

BARD Terms and Conditions of Trade

These Terms and Conditions of Trade (“Conditions”) shall apply to and form part of any contract for the supply of goods and/or services (“Goods”) by Bard Engineering Group Pty Ltd (“Bard”) to the Customer

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these Conditions:

- (a) **Business Day** means a day that is not a Saturday, Sunday or public holiday in Brisbane, Queensland, Australia;
- (b) **Conditions** includes the terms and conditions contained herein and any other terms and conditions set out in a Quotation supplied by Bard to the Customer, but excludes any variations whatsoever stipulated in a Customer’s purchase order accepted by Bard;
- (c) **Consequential Loss** means any special, contingent or consequential loss or damage of any nature whatsoever and whether direct or indirect, including but not limited to: loss of profit or anticipated profit, loss of production, loss of use (including the loss of use of Your machine/ plant/ equipment – e.g. downtime), loss of contract, loss or damage under a third party contract, loss of goodwill, loss of opportunity, wasted expenses or overheads (including machine/ plant/ equipment work, Your labour costs and return freight costs) arising from or in connection with these Conditions, a Contract or any Bard’ Goods.
- (d) **Consumer** means a person who acquires Goods from Bard where:
 - (i) the amount paid or payable for the Goods did not exceed \$40,000.00; or
 - (ii) the Goods were of a kind ordinarily acquired for personal, domestic or household use or consumption, unless the Goods were acquired for the purpose of re-supply or the purpose of using them up or transforming them in trade or commerce.
- (e) **Contract** means a contract for the sale and purchase of the Goods which incorporates these Conditions as evidenced by the acceptance of an order from the Customer by Bard;
- (f) **Corporations Act** means the *Corporations Act 2001* (Cth);
- (g) **Current Price** means the price for the Goods on Bard’ published price list at the relevant time;
- (h) **Customer** means the person (named in the order) who buys or has agreed to buy the Goods from Bard, and includes a Consumer;
- (i) **Force Majeure** shall mean an act of God, war, fire, strike, lockout, trade or industrial disputes, government interference, lack of production capacity or raw materials, transport delays, accidents, breakdown of plant or machinery, non-delivery or shortage of supplies or any other cause beyond Bard’ control;
- (j) **GST** means the tax payable on Taxable Supplies within the meaning of the GST Act;
- (k) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related legislation imposing such tax or legislation that is enacted to validate, recapture or recoup such tax;
- (l) **Bard** means Bard Engineering Group Pty Ltd ABN 78 636 514 700 or any Related Corporation;
- (m) **Law** means any Commonwealth or Australian state legislation and regulations and the general (common) law and includes in particular the *Commonwealth Competition and Consumer Act 2010* and regulations as amended from time to time and the PPSA and regulations as amended from time to time;

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- (n) **PPSA** means the *Personal Property Securities Act 2009* (Cth);
- (o) **Quotation** includes any quotation or tender Bard has provided to the Customer for a purported supply of Goods to the Customer;
- (p) **Related Corporation** has the meaning given to the term “related body corporate” in section 50 of the Corporations Act 2001;
- (q) **Working Hours** means the time between 8.00am and 5.00pm on a Business Day.

1.2 Interpretation

In these Conditions, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, these Conditions, and a reference to these Conditions includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (f) a reference to time is to Brisbane, Queensland, Australia time;
- (g) a reference to a party is to a party to these Conditions, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate or association (whether incorporated or unincorporated), governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (k) a word or expression defined in the PPSA and used in these Conditions has the meaning given to it in the PPSA;
- (l) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (m) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (n) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (o) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these Conditions or any part of it; and
- (p) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

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2. QUOTATIONS, ORDERS AND CONTRACTS

