

**BALMORAL ENGINEERING PTY LTD**

ABN 37 001 826 017

**TERMS AND CONDITIONS OF SALE**

**1. SCOPE**

This document sets out the terms and conditions applicable to the sale of products and services by Balmoral Engineering Pty Ltd ABN 37 001 826 017 (**Balmoral**). On acceptance of a Purchase Order by Balmoral in accordance with clause 3.1, a contract for the supply of the Products and Services (**Contract**) comes into existence with effect from that date.

The Contract is comprised of the following documents in order of precedence:

- (a) the Order Confirmation;
- (b) the Purchase Order (but subject to clause 3.1(c));
- (c) this document; and
- (d) the Quotation.

The definitions applicable in this Contract are set out in clause 15.

The Seller's quotation is not to be construed as an offer or obligation to sell but merely an invitation to treat. The Seller reserves the right to accept or reject any orders received. The Customer's written order for the above Products ordered and the written acceptance by the Seller of the order will form a contract for the supply of the Products ordered.

**2. QUOTATIONS**

Any quotation issued by Balmoral is valid for 30 days. A quotation does not constitute an offer to sell by Balmoral capable of acceptance by Customer.

**3. ORDERING, PRICES AND DELIVERY OF PRODUCTS**

**3.1 Ordering Process**

- (a) Customer may order Products by submitting a Purchase Order to Balmoral.
- (b) A Purchase Order placed by Customer will not be considered to have been accepted by Balmoral until Balmoral issues an Order Confirmation or delivers the Ordered Products to Customer.
- (c) Additional or different terms proposed by Customer in its Purchase Order or any documentation sent by Customer to Balmoral will not apply to this Contract or the affected Purchase Order or any other Purchase Order.
- (d) Customer is not entitled to any priority of supply over other Customers or other customers of Balmoral.
- (e) A Purchase Order may not be varied or cancelled by Customer once accepted by Balmoral except with the express consent of Balmoral. The granting of consent will be entirely at the discretion of Balmoral and may be subject to the payment by Customer to Balmoral of a restocking fee determined by Balmoral and payable under clause 3.4(j). If Products have to be made or adapted to Customer's particular specifications or requirements then Customer must also pay for all work in progress up to the date of cancellation.

### **3.2 Pricing**

- (a) Prices for Products are specified in a quotation issued by Balmoral. Prices as quoted are based on current all inclusive manufacturing costs, and are subject to variation without notice if such costs increase either before or after acceptance of any order. Prices in the quotation and Order Confirmation will be expressed as AUD firm.
- (b) Balmoral may change Prices at any time on 30 days' notice (including as a consequence of exchange rate variations). Except where a quote is expressed to be firm for a specified period, all Purchase Orders accepted after the effective date of a Price change will be subject to the new Prices and Balmoral will issue a revised Invoice to Customer if necessary.
- (c) The Invoiced Price for Ordered Products will be as specified in an Invoice issued by Balmoral to Customer.
- (d) The following standard delivery terms may be applicable to the Prices as specified on a quotation:
  - (i) FIS or Free Into Store means that the sender pays for the freight (applicable to Australian customers only)
  - (ii) FOB or Free On Board means the receiver pays for the freight.
  - (iii) EXW or Ex Works means:
    - (A) the receiver permits a consignment to be shipped on the receiver's nominated freight account; or
    - (B) Picked Up In Store which means Customer collects the Ordered Products from Balmoral's premises.
  - (iv) Other delivery terms may be nominated in the quotation as defined by The Incoterms or International Commercial Terms.

