

BIESSE GROUP AUSTRALIA PTY LIMITED
 ABN: 36 098 130 191 ACN: 098 130 191

Interpretation

- In these conditions:
 - 'BGA' means Biesse Group Australia Pty Limited, A.C.N. 098 130 191 which is the seller of the Goods.
 - 'Purchaser' means the buyer of the Goods specified on the invoice.
 - 'Goods' means the products and, if any, services specified in the invoice.
 - 'Invoice' means any quotation, account, statement, statement or invoice provided by BGA to the Purchaser for Goods.
 - 'Order' means any purchase order or request of any type from the Purchaser, whether written or oral, for supply of Goods which is accepted by BGA.
- Nothing in these conditions shall be read or applied so as to exclude, restrict, modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Trade Practices Act 1974) and which by law cannot be excluded, restricted or modified.

General

- These conditions (which shall only be waived in writing signed by BGA) shall exclude all other written or oral terms, express or implied and apply both to any invoice issued by BGA and any order placed by the Purchaser and shall at all times prevail over any and all other conditions of a Purchaser's order to the extent of any inconsistency.

Terms of Sale

- The Goods and all other products or services sold by BGA are sold on these conditions unless otherwise agreed by the parties in writing.

Duration of Quotations

- Unless previously withdrawn, BGA's quotation Invoices are open for acceptance within the period stated in them or, when no period is so stated, within 30 days only after its date. BGA reserves the right to refuse any order based on a quotation Invoice within 7 days after the receipt of the order.

Costs of Packing and Other Expenses

- The Purchaser must pay all and any Goods and Services tax (GST), sales, transaction, use, excise, gross receipts, value added, property or other taxes or duties of any kind whatsoever assessed upon or relating in any way to the Goods ordered by the Purchaser.

Fitness for Purpose

- The Purchaser is fully responsible for determining the suitability and fitness for purpose of Goods ordered and used by it and BGA, to the extent allowable at law, makes no warranties as to suitability or fitness for purpose of Goods unless specifically warranted in writing.

Specifications

- The descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter of BGA do not form part of any contract of sale of the Goods or of the description applied to the Goods.
- Where the Purchaser provides technical specifications to BGA and requests the Goods to meet or operate to those specifications:
 - the Purchaser is fully responsible for the accuracy and detail of the specifications and BGA shall not be responsible for any loss or damage suffered by the Purchaser in respect of Goods supplied and based on the Purchaser's specifications which are unsuitable for any reason or is not appropriate for the Purchaser's intended use or purpose;
 - no error or misdescription by the Purchaser shall vitiate a contract between BGA and the Purchaser for the supply of Goods and the Purchaser shall be bound to take the Goods ordered and pay for them without deduction or set-off of any kind.

Performance

- Any performance values or specifications given by BGA are estimates only and BGA is under no liability for damages for failure of the Goods to attain such values or meet such specifications unless specifically guaranteed in writing. Any such written guarantees are subject to the recognised tolerances applicable to such values or specifications.

Delivery

- The delivery and installation times made known to the Purchaser are estimates only and is contingent on availability of supply from 3rd parties and BGA is not liable for late delivery or installation or non-delivery.
- BGA is not liable for any loss, damage or delay occasioned to the Purchaser or its Purchasers arising from late or non-delivery or late installation of the Goods.
- BGA may at its option deliver the Goods to the Purchaser in any number of instalments unless otherwise agreed in writing by BGA.
- If BGA delivers any of the Goods by instalments, and any one of those instalments is defective for any reason it is not a repudiation of any contract of sale formed by these conditions; and
- The Purchaser is responsible for providing adequate facilities for unloading of the Goods at the place specified by the Purchaser.

Shortage

- The Purchaser waives any claim for shortage of any Goods delivered and accepts the Goods as delivered if a claim for short delivery has not been lodged with BGA within 14 days of delivery.

Loss or Damage in Transit

- Unless otherwise agreed by BGA in writing, the risk in any Goods passes to the Purchaser once the Goods have been loaded for dispatch from the premises of BGA and BGA is not responsible to the Purchaser or any person claiming through the Purchaser for any loss or damage to Goods in transit caused by any event of any kind by any person (whether or not BGA is legally responsible for the person who caused or contributed to that loss or damage).
- BGA will provide the Purchaser with such assistance as may be necessary to press claims on carriers so long as the Purchaser:
 - has notified BGA and the carriers in writing immediately after loss or damage is discovered on receipt of Goods; and
 - lodges a claim for compensation on the carrier within three (3) days of the date of receipt of the Goods.