- 2.1 All Quotations are made and all orders for Goods are accepted by Bard on, and subject to, these Conditions and any other special terms and conditions which are agreed to by Bard in writing.
- 2.2 Unless otherwise expressly agreed by Bard, previous dealings between Bard and any Customer or the imposition of additional or alternative terms and conditions by a Customer shall not vary or replace these Conditions or be deemed in any circumstances whatsoever to do so. These Conditions prevail over any terms and conditions of the Customer whether or not any inconsistency arises. It is expressly acknowledged and agreed that any order issued by the Customer consequent upon or with reference to a Quotation will be deemed to be an offer to buy the Goods upon the terms stated in the Quotation and these Conditions notwithstanding any other terms contained in the Customer's order or any clause in the Customer's order purporting to exclude these Conditions.
- 2.3 Bard may withdraw, revoke or vary a written quotation at any time prior to the Customer submitting an order which accepts the offer to sell comprised by the written quotation.
- 2.4 Bard reserves the right to accept or decline, in whole or in part, any order for Goods placed by a Customer.
- 2.5 The agreement to supply Goods to the Customer starts on the date Bard agrees to supply the Goods to the Customer. This may not be the date the order is received by Bard.
- 2.6 Where in the period between acceptance of a quote and delivery of the relevant Goods, Bard incurs an increase in the cost of producing and/or delivering the Goods, Bard reserves the right to increase the quoted price of those Goods any time prior to delivery (a 'price escalation'). The Customer shall accept any such price escalation.
- 2.7 Bard is entitled to rely on the representations and actions of the Customer's officers, employees, agents or representatives as being binding on the Customer. All orders for Goods (and any relevant instructions associated with such orders) issued to Bard by the Customer (its officers, employees, agents or representatives) by verbally must be confirmed in writing within two (2) Business Days of the order (or instruction). Bard may withhold the supply of the Goods ordered until such time as the Customer provides the written confirmation of the order (and/or instruction).
- 2.8 Bard acknowledges that the supply of Goods by Bard under these Conditions to an individual whose acquisition of the Goods is wholly or predominantly for personal, domestic or household use or consumption, will be a consumer contract for the purposes of the Australian Consumer Law (Consumer Contract).
- 2.9 Once an order has been accepted by Bard, the Customer can only cancel, vary or suspend the order (whether in whole or in part) if Bard agrees in writing to such cancellation, variation or suspension. The Customer agrees to pay all costs, expenses and liabilities incurred by Bard as a consequence of the cancellation, variation or suspension of the order and accepts any consequential delay in the supply of the Goods under the order as a result.
- 2.10 Where the Customer cancels an order, in whole or in part, after the commencement of Bard's manufacture of the Goods the subject of the order being cancelled or varied, any deposit paid in respect to the Goods under the order shall be applied towards any work undertaken on the order and if there is a balance of the deposit monies remaining after being applied to the work undertaken up to the date of cancellation, then Bard will refund any remaining deposit monies to the Customer.

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3. PRICE

- 3.1 The price of Goods will be Bard' Current Price at the time of delivery (or where clause 5.3(d) applies, the Current Price at the date of the invoice), subject to any contrary agreement (if any) between Bard and the Customer regarding price.
- 3.2 Where Goods supplied to a Customer are of a kind ordinarily acquired for personal, domestic or household use, Bard will provide a quotation or otherwise notify the Customer of a single total price, inclusive of GST, applicable to those Goods if the price is capable of being quantified. The Customer shall be liable to pay to Bard all amounts on account of GST in the same manner and by the same means as all other charges.
- 3.3 Subject to clause 3.4, the price of Goods specified by Bard in any quotation:
- (a) will remain valid for a period of 30 days for an order made by the Customer in accordance with the quotation, unless otherwise specified; and
 - (b) is subject to any other conditions specified in the quotation.
- 3.4 Bard reserves the right to amend any price in a Quotation or to vary the price or conditions in the Quotation to correspond to the true facts or correct price at any time if it is of the opinion a significant error or mistake of fact or price has occurred in the calculation or preparation of the Quotation.
- 3.5 Unless otherwise indicated, all prices for Goods are exclusive of all applicable taxes and charges. The Customer shall be liable for all excise, sales, GST or any other tax, charge or government impost (domestic or foreign) upon the Goods or any part of the Goods, or upon the manufacture, use sale or delivery of the Goods in addition to the purchase price. Where Goods are subject to GST, the Customer must pay GST at the same time as payment for Goods is made, subject to the provision of a tax invoice.
- 3.6 Unless otherwise agreed, prices do not include the cost of delivery of Goods, including but not limited to costs incurred by Bard arising out of late notification by the Customer of a change to agreed delivery schedule, storage charges where Goods are not collected immediately upon being made available and any demurrage costs incurred by Bard.
- 3.7 Unless otherwise requested by the Customer in writing, prices quoted provide for Bard' standard packing arrangements. Should a form of packaging other than that normally used by Bard be requested by the Customer, additional charges may apply, Bard will advise any applicable extra charge.

4. PAYMENT

- 4.1 Unless Bard grants credit to the Customer and subject to Bard' right to withdraw credit, payment for Goods purchased from Bard must be made by the Customer in immediately available funds on or immediately prior to delivery of the Goods.
- 4.2 Where the Customer has an approved credit account with Bard, the Customer shall ensure that payment for the Goods is made to Bard in accordance with the terms agreed between Bard and the Customer. Unless otherwise agreed, all payments are required to be made by the Customer for:
- (a) Domestic/Australian Orders which are:
 - (i) less than or equal to \$100,000.00, within net 30 days after the date of Bard' invoice;
 - (ii) greater than \$100,000.00 but less than \$200,000.00:
 - A. payment of a deposit equal to 20% of order value at the time of order by the Customer; then

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- B. payment of 30% of order value on delivery of the Goods to the Customer; and
 - C. balance payment due net 30 days after the date of Bard' invoice.
 - (iii) greater than or equal to \$200,000.00:
 - A. payment of a deposit equal to 30% of order value at the time of the order by the Customer; then
 - B. payment of 40% of the order value on delivery of the Goods to the Customer; and
 - C. balance payment due net 30 days after the date of Bard' invoice.
 - (b) Export/Overseas Orders:
 - (i) Payment of a deposit equal to 40% of order value at the time of order by the Customer;
 - (ii) Balance payment in full prior to release of Goods from Bard to freight forwarders.
- 4.3 Payments made by credit card may be subject to a surcharge.