### **3.3 Payment**

- (a) In addition to payment of the Invoiced Price, Customer will pay or reimburse Balmoral on demand for all applicable shipping charges, handling charges, import duties, customs charges and other charges specified in the Order Confirmation.
- (b) Customer will pay all GST(if applicable) in addition to, and at the same time as, payment of the Invoiced Price. Balmoral will provide Customer with a tax invoice or such other information as required by law.
- (c) If Customer pays an Invoice, by direct bank deposit or telegraphic transfer, the payment must be in cleared funds and Customer will be responsible for any bank charges in making the payment including any foreign currency exchange costs.
- (d) Customer must not withhold payment or make any deduction from the Invoiced Price or any other amount owing to Balmoral without Balmoral's prior written consent.
- (e) Balmoral may at its discretion allocate a payment that does not specifically identify the invoice for which the payment is made in satisfaction of money owing under any outstanding Invoices without regard to the date of those Invoices.
- (f) Balmoral may charge interest on any overdue money at the rate which is 2% above the Reserve Bank of Australia's target for the cash rate from time to time, calculated from the due date for payment of the outstanding amount until the date of payment by Customer. Any payment made by Customer will be credited first against any interest that has accrued.
- (g) Balmoral will be entitled to recover from Customer all reasonable legal and other costs incurred by Balmoral arising from Customer's default in payment and the collection of any overdue money.

- (h) The “Due date” on the Proforma or Invoice is the date the payment must be received in full by Balmoral from the Customer.

### **3.4 Shipment and Delivery of Products**

- (a) Balmoral will use its reasonable endeavours to supply the Ordered Products in the quantities specified in the Order Confirmation in accordance within the Delivery Period.
- (b) If the “Due date” which appears on the Proforma or Invoice is earlier than the “Delivery date” which appears on the Order Confirmation, Customer acknowledges that Balmoral is not required to deliver the Ordered Products to Customer unless Customer has paid the Invoiced Price in full and Balmoral is not liable to Customer for any failure to deliver the Ordered Products within the Delivery Period resulting from Customer’s failure to pay the Invoiced Price when due.
- (c) Balmoral may cancel or suspend delivery of the Ordered Products to Customer if:
  - (i) there are any outstanding Invoices under this Agreement; or
  - (ii) Balmoral reasonably believes that the Ordered Products:
    - (A) may cause injury or damage; or
    - (B) may infringe the IPR of any person,such cancellation or suspension of delivery will not in any way constitute admission of liability or fault by Balmoral.
- (d) Delivery of the Ordered Products will be made at the Delivery Location on a day in the manner if specified in the Order Confirmation.
- (e) If Balmoral fails to deliver some or all of the Ordered Products pursuant to this Contract, Customer will not be entitled to cancel this Contract or any Order unless Balmoral consents.
- (f) If Customer does not, or indicates to Balmoral that it will not, take or accept delivery of any of the Ordered Products, then these Ordered Products will be deemed to have been delivered when Balmoral was willing to deliver them. If Customer fails to take delivery of the Products ordered in accordance with the preceding sentence, Balmoral may arrange suitable storage of the Ordered Products at Balmoral’s premises or elsewhere and all costs of such storage, insurance, demurrage, handling and other charges incidental to such storage will be charged to Customer.
- (g) Unless expressly precluded by the Order Confirmation, Balmoral reserves the right to deliver the Ordered Products by instalments. Each instalment will be deemed to be the subject of a separate contract and no default or failure by Balmoral in respect of any one or more instalments will vitiate this Contract in respect of the Ordered Products previously delivered or undelivered Products. In the event that Balmoral gives notice to Customer that it is unable to deliver any instalment of the Ordered Products, Customer will be deemed to have accepted those instalments already delivered but Balmoral may reimburse the Price of the undelivered Ordered Products which have been paid for by Customer.
- (h) Balmoral will not be liable for shortage of Ordered Products on delivery unless Customer notifies Balmoral of the shortfall at the time of delivery at the Delivery Location and confirms the notification to Balmoral in writing within three days. Customer will not be entitled to withhold payment of any portion of the Price which remains outstanding whilst any claim is being investigated by Balmoral.
- (i) Customer will be deemed to have accepted the Ordered Products with effect from the date of delivery to the Delivery Location.

