

# BENNEY TRANSFER TECHNOLOGY



## STANDARD TERMS AND CONDITIONS OF QUOTATION AND SUPPLY

### 1. SUPPLY OF GOODS

Benney Transfer Technology, herein after called BTT (Proprietor: WIKA Australia Pty Ltd, ABN 49 004 465 936 / ACN 004 465 936) agrees with the party to whom BTT supplies goods ("Customer"), that unless expressly amended in writing by BTT, the Goods are only supplied by BTT on these Terms and Conditions of Quotation and Supply and Credit Application Form and in respect of each order of Goods from the Customer accepted by BTT includes the order confirmation and invoice issued by BTT in respect of the relevant order (collectively, the "Contract") and that the Contract shall supersede all other conditions and agreements between the parties notwithstanding anything that may be implied or expressed to the contrary on the Customer's inquiries, order form or other document submitted by the Customer. Upon receipt by the Customer of these Terms and Conditions, any conduct by the Customer which confirms this transaction including the giving of any delivery instructions, or acceptance of delivery shall be deemed to constitute acceptance by the Customer of the Contract. The terms and conditions of the Contract shall without further notice apply to all future transactions between BTT and the Customer whether or not the Contract is delivered or executed in the course of such transactions. For the purposes of the Contract, "Goods" means all goods supplied or agreed to be supplied from time to time by BTT to the Customer and includes all of the Goods detailed in the invoices issued from time to time by BTT to the Customer.

### 2. QUOTATION & SPECIFICATIONS

- (a) A quotation or estimate by BTT does not constitute an offer and will remain valid for 30 business days from the date of the quotation unless otherwise stated on the quotation, after which, it is subject to alteration or withdrawal without further notice.
- (b) BTT has a policy of continuous improvement to its products and reserves the right to alter the specifications, design or, to discontinue any items without prior notice. Notwithstanding, all illustrations, descriptions and specifications are by way of example only and are not necessarily applicable to the goods being offered including the Goods.
- (c) Any BTT non-standard or non-catalogued Goods manufactured to a Customer specification may have their quantity supplied altered within +/- 10% of the quantity ordered by the Customer. Such variances may occur due to batch manufacture of such non-standard Goods and the Customer agrees to accept such variances.

### 3. PRICES

- (a) Any price lists or price indications are subject to alteration at any time. Unless otherwise stated on the attached invoice by BTT, all prices are "EXW - BTT's warehouse", Incoterms® 2010, in Australian currency (unless otherwise agreed with the Customer) and exclude the costs of delivery, installation and taxes.
- (b) BTT shall be entitled to charge and to recover from the Customer all Goods and Services Tax ("GST") payable in respect of the supply by BTT of Goods or services unless the Customer first provides in writing all details as may be required by BTT of any valid GST exemption certificate. For the purposes of the Contract:-
  - (i) Unless otherwise stated, all amounts payable under the Contract are expressed to be exclusive of GST. If the GST is payable on a Taxable Supply, the amount payable will be the amount expressed in the Contract plus GST;
  - (ii) The Customer will not be required to pay any amount to BTT (as the supplier) in respect of GST unless the Customer has received a Tax Invoice from BTT;
  - (iii) Each party warrants to the other party that it is registered for GST purposes; and

- (iv) For the purposes of this paragraph 3(b), the terms "GST", "Taxable Supply", and "Tax Invoice" have the meanings given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or, if that Act does not exist means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.
- (c) For any order less than A\$100, BTT reserves the right to charge the Customer a handling charge.
- (d) BTT reserves the right to charge price(s) ruling as at the date of delivery.

### 4. PAYMENT

Unless otherwise stated on the invoice by BTT, payment is to be made net thirty (30) days from the date of invoice without deduction except international sales which must be made at BTT option by telegraphic transfer at the time of placing the order to the account nominated by BTT or, by confirmed irrevocable letter of credit against documentation prior to delivery at the bank directed by BTT. No discount is allowed, and interest will be charged on all overdue accounts at the rate of 18% per annum calculated daily. At any time prior to delivery of the Goods, BTT reserves the right to require the Customer to pay such part or whole of the contract price as BTT considers appropriate.

### 5. CANCELLATION

Orders may not be cancelled by the Customer except with the prior written consent of BTT and then only on such terms as BTT may require. BTT reserves the right to charge the Customer a cancellation charge of 20% of the contract price or such amount BTT calculates will indemnify it against the damage suffered (including lost profit) as a result of cancellation.

