

SUPPLY OF GOODS TERMS AND CONDITIONS

This Agreement is entered into between Barhyd Pty Ltd (ACN 151 773 992) (**we, us or our**) and you, together the **Parties** and each a **Party**.

Our Disclosures

Please read this Agreement carefully before you accept in accordance with clause 1. We draw your attention to:

- our privacy policy (on our website) which sets out how we will handle your personal information; and
- clause 9 (Liability) which sets out exclusions and limitations to our liability under this Agreement.

If we refer you to a third party, we may receive a financial incentive (such as a referral fee) from that third party.

This Agreement does not intend to limit your rights and remedies at Law, including any of your Consumer Law Rights.

1. Acceptance

- 1.1 You accept this Agreement by expressly agreeing to its terms, which includes making part or full payment of the Price set out in the invoice and accepting a quote to which this Agreement is attached.
- 1.2 This Agreement will commence on the Commencement Date and will continue until the date on which we have completed the supply of the Goods to you (as reasonably determined by us).

2. Supply of Goods

- 2.1 In consideration of your payment of the Price, we will supply the Goods in accordance with this Agreement, whether ourselves or through our Personnel.
- 2.2 If this Agreement expresses a time within which the Goods are to be supplied, we will use reasonable endeavours to provide the Goods by such time, but you agree that such time is an estimate only.

3. Delivery, Title and Risk

- 3.1 Title in the Goods will only pass to you on the date that you pay the Price in full in accordance with this Agreement.
- 3.2 If we are responsible for delivering the Goods to you, we will use reasonable endeavours to deliver the Goods by the time agreed between the Parties, and risk in the Goods will pass to you once we have delivered the Goods to the agreed delivery location. You will be responsible for the costs of delivery.
- 3.3 If you are responsible for collecting the Goods from us, you must collect the Goods by the time agreed between the Parties, and risk in the Goods will pass to you once you have collected the Goods from the agreed collection location. You will be responsible for the costs of collection.
- 3.4 Where Goods are supplied to you without payment in full, you:
 - (a) are a bailee of the Goods until title in them passes to you;
 - (b) irrevocably appoint us to be your attorney to do all acts and things necessary to ensure our retention of title to the Goods, including the registration of

any security interest in our favour with respect to the Goods; and

- (c) must not allow any other person to have or acquire any security interest in the Goods without our prior written consent.

4. Price and Payment

- 4.1 You agree to pay us the Price and any other amounts due under this Agreement in accordance with the Payment Terms.
- 4.2 At our sole discretion, we may require you to pay a deposit before we will make the Goods available for collection or delivery (**Deposit**). The amount of the Deposit required will be specified in the quote or invoice provided to you. If a Deposit is required, you must pay the Deposit amount by the due date specified in the quote or invoice. We are not obliged to make the Goods available for collection or delivery until the Deposit has been paid in full. The Deposit will be credited towards the total Price payable for the Goods. If you fail to pay the remaining balance of the Price when due, we may retain the Deposit amount to compensate us for our reasonable costs and losses.
- 4.3 We will issue the final invoice to you one (1) day after delivery or your collection of the Goods. You will pay the invoice amount in accordance with the applicable Payment Terms for your trading account (**Trading Account**):
 - (a) for 7-day Trading Account holders, payment in full within seven (7) days from the end of the month in which the invoice is dated;
 - (b) for 30-day Trading Account holders, payment in full within thirty (30) days from the end of the month in which the invoice is dated.

Payment will be made by bank transfer or other method agreed between us in writing.

- 4.4 If any payment has not been made in accordance with the Payment Terms, we may (at our absolute discretion, and without prejudice to any of our rights or remedies under this Agreement or at Law):
 - (a) after a period of 5 Business Days from the relevant due date, cease supplying the Goods, and recover, as a debt due and immediately payable from you, our reasonable additional costs of doing so (including all recovery costs);
 - (b) charge interest at a rate equal to the Reserve Bank of Australia's cash rate, from time to time, plus 2% per annum, calculated daily and compounding monthly, on any such amounts unpaid after the relevant due date in accordance with the Payment Terms; and/or
 - (c) enter any premises where the unpaid Goods are stored or held, for the purpose of retrieving and taking possession of those Goods, and you agree to provide any access, items and consents required to enable us to do so.
- 4.5 When applicable, GST payable will be clearly shown on our invoices. You agree to pay us an amount equivalent to the GST imposed on these charges. "GST" has the meaning

given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

- 4.6 Unless otherwise stated by us in writing, the Price is exclusive of any tax imposed by any government, state or local authority on the value of goods and services, and includes goods and services tax, sales tax, use tax, indirect tax, value added tax, excise tax, customs tax, tariffs and duties (**Sales Tax**), which will be your responsibility to pay. If we are required to pay any Sales Tax in relation to the Goods supplied under this Agreement, the applicable Sales Tax will be set out in the invoice provided to you and the Price payable by you under this Agreement must be increased by the applicable Sales Tax. This clause 4.6 does not apply to any taxes imposed on our net income.