5. DEFAULT BY CUSTOMER

- 5.1 If the Goods have been supplied by Bard under a Consumer Contract and the Customer is in default in the performance of any of its material obligations under these Conditions, Bard may:
- (a) refuse to deliver further Goods until such time as the Customer has remedied that default;
 - (b) upon the expiry of 14 days' notice given by Bard to the Customer requiring the Customer to remedy such default and where the Customer has not remedied the default, terminate the Consumer Contract (in relation to Goods that have not been delivered) and sue the Customer for damages for breach of contract.
- 5.2 Where the Customer is in default in the performance of any of its obligations under these Conditions and the Goods have not been supplied under a Consumer Contract, Bard may, without prejudice to any other rights it may have under these Conditions or at Law:
- (a) refuse to supply or deliver further Goods to the Customer until such time as the Customer has remedied that default;
 - (b) charge interest on any amount overdue from the date it became due to the date payment is received at the rate of 2% above the maximum overdraft rate of Bard' bankers for the time being in force, compounded daily. All payments made by the Customer will first be applied to the accrued interest;
 - (c) trace the full proceeds of the sale of the Goods by the Customer to another person, where the Customer must account such proceeds to Bard;
 - (d) demand the return of the Goods from the Customer, whereupon the Customer's receipt of a demand from Bard for the return of the Goods, the Customer must immediately return them to Bard or make them available for collection from the Customer's premises (or any site where they are located);
 - (e) where the Customer does not return the Goods to Bard on demand under clause 5.2(c), the Customer irrevocably authorises the representatives of Bard to enter upon the Customer's premises (or any site where the Goods are located) to take possession of the Goods without prior notice and the Customer indemnifies Bard against any action, claim or demand arising out of any act lawfully done by Bard in the exercise of its powers hereunder;

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- (f) re-sell the Goods not delivered or re-taken from the Customer and the Customer releases Bard from all obligations under any Contract;
 - (g) charge reasonable storage fees for and incidental to the storage and handling of Goods until their delivery to the Customer or re-sale;
 - (h) charge and recover from the Customer the cost of materials or goods acquired for the purpose of the future deliveries of the Goods;
 - (i) exercise such rights as are afforded to Bard under the PPSA;
 - (j) retain all monies paid;
 - (k) register a default with any credit reference facility;
 - (l) charge the Customer the amount (if any) which represents difference in the sale price of the re-sold Goods against the Current Price for the Goods;
 - (m) charge the Customer the lost profit on the sale of the Goods to the Customer; and
 - (n) terminate any Contract between it and the Customer for the supply of Goods.
- 5.3 If the Customer (including a Customer under a Consumer Contract) commences to be wound up or is placed under official management or into liquidation or has a receiver and/or manager appointed in respect of any of its assets or becomes insolvent, commits any act of bankruptcy or becomes subject to any other analogous event, Bard may at its option exercise any or all of the following rights in addition to any other rights it may have under these Conditions or at law:
- (a) suspend deliveries of further Goods to the Customer whether under these Conditions, a Contract or otherwise;
 - (b) terminate the Contract in relation to Goods that have not been delivered;
 - (c) withdraw any credit facilities which may have been extended to the Customer and require immediate payment of all moneys owed to Bard by the Customer notwithstanding the due date for payment may not have passed;
 - (d) issue an invoice for, and demand immediate payment of, Goods ordered by the Customer but not delivered.
- 5.4 Bard may set off any amount owed by the Customer to Bard or any of its Related Corporations against any amount of money owed, or may become owing, by Bard or its Related Corporations to the Customer. The Customer waives any right to set off any amount that is, or may become, owing by the Customer to Bard against any amount owing by Bard to the Customer. This clause overrides any other document or agreement to the contrary.

6. SECURITY

Bank Guarantee

- 6.1 Unless expressly agreed by Bard in writing to the contrary, the Customer must provide (at its expense and at the time of the order) an unconditional bank guarantee equal to the value of the total order being placed by the Customer from a financial institution (of reasonable financial standing and satisfactory to Bard) where the Customer orders Goods with a value greater than or equal to \$400,000.00.

Deed of Guarantee and Indemnity

- 6.2 Where Bard considers it necessary, it may require an interested person in the Customer (for example: directors, shareholders, trusts, or a Related Corporation) to execute a Deed of Guarantee and Indemnity (in the form required by Bard) to guarantee the performance of

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- 6.3 the Customer's obligations under these Conditions, or a Contract. Bard may withhold the Supply of the Goods ordered by the Customer until such time as the executed Deed of Guarantee and Indemnity has been provided by the Customer to Bard.

Charge

- 6.4 The Customer as beneficial owner charges in favour of Bard all of its interest in all of the present and future real and personal property of the Customer as security for the due and punctual payment of all debts and monetary liabilities owed by the Customer to Bard pursuant to a Contract on or including the terms of these Conditions. The Customer consents to Bard lodging a caveat over the Customer's real property, or registering its interest over the Customer's personal property on the register created by the PPSA, to note its interest. Upon demand by Bard, the Customer agrees to immediately execute a mortgage, charge or other document (as required by Bard and on terms satisfactory to Bard) to more particularly describe its security interests conferred by this clause.