### 6. DELIVERY

- (a) The costs of freight, delivery, unloading and installation of the Goods on their arrival at the agreed place of destination shall be borne by the Customer and the Customer shall reimburse BTT for all such costs which it incurs on the Customer's behalf. Notwithstanding, any Goods which require special packing will be charged to the Customer's account at cost and will not be returnable for credit.
- (b) While BTT will use its best endeavours to deliver by the delivery date mentioned in any document, such date shall be indicative only and will not give rise to any legal obligation to supply on that date. BTT reserves the right to deliver using any mode of transport and/or by instalments. Each instalment shall be deemed to be sold under a separate contract, provided always however that BTT may suspend delivery whilst payment is overdue in respect of any previous instalments.
- (c) The Customer is deemed to accept delivery of the Goods when the Goods are placed at the Customer's disposal at the agreed place of destination, namely, when the Goods are available for collection at BTT's warehouse if sold "EXW - BTT's warehouse" Incoterms® 2010, notwithstanding that delivery of the Goods may be staggered or that the Customer may not have signed a receipt for the Goods.
- (d) If the Customer is unable or fails to accept delivery of the Goods, BTT may deliver the Goods to a place of storage nominated by the Customer and failing such nomination to a place nominated by BTT and the Customer shall be liable for all costs incurred by BTT in transporting the Goods to, and storage at, such nominated place. Such delivery shall, for the purposes of paragraph 6(c) of these terms, be deemed to be delivered.

### 7. CLAIMS & RETURNS

- (a) Upon delivery of the Goods or any part thereof, the Customer will inspect the Goods and within seven (7) days of delivery (or in the case of missing or undelivered Goods within 14 days) deliver to

BTT notice in writing of any claim against BTT. If no such notice is received by BTT within the said period the Goods shall be deemed to be in all respects in accordance with the order and the Customer shall be bound to accept and pay for the same accordingly and, subject to paragraph 10 of these terms, the Customer shall have no claims against BTT.

- (b) The return of Goods in accordance with paragraph 7(a) of these terms will not be accepted by BTT unless prior authorisation has been given to the Customer by BTT and, the Goods are returned in the manner directed by BTT at the Customer's cost. At BTT's option, any Goods shown to BTT's satisfaction to be defective may be replaced, repaired or refunded.
- (c) The failure of any delivery or the rejection by the Customer of any Goods delivered or part thereof shall not vitiate or affect this Contract regarding the balance of the Goods to be delivered, and payment thereof.
- (d) Other than as set out in this paragraph 7 of these terms, no Goods may be returned to BTT without its prior written approval and then only on such terms as BTT may require. Notwithstanding, BTT reserves the right to charge the Customer a cancellation charge of 20% of the contract price or such amount BTT calculates will indemnify it against the damage suffered (including lost profit) as a result of accepting that return.

#### 8. DELAY

BTT is not liable for failure or delay in performance caused wholly or partially by unavailability of freight or shipping space, failure of manufacturer/supplier to supply whole or part of the Goods to BTT, prohibitions or restrictions under any law or by any government or authority, inability to obtain any necessary export licence or import licence, or any act of force majeure including, but without limitation, any act of war, fire, explosion, accident, breakdown of machinery, rioting, civil or industrial disturbances, strikes or lockouts, shortage of labour, or due to any other circumstances, whether of a similar nature or beyond the control of the BTT. In the event of any such failure or delay, BTT may at its discretion terminate whole or any part of any order or postpone its performance.

#### 9. RISK AND TITLE

Until payment in full of all amounts owing by the Customer to BTT on any account whatsoever:-

- (a) the title in the Goods shall not pass to the Customer and the Customer shall keep the Goods as bailee for BTT. The Goods shall nevertheless be at the risk of the Customer from the time of delivery, and the Customer shall keep the Goods fully insured for their full replacement value. The Customer shall indemnify BTT against all loss or damage to the Goods whatsoever occurring after delivery;
- (b) the Customer must store the Goods so as to clearly identify them as the property of BTT, and ensure that the Customer is not, nor is deemed to be, a reputed owner of the Goods;
- (c) the Customer irrevocably authorises BTT or its servants or agents to enter the Customer's premises and recover and dispose of the Goods and the Customer will not make any claim against BTT in respect of such entry or disposal. The Customer also appoints BTT as its attorney to do all such acts and things as are necessary to enable BTT to recover and dispose of the Goods; and
- (d) the Customer shall hold the Goods in a fiduciary capacity and may only sell the Goods in the ordinary course of business as agent for BTT. Furthermore, the Customer must hold the proceeds of any such sale in a fiduciary capacity for, and to the account of, BTT, and the Customer must take all steps necessary to keep such proceeds separate from other monies and pay over such proceeds to BTT to the extent necessary to discharge in full the Customers indebtedness to BTT.