Warranty

- Unless otherwise agreed by BGA in writing and subject to clause 11.4, BGA's liability for new Goods manufactured by it is limited to making good any defects by repairing the defects or at BGA's option by replacement, within a period not exceeding six (6) calendar months after the Goods have been dispatched so long as:
 - defects have arisen solely from faulty materials or workmanship;
 - the Goods have not received maltreatment, inattention, interference or been serviced or worked on by technicians not approved by BGA;
 - accessories of any kind used by the Purchaser are manufactured by or approved by BGA; and
 - the defective Goods are promptly returned free of cost to BGA.
- If the Goods are not manufactured by BGA the guarantee of the manufacturer of those Goods is accepted by the Purchaser and is the only guarantee given to the Purchaser in respect of the Goods.
- BGA is not liable for and the Purchaser releases BGA from any claims in respect of faulty or defective Goods based on specifications supplied by the Purchaser unless such specifications have been wholly prepared by BGA and the responsibility for any claim has been specifically accepted by BGA in writing. In any event BGA's liability under this paragraph is limited strictly to the replacement of defective Goods in accordance with paragraph 11.1 of these conditions.
- Any warranty given by BGA under clause 11.1 is:
 - applicable to new Goods only and does not cover ordinary wear and tear, or damage caused by external or 3rd party influences and no warranty is given in respect of used or 2nd hand Goods, or consumables unless otherwise provided in writing by BGA; and
 - based on the Goods being used on an 8 hour single shift basis per day ("the Shift") over the applicable warranty period ("the Use Time") and any use of the Goods in excess of the Use Time will cause the warranty period to be reduced by one day for each Shift or part thereof over and above the Use Time. Nothing in this clause shall extend the warranty period irrespective of if the Goods are used for less than the Use Time.
- Any repairs made by BGA under any warranty claim will be performed as soon as reasonably practical but only between the hours of 9am to 5pm, Monday to Friday and the Purchaser hereby releases BGA and waives any claims it may have against BGA for any loss or damage it may suffer while repairs are undertaken.

Limitation of Liability

- Except as provided in these conditions and the extent allowable by law, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded. BGA is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the Goods or arising out of BGA's negligence or in any way whatsoever.
- BGA's liability for a breach of a condition or warranty implied by Div 2 of Pt V of the Trade Practices Act 1974 (other than s 69) is limited to:
 - in the case of Goods, any one or more of the following:
 - the replacement of the Goods or the supply of equivalent Goods;
 - the repair of the Goods;
 - the payment of the cost of replacing the Goods or of acquiring equivalent Goods;
 - the payment of the cost of having the Goods repaired; or
 - in the case of services;
 - the supplying of the services again; or
 - the payment of the cost of having the services supplied again.
- BGA's liability under s 74H of the Trade Practices Act 1975 is expressly limited to a liability to pay to the Purchaser an amount equal to:
 - the cost of replacing the Goods;
 - the cost of obtaining equivalent Goods; or
 - the cost of having the Goods repaired, whichever is the lowest amount.

Prices

- Unless otherwise stated all prices quoted by BGA are net, exclusive of Goods and Services Tax (GST).
- Prices quoted are those at the date of issue of an Invoice or where no Invoice has been issued then the acceptance of an Order by BGA, and are based on availability, any specifications required by the Purchaser, rates of freight, insurance, customs duties,

exchange rates, shipping expenses and other costs of supply ("Inputs") existing on the date of the Invoice or the date the Order is accepted.

- 14.3 Any variation to any Inputs prior to delivery shall be accepted by and payable by the Purchaser.

Payment

- 15.1 On the acceptance of any Order by BGA, the Purchaser must pay the deposit shown on the Invoice.
- 15.2 Unless otherwise agreed by BGA in writing, balance payments of all Invoices issued by BGA to the Purchaser are payable thirty (30) days net commencing from the end of the month shown on date of issue of the Invoice.
- 15.3 If any cheque, credit card or other form of payment issued by the Purchaser or by any third party in payment for Goods is dishonoured:
- 15.3.1 BGA may refuse to supply any further Goods (whether or not BGA is to make any further deliveries of the Goods), until satisfactory payment is received in full; and
- 15.3.2 BGA is entitled to treat the dishonour of the Purchaser's payment as a repudiation of that supply contract, retain any deposit paid by the Purchaser and to elect between terminating the contract or affirming it, and in each case, claiming and recovering from the purchaser, compensation for loss or damage suffered.
- 15.4 BGA may at its discretion require payment by means of an irrevocable letter of credit or bank guarantee in favour of BGA established by and with a bank in such form as is approved by BGA in writing, for Goods ordered by the Purchaser and delivered or to be delivered by BGA.
- 15.5 If BGA is not paid for any Goods on the due date for payment, without prejudice to any other right or remedy:
- 15.5.1 all outstanding money carries interest on daily balances until paid at a rate of interest per annum equal to 3% in excess of the interest rate charged by BGA's principal bankers on overdraft accounts for sums of \$100,000 Australian dollars; and
- 15.5.2 any deposit paid to BGA will be forfeited to BGA and BGA may recover the balance price of the Goods together with all interest forthwith from the Purchaser as a liquidated debt in a court of tribunal of competent jurisdiction irrespective of any claim that the Purchaser may have against BGA for any thing or matter related to the Goods delivered.