6.5 PPSA

- (a) The Customer grants and hereby agrees and acknowledges that Bard may register on the register created by the PPSA a security interest created by or provided for in these Conditions and that such security interest shall be in all present and after acquired property and proceeds.
- (b) The Customer acknowledges and agrees that Bard may apply to register a security interest in the Goods at any time before or after delivery of the Goods. The Customer waives its right under s 157 of the PPSA to receive notice of any verification of the registration.
- (c) Bard can apply amounts it receives from the Customer towards amounts owing to it in such order as Bard chooses.
- (d) If the Customer defaults in the performance of any obligation owed to Bard under these Conditions or any other agreement for Bard to supply Goods to the Customer, Bard may enforce its security interest in any Goods by exercising all or any of its rights under these Conditions or the PPSA. To the maximum extent permitted by law, the Customer and Bard agree that the following provisions of the PPSA do not apply to the enforcement by Bard of its security interest in the Goods: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143.
- (e) The Customer and Bard agree not to disclose information of the kind mentioned in s 275(1) of the PPSA, except in circumstances required by sections 275(7)(b)-(e) of the PPSA.
- (f) The Customer must, at its own expense, promptly do anything required by Bard to ensure that Bard's security interest is a perfected security interest and has priority over all other security interests in the Goods.
- (g) If Bard registers a security interest under the PPSA, Bard may exercise any and all remedies afforded to Bard as a secured party under it without prejudice to any other rights or remedies arising out of a default by the Customer of these Conditions or any Contract with Bard.

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- (h) The Customer agrees not to change the Customer's name or undertake any changes to any documents that Bard has registered, requires to be registered, or are capable of being registered without giving Bard five (5) Business Days' prior written notice of the change.
- (i) Nothing in this clause 6.5 is limited by any other provision of these Conditions or any other Contract or agreement between the parties.

Attorney

- 6.6 Should the Customer fail within a reasonable time of such demand to execute such mortgage then the Customer irrevocably appoints Bard (or its solicitor/s) as its attorney with authority to do on its behalf anything that it may lawfully authorise an attorney to do including, without limitation, to make, sign, execute, seal and deliver any document and to take possession of, use, sell or otherwise dispose of any real or personal property of the Customer.

7. COSTS

All costs, expenses, disbursements, outlays, fees, levies, duties or other such costs or expenses incurred by Bard relating to any default of the Customer of these Conditions or action taken by Bard to enforce its rights under these Conditions, including the recovery (or attempted recovery) of monies due from the Customer (including, without limitation, legal or other debt collection costs on an indemnity basis, administration fees, fees or levies imposed by a financial institution for non-payments, duty) shall be a debt due and immediately recoverable by Bard from the Customer and payable on demand.

8. SPECIFICATIONS, MATERIALS OR SPECIAL ORDERS

- 8.1 All descriptions, specifications, illustrations, drawings, data, dimensions and weights contained in catalogues, price lists or other advertising matter of Bard or elsewhere are approximations only. They are intended by Bard to be a general description for information and identification purposes only and they do not create a sale by description and no warranty is expressed by Bard or may be implied by Bard providing them to the Customer and the Customer undertakes to check all such drawings, dimensions, weights, capacities, specifications and performances to ensure that they are correct for the Customer's purposes.
- 8.2 All drawings, illustrations, specifications, formulations, production processes, documents, pricing, quality systems, testing methods, designs, samples, other information disclosed by Bard must be treated confidentially by the Customer whether they are marked confidential or otherwise treated as confidential or not and must not be disclosed by the Customer to another party or parties without the express prior written consent of Bard or be used by the Customer for any purpose other than directly related to the use of the Goods by the Customer.
- 8.3 Bard shall not be bound to accept any change in product dimension, materials or finish, a reduction in the quantity ordered or other particulars of an order for Goods after Bard has ordered special materials or commenced tooling for manufacture.
- 8.4 Unless otherwise stated on a quotation, Goods will be supplied by Bard within the tolerances in regard to quantity, weight, dimension, metallurgical or chemical composition as specified in the relevant order or, if not specified, as consistent with usual industry practice. Where the total mass or length of any Goods supplied includes a fraction of the unit of measurement for the mass or length of those Goods, the Customer must pay for that fraction of measurement on a pro rata basis.