#### 10. WARRANTIES

- (a) All parts manufactured and supplied by BTT carry (unless otherwise stated on the attached invoice) a guarantee against

defects in materials and workmanship for a period of 12 months from the date of delivery ("Guarantee Period") subject always to the other provisions of this paragraph 10, fair wear and tear excepted and provided always that the Goods have not been mistreated, unattended, interfered with or used with accessories of any kind not manufactured or approved by BTT. Any goods not manufactured but supplied by BTT shall be subject to the warranty, if any, offered by their manufacturer(s) and such goods shall be excluded from the warranty offered by BTT in this paragraph 10. Any goods manufactured and supplied by BTT and shown to its satisfaction to be defective by reason of faulty materials or workmanship may, at BTT's option, be replaced, repaired or refunded in accordance with this paragraph 10. In order to qualify for this guarantee, a claim must be made in writing to and received by BTT within the Guarantee Period and the goods the subject of the claim, must be returned at the Customer's cost in the manner directed by BTT failing which, this guarantee shall not apply and BTT shall be discharged from all liability under this paragraph 10.

- (b) Any advice, recommendations, information assistance or service provided by BTT in relation to the Goods or their use will be given in good faith. BTT only undertakes that the Goods sold pursuant to this Contract will correspond to the description (if any) in the latest issue of the manufacturer's/supplier's applicable label or data sheet relating to that class of goods and that the Customer will be given a good legal title. All warranties, conditions, liabilities (including negligence) or representations in relation to, inter alia, the quality or fitness of the Goods, their compliance with description, or their use or application (other than any being or giving rise to non-excludable rights under any laws of Australia or the States or Territories thereof) which might but for this paragraph 10(b) be implied herein by law or otherwise are hereby expressly negated and excluded. BTT's liability to the Customer for breach of any such non-excludable rights or pursuant to any express warranty of this Contract, will be limited, insofar as the same may legally be done, at BTT's option to: refunding the price of the Goods in respect of which the breach occurred, or the repair or replacement of those Goods; or in relation to the provision of advice or services by BTT, refunding the price of such advice or services in respect of which the breach occurred, or the provision of such advice or services again.

- (c) Notwithstanding any other provision of the Contract, BTT will not be liable for any special, indirect, incidental or consequential loss or damages (including any loss of profits) whether arising from negligence, breach of contract, statute or otherwise in connection with or arising out of or in any way related to the Goods, or the provision by BTT, of advice or services as the case may be, pursuant to the Contract. In any event, the total liability of BTT under this Contract shall be limited to the total amount paid by the Customer under the Contract.

#### 11. INSOLVENCY AND TERMINATION

If the Customer fails to comply with any of the terms of the Contract or fails to make payment for Goods as and when they fall due; or if the Customer shall become bankrupt or commit any act of bankruptcy; or if the Customer (being a company) goes into liquidation or provisional liquidation, has a receiver or administrator appointed; or if in the opinion of BTT the Customer is no longer able to meet its debts as and when they fall due, BTT may at its discretion suspend or postpone any delivery without being liable for any loss or damage suffered by the Customer in that regard, or terminate the Contract by notice in writing to the Customer. Upon termination, BTT shall be entitled to recover all costs incurred by it including, without limitation, payment for all deliveries already made and the cost of materials already obtained or ordered for the purpose of future deliveries (whether or not such materials have been incorporated into the Goods being purchased by Customer). Termination pursuant to this paragraph 11 shall not affect any other rights or remedies which BTT may have.

## 12. PALLETS/CONTAINERS

- (a) Any pallets or containers owned by BTT and used for the delivery of Goods remain the sole property of BTT and are to be returned in good order and condition to BTT or any of its agents upon its request as directed and at the Customer's expense.
- (b) In the event that pallets or containers in which Goods are delivered are not owned by BTT ("Hire Equipment"), the Customer will return the Hire Equipment to BTT in good order and condition and at the Customer's expense within 1 month of delivery and the Customer shall indemnify BTT for all liability, costs and damages however caused relating to that Hire Equipment.
- (c) Any pallets or containers not returned in accordance with the above sub-paragraphs 12(a) and 12(b), may at the election of BTT, be deemed to be purchased by the Customer and shall then be promptly paid for in full by the Customer at a value determined by BTT.