- (j) If Customer wishes to return any Ordered Product and receive a refund or credit, Customer must obtain the prior written approval of Balmoral before returning the Products (which approval Balmoral may give in its absolute discretion and subject to any conditions it stipulates). Without limitation to any other right of Balmoral in relation to consenting to the return of Ordered Products, Balmoral may charge a restocking fee in respect of the returned Product which, at Balmoral's discretion may be invoiced separately or deducted from any amount to be refunded by Balmoral to Customer.

## **4. INSTALLATION AND USE**

### **4.1 Installation**

Unless expressly included in an Order Confirmation, Customer is responsible for installing Ordered Products. Balmoral excludes all liability for any damage to the Ordered Products arising in the course of installation or attempted installation of the Ordered Products.

### **4.2 Use**

Ordered Products must only be used in accordance with the Specifications. Balmoral makes no warranties nor gives any guarantees, expressed or implied as to the merchantability or fitness for purpose. The user is responsible for determining whether the Balmoral product is fit for a particular purpose and suitable for the user's method of use or application. A variety of factors that can affect the use and application of a product, some of which are within the user's knowledge and control, it is essential that the user evaluate the product to determine whether it is fit for a particular purpose and suitable for the user's method of use or application. The ultimate responsibility for installing and maintaining the product correctly is with the end user.

## **5. SERVICES**

### **5.1 Supply Services**

Balmoral will issue a quotation for the supply of services. If, as a prerequisite to issuing the quotation, Balmoral incurs costs, such as labour or setup time, then Balmoral reserves the right to be reimbursed for such costs, if the customer does not proceed with the service requested by the customer.

### **5.2 Supply of Services**

If the Order Confirmation specifies the payment terms as "Pre-payment", Customer acknowledges that Balmoral is not required to supply the Services to Customer unless Customer has paid the Invoiced Price in full and Balmoral is not liable to Customer for any failure to deliver the Services by the date specified in the Order Confirmation or Invoice resulting from Customer's failure to pay the Invoiced Price when due.

## **6. RISK AND TITLE**

### **6.1 Title**

Legal and beneficial ownership in the Ordered Products will not pass to Customer until Customer has paid the Price for the Ordered Products in full.

### **6.2 Risk**

- (a) Risk of loss of or damage to the Products will remain with Balmoral until the earlier of:
- (i) the passing of title to the Ordered Products to Customer; and
  - (ii) delivery or deemed delivery of the Ordered Products by Balmoral to Customer in accordance with clause 3.4.

After this time, as between Balmoral and Customer, risk of damage to, or loss or deterioration of, the Ordered Products from any cause passes to Customer.

- (b) Until Customer has paid the Price for the Ordered Products to Balmoral in full:
  - (i) Customer must separately store the Ordered Products in their delivered packaging and in such a way that makes it clear that the Ordered Products are the property of Balmoral;
  - (ii) in the event of Customer's failure to make a payment when due, Balmoral or its authorised representative will be entitled, without the necessity of giving any notice, to enter premises occupied by Customer or where the Ordered Products are located to search for and remove any of the Ordered Products without in any way being liable to Customer. If the Ordered Products or any of them are wholly or partially attached to or incorporated in any other product, Balmoral may (when practical) disconnect them in any way necessary to remove the Products; and
  - (iii) Customer indemnifies and must keep indemnified Balmoral in respect of all Losses that Balmoral suffers or incurs as a consequence of taking action in accordance with clause 6.2(b)(ii), including any transportation and storage charges and such Losses must be paid by Customer to Balmoral on demand (subject to verification of such Losses by Balmoral).
- (c) Balmoral may apply amounts received in connection with this Contract to satisfy obligations secured by a security interest contemplated or constituted by this Contract in any way Balmoral determines in Balmoral's absolute discretion.

## **7. SECURITIES INTERESTS**

### **7.1 Application**

This clause 7 applies only where Balmoral sells Products to Customer on Nett 30 day terms.