5. Security Interest

5.1 You acknowledge and agree that:

- (a) this Agreement is a 'security agreement' under the *Personal Property Securities Act 2009* (Cth) (**PPSA**);
- (b) this clause 5 creates a security interest in the Goods and any proceeds from any sale or disposal of the Goods, and we are a secured party in relation to the Goods and any such proceeds;
- (c) we are entitled to register our interest on the relevant register as (at our discretion) a security interest, and if applicable, a 'purchase money security interest'; and
- (d) you must (at your cost), where we request, take all steps that we consider necessary or desirable to assist us to register our security interest, to ensure our security interest in the Goods and the proceeds is enforceable, and to perfect, or better secure our position under this Agreement, or ensure our priority over all other security interests

5.2 Until such time as title in the Goods has passed to you as contemplated under clause 3.1, you must not allow any other person to have or acquire any security interest in the Goods, unless with our prior written consent.

5.3 To the extent the Law permits, you waive your right to receive any notice (including notice of a verification statement) that is required by the PPSA, including but not limited to notices under sections 95, 118, 121, 130, 132, 135 or 157. However, this does not prevent us from giving a notice under the PPSA.

5.4 You must not disclose any information of the kind referred to in section 275 of the PPSA, to the extent permitted under that section.

5.5 Nothing in this clause 5 is intended as an agreement to subordinate a security interest arising under this Agreement and conditions in favour of any person under section 61 of the PPSA.

5.6 In this clause 5, a 'security interest' includes any form or lien, encumbrance or a security interest under the PPSA.

5.7 Terms used in this clause 5 but not defined have the same meanings as in the PPSA.

5.8 This clause 5 will survive the termination or expiry of this Agreement.

6. Warranties and Representations

6.1 Each Party represents and warrants that:

- (a) it has full legal capacity, right, authority and power to enter into this Agreement, to perform its obligations under this Agreement, and to carry on its business; and
- (b) this Agreement constitutes a legal, valid and binding agreement, enforceable in accordance with its terms.

6.2 You represent and warrant that:

- (a) all information and documentation that you provide to us in connection with this Agreement is true, correct and complete;
- (b) no insolvency events (including but not limited to bankruptcy, receivership, voluntary administration, liquidation or creditors' schemes of arrangement) affecting you or your property are occurring or are likely to occur; and
- (c) if you enter into this Agreement as a trustee of a trust, then:
 - (1) you are the sole trustee of the relevant trust and have been validly appointed;
 - (2) you have full and valid power, authority, consents and approvals under the relevant trust to execute the Agreement and carry out the transactions contemplated by the Agreement; and
 - (3) you have the right to be indemnified out of the assets of the relevant trust for all liabilities incurred by you under the Agreement.

7. Confidential Information

7.1 Subject to clause 7.2, each Party must (and must ensure that its Personnel) keep confidential, and not use (except to perform its obligations under this Agreement) or permit any unauthorised use of, information provided by the other Party, including information about this Agreement and the other Party's business and operations.

7.2 Clause 7.1 does not apply where the disclosure is required by Law or the disclosure is to a professional adviser in order to obtain advice in relation to matters arising in connection with this Agreement and provided that the disclosing Party ensures the adviser complies with the terms of clause 7.1.

7.3 This clause 7 will survive the termination of this Agreement.

8. Australian Consumer Law

8.1 Certain legislation, including the Australian Consumer Law, and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the supply of the Goods by us to you which cannot be excluded, restricted or modified (**Consumer Law Rights**). To the extent that you maintain Consumer Law Rights at Law, nothing in this Agreement excludes those Consumer Law Rights.

8.2 Subject to your Consumer Law Rights, we provide all material, work and goods (including the Goods) to you

without conditions or warranties of any kind, implied or otherwise (including without limitation any implied warranties of merchantability or fitness for a particular purpose), whether in statute, at Law or on any other basis, except where expressly set out in this Agreement.