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- 8.5 In the case of Goods or components not of Bard' manufacture, Bard shall give the Customer, and use its best endeavours to enforce at the cost of and for the benefit of the Customer, such warranties and guarantees as Bard has obtained from its suppliers.
- 8.6 Where Bard is required to order special material or qualities for which a supplier of Bard requests minimum order quantities, the Customer may be requested to accept an increase of the minimum quantity required to be ordered by Bard to fulfil the order and if so requested the Customer shall be obliged to accept and pay for such increase. The price for the additional product shall be determined according to the unit price for the products included in the order.
- 8.7 If Bard is required to process the Customer's goods or materials then Bard does not give any warranty or assurance that materials supplied by the Customer are suitable for such processing. Subject to the rights of Consumers as set out in clause 17.2, Bard accepts no responsibility and shall not in any way be liable to the Customer for any damage done or caused to such materials or goods, except if you are a Customer under a Consumer Contract and such loss or damage arises from the negligence or wilful misconduct of Bard or any of its officers, employees or agents.
- 8.8 Notwithstanding any other provision of these Conditions, it is a term of the Contract made between Bard and the Customer that Bard has discretion to refuse to supply Goods to the Customer (without liability to the Customer) where:
- (a) Goods are unavailable or insufficient for any reason whatsoever;
 - (b) the Customer has failed to comply with terms on which Bard has agreed to provide credit to the Customer;
 - (c) the Customer or a Related Corporation of it has breached a Contract with Bard or a Related Corporation of it including these Conditions; or
 - (d) Bard considers it necessary or desirable to do so for any reason at all.
- 8.9 Subject to the rights of Consumers set out in clause 17.2, unless the Goods have been supplied to the Customer by Bard under a Consumer Contract, the Customer agrees that it does not rely on the skill or judgement of Bard in relation to the suitability of any of the Goods for a particular purpose unless it has indicated that purpose in writing to Bard and Bard has acknowledged in writing that the Goods will be fit for the particular purpose.

9. INSPECTIONS AND TESTING

Where Goods are required to be tested or inspected by Bard prior to their supply to the Customer, the Customer shall pay the costs of that testing (including obtaining certificates) or inspection in addition to the price for the Goods, and the results of the tests (including as to weight, size, quantity or composition of goods) and inspections shall be final and binding on the Customer.

10. INTELLECTUAL PROPERTY

- 10.1 All patent, designs, trademarks, copyright, original works and other intellectual property in any design, specification, process, method of working or other information relating to the Goods for the purpose of fulfilling the supply of the Goods to the Customer's requirements shall remain with and/or shall vest for all time with Bard.
- 10.2 All documentation (including price lists) provided by Bard to the Customer are confidential and shall remain the property of Bard and no part of any such documentation shall be divulged to another party or parties without the prior written consent of Bard.

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11. CUSTOMER'S INFORMATION

Where the Customer has provided to Bard with any design, specification, process, method of working, or any other information in connection with the Goods (Customer's Information):

- (a) Bard shall be under no obligation to check or confirm the conformity, accuracy or adequacy of the Customer's Information;
- (b) the Customer grants to Bard an irrevocable licence to use all copyright, design right or other intellectual property in the Customer's Information in connection with Bard's supply of the Goods to the Customer;
- (c) the Customer indemnifies Bard, its officers, agents and employees against all claims, demands, actions, costs (including legal costs on a full indemnity basis), charges, expenses, loss, damages or other liability arising out of or in connection with any claim against Bard in connection with the use of the Customer's Information (including for infringement of any intellectual property rights); and
- (d) to the fullest extent permitted by law and notwithstanding anything stated herein, Bard shall have no liability to the Customer (whether in contract, tort (including negligence) or otherwise) in connection with any error, omission or inaccuracy in the Customer's Information.

12. DELIVERY AND RISK

Delivery

- 12.1 Dates and times quoted for delivery by Bard in response to the Customer's requested delivery dates are estimates only. Bard will use reasonable endeavours to meet the Customer's requested time for delivery of the Goods, but the time for delivery is not of the essence and Bard shall not in any way be liable for any loss or damage suffered as a result of any delay or failure to effect delivery of the Goods to the Customer by the time requested by the Customer.
- 12.2 Bard shall not be obliged to complete any order in one delivery and expressly reserves the right to deliver by instalments. Where Bard delivers by instalments each instalment shall be deemed to be sold to the Customer under a separate Contract. Failure to deliver any one instalment by the time quoted for delivery of that instalment (if any) shall not entitle the Customer to repudiate the order.
- 12.3 Where Bard is to deliver the Goods to the Customer, it shall deliver Goods to the Customer as follows:
 - (a) arrange transport by any means and on any conditions in its absolute discretion;
 - (b) delivery will be made during Working Hours to the location agreed by the parties ("Delivery Point");
 - (c) Bard or its transport contractor will deliver the Goods so close ("Drop Spot") to the Delivery Point as, in the opinion of Bard or its transport contractor, it is safe or prudent to do so and delivery occurs when Bard's or its transport contractor's delivery vehicle arrives at the Drop Spot;
 - (d) Bard reserves the right to charge the Customer any costs which it incurs as a result of any delay by the Customer in unloading the Goods or where unloading of the Goods cannot be effected, including, if applicable, a return delivery fee at the prevailing freight rates;