## 13. AIRCRAFT AND OTHER USES

- (a) The Customer must notify BTT if the Goods are for use in aircraft and such special conditions, as then notified by BTT, will apply to the sale of such Goods.
- (b) Notwithstanding, Customers are responsible for obtaining at their expense, any licences, permits or authorisations required under any regulations in force within the country of export and, destination of the Goods. BTT reserves the right to refuse to supply or cancel this Contract at any time in whole or in part if it considers that the Customer has not provided satisfactory evidence of any such applicable licences, permits or authorisations.

## 14. SERVICES

Any services provided to the Customer are subject to a charge by BTT and may at BTT's option be subject to a separate agreement. BTT reserves the right at any time to refuse to perform any services requested by the Customer.

## 15. INTELLECTUAL PROPERTY

Goods offered for sale by BTT may be the subject of patents, registered designs, trademarks, copyright or other proprietary and legal protection and the Customer will immediately notify BTT of any suspected infringement of such rights. To the best of BTT's knowledge, goods sold do not infringe any patent, trademark, registered design or copyright of any third party.

## 16. PPSA

- (a) The Customer acknowledges:
  - (i) that the transactions contemplated by the Contract give rise to a Security Interest in the Goods as Collateral under and for the purposes of the PPSA;
  - (ii) that BTT may Register BTT's Security Interest on the PPS Register and the Customer consents to such registration;
  - (iii) that BTT may Register BTT's Security Interest prior to the Attachment of BTT's Security Interest to the Goods;
  - (iv) that the Goods are not Consumer Property;
  - (v) that BTT may from time to time, whether before or after the transactions contemplated herein, grant security interests (whether by mortgage, charge or otherwise) over its rights under the Contract.
- (b) The Customer must execute documents and do such further acts as may be required by BTT to Register the Security Interest granted to BTT under the Contract under the PPSA.
- (c) Without limiting the generality of condition 16(b) of these terms and conditions, if BTT determines that the PPSA applies, or will in the future apply, to a Contract or the supply by it of any Goods, then the Customer must promptly upon request from BTT:

- (i) do anything (including obtaining consents, making amendments to the relevant Contract or executing a new Contract) for the purposes of:
    - (A) ensuring that any Security Interest created under, or provided for by, the relevant Contract:
      - 1. attaches to the Collateral that is intended to be covered by that Security Interest;
      - 2. is enforceable, perfected, maintained and otherwise effective; and
      - 3. any Security Interest created under, or provided for by, the relevant Contract has the priority contemplated by that Contract; or
    - (B) enabling BTT on and from the Registration Commencement Time (within the meaning of the PPSA), to prepare and register a financing statement or financing change statement; or
    - (C) enabling BTT to exercise any of its powers in connection with any Security Interest created under, or provided for by, the relevant Contract; and
  - (ii) do everything including signing all documents and giving all consents to enable BTT to cure any defect in Registration of BTT's Security Interest and the Customer hereby irrevocably appoints BTT as the Customer's attorney for this purpose.
- (d) Until ownership of the Goods passes, the Customer waives the Customer's rights under the following provisions of Part 4 of the PPSA:
- (i) to receive a notice of intention of removal of an accession (section 95);
  - (ii) to receive a notice that BTT decides to enforce BTT's Security Interest in accordance with land law (section 118);
  - (iii) to receive a notice of enforcement action against liquid assets (section 121(4));
  - (iv) to receive a notice of disposal of goods by BTT purchasing the Goods (section 129);
  - (v) to receive a notice to dispose of Goods (section 130);
  - (vi) to receive a statement of account following disposal of Goods (section 132(2));
  - (vii) to receive a statement of account if no disposal of Goods for each 6 month period (section 132(4));
  - (viii) to receive notice of any proposal of BTT to retain Goods (section 135);
  - (ix) to object to any proposal of BTT to either retain or dispose of Goods (section 137);
  - (x) to redeem the Goods (section 142);
  - (xi) to reinstate the security agreement (section 143);
  - (xii) to receive a notice of any verification statement (sections 157(1) and 157(3)).
- (e) The Customer further agrees that where BTT has rights in addition to those under Part 4 of the PPSA, those rights will continue to apply.
- (f) Until ownership of the Goods passes, the Customer must not give to BTT a written demand or allow any other person to give BTT a written demand requiring BTT to register a financing change statement under the PPSA or enter into or allow any other person to enter into the PPS Register a financing change statement under the PPSA.
- (g) The Customer must forthwith upon receiving a request for information in relation to BTT's Security Interest and otherwise as contemplated by section 275 of the PPSA, and within a reasonable time prior to responding to the request, notify BTT of any such request and provide full details of the request and/or a copy of it.
- (h) The Customer acknowledges that it has a duty of confidentiality to BTT by reason of the matters contemplated in the Contract and the protection of BTT's goodwill inherent in the transactions contemplated in the Contract. Subject to the

PPSA, each of BTT and the Customer agree not to disclose any information of the kind referred to in section 275(1) of the PPSA that is not publicly available.