### **7.2 Australia**

- (a) In this clause 7.2, terms have the same meaning as in the Personal Property Securities Act 2009 (Cth).
- (b) Customer acknowledges and agrees that:
  - (i) Balmoral may register on the Personal Property Securities Register, a security interest as granted by Customer that is created, or deemed to be created, in connection with supplies made by Balmoral;
  - (ii) Balmoral may take, or require Customer to take (in which case, Customer must promptly at its own cost take), any action to ensure that each such security interest is enforceable, perfected, protected and afforded the priority ranking required by Balmoral; and
  - (iii) Customer must not create or permit the creation or existence of any security interest or other interest benefitting a third party in goods supplied by Balmoral and in which Balmoral has, or deemed to have, a legal or beneficial interest or a security interest.
- (c) Customer waives its right to receive a copy of any verification statement in respect of a security interest registered in favour of Balmoral. Customer must not change its name without giving Balmoral written notice at least seven days before the change takes effect.

### **7.3 New Zealand**

- (a) In this clause 7.3, terms have the same meaning as the Personal Property Securities Act 1999 (NZ) (**NZPPSA**).
- (b) Customer grants to Balmoral a security interest in the Products as security for payment of the Invoiced Price and all other moneys payable from time to time to

Balmoral by Customer, and for the performance by Customer of all Customer's other obligations from time to time to Balmoral (together the **Customer's Indebtedness and Obligations**). For the purposes of section 36(1)(b) of the NZPPSA, and to ensure maximum benefit and protection for Balmoral by virtue of section 36(1)(b)(iii) of the NZPPSA, Customer confirms and agrees that Customer intends to and does grant to Balmoral, as security for Customer's Indebtedness and Obligations, a security interest in all of Customer's present and after-acquired property except only for any such property which is or comprises items or kinds of personal property (**Excepted Property**):

- (i) in or to which Customer has rights; and
- (ii) which has not been supplied by Balmoral to Customer,

other than any Excepted Property which is or comprises proceeds of any of that present and after-acquired property which has been supplied by Balmoral to Customer.

- (c) Customer agrees to do anything that Balmoral requires to ensure that Balmoral has a perfected security interest and (if applicable) a purchase money security interest in the Ordered Products.
- (d) Balmoral may allocate all amounts received from Customer in any manner it determines including any manner required to preserve any purchase money security interest in the Ordered Products.
- (e) While the Ordered Products continue to secure Customer's Indebtedness and Obligations, Customer must store the goods separately and clearly identify the goods as being subject to Balmoral's security interest.
- (f) Customer agrees that nothing in sections 114(1)(a), 133 and 134 of the NZPPSA shall apply to this Contract, or the security under this Contract, and waives Customer's rights under sections 121, 125, 129, 131 and 132 of the NZPPSA.
- (g) Customer waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest under this Contract.

#### 7.4 Notification

Customer must advise Balmoral immediately if Customer commits or is subject to an Insolvency Event or of any action by third parties (including any of its creditors) affecting Balmoral's security interest in the goods under clause 7.2 or 7.3.

### 8. WARRANTY AND LIABILITY

#### 8.1 Australian Consumer Law

Balmoral's goods and services may come with guarantees as provided under Australian Consumer Law and such guarantees cannot be excluded. In reference to this clause, particular attention needs to be paid to clauses 11.1 and 11.2.

#### 8.2 Additional Warranty

This warranty is given by Balmoral Engineering Pty Ltd ABN 37 001 826 017 (**Balmoral**) of 1/38 Leighton Place, Hornsby, NSW, 2077, Australia. In addition to the guarantees to which Customer is entitled under the Australian Consumer Law, Balmoral warrants to Customer that:

- (a) the Ordered Products will:
  - (i) be free from material defects in design, materials, workmanship and manufacture;
  - (ii) conform in all material respects with the Specification; and

- (iii) will be manufactured so that they are safe if properly used according to their specification.

for the period specified in the applicable Balmoral Warranty document current at the time that the Ordered Products are delivered to Customer. Except as provided in clause 11.2 and subject to the Australian Consumer Law and other applicable law, on expiry of the specified warranty period, Balmoral's obligations under clause 8.2 cease; and

- (b) any Services supplied by Balmoral will be supplied with due care and skill and using appropriate equipment and appropriately trained personnel.