Rights in Relation to Goods

- 16.1 BGA reserves the following rights in relation to the Goods until all accounts owed by the Purchaser to BGA are fully paid:
- 16.1.1 ownership of the Goods;
- 16.1.2 to enter the Purchaser's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods; and
- 16.1.3 to keep or resell any Goods repossessed pursuant to 16.1.2 above;
- 16.2 If the Goods are resold, or products manufactured using the Goods are sold, by the Purchaser, the Purchaser shall hold such part of the proceeds of any such sale as represents the invoice price of the Goods sold or used in the manufacture of the Goods sold in a separate identifiable account as the beneficial property of BGA and shall pay such amount to BGA upon request. Notwithstanding the provisions above BGA shall be entitled to maintain an action against the Purchaser for the purchase price and the risk of the Goods shall pass to the Purchaser upon delivery.

BGA's Property and Purchaser's Obligations

- 17.1 Any property of BGA under the Purchaser's possession, custody or control is completely at the Purchaser's risk as regards loss or damage caused to the property or by it.
- 17.2 Until the Contract is fully and completely satisfied, the Purchaser must:
- 17.2.1 maintain the Goods in good order, condition and repair;
- 17.2.2 insure the Goods for their full replacement value against all instances of loss or damage;
- 17.2.3 reimburse BGA for any moneys which BGA may be required to pay to protect the Goods or to make good any failure by the Purchaser to comply with the obligations of the Purchaser under the Contract;
- 17.2.4 indemnify, keep indemnified and hold BGA harmless from any and all claims of any kind by any person or company arising out of or in connection with the operation of the Contract and/or operation and use of the Goods or from any act or omission of the Purchaser or any of its Agents, Representatives or Employees or from the failure of the Purchaser to comply with any Statutes, Regulations, By-laws or other legal provisions (by whatever name called) including, but not limited to, claims with respect to any actual or alleged bodily injury, sickness, disease or death or may damage to any property, including the Goods, arising from any false, misleading, deceptive or misdescriptive representation or statement made by the Purchaser in respect of the products to any person.

Storage

18. BGA reserves the right to make a reasonable charge for storage if:
- 18.1 The Purchaser notifies BGA it is unable to take delivery of the Goods at the initial delivery time, whereupon BGA will be entitled to charge storage fees to the Purchaser in respect of the Goods held for delivery by BGA from the initial delivery date to the date of actual delivery at normal commercial rates prevailing at that time; or
- 18.2 Delivery instructions are not provided by the Purchaser within seven (7) days of a request by BGA for such instructions, whereupon BGA may charge for storage from the first day after BGA requests the Purchaser to provide delivery instructions.

Returned Goods

- 19.1 BGA is not under any duty to accept Goods returned by the Purchaser and will do so only on terms to be agreed in writing in each individual case.
- 19.2 If BGA agrees to accept returned Goods from the Purchaser under clause 19.1, the Purchaser must, at its cost, return the Goods to BGA at BGA's place of business.

Goods sold

20. All Goods to be supplied by BGA to the Purchaser are as described on the Invoice or where no Invoice is provided, the Order accepted by BGA and such description, or as modified by the parties in writing, prevails over all other descriptions.

Cancellation

21. No order may be cancelled except with consent in writing and on terms which will indemnify BGA against all losses.

Place of Contract

- 22.1 Any contract for sale of the Goods is made in the state or territory of Australia from which this document is issued.
- 22.2 The parties submit all disputes arising between them to the courts of such state or territory and any court competent to hear appeals from those courts of first instance.

Waiver

23. If BGA shall grant to the Purchaser any extension of time or other indulgence, the same shall not in any way affect or prejudice the rights of BGA under any contract for sale of which these terms and conditions form part except to the extent of the specific extension or indulgence.

Severability

24. If any provision of these terms and conditions is deemed by a court of law to be void, invalid or unenforceable then such provision shall be severed from these terms and conditions and the remaining provisions shall remain in full force and effect.

Separate Contract

25. Each order agreed between BGA and the Purchaser constitutes a separate contract for the sale of Goods, and unless otherwise permitted in these terms and conditions, the breach of any one such contract shall not be grounds for the termination of any other contract so formed between the parties.

Force Majeure

26. If by reason of any fact, circumstance, matter or thing beyond the reasonable control of BGA or the Purchaser either is unable to perform in whole or in part any obligation in relation to any contract made for the supply of Goods to which these terms and conditions apply, that party is relieved of their obligations to the extent and for the period that it is so unable to perform and is not liable to the other party in respect of such inability except that an obligation to pay money is never excused by such circumstances.

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