8.3 This clause 8 will survive the termination or expiry of this Agreement.

9. Liability

9.1 Despite anything to the contrary but subject to your Consumer Law Rights, to the maximum extent permitted by Law:

- (a) neither Party will be liable for Consequential Loss;
- (b) a Party's liability for any Liability under this Agreement will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (or any of its Personnel), including any failure by that other Party to mitigate its loss; and
- (c) (where our Goods are not ordinarily acquired for personal, domestic or household use or consumption) in respect of any failure by us to comply with relevant Consumer Law Rights, our Liability is limited (at our discretion) to:
 - (1) replacing the Goods or the supply of equivalent Goods, or the payment of the cost of replacing the Goods or of supplying equivalent Goods; or
 - (2) the repair of the Goods, or the payment of the cost of having the Goods repaired;
- (d) our aggregate liability for any Liability arising from or in connection with this Agreement will be limited to the Price paid by you to us in respect of the supply of the relevant Goods to which the Liability relates.

9.2 This clause 9 will survive the termination or expiry of this Agreement.

10. Term and Termination

10.1 This Agreement will operate for the Term.

10.2 This Agreement will terminate immediately upon written notice by a Party (**Non-Defaulting Party**) if:

- (a) the other Party (**Defaulting Party**) breaches a material term of this Agreement and that breach has not been remedied within 10 Business Days of the Defaulting Party being notified of the breach by the Non-Defaulting Party; or
- (b) (to the extent permitted under the *Corporations Act 2001 (Cth)*) any step is taken to enter into any arrangement between the Defaulting Party and its creditors, any step is taken to appoint a receiver, a receiver and manager, a liquidator, a provisional liquidator or like person of the whole or any part of the Defaulting Party's assets or business, the Defaulting Party is bankrupt, or the Defaulting Party is unable to pay its debts as they fall due.

10.3 Upon expiry or termination of this Agreement:

- (a) we will immediately cease providing the Goods;

(b) without limiting and subject to your Consumer Law Rights, any payments made by you to us for Goods already supplied are not refundable to you;

(c) you are to pay for all Goods supplied prior to termination, including Goods which have been supplied and have not yet been invoiced to you, and all other amounts due and payable under this Agreement;

(d) by us pursuant to clause 10.2, you also agree to pay us our additional costs, reasonably incurred, and which arise directly from such termination (including recovery fees);

(e) we may retain your documents and information (including copies) to the extent required by Law or pursuant to any information technology back-up procedure, provided that we handle your information in accordance with clause 7; and

(f) you agree to promptly return (where possible), or delete or destroy (where not possible to return), any documentation, information or material provided to you by us that is in your possession or control.

10.4 Termination of this Agreement will not affect any rights or liabilities that a Party has accrued under it.

10.5 This clause 10 will survive the termination or expiry of this Agreement.

11. General

11.1 **Amendment:** This Agreement may only be amended by written instrument executed by the Parties.

11.2 **Assignment:** Subject to clauses 11.3 and 11.12, a Party must not assign, novate or deal with the whole or any part of its rights or obligations under this Agreement without the prior written consent of the other Party (such consent is not to be unreasonably withheld).

11.3 **Assignment of Debt:** You agree that we may assign or transfer any debt owed by you to us, arising under or in connection with this Agreement, to a debt collector, debt collection agency, or other third party.

11.4 **Disputes:** A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, this Agreement (including any question regarding its existence, validity or termination) (**Dispute**) without first complying with this clause 11.4. A Party claiming that a Dispute has arisen must give written notice to the other Party specifying the nature of the Dispute (**Dispute Notice**). The Parties must meet (whether in person, by telephone or video conference) within 10 Business Days of service of the Dispute Notice to seek (in good faith) to resolve the Dispute.

If the Parties do not resolve the Dispute within 20 Business Days of the date the Dispute Notice was served (or such further period as agreed in writing by the Parties), either Party may refer the matter to mediation, administered by the Australian Disputes Centre, to be conducted in Perth, Western Australia, in accordance with the Australian Disputes Centre Guidelines for Commercial Mediation.

Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.

11.5 **Force Majeure:** Neither Party will be liable for any delay or failure to perform their respective obligations under this Agreement if such delay or failure is caused or contributed to by a Force Majeure Event, provided that the Party seeking to rely on the benefit of this clause:

- (a) as soon as reasonably practical, notifies the other Party in writing details of the Force Majeure Event, and the extent to which it is unable to perform its obligations; and
- (b) uses reasonable endeavours to minimise the duration and adverse consequences of the Force Majeure Event.

