

## Introduction

1. These Standard Terms and Conditions, the Quote, the Special Conditions and the Specifications form the entire agreement between the Buyer and BTP Parts Pty Ltd ACN 096 533 283 (**BTP**) for the sale and purchase of the Product(s) (**Agreement**). By countersigning the Quote, or by issuing a purchase order or instructing BTP to proceed based on the Quote, the Buyer approves the Specifications and accepts the terms and conditions set out in the Quote and these Standard Terms and Conditions.
2. If there is any inconsistency between the terms and conditions of the Quote, the Special Conditions, the Specifications and these Standard Terms and Conditions, the order of priority for the purpose of construction is:
  - a. the Special Conditions; then
  - b. these Standard Terms and Conditions; then
  - c. the Quote (other than the Special Conditions); then
  - d. the Specifications.
3. Capitalised terms not defined in a particular clause of these Standard Terms and Conditions have the meanings given to them in clause 54.

## Deposit

4. On countersigning the Quote or issuing a purchase order or instructing BTP to proceed based on the Quote, the Buyer must pay BTP the Deposit in AUD (if applicable). The Buyer agrees that the Deposit is paid in consideration for the Buyer securing one or a series of delivery slots for the Product(s) (as the case may be). The Deposit may be applied by BTP to costs associated with the supply of the Product(s) to the Buyer. Unless the Agreement is terminated by BTP under clause 44 of these Standard Terms and Conditions, the Deposit is not refundable unless this has been previously agreed in writing by BTP.

## Payment

5. BTP is not required to deliver the Product(s) until the Buyer has paid for them in full. Payment of the Price less the Deposit is due in AUD in accordance with the Deposit and the Quote and in any case on or before delivery of the Product(s) to the Buyer. Time for payment is of the essence. If invoices are issued, payments are due within 30 days from the end of month in which the invoice is issued (or within such other period as specified in the invoice).
6. If BTP is not paid for any part of the Product(s) on or before the date that risk in the Product(s) passes to the Buyer (**Delivery Date**), without prejudice to any other rights or remedies of BTP:
  - a. the Buyer will be liable for any costs incurred by BTP as a result of the Buyer's default;
  - b. any and all outstanding money payable to BTP will accrue interest at the BBSW (3 month mid-point rate) + 8.5% (available at <http://www.afma.com.au/data/BBSW>); and
  - c. BTP may recover the Price of the Product(s) together with all costs and interest from the Buyer as a liquidated debt in a court or tribunal of competent jurisdiction irrespective of any claim that the Buyer may have against BTP for anything or matter related to the Product(s).
7. Unless otherwise stated, all pricing in the Quote has been calculated exclusive of GST (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cwth)). If GST is imposed on a supply made pursuant to this Agreement, the Buyer must pay to BTP, in addition to the GST-exclusive consideration, an amount equal to the GST payable by the Buyer in respect of the supply. Any GST amount payable under the Agreement is payable on the day that payment of the consideration (or part of the consideration) for the supply that has given rise to the obligation to pay GST is required pursuant to this Agreement, or where the consideration is non-monetary consideration, seven days after the recipient receives a tax invoice for the supply. BTP will ensure that any invoice or other request or demand for payment for supplies to the Buyer under the Agreement constitutes a tax invoice that should, where applicable, enable the Buyer to claim any tax credits for the GST in respect of supplies to which the invoice relates.

## Delivery, title and risk

8. Delivery of the Product(s) is Ex Works (the place as specified in the Quote) as defined in Incoterms 2010 (**Delivery**). Any freight or

shipment of the Product(s) by BTP to the Buyer will be subject to separate agreement between the parties.

9. Title to the Product(s) passes from BTP to the Buyer on payment of the Price (plus any amounts determined under clause 6) to BTP in full. Until that time, title in the Product(s) remains with BTP. Risk in the Product(s) passes from BTP to the Buyer upon the actual or constructive Delivery of the Product(s) to:
  - a. the Buyer, or any of its agents, representatives or subcontractors; or
  - b. if BTP is to arrange freight or shipment of the Product(s), the freight or shipping subcontractor retained by BTP at the Buyer's direction or with the Buyer's agreement.
10. BTP will use reasonable endeavours to ensure that the Product(s) are available for Delivery within the time specified in the Quote. BTP makes no guarantees as to the proposed delivery date and the delivery date is subject to change. If the proposed delivery date changes, BTP will advise the Buyer of the new proposed delivery date as soon as reasonably practicable.
11. While title in the Product(s) remains with BTP:
  - a. the Buyer has no right or claim to any interest in the Product(s);
  - b. the Buyer must not claim any lien over the Product(s);
  - c. the Buyer must not create any absolute or defeasible interest in the Product(s) in relation to any third party except as expressly authorised by BTP;
  - d. where the Buyer is in actual or constructive possession of the Product(s), the Buyer:
    - i. must not deliver them or any document of title to the Product(s) to any person except as directed by BTP;
    - ii. is in possession of the Product(s) as a bailee of those goods and owes BTP the duties and liabilities of a bailee. This bailment continues in relation to each of the Product(s) until the Price (plus any amounts determined under clause 6) has been paid to BTP in full;
    - iii. must not allow any person to have or acquire any security interest in the Product(s);
    - iv. must store the Product(s) separately from all other equipment;
    - v. must insure the Product(s) for their full insurable or replacement value (whichever is the higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Buyer carries on business; and
    - vi. must not remove, deface or obliterate any identifying plate, mark or number on any of the Product(s).
12. Without limiting or waiving its rights under clause 11 of these Standard Terms and Conditions, if the Buyer supplies any of the Product(s) to any person before the Price (plus any amounts determined under clause 6) has been paid to BTP in full, the Buyer agrees that:
  - a. the Buyer holds the proceeds of re-supply of the Product(s) on trust and as agent for BTP immediately when those proceeds are receivable or are received by the Buyer;
  - b. any accessory or item that accedes to any of the Product(s) by an act of the Buyer, or of any person at the direction or request of the Buyer, becomes and remains the property of BTP until BTP is paid the Price (plus any amounts determined under clause 6) in full, at which time title in the Product(s) (including the accessory) passes to the Buyer or the relevant person (as the case may be);
  - c. if any Product(s) are used in any mining, manufacturing or other process or are mixed with other products, the Buyer must record the value of Product(s) so used or consumed and upon sale of any item produced using the Product(s) must immediately pay the balance of the Price to BTP out of the proceeds of sale; and
  - d. BTP may recover possession of the Product(s) at the Buyer's cost, including at any site owned, possessed or controlled by the Buyer and in this circumstance the Buyer agrees that BTP has an irrevocable licence to do so without incurring liability to the Buyer or any person claiming through the Buyer. Where the Buyer does not own, possess or control the site at which