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- (e) the unloading of Goods at a Drop Spot is the Customer's responsibility at its own cost and risk but Bard or its transport contractor may, without liability to the Customer, unload the Goods at the Drop Spot if the Customer requests Bard to do so or is absent from the Drop Spot at the time Bard or its transport contractor wishes to unload and, subject to the rights of Consumers set out in clause 17.2, the Customer releases and forever discharges Bard and its transport contractor from and against any claim, cause of action or liability arising out of the unloading of Goods at the Drop Spot;
 - (f) where the Customer attends Bard's premises to acquire the Goods, Bard may, in its absolute discretion:
 - (i) deliver the Goods into or onto the Customer's vehicle in which case delivery is effected when the Goods are set down in or on the Customer's vehicle; or
 - (ii) deliver the Goods by setting them down alongside the Customer's vehicle in which case delivery is effected when the Goods are set down alongside the Customer's vehicle notwithstanding that Bard's staff may, on request, assist the Customer to load the Goods into or onto the Customer's vehicle.
- 12.4 Where Bard or its transport contractor enters the Customer's premises or the premises of a third party nominated by the Customer as a delivery point, the Customer:
- (a) releases Bard from any claim the Customer may at any time have had against Bard but for this release in respect of damage occasioned to the Customer's premises or injury to persons arising out of the delivery by Bard or its transport contractor of Goods to such premises; and
 - (b) indemnifies and holds Bard harmless from and against any loss, damage or liability suffered or incurred by Bard in respect of damage occasioned to the third party's premises or injury to persons arising out of the delivery by Bard or its transport contractor of Goods to the premises of the third party except for and to the extent that such loss, damage or liability suffered or incurred by Bard arises out of the negligence or wilful misconduct of Bard or its transport contractor.
- 12.5 Where the Customer requests Bard to arrange for the transportation of the Goods from Bard to the Customer and for the insurance of the goods while in transit on the Customer's behalf, Bard shall be entitled to charge the Customer at Bard's current charges from time to time, including labour for loading or unloading the Goods.
- 12.6 Goods ordered for collection by the Customer will be held for a maximum period of 10 Business Days after the specified collection date. If the Goods are not collected by that time, they may be delivered to (at Bard's option) the Customer at a location selected by Bard and all costs incurred by Bard in relation to the holding and delivery of the Goods shall be charged to and be paid by the Customer.
- 12.7 The quantities and description of Goods listed on Bard's documentation shall be conclusive evidence of the quantities and condition of the Goods actually delivered and received by the Customer notwithstanding that the Customer or its representatives have not signed such documentation, except in the case of manifest error or where the Customer advises Bard in writing to the contrary within 24 hours of the date of the delivery or return of the Goods.
- 12.8 No defect or claim in respect of Goods delivered shall entitle the Customer to reject delivery of other Goods, which are not subject to any defect or claim, delivered as part of the order.

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- 12.9 If Bard is prevented either directly or indirectly from performing any of its obligations under these Conditions, including without limitation, making a delivery of the Goods or any part of the Goods by reason of Force Majeure it shall be entitled, at its option, by notice to the Customer, either to:
- (a) extend the time for delivery of the Goods for a reasonable period; or
 - (b) subject to refunding the Customer for any payment already made to Bard in respect of those particular Goods (if any), terminate a Contract, and the Customer shall not have any claim against Bard for damages or any other remedy for breach of contract.

Risk

- 12.10 The goods are at the Customer's risk from the occurrence of first in time of any of the following events:
- (a) the passing of title in the Goods to the Customer;
 - (b) when Bard's or its transport contractor's delivery vehicle arrives at the Drop Spot;
 - (c) the physical delivery of the goods to the Customer;
 - (d) the physical delivery to a carrier or other bailee whether named by the Customer or not.
- 12.11 The Customer has the responsibility at its expense and without recourse to Bard to collect and transport the goods from Bard' premises and to keep the Goods insured from the time at which risk passes to the Customer.

13. RETENTION OF TITLE

- 13.1 The Customer agrees that legal and equitable title to the Goods is retained by Bard until Bard receives payment in full from the Customer for the Goods and all other monies owing by the Customer to Bard at any time. Payment shall not be taken to occur until the payment by electronic transmission, telegraphic transfer, cheque, note or other negotiable instrument has been duly cleared through Bard' bank account and is available for immediate use by Bard.
- 13.2 The Customer agrees that a certificate purporting to be signed by an officer of Bard identifying goods as unpaid for shall be conclusive evidence that Goods have not been paid for and that Bard has title to those Goods.
- 13.3 Prior to title in the Goods passing to the Customer, the Customer:
- (a) must hold the Goods as bailee and fiduciary agent of Bard;
 - (b) where the Customer processes the Goods, either by using the Goods to manufacture other goods or by incorporating the Goods in or with any other goods, must hold such part of the new goods ("Processed Goods") on trust for Bard as bailee and fiduciary agent of Bard;
 - (c) must store the Goods and such part of the Processed Goods separate from its own goods and those of any other third party so that they are readily identifiable as the property of Bard;
 - (d) must keep the Goods in good and merchantable condition and fully insure the Goods against loss or damage however caused;

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- (e) must not sell the Goods except with the prior written consent of Bard or in the ordinary course of the Customer's business, provided that any such sale is at arms' length and on market terms;
 - (f) any proceeds of re-sale, insofar as they relate to the Goods shall be held on trust for Bard in a separate account; and
 - (g) must not create any encumbrance over the Goods which is inconsistent with Bard' title and ownership of the Goods.
- 13.4 For the purpose of this clause 13, "such part" means an amount equal in dollar terms to the amount owing by the Customer to Bard at the time the Goods are used in the manufacture of, or incorporated into, the Processed Goods.