### **8.3 Remedies for Faulty or Damaged Products**

- (a) If an Ordered Product does not meet any of the warranties specified in clause 8.1(a) or the Ordered Product is damaged, Customer must:
  - (i) contact Balmoral as specified in clause 8.3(b) to notify Balmoral that the affected Ordered Product or Service does not meet one or more of the above warranties and specify the specific warranty which has been breached; and
  - (ii) return the affected Ordered Product to Balmoral in accordance with Balmoral's instructions at Customer's cost as applicable so that Balmoral may inspect the affected Ordered Product to confirm non-compliance with the nominated warranty.
- (b) Customer must contact Balmoral as follows:

*[Insert name/position who should be contacted, full company name, relevant address, email address and telephone number]*
- (c) Balmoral will examine the returned Ordered Product or Service to determine if any warranty has been breached. Balmoral will, in its discretion determine whether to:
  - (i) repair or replace the returned Ordered Product or to refund the Invoiced Price for the affected Ordered Product; or
  - (ii) re-perform the Service or to refund the Invoiced Price for the affected Service.
- (d) Subject to the Australian Consumer Law and other applicable laws which prohibit the exclusion, limitation or modification of terms implied under those laws and clause 11, this clause sets out Customer's exclusive remedy in relation to defective or damaged Ordered Products and Services.

### **8.4 Damage after Delivery of Ordered Products**

Balmoral will not be responsible for any damage to the Ordered Products which occurs at any time after Delivery to Customer unless Customer can provide reasonable evidence that the damage was a direct result of any fault or defect:

- (a) in the manufacture of the Ordered Products;
- (b) in the packing of the Ordered Products; or
- (c) in the Ordered Products which Customer can show was caused prior to delivery to Customer.

### **8.5 Exclusions from Warranty**

Ordered Products will not be subject to the warranty specified in clause 8.2, and Balmoral will not be liable to Customer to the extent that any breach of warranty or damage or destruction is caused by or arises from:

- (a) any failure by Customer to properly or safely store the Ordered Products;
- (b) any failure by Customer to properly install the Ordered Products;

- (c) any failure by Customer to use the Ordered Products for their purpose;
- (d) any use by Customer or any other person of the Ordered Products contrary to the Specification;
- (e) tampering with the Ordered Products;
- (f) any act or omission by Customer or any other person after delivery of the Ordered Products; and;
- (g) any failure to properly maintain the Ordered Products.

## **9. INTELLECTUAL PROPERTY RIGHTS IN PRODUCTS**

### **9.1 Ownership of IPR**

Balmoral or its suppliers (as applicable) retains ownership of all IPR in the Products and the Specifications, any manuals and other documentation supplied with or relating to the Products (**Documentation**).

### **9.2 Use of Documentation**

Customer may use the Documentation in association with or to use the Products but may not make any copies of the Documentation unless it has obtained the prior written approval of Balmoral.

### **9.3 Trade Marks, Serial Numbers and Other Markings on Products**

Customer must not alter, remove, conceal or tamper with any trade marks, labelling, serial numbers or other markings or means of identification displayed on or which are affixed to the Ordered Products or Documentation and must reproduce all copyright and other ownership notices on all copies it makes of the Documentation.

### **9.4 Indemnity**

Balmoral indemnifies and must keep indemnified Customer in respect of any Losses suffered or incurred by Customer pursuant to any claim that the possession or distribution of the Ordered Products by Customer infringes the IPR of a third party. Customer must follow any directions issued by Balmoral in relation to the use or return of Ordered Products to mitigate or remove any such claim.