the Product(s) are situated, the Buyer agrees to use its best endeavours to procure access for BTP.

#### **PPSA**

13. The Buyer acknowledges that BTP has a purchase money security interest in the Product(s).
14. The parties acknowledge that, except as otherwise agreed in writing by the parties, any payments made by the Buyer to BTP must be applied in accordance with section 14(6)(c) of the PPSA.
15. The Buyer acknowledges that BTP's rights and interest in proceeds derived from the Product(s) constitute a security interest in such proceeds.
16. BTP may register any security interest contemplated by this agreement on the PPS Register in any manner it chooses (including by registering one or more financing statements in relation to its interest in the Product(s), with such expiry dates as BTP determines in its absolute discretion). The Buyer must provide BTP with any information it requires for the purposes of giving effect to such registration.
17. Without limiting any other provision of this agreement, the Buyer is in default under the Agreement for the purposes of section 123(1) of the PPSA if any other secured party:
  - a. seizes the Product(s) (whether under PPSA, section 123 or otherwise) for the purposes of enforcement; or
  - b. becomes entitled to seize the Product(s).
18. For the purposes of section 157(3) of the PPSA, the Buyer irrevocably and unconditionally waives its right to receive any notice from BTP in connection with the registration of a financing statement or a financing change statement in respect of the Product(s).
19. The Buyer agrees that any action taken by BTP in relation to BTP's security interest in the Product(s) is at the cost of the Buyer.
20. If chapter 4 of the PPSA would otherwise apply to the enforcement of any security interests created under this agreement then the provisions of chapter 4 are excluded, to the extent possible.
21. The Buyer must take any steps BTP reasonably requires to perfect or otherwise ensure the enforceability and priority of any security interest granted to it under this agreement, including, at the request of BTP:
  - a. obtaining and giving any consents;
  - b. producing and providing any receipts or information in respect of the Product(s);
  - c. signing or procuring the signing of any documents;
  - d. facilitating registration of any security interest on the PPS Register;
  - e. facilitating the giving of notice to any person, including any person who also has, or appears to have, a security interest over the Buyer or the Product(s); and
  - f. facilitating the exercise of BTP's right in enforcing any security interest.
22. The parties agree that other than the existence of a security interest in any Product(s), and details of the relevant Product(s), and the amount (if any) owing by the Buyer to BTP from time to time in relation to any Product(s), all other information relating to this agreement is subject to a duty of confidence, and must not be disclosed to any party other than in accordance with clause 42 (**Confidentiality**).

#### **Specification**

23. The Specification has been prepared solely based on information provided to BTP by the Buyer, information published as at the date of the Quote by any original equipment manufacturer (**OEM**) in relation to any part of the Product(s), and any BTP engineering measurements of any vehicle, parts or equipment to which the Product(s) is or are to be installed or attached by BTP (where relevant). BTP has relied on the correctness, accuracy and completeness of the information provided by the Buyer and the information published by the relevant OEM. BTP takes no responsibility and has no liability for or in respect of the information provided by the Buyer or the information published by the relevant OEM. BTP reserves the right to make changes to the Specifications and/or the Price and/or the proposed delivery date if, at any time after the Buyer countersigns the Quote, or issues a purchase order or instructs BTP to proceed based on the Quote:

- a. any information provided by the Buyer proves to be incorrect, inaccurate or incomplete;
- b. new information relevant to the Product(s) is published by an OEM or any other person, or otherwise becomes known to BTP;
- c. the Buyer requests Specification changes or additions; or
- d. changes to the Specifications constitute (in BTP's reasonable opinion) improvements to the Product.

