform BBEA of any material facts which would or might reasonably affect the commercial decision by BBEA to accept the order and/or grant credit in relation to and any failure to do so by or on behalf of the Customer shall create and be deemed to create an inequality of bargaining position, shall constitute and be deemed to constitute the taking of an unfair advantage of BBEA and to be unconscionable, misleading and deceptive.

**8. Delivery:** The Customer acknowledges and agrees that **a)** BBEA accepts no responsibility or duty for delivery, but may elect to arrange delivery at its discretion and without any liability and at the Customer's costs and responsibility in all things **b)** BBEA reserves the right to charge for any delivery **c)** The Customer shall be deemed to have accepted delivery and liability for the products immediately BBEA notifies the Customer that any products are ready for collection or they are delivered to a carrier or to the Customer's business premises or site whether attended or not **d)** A certificate purporting to be signed by an officer of BBEA confirming delivery shall be conclusive evidence of delivery as shall any signed delivery docket **e)** BBEA will not be liable for delay, failure or inability to deliver any products or perform any services **f)** Once the Customer is notified products are ready for collection or delivery, the Customer agrees to pay all costs of BBEA in holdings those products for the Customer. **g)** Risk in the customers goods in our possession, for including but not limited to, servicing, inspection, repair remains with the customer. It is the customers responsibility to insure your goods, even if we have arranged transportation of the Goods. **h)** If you fail to pick up or to accept delivery of the Goods ordered, or request a delay in delivery, you shall pay us reasonable storage charges until such time as delivery is made. You shall also pay for the Goods in full as if the Goods had been delivered.

**9. Variation:** Variation or cancellation of these Terms or orders must be agreed in writing.

**10. Variations in Quantity:** The Customer agrees to accept a permissible variation of quantity provided the variation does not exceed + or - 10% of the quantity ordered.

**11. Specifications** 11.1 All drawings and technical documents supplied by us to you shall remain our property and must not be used by you or reproduced or brought to the knowledge of any other person without our written consent.

11.2. Where the equipment is manufactured to the customer's specification the customer hereby warrants that the manufacture and supply of such equipment by the company will not infringe an intellectual property right, a patent, registered design, trademark, copyright or other proprietary right and the

customer indemnifies the company against any liability to or action by a third party for infringement or alleged infringement of any intellectual property right.

11.3. All reports, correspondence, drawings, plans, computations, specifications etc prepared or made by us in connection with the contract for the provision of the goods or any tender or quotation shall remain the property of the company and confidential between the company and the purchaser and must not be disclosed, copied or used without the company's prior consent and shall be returned to the company immediately upon the company's request. All right or title to any discovery made while the seller is producing the goods pursuant to any contract for the purchaser shall remain with the company.

11.4. All intellectual property remains the property of BBEA at all times.

11.5 Where we are required to install Goods we are not responsible for determining or ascertaining the structure soundness or suitability of any building in which the Goods are to be installed.

#### **12. Compliance with Acts and Regulations**

12.1 Where you grant access to us over your property for the purposes of our providing Goods or services to you, you shall ensure compliance with all legislation and regulations in relation to the property, including ensuring the property is in a safe state for us to undertake any necessary work.

12.2 If we have any concerns regarding the safety of our employees, in relation to the access and use of your property, we shall be entitled to halt all work on your property, until such time as our safety concerns have been resolved. In that case you shall be responsible for payment of work undertaken by us to that point.

**13.. Warranties:** Except to the extent of written warranties given by us to you, all warranties and representations including those expressed or implied by law, in respect of Goods sold or services supplied are excluded to the extent permitted by law. We shall not be liable: A) Where you have altered or modified the goods, mis-applied the Goods, or have subjected them to any unusual or non-recommended use, servicing or handling. B) For loss caused by any factors beyond our control. C) For any indirect or consequential loss of any kind. D) For any second hand goods. E) Where the terms of the written warranty have not been complied with, or any manufacturers's handbook provided to you has not been complied with. G) Where electrical goods have not been used on the correct electrical current or not in the manner or not for the duty recommended by us. H) For failure or damage to pumping equipment caused by sand or abrasive material. I) For repairs or jobs using customer supplied material.

13.1. Our total liability under any warranty for defective or damaged Goods supplied by us or in relation to the provision of services is limited at our option to either:

- (a) replacing or repairing the defective or damaged Goods; or
- (b) refunding the price of the defective or damaged Goods or provision of service.

13.2 Any Goods returned to us must be returned freight paid. You can claim for any reasonable freight charges. All claims must be accompanied by the packing slip or delivery docket, and a copy of the invoice. Claims must be made within 7 days of receipt of the Goods. Where we elect to repair defective Goods, we will use reasonable endeavours to repair the Goods, as soon as practical, but will not be liable for any delay in completing the repairs.

13.3 Goods "ex stock" may be returned freight paid for a handling fee of not less than 20%, provided the Goods (together with a copy of the relevant invoice) are returned within 14 days of delivery of the Goods. You may only return Goods under this clause if the Goods are in the same condition as when purchased. Goods bought on "special" are not returnable.

13.4 Goods specifically purchased, fabricated or machined at the customer's request are not returnable.

**14. Products and Services** a) BBEA disclaims any responsibility or liability relating to any products or services which are i) made or performed to designs, drawings and/or specifications and/or procedures etc or with materials which are provided or approved (whether in part or fully) by or on behalf of the Customer ii) utilised, stored, handled or maintained incorrectly or inappropriately b) the Customer agrees to check all products and services for compliance with all applicable standards and regulatory bodies before use, on-sale or application and to use or apply same in accordance with and with all manufacturers and/or BBEA recommendations and directions as well as with good commercial practice.