14. DAMAGE, INACCURACIES AND DEFECTS

- 14.1 The Customer shall check all Goods received immediately upon unloading and shall notify Bard in writing of any inaccuracies or short supply of Goods or any fault, damage or defect in Goods or failure of Goods to comply with the terms of a Contract made pursuant to these Conditions within five (5) Business Days of the date of delivery of the Goods.
- 14.2 Subject to the rights of Consumers set out in clause 17.2, if the Customer does not notify Bard in writing within five (5) Business Days of the date of delivery of any inaccuracies or short supply, visual or obvious defects or a failure of the Goods to comply with the terms of a Contract, Bard will not be responsible for any inaccuracies or short supply of Goods, or for visually obvious damage or defects in Goods or failure of Goods to comply with the terms of a Contract whatsoever and howsoever caused and whether arising out of or resulting from the negligence or wilful misconduct of Bard, or any of its officers, employees, agents or representatives.
- 14.3 The Customer must notify Bard of any queries or disputes regarding items shown in invoices issued by Bard within five (5) Business Days of the issue date of the relevant invoice.
- 14.4 In order to submit a claim for a defective product under the warranty given in clause 17.1, you will need to (at your own expense) contact Bard on +61 (0)7 3216 6322 and send notice in writing to Bard at PO Box 518 Archerfield QLD 4108, or by email at sales@bardengineering.com.au with the Customer's details (your name, address, telephone number), details of Bard' Goods and details of the defect claimed – also refer to Bard' Warranty Policy (copy available on website www.Bard.com.au and by request).

15. ASSIGNMENT AND SUBCONTRACTING

- 15.1 Bard may assign or otherwise deal with the benefit of any Contract made pursuant to these Conditions without the consent of the Customer.
- 15.2 Bard may subcontract the supply of the Goods to the Customer, in whole or in part, without the consent of the Customer.
- 15.3 The Customer may assign or subcontract its obligations under these Conditions or a Contract only with the express written consent of Bard.

16. RETURN'S POLICY

- 16.1 Returns will only be accepted by Bard in accordance with this "Return Policy". Bard will accept Goods for return where the following conditions are met:
- (a) The Customer must give notice that it wishes to return the Goods to Bard.

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- (b) The Goods must be in an “as new” saleable condition. Goods which are returned which do not meet this criteria will either be returned to the Customer or made available for the Customer to collect.
 - (c) The Goods must be stock items. Non-stock items or Goods which are manufactured to, or indented with specific Customer’s requirements or which are supplied ‘ex-works Bard’ are not returnable.
 - (d) The Customer must pay the costs of returning the Goods to Bard.
 - (e) The Goods must be returned within 20 Business Days of original date of delivery to the Customer.
 - (f) The Customer must pay a ‘restocking fee’ equal to 50% of the value of the Goods being returned for Bard’ handling and administration of the return of the Goods.
- 16.2 Bard will invoice the Customer the restocking fee for Goods returned in its next invoicing cycle. Payment is to be made in accordance with the payment terms in clause 4.
- 16.3 If the Customer wishes to return Goods, the Customer must fill out and submit to Bard a Material Return Request Form, for Bard’s review and consideration.

17. WARRANTIES, LIABILITIES AND INDEMNITIES

- 17.1 Bard warrants that the Goods it manufactures are free from defects in manufacture, including the material used to manufacture and welding fractures (in accordance with its Warranty Policy – copy available on request if not already provided). Where applicable, the Goods shall be installed in accordance with Bard’ recommended fixing procedures or under the strict supervision of Bard.
- 17.2 Bard acknowledges that consumer legislation contains certain Consumer guarantees for the supply of goods or services that cannot be excluded, restricted or modified by these Conditions. For Consumers under the Australian Consumer Law:
- (a) Bard’ Goods come with guarantees that cannot be excluded under the Australian consumer Laws, e.g.:
 - (i) that Bard’ Goods are of acceptable quality and fit for the purpose for which they are commonly acquired or for a purpose made known to Bard and based on which the goods are supplied, and
 - (ii) that Bard’ services will be provided with due care and skill and are fit for the purpose for which they are commonly acquired or for a purpose made known to Bard and based on which the services are supplied;
 - (b) The Consumer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage;
 - (c) The Consumer is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.
- Nothing in these Conditions is intended to exclude or restrict the application of such Law.
- 17.3 Subject to the rights of Consumers set out in clause 17.2:
- (a) Bard shall not be responsible for the consequence of any representation made or technical advice given by its officers, employees, agents representatives or sub-contractors in connection with the design, installation and use of the Goods, and the Customer agrees that all such advice is accepted by the Customer entirely at the Customer’s risk; or