#### **Warranty**

24. Product warranty will be in accordance with BTP's Warranty Procedure attached as Annexure A.
25. Subject to clause 27 of these Standard Terms and Conditions, the Buyer's sole and exclusive remedy for any breach of warranty is, at BTP's option, repair or resupply of the defective material or service, or non-conforming part (as the case may be) at BTP's premises during BTP's normal working hours, the replacement of the goods or component or supply of an equivalent; the payment of the cost of replacing the goods or component or of acquiring an equivalent; the payment of the cost of having the goods or component repaired; the supplying of any services again; or the payment of the cost of having any services supplied again.
26. BTP has no obligation for any Product defects or non-conformance to the extent that the defect or non-conformance is caused by or occurs as a result of:
  - a. misuse of, an accident in relation to, improper storage of, or negligent or wrongful use of, the Product(s);
  - b. inadequate or insufficient maintenance of the Product(s) in accordance with original equipment manufacturer guidelines and/or specific BTP guidelines on maintenance of the Product(s);
  - c. failure by the Buyer to conduct normal maintenance on a Product, including regular inspections and/or incorrect installation of the Product(s) and/or incorrectly completing servicing paperwork;
  - d. improper adjustment, calibration or operation of the Product by the Buyer;
  - e. installation of a Product where that installation was performed by a person other than BTP;
  - f. modifications, alterations, welded additions or design changes to the Product that are not approved by BTP in writing;
  - g. the Buyer's unreasonable delay in making the Product available to BTP upon written notification by BTP of the need for a Product inspection, variation or modification;
  - h. consequential damage to a Product as a result of BTP being unable to access a Product where written notification for Product inspection, variation or modification has been sent to the Buyer by BTP;
  - i. damage resulting from a deficiency in design, materials or workmanship of a third party (not including BTP) that is not discoverable by reasonable care or inspection prior to delivery of the Product(s) by BTP;
  - j. the Product being used in combination with another item that the Buyer or end user knew or should reasonably have known was defective, was not designed for use with the Product, was in a damaged state, or was being operated in a way that would reasonably cause damage to the Product;
  - k. the Product being used otherwise than in accordance with any directions laid down in any operating manual or instructions supplied by BTP;
  - l. the information provided by the Buyer to BTP in respect of the supply of the Product (including with regard to the Specifications) being incorrect, inaccurate or incomplete;
  - m. corrosion;
  - n. normal or fair wear and tear;
  - o. the use of replacement parts, consumables or other equipment other than those supplied by or recommended by BTP for use with the Product; or
  - p. repairs to a Product that are not approved by BTP in writing.
27. BTP's liability in respect of any breach of warranty does not cover costs associated with:
  - a. the removal or reinstallation of a Product;

- b. freight or shipping of a Product to and from the place at which warranty work is performed;
- c. freight or shipping of parts, materials or equipment;
- d. labour costs except where the initial labour was the predominant cause of the breach of warranty;
- e. replacement of items attached to the Product or to which Products are attached or fitted by any person other than BTP;
- f. travel and associated accommodation and sundries for BTP employees required to perform warranty work; or
- g. equipment rental charges associated with the performance of warranty work.

Such costs will be separately invoiced by BTP to the Buyer.

#### Returns

28. Except as provided in clauses 24 to 27, BTP may in its sole discretion approve the return of any Product. If BTP approves the return of the Product, the Buyer shall return the Product freight prepaid and the returned Product will only be accepted if in BTP's opinion the Product is in a good and saleable condition. BTP reserves the right to charge a handling fee as set out in the Return of Goods Policy including Service Exchange Components attached as Annexure B.

#### Liability

29. BTP is not liable for any loss whatsoever arising from the late delivery of the Product(s), and accepts no responsibility for any transaction, schedule or project plan of the Buyer that is jeopardised as a result of late delivery of the Product(s).
30. BTP is not liable for and the Buyer indemnifies BTP and agrees to keep BTP indemnified against all claims, losses, actions, damages, costs and expenses (including without limitation the cost of defending and settling any action, claim or demand) that may be made against or incurred by BTP arising out of a breach of this Agreement by the Buyer, its agents or servants, or use or operation of the Product by the Buyer or any other person.
31. The *Competition and Consumer Act 2010 (Cwlth)*, the *Fair Trading Act 2010 (WA)* and similar legislation in force in other Australian states and territories imply certain terms, conditions and warranties ("prescribed terms") into contracts for the supply of certain goods and services and prohibit the exclusion, restriction or modification of certain terms, conditions and warranties. Some prescribed terms permit a supplier to limit its liability for a breach of the prescribed terms. Subject to the legislation referred to above:
- a. the liability of BTP in respect of a breach of a prescribed term relating to the Product(s) or any part of the Product(s) (but only to the extent that a prescribed term applies to the supply of goods or services under this Agreement) is limited (at the option of BTP) to the replacement of the goods or component or supply of an equivalent; the repair of the goods or component; the payment of the cost of replacing the goods or component or of acquiring an equivalent; the payment of the cost of having the goods or component repaired; the supplying of any services again; or the payment of the cost of having any services supplied again; and
  - b. other than as set out in paragraph 31.a (to the extent it applies) and clauses 24 to 27 of these Standard Terms and Conditions, the Buyer does not have under any circumstances any cause of action against or right to claim or recover from BTP for or in respect of any loss or damage of any kind whatsoever, caused directly or indirectly by:
    - i. any defect in material or workmanship of, or any other defect whatsoever in, or unsuitability for any purpose of, the Product(s) or any part of the Product(s); or
    - ii. default or negligence (or other form of tort) on the part of BTP or of any employee, contractor or agent of BTP or of any person for whom BTP has legal responsibility relating to the supply of, or otherwise concerning the Product(s) or any part of the Product(s),
 and the Buyer indemnifies BTP against any such claim or liability.
32. Subject to clause 31 of these Standard Terms and Conditions, other than as set out in clauses 24 to 27 of these Standard Terms and Conditions and to the maximum extent permitted by law, BTP is not liable for any claims of whatever nature, whether in contract,

warranty, tort (including negligence), product liability or otherwise for any damages arising out of, connected with or resulting from the supply, use, operation or resale of the Product(s) under this Agreement and the Buyer indemnifies BTP against any such claim or liability.