## **10. CONFIDENTIALITY OBLIGATIONS**

### **10.1 Obligations**

Any information that parties receive or otherwise have access to incidental to or in connection with this Contract and which in the case of Balmoral includes the secure sections of Balmoral's website (collectively, the **Confidential Information**), will be and remain the property of the disclosing party.

### **10.2 Use of Confidential Information**

Confidential Information may be used to the extent necessary to perform this Contract and the parties must not disclose Confidential Information to any third party, except to its representatives (who have executed confidentiality Contracts containing terms substantially similar to these terms) as necessary to perform its obligations or exercise its rights under this Contract.

### **10.3 Ownership of Confidential Information**

The disclosing party retains ownership of all and any right, title or interest in and to the Confidential Information or product or invention described or ascertainable from the Confidential Information.



#### **10.4 Remedies**

The recipient acknowledges and agrees that:

- (a) damages may not be an adequate remedy for any breach of the provisions of this clause 10; and
- (b) the discloser will be entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the recipient, in addition to any other remedies available to the discloser at law or in equity.

### **11. WARRANTIES, LIMITATION AND INDEMNITIES**

#### **11.1 Exclusion of Implied Warranties and Terms**

All warranties, conditions, guarantees, terms, undertakings and obligations implied by statute, common law, trade usage, course of dealing or otherwise including warranties or conditions of merchantability, fitness for purpose, satisfactory quality or compliance with description and non-infringement are excluded to the fullest extent permitted by the Australian Consumer Law and other applicable law.

#### **11.2 Implied Warranties and Terms**

Where Customer is acquiring goods that are not of a kind ordinarily acquired for personal, domestic or household use or consumption and subject to any terms, conditions, warranties or guarantees implied by the Australian Consumer Law or other applicable law into this Contract which cannot be excluded, restricted or modified, the liability of Balmoral to Customer under the implied terms, conditions, warranties or guarantees is limited, at the option of Balmoral to:

- (a) in the case of Products, the replacement of the Ordered Products or the supply of equivalent products; the repair of such products; the payment of the cost of replacing the Ordered Products or of acquiring equivalent products; or the payment of the reasonable cost of having the Ordered Products repaired; or
- (b) in the case of Services, the supplying of such services again; or the payment of the reasonable cost of having such services supplied again (at Balmoral's absolute discretion).

#### **11.3 Exclusion of Indirect Loss**

To the fullest extent permitted by the Australian Consumer Law and other applicable law, under no circumstances will a party be liable to the other party for:

- (a) special, incidental or indirect damages or for any economic consequential damages; or
- (b) any loss of profit, loss of revenue, loss of interest, loss of data, loss of use, loss of goodwill or business opportunities, business interruption (or any other similar financial loss), which arise directly or indirectly

in connection with this Contract, however that liability arises including in contract or tort, liability under indemnity or for any other common law, equitable or statutory cause of action or otherwise. This clause will not prevent Balmoral from recovering the Invoiced Price from Customer.

#### **11.4 Limitation**

Subject to clause 11.2 and except for liability for breach of clauses 9 and 10 and indemnities under clause 11.5, to the fullest extent permitted by the Australian Consumer Law and other applicable law and except as provided otherwise in this Contract, the maximum cumulative aggregate liability of a party to the other party regardless of basis (including indemnity, warranty, fundamental breach, negligence, misrepresentation or other contract or tort claim)

for each Order is limited to the total amount paid by Customer to Balmoral (excluding GST) under this Contract for that Order.

### **11.5 Indemnities**

Customer indemnifies and must keep indemnified Balmoral against any and all Losses arising out of or relating to:

- (a) the failure of Customer to comply with all applicable laws, rules, and/or regulations, including, without limitation, laws relating to export controls;
- (b) any negligent act or omission of Customer; and
- (c) claims against Balmoral arising from or caused by Customer's use of the Products.

Balmoral may participate in the defence or settlement of any claim with counsel at its expense.

