

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) 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 ("Contract") and that this 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 this Contract. The terms and conditions of this Contract shall without further notice apply to all future transactions between BTT and the Customer whether or not this Contract is delivered or executed in the course of such transactions.

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.

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 "ex-warehouse" - BTT's warehouse, Incoterms 2000, in Australian currency and exclude the costs of delivery, installation and taxes (including sales tax). Notwithstanding, all international sales of goods outside Australia are sold "FCA" - BTT's warehouse, Incoterms 2000, unless otherwise stated on the invoice by BTT.
- (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.
- (c) For any order less than \$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 good which requires 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 instalment.
- (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 "ex-warehouse" or, when BTT has loaded the goods into the charge of the agreed carrier if sold "FCA - BTT's warehouse", 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 clause 6(c) above, 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 Clause 10, the Customer shall have no claims against BTT.
- (b) The return of goods in accordance with sub-clause 7(a) 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 clause 7, 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 Customer's 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 clause 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 clause 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 sub-clause. 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 sub-clause.
- (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 clause 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 this 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 this Contract. In any event, the total liability of BTT under this Contract shall be limited to the total amount paid by the Customer under this Contract.

11. INSOLVENCY AND TERMINATION

If the Customer fails to comply with any of the terms of this 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 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 this 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 clause 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-clauses, 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 as special conditions, 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. 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 affected 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).

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