33. Notwithstanding any other provision of this Agreement, the Buyer agrees that BTP shall not in any circumstances be liable for any indirect or consequential loss or damage (including for loss of profit (whether actual, direct, indirect, anticipated or otherwise), loss of revenue, loss of product, loss of expected savings, loss of income, rent or holding costs, loss of expected production, opportunity costs, loss of business (including loss or reduction of goodwill or opportunity) or damage to reputation, regardless of whether any or all of these things are considered to be indirect or consequential losses or damage) in contract, tort (including negligence), under any statute or otherwise arising from or related in any way to this Agreement or its subject matter, or the supply, use, operation or resale of the Product(s) under this Agreement, however caused.
34. The Buyer acknowledges that:
- a. BTP has not supplied any sample of the Product(s) to the Buyer;
  - b. if the Buyer sells the Product(s) to any person by reference to a sample, that sample has not been supplied to that person by BTP;
  - c. in entering into the Agreement, the Buyer does not rely on any statement, representation, warranty, condition, forecast or other conduct which may have been made by or on behalf of BTP, except as set out in clause 40;
  - d. it has independently and without the benefit of any inducement, representation or warranty (other than as set out in clause 40) from BTP or its agent determined to enter into the Agreement;
  - e. the disclosures made before the parties entered into the Agreement regarding the Product(s) are accepted by the Buyer and neither BTP nor any of its representatives has made or makes any representation or warranty as to the accuracy or completeness of those disclosures or that information;
  - f. neither BTP nor any of its representatives:
    - i. accepts any duty of care in relation to the Buyer in respect of any disclosure or the provision of any information referred to in clause 34.e; nor
    - ii. is to be liable to the Buyer if, for whatever reason, any such information is or becomes inaccurate, incomplete or misleading in any particular way; and
  - g. any sale by sample by the Buyer to any person (including any 'consumer' within the meaning of the *Competition and Consumer Act 2010 (Cwlth)*) is not referable to the sale or supply of the Product(s) by BTP to the Buyer under this Agreement.
35. The environmental management at any site on which the Product(s) may be used is the responsibility of the Buyer. In this regard, BTP disclaims responsibility for any infringements which occur related to breaches of any legislation, regulations or rules pertaining to environmental aspects such as noise, pollution, contamination, the atmosphere, water, sewerage, dangerous goods or waste disposal.

#### Intellectual Property Rights

36. The Buyer acknowledges and agrees that BTP remains the owner of all BTP IP and that nothing in this Agreement transfers any BTP IP to the Buyer.
37. The Buyer must not use, register or attempt to register any interest in or otherwise deal with the BTP IP, or allow any other person to do the same, for any purpose.

#### Taxes and duties

38. Notwithstanding any other provision of this Agreement (except clause 7), the parties agree that the Buyer must pay the costs of customs formalities as well as duties, taxes and other charges payable in connection with the export, import and transportation of the Product(s) to any country outside of Australia.

#### Buyer Warranties

39. The Buyer warrants to BTP that:

- a. it is validly existing under the Laws of its place of incorporation or registration;
  - b. it has the power to enter into and perform its obligations under the Agreement and to carry out the transactions contemplated by the Agreement; and
  - c. it is able to pay its debts as and when they are due and payable and no Product(s) are liable to a claim by a trustee in bankruptcy or a liquidator.
47. If the Dispute is unable to be resolved under clause 46 within 14 Business Days, the parties will endeavour in good faith to settle the Dispute at least once by a meeting between the managing directors or chief executive officers of the parties before commencing legal proceedings to finally determine the Dispute.
  48. The Parties must continue to perform their respective obligations under the Agreement (including obligations to pay money), pending the resolution of any Dispute.
  49. Nothing in this Agreement is to be taken as preventing any party from seeking interlocutory relief in respect of any Dispute.

#### **BTP Warranties**

40. BTP warrants to the Buyer that:
  - a. it has and will have the right to sell and transfer title to and property in the Product(s) to the Buyer;
  - b. it is able to pay its debts as and when they are due and payable and no Product(s) are liable to a claim by a trustee in bankruptcy or a liquidator;
  - c. it is validly existing under the Laws of its place of incorporation or registration; and
  - d. it has the power to enter into and perform its obligations under the Agreement and to carry out the transactions contemplated by the Agreement.

#### **Excusable delay**

41. Notwithstanding any other provision of this Agreement, BTP will not be responsible for nor be deemed to be in default under this Agreement on account of any delay in performance under this Agreement due to any acts of God; war, warlike operations, acts of terrorism, insurrections or riots; fires; floods; explosions; serious accidents; epidemics; quarantine restrictions; delay or default by contractors or sub-contractors; any act of government (including delays in approvals or clearances), governmental priorities, allocation regulations or orders affecting materials, facilities or incomplete or completed Product(s); strikes, labour disputes or other industrial action causing cessation, slow-down or interruption of work; delay or default in freight, shipping or logistics; or inability after due and timely diligence to procure materials, accessories, equipment or parts; or any other cause to the extent it is beyond BTP's control or not occasioned by BTP's fault or negligence, as the case may be.

#### **Confidentiality**

42. The Buyer must keep confidential and not disclose, and ensure that its employees, agents and subcontractors keep confidential and not disclose, the Price or any information that would otherwise be confidential between the parties, except that the Buyer may disclose information to the extent reasonably required to comply with the mandatory requirements of an applicable Law.

#### **Termination**

43. Should the Buyer:
  - a. fail to perform or observe any of the terms of this Agreement (including payment terms) within 7 days of BTP notifying the Buyer of its failure to perform or observe such terms; or
  - b. enter into an agreement or arrangement with its creditors; or
  - c. being an individual, commit an act of bankruptcy; or
  - d. being a company, resolve or be ordered to be wound up, become insolvent (as defined in the *Corporations Act 2001* (Cwlth)) in BTP's reasonable opinion, or have a liquidator, receiver, receiver and manager or official manager appointed over all or any part of its assets,

BTP may by written notice to the Buyer immediately terminate the Agreement. Upon termination of this Agreement by BTP under this clause, BTP will be entitled to cease the supply of the Product(s), retain the Deposit and recover from the Buyer any other sum due from the Buyer at the time of termination in respect of any loss or damage suffered by BTP.

44. BTP may by written notice to the Buyer immediately terminate the Agreement for convenience. If BTP terminates the Agreement for convenience, BTP must refund the Deposit to the Buyer.

#### **Disputes**

45. If any dispute arises under or in connection with the Agreement (**Dispute**), either party may give notice to the other party with details of the Dispute.
46. Within 14 Business Days of receiving notice of a Dispute, the senior managers of the parties (with authority to resolve the Dispute) must meet and attempt to resolve the Dispute.