- (i) The Customer must assist and provide all necessary consents and sign all necessary documents and do all necessary things to assist BTT in applying to a Court for an order exempting BTT from responding to the request or extending the time for responding to the request under section 278 of the PPSA.
- (j) Anything that is required by BTT to be done under this paragraph 16 shall be done by the Customer at its own expense. The Customer agrees to reimburse the costs of BTT in connection with any action taken by BTT under or in connection with this paragraph 16.
- (k) Without limiting any other indemnity in favour of BTT provided herein, the Customer hereby indemnifies BTT from and against any costs, damages, loss or liability of any kind (including legal costs on a full indemnity basis and disbursements in defending or settling the claim) however suffered or incurred by BTT ("Liability") as a consequence of any breach of the Contract (including these terms and conditions) by the Customer. This indemnity extends to any Liability incurred by BTT:
  - (i) arising out of or in connection with an Amendment Demand or Amendment Notice or any other legal action in relation to BTT's Security Interest found by a Court not to be authorised under section 178 of the PPSA; and
  - (ii) whether such a Liability arises out of statute, tort (including negligence), contract or otherwise.
- (l) The Customer acknowledges that it has received value as at the date of first delivery of the Goods and has not agreed to postpone the time for Attachment of BTT's Security Interest.
- (m) The Customer irrevocably grants to BTT the right to enter upon the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, if BTT has cause to exercise any of its rights under sections 123 or 128 of the PPSA, and the Customer must indemnify BTT from any claims made by any third party as a result of such exercise.
- (n) In these terms and conditions and for the purposes of the Contract the following words and phrases have the meanings specified unless the context indicates otherwise:
  - (i) "Amendment Demand" has the meaning given in section 178 of the PPSA;
  - (ii) "Amendment Notice" has the meaning given in section 180 of the PPSA;
  - (iii) "Attaches" has the meaning given in section 19 of the PPSA, and "Attached" and "Attachment" have corresponding meanings;
  - (iv) "Collateral" has the meaning given in section 10 of the PPSA and refers to the Goods;
  - (v) "Consumer Property" has the meaning given in section 10 of the PPSA;
  - (vi) PPSA means the *Personal Property Securities Act 2009* (Cth) (as amended from time to time) and any regulations made pursuant to the PPSA;
  - (vii) "PPS Register" means the Personal Property Securities Register established under section 147 of the PPSA;
  - (viii) "Register" means to register a Security Interest on the PPS Register and "Registration" has a corresponding meaning; and in relation to an asset or person located outside Australia, Registration or other action having a corresponding effect;
  - (ix) "Security Interest" has the meaning given in section 12 of the PPSA;
  - (x) "BTT's Security Interest" means the Security Interest in the Goods contemplated by the Contract and granted to BTT.

## 17. FURTHER PROVISIONS

- (a) The Customer must not without BTT's prior written approval, assign or transfer or purport to assign or transfer this Contract or the benefit thereof to any other person whatsoever.
- (b) No indulgence or forbearance extended to the Customer shall limit or prejudice any other right of claim to BTT.
- (c) The supply of Goods by BTT shall not confer any right upon the Customer to use any BTT trademark or tradename without BTT's prior written consent and at all times such marks or names remain the property of BTT.
- (d) If any provision or part of a provision of the Contract should be held unenforceable or in conflict with the law of any relevant jurisdiction, any part so held unenforceable or invalid shall be read down to the minimum extent necessary to render it enforceable and valid, and if incapable of being read down it shall be severed from the remainder of the Contract which shall not be effected by such severance.
- (e) This contract shall be governed by the laws of the State of New South Wales, Australia and the parties hereby submit to the non-exclusive jurisdiction of the Courts and tribunals of the said State.
- (f) The rights and obligations of the parties under this Contract shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods (1980).

### Acceptance:

I/We, the Customer, acknowledge and agree to the Contract (including these terms and conditions of quotation and supply) as may be amended from time to time by BTT. I/we represent to BTT that I/we are duly authorised to acknowledge and agree to the Contract (including these terms and conditions of quotation and supply) for and on behalf of the Customer:

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Capacity: \_\_\_\_\_

Date: \_\_\_\_\_