Where the Force Majeure Event prevents a Party from performing a material obligation under this Agreement for a period in excess of 60 days, then the other Party may by notice terminate this Agreement, which will be effective immediately, unless otherwise stated in the notice. This clause will not apply to a Party's obligation to pay any amount that is due and payable to the other Party under this Agreement.

11.6 **Governing Law:** This Agreement is governed by the laws of Western Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Western Australia and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts. The Parties agree that the U.N. Convention on Contracts for the Sale of International Goods is excluded from application to this Agreement.

11.7 **Intellectual Property:** Nothing in this Agreement constitutes a transfer or assignment of one Party's Intellectual Property Rights to the other Party.

11.8 **Notices:** Any notice given under this Agreement must be in writing addressed to the addresses set out in this Agreement, or the relevant address last notified by the recipient to the Parties in accordance with this clause. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.

11.9 **Publicity:** Despite clause 7, with your prior written consent, you agree that we may advertise or publicise the broad nature of our supply of the Goods to you, including on our website or in our promotional material.

11.10 **Relationship of Parties:** This Agreement is not intended to create a partnership, joint venture, employment or agency relationship between the Parties.

11.11 **Severance:** If a provision of this Agreement is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from this Agreement without affecting the validity or enforceability of the remainder of that provision or the other provisions in this Agreement.

11.12 **Subcontracting:** We may subcontract the supply of any part of the Goods without your prior written consent. We agree that any subcontracting does not discharge us from any liability under this Agreement and that we are liable for the acts and omissions of our subcontractor.

11.13 **Waiver:** Any failure or delay by a Party in exercising a power or right (either wholly or partially) in relation to this Agreement does not operate as a waiver or prevent that Party from exercising that power or right or any other power or right. A waiver must be in writing and will be effective only to the extent specifically stated.

12. Definitions

In this Agreement, unless the context otherwise requires, capitalised terms have the meanings given to them:

ACL or Australian Consumer Law means the Australian consumer laws set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as amended, from time to time.

Agreement means these terms and conditions and any documents attached to, or referred to in, each of them.

Business Day means a day on which banks are open for general banking business in Perth, Western Australia, excluding Saturdays, Sundays and public holidays.

Commencement Date means the date you make part or full payment of the Price for the Goods, whichever is earlier.

Consequential Loss includes any consequential loss, special or indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise. However, your obligation to pay us the Price will not constitute "Consequential Loss".

Consumer Law Rights has the meaning given in clause 8.1.

Goods means the goods to be supplied as set out in the quote attached to this Agreement, as adjusted in accordance with this Agreement.

Force Majeure Event means any event or circumstance which is beyond a Party's reasonable control including but not limited to, acts of God including fire, hurricane, typhoon, earthquake, landslide, tsunami, mudslide or other catastrophic natural disaster, civil riot, civil rebellion, revolution, terrorism, insurrection, militarily usurped power, act of sabotage, act of a public enemy, war (whether declared or not) or other like hostilities, ionising radiation, contamination by radioactivity, nuclear, chemical or biological contamination, any widespread illness, quarantine or government sanctioned ordinance or shutdown, pandemic (including COVID-19 and any variations or mutations to this disease or illness) or epidemic.

Intellectual Property Rights or Intellectual Property means any and all existing and future rights throughout the world conferred by statute, common law, equity or any corresponding law in relation to any copyright, designs, patents or trade marks, domain names, know-how, inventions, processes, trade secrets or confidential

information, circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing, whether or not registered or registrable.

Law means all applicable laws, regulations, codes, guidelines, policies, protocols, consents, approvals, permits and licences, and any requirements or directions given by any government or similar authority with the power to bind or impose obligations on the relevant Party in connection with this Agreement or the supply of the Goods.

Liability means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a Party to this Agreement or otherwise.

Personnel means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents, but in respect of you, does not include us.

Price means the price set out in the quote and/or invoice, as adjusted in accordance with this Agreement.

13. Interpretation

In this Agreement, unless the context otherwise requires:

- (a) a reference to this Agreement or any other document includes the document, all schedules and all annexures as novated, amended, supplemented, varied or replaced from time to time;
- (b) a reference to any legislation or law includes subordinate legislation or law and all amendments, consolidations, replacements or re-enactments from time to time;
- (c) a reference to a person includes a natural person, body corporate, partnership, joint venture, association, government or statutory body;
- (d) a reference to a party (including a Party) to a document includes that party's executors, administrators, successors, permitted assigns;
- (e) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;
- (f) a reference to time is to local time in Perth, Western Australia; and
- (g) a reference to \$ or dollars refers to the currency of Australia from time to time.