#### **Used Equipment Sales**

50. If the Product(s) consist(s) of Used Equipment, the warranty referred to in clause 24 will not apply, and the additional conditions set out in Annexure C attached will apply to the sale and purchase of Used Equipment.

#### **Notices**

51. A notice, demand, document or other communication relating to the Agreement must be in writing in English, signed by the sender or its duly authorised representative and may be delivered by prepaid post, by hand, by facsimile or email to a party and marked for the attention of the person identified in the Quote, or if the recipient has notified otherwise, then marked for attention in the way last notified.
52. A notice or other communication is effective:
  - a. if delivered by hand, when delivered;
  - b. if delivered by post, 3 days after posting (or 7 days after posting if sent to or from a place outside Australia);
  - c. if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; and
  - d. if sent by email, at the time when successfully sent.
53. A notice or other communication received after 5 pm in the place of receipt or on a non-Business Day is taken to be received at 9 am on the next Business Day.

#### **Definitions**

54. In these Standard Terms and Conditions, unless the context requires otherwise:
 

**AUD** means Australian Dollars.

**Business Day** means a day on which banks are open for business in Perth, Western Australia.

**Buyer** means the party identified in the Quote.

**Deposit** means the deposit amount that the Buyer is required to pay to BTP, as set out in the Quote.

**BTP IP** means Intellectual Property Rights owned, controlled or developed by or licensed to BTP.

**Intellectual Property Rights** means all statutory and other proprietary rights in respect of patents (including inventions), trade marks, copyright (and associated moral rights), designs, circuit layout and know how (including trade secrets), and the right to apply for such rights and all other intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967, or any application or right to apply for registration of any of the preceding rights.

**Law** means:
 
  - a. Commonwealth, State and local government legislation including regulations, by-laws, orders, awards and proclamations;
  - b. common law and equity; and
  - c. authority requirements and consents, certificates, licenses, permits and approvals (including conditions in respect of those consents, certificates, licenses, permits and approvals).

**PPSA** means the Personal Property Securities Act 2009 (Cwlth).

**PPS Register** means the Personal Property Securities Register established under section 147 of the PPSA.

**Price** means the price set out in the Quote.

**Product(s)** means the products and/or services described in the Quote.

**Quote** means the quote, proposal, invoice or response to query or order provided by BTP to the Buyer in relation to the Product(s).

**Special Conditions** means the special conditions set out in the Quote (if any).

**Specifications** means the specifications, standards or technical requirements described in the Quote.

**Used Equipment** means mining plant and machinery identified as used equipment in the Quote.

**General**

55. These Standard Terms and Conditions supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Product(s) or any part of the Product(s) whether written or oral, including, without limitation, those relating to the performance of the Product(s) or any part of the Product(s) or the results that ought to be expected from using the Product(s).
56. The provisions of this Agreement are express provisions for the rights, obligations and liabilities of BTP and the Buyer with respect to matters to which the *Civil Liability Act 2002* (WA) applies and, to the maximum extent permitted by law, the provisions of the Agreement exclude, modify and restrict the provisions of the *Civil Liability Act 2002* (WA) to the extent of their inconsistency with the Agreement.
57. The terms and conditions of the United Nations Conventions on Contracts for the International Sale of Goods do not apply to this Agreement.
58. To the maximum extent permitted by law, any terms and conditions that may be implied into this Agreement by the *Sale of Goods Act 1895* (WA), or similar legislation in force in any other Australian state or territory, do not apply to this Agreement.
59. The failure of any party to enforce a provision of this Agreement or to exercise any of its rights expressed in this Agreement is not a waiver of such provisions or rights and does not affect the enforcement of this Agreement. No waiver under this clause operates as an estoppel against the party seeking to rely on this clause. The exercise by any party of any of its rights expressed in this Agreement does not preclude or prejudice such party from exercising the same or any other rights it may have irrespective of any previous action taken by that party.
60. No rule of construction will apply in the interpretation of the Agreement to the disadvantage of one party on the basis that that party put forward or drafted the Agreement.
61. The Buyer acknowledges and agrees that it has been given the opportunity to obtain legal advice with regard to the meaning and operation of the Agreement.
62. This Agreement is not assignable or transferrable by either party in whole or in part except with the prior written consent of the other party. The warranties in this Agreement are personal to the Buyer and cannot be transferred to third parties except with the prior written consent of BTP.
63. Except as expressly stated otherwise in this Agreement, the rights of a party to this Agreement are cumulative and are in addition to any other rights of that party.
64. This Agreement is governed by the law of Western Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia. Each Party waives any objection that it may now or in the future have to the venue of any proceedings, and any claim that it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within the jurisdiction specified in this clause.

## **ANNEXURE A – BTP Warranty Procedure**

### **1. Service Exchange Warranty**

BTP Pty Ltd warrants this rebuilt component to be free from defects in materials and workmanship for a period as shown below after the date of installation.

- 1.1 Engines – 12months full warranty – unlimited hours. (2 year/ 10,000hrs under a BTP extended power train warranty)
- 1.2 Transmissions – 12 months full warranty – unlimited hours. (2 year/ 10,000hrs under a BTP extended power train warranty)
- 1.3 Torque Convertors – 12 months full warranty – unlimited hours. (2 year/ 10,000hrs under a BTP extended power train warranty)
- 1.4 Differentials-12 months full warranty – unlimited hours. (2 year/ 10,000hrs under a BTP extended power train warranty)
- 1.5 Wheel groups – 14 months full warranty – unlimited hours. (2 year/ 10,000hrs under a BTP extended power train warranty)
- 1.6 Track frame groups D10T and D11T – 12 months OR 4,000hrs full warranty on frames.
- 1.7 Limited warranty on track adjusters, suspension pads and cartridge pins. – 3 months
- 1.8 Grader Front Axle assemblies and 'A' Frame Circle assemblies –12 months full warranty
- 1.9 Aftermarket Solid Billet Equalizer Bars – 12 months full warranty
- 1.10 All other Equalizer Bars – 6 months full warranty
- 1.11 Hydraulic cylinders, Valves, Pumps – 6 months full warranty.
- 1.12 Radiators – 6 months full warranty.