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- (b) or as otherwise expressly specified in the terms of Bard' Warranty Policy, Bard' liability to the Customer (whether arising under statute, contract, tort (including negligence), equity or otherwise) for any defect in the Goods, or the supply of the Goods, is limited, at Bard' option, to:
 - (i) in the case of Goods, the repair of the Goods, the replacement of the Goods or paying for the cost of repair or replacement of the Goods;
 - (ii) in the case of services, the resupply of services or paying for the cost of resupplying the services;
 - (iii) the Current Price of the Goods (or services) giving rise to the liability.
 - (c) and also subject to clause 17.3(b) Bard is not liable to the Customer or anyone else in connection with the Goods or the supply of the Goods or with these Conditions (including any changes to the Conditions), including without limitation for:
 - (i) any losses, costs, damages, expenses, claims, demands, actions, suits or proceedings (including without limitation for damage to the Goods or injury to any person) arising from:
 - A. the loading, unloading or delivery of the Goods;
 - B. a failure to deliver, or delay in delivering, the Goods;
 - C. a failure to install the Goods in accordance with Bard' recommendations or supervision;
 - D. the removal of defective Goods or the installation of replacement Goods; or
 - E. the use of any tool or equipment loaned or hired out by Bard;
 - (ii) any Consequential Loss; and
 - (iii) any claim, action or proceeding by a third party against the Customer (or any loss, damages or liability incurred or suffered by the Customer as a result of any such claim, action or proceeding); and
 - (d) the Customer indemnifies Bard from and against all losses, damages, costs and expenses suffered or incurred by Bard, and all claims, demands, suits, actions or proceedings made or brought against Bard, arising out of:
 - (i) Bard' use of or reliance on any materials, design, drawing or specification provided to Bard by the Customer (including any allegation or claim that any such use or reliance by Bard infringes the intellectual property rights of any person);
 - (ii) any loss or damage caused by or during the processing of materials or components supplied to Bard by the Customer, except if you are a Customer under a Consumer Contract and such loss or damage arises from the negligence or wilful misconduct of Bard, or any of its officers, employees or agents.
- 17.4 Nothing in these Conditions shall constitute Bard as a subcontractor of the Customer. Bard' obligations and liabilities are limited to those of a supplier of goods only.

18. CUSTOMER ISSUED COMPONENTS

- 18.1 Where the Customer provides Bard with any (free issue) components for installation on the Customer's behalf to any Bard's Goods by Bard, it does so at its own risk and the components remain at the risk of the Customer, despite them being left in the possession and/or control of Bard.

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- 18.2 Bard will perform the installation of the Customer's components to Bard's Goods in accordance with the industry standards of workmanship.
- 18.3 The Customer acknowledges and agrees that Bard has no responsibility whatsoever for quality or workmanship of the Customer's Components and that the quality and workmanship of the component is sole responsibility of the supplier of the component or the original manufacturer of the component.
- 18.4 Other than Bard' obligation to perform the installation in accordance with clause 18.2, or the negligent acts or omissions of Bard, the Customer agrees that Bard has no liability to the Customer for any failure, damage or loss of the Customer's components and that no warranty is given by or to be implied against Bard, in respect to any Customer provided components.
- 18.5 The Customer acknowledges that any delay by it in providing its components to Bard for installation may impact on Bard' ability to meet the Customer's requested delivery date for the Goods, and that in those circumstances (and in addition to clause 12.1), the Customer acknowledges that Bard shall not in any way be liable to the Customer for any loss or damage (of whatever nature) suffered as a result of any delay or failure by Bard to affect delivery of Goods by the date requested.

19. MISCELLANEOUS

- 19.1 These Conditions set out the entire agreement between the parties in relation to their subject matter. The terms of the United Nations Convention on Contracts for the International Sale of Goods 1980 are expressly excluded.
- 19.2 Nothing in these Conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any conditions, warranty, guarantee, right or remedy implied by Law, except to the extent permitted by Law.
- 19.3 These Conditions may only be varied by specific written consent of a Director (or his/her authorised delegate) of Bard.
- 19.4 Bard reserves the right to vary, add or substitute these Conditions from time to time. Any variations to these Conditions will be deemed to have been received by the Customer if they are forwarded to the last known postal address of the Customer or are contained in a Quotation after the variation and shall have effect from the date of publication of such changes to its customers. A copy of the most current Conditions will be forwarded to any Customer who requests it from Bard.
- 19.5 A party waives a right under these Conditions only if it does so in writing. A party does not waive a right simply because it fails to exercise the right, delays exercising the right or only exercises part of the right. A waiver of one breach of a term of these Conditions does not operate as a waiver of another breach of the same term or any other term.
- 19.6 If a provision in these Conditions is wholly or partly invalid or unenforceable in any jurisdiction, that provision or the part of it that is invalid or unenforceable must, to that extent, and in that jurisdiction, be treated as deleted from these Conditions. This does not affect the validity or enforceability of the remaining provisions in that jurisdiction, or of the deleted provision in any other jurisdiction.
- 19.7 The law applicable to these Conditions, a Contract or a Consumer Contract between Bard and the Customer is the law of the State of Queensland and Commonwealth of Australia. Bard and the Customer submit to the jurisdiction of the Queensland and Commonwealth courts.