ANNEXURE A – WARRANTY AGAINST DEFECTS

WARRANTY AGAINST DEFECTS

In this Warranty:

We, us, or our means Barhyd Pty Ltd (ACN 151 773 992) and our contact details are set out at the end of this warranty;

You, or your means the purchaser or the original end-user of the Goods;

Goods means the product or equipment supplied to you by us, pursuant to the Supply of Goods Terms and Conditions and which were purchased in Australia.

This warranty is attached to and forms part of Supply of Goods Terms and Conditions.

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

1 Warranty

- 1.1 We provide this Warranty to you in addition to any rights or remedies you have under the Australian Consumer Law or any other applicable law (**Consumer Law Rights**).
- 1.2 This Warranty does not apply to any equipment or parts that are covered by the manufacturer's warranty under a Supply of Goods Terms and Conditions.
- 1.3 If any materials, parts or features required to facilitate any repair or replacement pursuant to clause **Error! Reference source not found.** are unavailable or no longer in production, or your model of Goods is no longer available or in production, we will use our best endeavours to use appropriate equivalent materials, parts, features or model.

2 Making a valid warranty claim

- 2.1 To claim the benefit of this Warranty, you must:
 - (a) notify us by email as soon as you become aware that the Goods are defective and in any event, within 14 days of when you become aware that the Goods are defective with evidence of proof of purchase of your Goods from us and a description and photographs of the claimed defect;
 - (b) allow us sufficient access to your site to inspect your Goods;
 - (c) if we ask you to, you must return to return the Goods together with all packaging, parts, accessories and documentation to the contact details set out below; and
 - (d) provide any other information reasonably required by us to assess your claim.
- 2.2 Where you return the Goods as part of a Warranty claim under this clause 2.1, you will need to cover any associated costs of you returning the Goods to us.
- 2.3 Where we accept your claim under this Warranty, clause **Error! Reference source not found.** will apply.

3 When this warranty applies and when it does not

- 3.1 This Warranty does not cover any defect which is caused (or partly caused) or contributed to, by any:
 - (a) act or omission, accident, or negligence by you or any third party not engaged by us (including any third party installer of your Goods);
 - (b) failure on your part to follow any instructions or guidelines (including any manual) provided by us or the manufacturer in relation to your Goods or properly maintain your Goods in accordance with any of our instructions or guidelines (including any manual);
 - (c) use of your Goods otherwise than for any application or use specified by us or the manufacturer;
 - (d) continued use of your Goods (where such use is not reasonable) after any defect in your Goods becomes apparent or would have become apparent to a reasonably prudent person;
 - (e) incorporation or installation of fixtures, appliances or other items into your Goods;

- (f) failure by you to notify us of any defect in your Goods within a reasonable period of time after you become aware of or ought to have reasonably become aware of the relevant defect;
- (g) reasonable wear and tear of your Goods;
- (h) act of God or force majeure event (including but not limited to war, riot, invasion, act of terrorism, contamination, earthquake, flood, fire, or other natural disaster, or any other event or circumstance beyond our or the manufacturer's reasonable control); or
- (i) installation, repair, replacement, maintenance, altering, overhauling or otherwise compromise of the Goods by you or any person other than us or the manufacturer.

3.2 **Additional Expenses:** Any works or services requested by you to be performed by us (including any work or services that are additional to repairs carried out by us pursuant to clause **Error! Reference source not found.** and deemed by us to not be covered under this Warranty may incur additional charges, which we will advise you of prior to commencing those additional work or services. We are under no obligation to perform any additional work or services that you may request.

4 General

- 4.1 Supply of Goods Terms and Conditions prevails: This Warranty is subject to the Supply of Goods Terms and Conditions and in the event of any inconsistency or ambiguity between this Warranty and the Supply of Goods Terms and Conditions, the Supply of Goods Terms and Conditions will prevail.
- 4.2 This Warranty is only valid and enforceable in Australia and is governed by the laws of Western Australia.
- 4.3 **No third party reliance:** The benefit of this Warranty is for you only, and no other person or third party can rely on or make a claim under this Warranty.
- 4.4 **No Assignment or transfer:** This Warranty or the benefit under this Warranty cannot be assigned or transferred to any other person or third party.
- 4.5 **Severance:** If any provision of this Warranty is held to be void, invalid or illegal or unenforceable in any jurisdiction, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or part of that provision) will be severed from this Warranty without affecting the validity or enforceability of the remainder of that provision or the other provisions in this Agreement.

Contact us for further details:

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