### **2. Warranty Provisions**

The above warranties are subject to the following provisions.

- 2.1 Any machine fitted with a BTP Parts Pty Ltd component not operated and maintained in accordance to the manufacturer's operational and maintenance guidelines will not receive warranty.
- 2.2 The user will ensure all BTP Parts Pty Ltd fitment criteria are fulfilled and documentation completed and returned to BTP Parts Pty Ltd within 21 days of that component being installed. After 21 days BTP Parts Pty Ltd reserves the right to void any warranty.
- 2.3 The user will inform BTP Parts Pty Ltd immediately if a problem has developed in a BTP Parts Pty Ltd component.
- 2.4 At no time is there to be any dismantling or removal undertaken without express consent from BTP Parts Pty Ltd. Any action taken without consultation and permission from BTP Parts Pty Ltd may void the warranty claim.

- 2.5 The customer must complete a "Warranty Claim Form" in consultation with BTP parts Pty Ltd in detail and return to BTP Parts Pty Ltd within 24 hours of becoming aware of a problem with the components
- 2.6 In cases of warranty claims and following consultation with a BTP Parts Pty Ltd representative, the customer may be instructed to issue a new Purchase Order for that component at the full purchase price which states "Subject to Warranty Claim" for further work to proceed.
- 2.7 BTP Parts Pty Ltd will repair or replace failed components, and will be the sole arbitrator in determining whether to repair or replace the failed component. BTP Parts Pty Ltd may at its discretion elect to pay for the repair or replacement of the failed component in lieu of performing repair or replacement.
- 2.8 This decision will be made following an inspection of the failed component, this may be carried out in a site situation under the guidance of BTP Parts Pty Ltd or at a facility to be nominated by BTP Parts Pty Ltd, determining that the failure occurred due to defective material, workmanship or other influences.
- 2.9 The cost of removal and installation of a failed component is excluded from this warranty unless carried out by/or agreed to by BTP Parts Pty Ltd.
- 2.10 Cost incurred with transportation and handling of the machine or components are the responsibility of the owner under this warranty, unless agreed to by BTP Parts Pty Ltd.
- 2.11 Repairs performed under this warranty do not extend the warranty period beyond the time frame set forth when the component was originally purchased or installed.
- 2.12 Failures that are not covered under this warranty are those caused by: vandalism, abuse, a failure to maintain the component in accordance with the manufacturer's specifications, by others, of this component into a contaminated or improperly functioning system.
- 2.13 BTP Parts Pty Ltd is not responsible for incidental or consequential damages.
- 2.14 All warranty periods start from the day that the component is fitted, however is subject to customer storage conditions.
- 2.15 Component warranty is void when a component is not fitted within a 12 month period of receipt.
- 2.16 Oil samples must be carried out every 250 hours on Engines and every 500 hours on power train components and/ or as per manufactures specifications, these results will be made available to BTP Parts Pty Ltd if so requested.
- 2.17 Undercarriage reports to be made available to BTP Parts Pty Ltd if so requested. (undercarriage must be maintained on the machine within manufactures guidelines)
- 2.18 No warranty given on electrical components or air starters on Engines.
- 2.19 This warranty does not deprive the owner of any of those rights and remedies which are conferred upon consumers by the Competition and Consumer Act 2010 and/or by any other applicable Commonwealth, State or Territorial Statutory enactment.

### **3. Used Part**

- 3.1 Any used part sold By BTP under its Used Parts Guarantee where goods have been visually inspected and are considered reusable are, unless otherwise stated, sold in good faith and can be reused . These parts can be returned within 30 days for a full credit but are not covered under any BTP Warranty Clause and once fitted are accepted by the purchaser to be fit for use.
- 3.2 Used components that are opened and inspected with no history are to be given a guarantee of condition of internal parts with the intent that the component will be rebuilt prior to use unless otherwise stated and are not covered under any BTP Warranty Clause. The component can be returned for a full credit within 30 days only if the item is returned fully assembled.
- 3.3 Used components opened and inspected with history and sold with an indicated history will be sold with 3 months full warranty or can be returned fully assembled within 30 days for a full credit.

### **4. New Part**

- 4.1 New parts sold either OEM or aftermarket have a 6 month warranty on defects and quality .

### **5. Reconditioned Components**

- 5.1 Any component rebuilt to a customer's requirements and not to BTP Service Exchange standards are subject to warranty between 3-6 months dependent on customers control of parts reused.
- 5.2 All labour and machining will be covered by a standard 3 month warranty on workmanship only .

### **6. BTP Extended Power Train Warranty**

- 6.1 To be covered for BTP Extended Power Train Warranty all power train components are to be fitted to the same machine and consist of Engine, Converter, Transmission, Pump Drive, Differential, Steering Clutch and Valves , Final Drives and all related component pumps. At the point of sale, the following exceptions can be agreed with BTP Parts Pty Ltd
  - 6.1.1 Engines not supplied in the BTP range.
    - a) BTP extended power train warranty may still be available on the remaining powertrain items subject to BTP pre approval.
  - 6.1.2 Compartment powertrains.
    - BTP extended power train warranty may still be available on:
      - a) Complete Off Highway Truck Rear Axle Group – i.e. truck consisting of Transmission & Pump, Differential and both Rear Wheel Groups fitted.
      - b) Dozer Powertrain where Transmission, both Final Drives, Steering Clutches and Valves fitted.
- 6.2 All components must be fitted at the same time , the warranty will cover all components from the date and hour meter reading of installation until the warranty expires.