**15. Other Terms and Conditions:** No terms and conditions sought to be imposed by the Customer upon BBEA shall apply.

**16. Attornment:** The Customer hereby irrevocably appoints any solicitor of BBEA as its attorney in all things relative to these Terms and the Customers obligations.

**17. Defaults: a)** Upon any default or breach of these terms by the Customer, BBEA may (inter alia) retain all monies paid and/or cease further deliveries and recover from the Customer all loss of profits arising and/or at its discretion take immediate possession of any product not paid for, without prejudice to any other of its rights and without being liable in any way to any party b) The customer agrees not to commence or continue or permit to be commenced or continued through it any suit or action against BBEA whilst the customer is in default under any part of these Terms or in any of its dealings with BBEA

**18. Dimensions and Specifications** Dimensions and specification referred to the contract, a catalogue or other publication maintained or issued by the Company are estimates only. Unless it is agreed in writing, it is not a condition of contract that the goods will correspond precisely to the dimensions, specifications or customary tolerances.

**19. Customer Restructure:** The Customer agrees to notify BBEA in writing within 7 days, of any a) change in its structure or management including any change in director, shareholder or management or change in partnership or trusteeship b) any sale of disposition of any part of its business or trading

assets to any third party who intends to engage in trade or business employing any part of those assets.

**20. Jurisdiction:** The Customer agrees that all contracts made with BBEA shall be deemed to be made in the State nominated by BBEA and agrees to submit to the jurisdiction of the appropriate Courts nominated by BBEA.

**21. Credit Limit:** If BBEA grants any credit facility or nominates any credit limit, this is an indication only of its intention at the time. BBEA can vary or withdraw any credit facility at any time at its discretion and without any liability to the Customer or any other party.

**22. Packaging:** The Customer agrees that it is responsible for ensuring that all product used for packaging etc. complies fully with all relevant laws, regulations and standards etc.

**23. Tooling:** The Customer agrees that all tooling, material or intellectual property employed in the preparation for or production of any products or provision of any services will be and remain the property of BBEA notwithstanding any contribution by the Customer thereto.

**24. Pallets:** The Customer agrees to procure the return of all pallets provided by BBEA to the Customer or any third party at the request of the Customer and to forthwith indemnify BBEA for the replacement cost of any pallet not so returned within 30 days.

**25..Recovery Costs:** The Customer will pay to BBEA the costs and expenses incurred by it or its solicitors, legal advisers, mercantile agents and other parties acting on BBEA behalf in respect of anything instituted or being considered against the Customer whether for debt, possession of any products or otherwise.

#### **26. Mediation**

If a dispute arises, we may agree to settle the dispute by mediation before resorting to litigation or arbitration.

#### **27. Cancellation** 27.1. Cancellation by you

You may not cancel any order for Goods or services or part of it without our written consent. If you do so, in addition to any other rights we may have, we may retain any deposit paid and charge you for any costs incurred to date.

#### 27.2 Cancellation by us

We shall be entitled without liability to you to cancel an order or delivery of an order if:

- (a) you become insolvent, enter into a scheme of arrangement with creditors (other than with our consent) or you cease or threaten to cease to carry on all or a material part of your business, or have a receiver appointed in respect of any or all of your assets or other steps are taken for your dissolution;
- (b) you or we are refused any licences, consents or permits in respect of the Goods or services;
- (c) An extraordinary event occurring or a material change affecting the affairs or the financial condition of the purchaser, which gives the company reasonable grounds to conclude that the purchaser may not, or may be unable to, perform or observe its obligations under the contract; or
- (d) you breach any term of these Terms.

**28. Waiver or variation** Waiver or variation of these Terms by us will only be effective if given in writing by an authorized member of our staff. If we waive any of these Terms the waiver will not affect our rights under these Terms at any future time.

**29. Severability** Each clause in these Terms is severable and if any clause is held to be illegal or unenforceable then the remaining clauses will remain in full force and effect.

**30.. Indemnity** The customer shall comply with all instructions of the company in relation to the handling, fitting and installation and use of the equipment and notwithstanding such compliance the customer shall keep the company indemnified against all costs, claims, demand expenses and liabilities of whatsoever nature, including without prejudice to the generality of the foregoing, claims for death, personal injury, damage to property and consequential loss (including loss of profits) which may be made against the company or which the company may sustain, pay, incur as a result of or in connection with the manufacture, sale, export, import or use of the equipment.

**31. Compliance with laws** The Company will comply with all legislation, codes and standards specified in the Contract and the Company is under no liability as a failure to meet any other legislation, codes or standard. If, after the Contract date, there are any changes in any legislation, regulations or standards with which the company must comply, then the Customer agrees to reimburse or pay to the company an amount equal to additional cost incurred by the Company relating to such compliance.

**32. Subcontracting:** The company reserves the right to subcontract the performance of this contract or any part thereof to any other party or person it may determine

**33. Assignment:** The customer may not assign or transfer or purport to assign or transfer any of its rights or obligations under or in connection with the contract to any other person whatsoever.

**34. Notice:** The Customer agrees that it will be deemed to have notice of any change to these Terms, immediately they are adopted by BBEA and whether or not the Customer has actual notice thereof. The Customer shall be bound by any terms and conditions of sale adopted by BBEA immediately they are so adopted and notwithstanding any other purported or pre-existing terms and conditions of BBEA. Any amendments will be displayed on our website.

**35. Force Majeure:** BBEA will not be in default or in breach of any contract with the Customer for anything which arises as a result of Force Majeure. Force Majeure means beyond the reasonable control of BBEA and includes any strike or lock-out.