- 6.3 All component installation documentation must be completed and returned to BTP for the warranty to take affect.
- 6.4 The period of warranty shall be 2 years or 10,000 hrs, whichever occurs first.
  - 6.4.1 First 12 months full warranty
  - 6.4.2 Second 12 months pro rata warranty on the greater of months or hours utilised.
- 6.5 Any faults with any component covered must be reported to BTP within 24 hours of becoming aware of the fault.. The issue that has occurred must be documented on a BTP warranty claim form or equivalent and a purchase order subject to warranty attached.
- 6.6 All components as defined under the BTP extended power train warranty must have all their oil sample including an initial sample taken at start up and forwarded if required to BTP for review during the warranty period.
- 6.7 Monthly hour meter readings from the installation date must be made available to BTP upon request for review during the warranty period.
- 6.8 Machine download readings from the installation date must be made available to BTP upon request for review during the warranty period.
- 6.9 All component servicing is to be carried out to OEM servicing recommendations and time frames unless, otherwise agreed to by BTP.

## ANNEXURE B – BTP RETURN OF GOODS POLICY

- 1) Once the Product(s) have been supplied, or after 7 days from the date the Order was received by BTP, whichever is the earlier, an order may not be cancelled by the Buyer, for credit or otherwise, without prior written approval by BTP.
- 2) BTP is not under any duty to accept Product(s) returned by the Buyer and will do so only on terms to be agreed in writing in each individual case.
- 3) If BTP agrees to accept returned Product(s) from the Buyer, the Buyer must return the Product(s) to BTP at a location nominated by BTP within 14 days of the date of the written agreed terms of return with all freight costs and risk to be the responsibility of the customer
- 4) Any products returned to BTP must be in original packaging and/or transport stand and received in the same condition in which it was originally supplied
- 5) Upon notification from the buyer that they intend to return a product (or cancel an order), as agreed by BTP, or in the event of any other default by the Buyer a cancellation fee may be payable by the Buyer as follows:
  - (a) **Within 30 days of BTP being notified** - equal to Full Credit of the value of the Product(s) which are no longer to be supplied;
  - (b) **Greater than 30 Days but not more than 60 days of BTP being notified** – 10% of the value of the Product(s) which are no longer to be supplied; Credit note will be raised for 90% of original purchase price.
  - (c) **Greater than 60 days of BTP being notified** – No credit will be given unless by agreement with BTP on a case-by-case basis;
  - (d) **in the event that the Product(s) had been, or were being specifically manufactured by BTP or sourced from a 3<sup>rd</sup> party specifically for a Buyer**, the charge shall be equal to 40% of the value of the Products which are no longer to be supplied if BTP approve a return.
  - (e) **Unused service exchange products** will incur the following additional return fees by BTP to cover inspection, cleaning, preparation, disassembly and restocking;
    - (1) Within 30 days of supply – Cost to return to stock in condition was originally supplied
    - (2) Between 30 and 90 days – Cost to return to stock in condition was originally supplied (+ 10% value of the product returned (per 5(b)))
    - (3) Greater than 90 days – by negotiation with BTP
    - (4) Unreturned BTP Branded transport stands and covers on SX components will be charged at full replacement cost – minimum charge \$2,000 for non-returned transport stands
- 6) The following Product(s) are not returnable to BTP for credit in any circumstances, except under warranty:

- (a) any Product(s) specially made, including items cut to length (subject to 5(d));
  - (b) any Product(s) altered or damaged by the Buyer which are not in their original condition as supplied;
  - (c) any Product(s) having an Invoice value of \$10 or less; and
  - (d) any Product(s) returned 90 days after the Products were supplied.
  - (e) non-stocked items parts specifically ordered to meet customer requirements
- 7) No responsibility will be accepted by BTP for any delays in passing credit due to Product(s) being incorrectly branded or returned without adequate identification of both the Buyer and the Product(s) returned.

### **Customer Core Returns**

- a) Unless by prior agreement with BTP; Service Exchange (SX) Cores are expected to be received by BTP within 30 days after invoice date
- b) Any SX Core not returned to BTP after 30 days of invoice will automatically trigger a notification to be sent to the customer advising details of the SX Cores that have not been returned and a reminder on BTP Core Return Guidelines as a prompt to return the outstanding SX core
- c) SX Cores not returned within 60 days of original invoice (30 days after cores due) will have full value of SX core replacement cost invoiced to them as "SX core replacement invoice" with missing transport frames or covers charged at full replacement cost
- d) SX Cores returned within 30 days of this "SX Core replacement invoice" will be eligible for core credit of up to 100%
- e) SX Cores returned after 30 days of "SX Core Replacement Invoice" (90+ days from original invoice) will be only be credited at the discretion of BTP

### **Notes**

1. If the SX Part was sold including core fee or if sold as a service fee plus cost of repair, any extra charges listed above can be taken from that core charge or service fee
2. Cost of repair purchases incur charges as a percentage of the average cost of repair determined by BTP
3. Flat rate exchange purchases incur charges as a percentage of the original sales price

### **Core Return Guidelines – Core return Allowance**

Is the maximum, capped price or credit, that is applicable to the returned Service Exchange used core that did not meet any of the following criteria

1. Rotates freely (where applicable)
2. Returned as the same arrangement number and configuration as was originally supplied by BTP
3. Returned on transport stands/frames and/or boxes as originally supplied by BTP and in an undamaged condition
4. Returned not missing any parts or sub-components
5. Returned in assembled condition
6. Returned with no visible damage, holes and/or cracked housings
7. Returned with no evidence of post-removal contamination
8. Returned within agreed timeframe

## ANNEXURE C – ADDITIONAL CONDITIONS APPLYING TO THE SALE AND PURCHASE OF USED EQUIPMENT

### TERMS AND CONDITIONS FOR PURCHASE OF AUSDRILL ASSETS

1. These terms and conditions apply to the agreement between the Seller and the Buyer (**Agreement**) pursuant to which the Seller sells to the Buyer, and the Buyer purchases from the Seller, the Asset.
2. The Seller warrants to the Buyer that it has and will have the right to sell and transfer title to and property in the Asset to the Buyer.
3. Title to the Asset passes from the Seller to the Buyer on payment of the purchase price to the Seller in full. Until that time, title in the Asset remains with the Seller. Risk in the Asset passes from the Seller to the Buyer upon the actual or constructive delivery of the Asset to:
  - a. the Buyer, or any of its agents, representatives or subcontractors; or
  - b. if the Seller is to arrange freight or shipment of the Asset, the freight or shipping subcontractor retained by the Seller at the Buyer's direction or with the Buyer's agreement.
4. The Buyer agrees to buy the Asset on an "as is", "where is" basis, including any faults or defects.
5. The Seller makes no representations or warranties about the Asset whatsoever, including without limitation, about the quality or condition of the Asset.
6. The Buyer:
  - a. does not rely on any written or oral representations, warranties, undertakings, covenants, agreements or information provided or statements about any matter which affects or relates to the Asset made by or on behalf of the Seller, the Seller's agent or their respective employees or agents, other than as set out in these terms and conditions;
  - b. acknowledges that it has not been induced to purchase the Asset by any representation, statement, warranty or information provided by the Seller, the Seller's agent or their respective employees or agents;
  - c. acknowledges that agreeing to purchase the Asset it relied exclusively on the following matters independently of any statements, inducements or representations made by or on behalf of the Seller, the Seller's agent or their respective employees or agents:
    - i. the inspection of and investigations relating to the Asset made on behalf of the Buyer;
    - ii. the skill and judgment of the Buyer, its consultants and representatives; and
    - iii. opinions or advice obtained by the Buyer independently of the Seller or of the Seller's agents or employees.
  - d. acknowledges that it has made its own investigations and has satisfied itself about:
    - i. the conditions, quality and state of repair of the Asset;
    - ii. the purposes for which the Asset can be used;
    - iii. the fitness of the Asset for the purposes the Buyer wants it;
    - iv. the existence or otherwise of any requirements of authorities relating to the Asset; and
    - v. the existence or otherwise of necessary approvals and licenses from authorities relating to the Asset.
7. The Agreement represents the entire agreement of the parties and contains all of the representations, warranties, undertakings, negotiations, covenants and agreements of the parties in relation to the subject matter of the Agreement.
8. The Parties are not bound by any warranty, representations, collateral agreement or implied term under the general law or imposed by legislation unless:
  - a. such warranty, representation, agreement or term is contained in the Agreement; or
  - b. it is an implied term or warranty imposed by statute which is mandatory and cannot be excluded by the parties' agreement.
9. Liability:
  - a. The Seller is not liable for any loss and the Buyer indemnifies the Seller and agrees to keep the Seller indemnified against all claims, losses, actions, damages, costs and expenses (including without limitation the cost of defending and settling any action, claim or demand) that may be made against or incurred by the Seller arising out of a breach of this Agreement by the Buyer, its agents or servants, or use or operation of the Asset by the Buyer or any other person.
  - b. The *Competition and Consumer Act 2010 (Cwlth)*, the *Fair Trading Act 2010 (WA)* and similar legislation in force in other Australian states and territories imply certain terms, conditions and warranties (**prescribed terms**) into contracts for the supply of certain goods and services and prohibit the exclusion, restriction or modification of certain terms, conditions and warranties. Some prescribed terms permit a supplier to limit its liability for a breach of the prescribed terms. Subject to the legislation referred to above:
    - i. the liability of the Seller in respect of a breach of a prescribed term relating to the Asset or any part of the Asset (but only to the extent that a prescribed term applies to the supply of goods under this Agreement) is limited (at the option of the Seller) to the replacement of the goods or component or supply of an equivalent; the repair of the goods or component; the payment of the cost of replacing the goods or component or of acquiring an equivalent; or the payment of the cost of having the goods or component repaired; and
    - ii. other than as set out in paragraph 9(b)(i) (to the extent it applies) of these terms and conditions, the Buyer does not have under any circumstances any cause of action against or right to claim or recover from the Seller for or in respect of any loss or damage of any kind whatsoever, caused directly or indirectly by:
      - A. any defect in material or workmanship of, or any other defect whatsoever in, or unsuitability for any purpose of, the Asset or any part of the Asset; or
      - B. default or negligence (or other form of tort) on the part of the Seller or of any employee, contractor or agent of the Seller or of any person for whom the Seller has legal responsibility relating to the supply of, or otherwise concerning the Asset or any part of the Asset,and the Buyer indemnifies the Seller against any such claim or liability.
  - c. Subject to paragraph 9(b) of these terms and conditions, to the maximum extent permitted by law, the Seller is not liable for any claims of whatever nature, whether in contract, warranty, tort (including negligence), product liability or otherwise for any damages arising out of, connected with or resulting from the supply, use, operation or resale of the Assets under this Agreement and the Buyer indemnifies the Seller against any such claim or liability.
  - d. Notwithstanding any other provision of this Agreement, the Buyer agrees that the Seller shall not in any circumstances be liable for any indirect or consequential loss or damage (including for loss of profit (whether actual, direct, indirect, anticipated or otherwise), loss of revenue, loss of product, loss of expected savings, loss of income, rent or holding costs, loss of expected production, opportunity costs, loss of business (including loss or reduction of goodwill or opportunity) or damage to reputation, regardless of whether any or all of these things are considered to be indirect or consequential losses or damage) in contract, tort (including negligence), under any statute or otherwise arising from or related in any way to this Agreement or its subject matter, or the supply, use, operation or resale of the Asset under this Agreement, however caused.