### **11.6 Contribution**

The liability of a party for any Losses incurred by the other party will be reduced proportionately to the extent that:

- (a) any negligent act or omission of the party claiming compensation for Loss (or of its authorised representatives); or
- (b) any failure by the party claiming compensation for Loss to comply with its obligations and responsibilities under this Contract,

contributed to those Losses, regardless of whether legal proceedings are brought for negligence or breach of contract.

## **12. FORCE MAJEURE EVENTS**

Neither party will be liable for any failure to perform or delay in performance of this Contract to the extent that any such failure arises from any cause beyond the party's commercially reasonable control.

## **13. TERMINATION**

### **13.1 Termination for Cause**

A party may terminate this Contract by notice to the other party, effective from the date of the notice or from any later date that specified in the notice if:

- (a) the other party commits or is subject to an Insolvency Event; or
- (b) the other party breaches a material term of this Contract and the breach is not rectified, if it can be rectified, within 14 calendar days of receipt of notice of the breach.

### **13.2 Suspension**

Balmoral may, as an alternative to terminating this Contract under clause 13.1, by written notice to Customer immediately suspend the performance of its obligations under this Contract until such time has Customer has remedied the breach to the reasonable satisfaction of Balmoral. Balmoral's exercise of its rights under this clause is without prejudice to any of Balmoral's other rights and remedies under this Contract including the right to terminate this Contract under clause 13 if the breach which gave rise to the right to terminate or suspend persists.

### **13.3 Survival of Obligations**

Clauses 9, 10 and 11 and any other clause which by its nature is intended to survive the expiry or termination of this Contract will survive the expiry or termination.

## 14. DISPUTES

If a dispute arises between Balmoral and Customer under or in relation to this Contract, either party may notify the other party of the existence of the dispute (**Dispute Notice**) and request that the parties meet in good faith to resolve the dispute. The meeting must be attended by representatives of the parties who are authorised to make decisions on behalf of the party they represent and to legally bind the party to any agreements reached at the meeting. If a meeting is not held within 14 days of a Dispute Notice or if a meeting is held, the dispute is not resolved within 14 days of the meeting, either party may take such action as the party considers necessary to resolve the dispute.

## 15. DEFINITIONS AND GENERAL

### 15.1 Definitions

In this Contract unless the context otherwise requires terms defined in the Contract Details will have the meaning ascribed to that term in the Contract Details and:

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

**Customer** means a person submitting a Purchase Order.

**Delivery Location** means the location if specified in the Order Confirmation.

**Delivery date** means the date of despatch from Balmoral's premises.

**GST** has the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (Cth) and includes any other country, provincial, government, state and local sales, use, goods and services, value added, excise, privilege and similar levy or tax applicable to the supply of the Products or Services in the place where Customer is located. Any term used in this Contract which is defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth) will have the same meaning in this Contract. If Products are delivered to Customer outside Australia, GST means any tax on the supply of goods or products or services in the jurisdiction in which the Products are delivered.

**Intellectual Property Rights** or **IPR** means all present and future rights conferred by statute, common law or equity in any territory or jurisdiction throughout the world, known as of the date hereof or thereafter devised, in or in relation to copyright, trade marks, designs, patents, circuit layouts, business and domain names, inventions and Confidential Information, and other rights resulting from intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable.

**Insolvency Event** means:

- (a) if Customer is located in Australia – being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event; or
- (b) if Customer is located outside Australia – any circumstance analogous to any of those specified in paragraph (a).

**Invoice** means the invoice or invoices issued by Balmoral for the supply of Ordered Products to Customer.

**Invoiced Price** means the Price for Ordered Products as specified in an Invoice.

**Loss** means any liabilities, expenses, losses, damages and costs (including legal costs) whether incurred by or awarded against a party.

**Order Confirmation** means formal acknowledgement of Customer's Purchase Order issued by Balmoral to Customer (which acknowledgement may be via email).

**Ordered Products** means the Products specified in an Invoice.

**Purchase Order** means a document or email issued by Customer offering to purchase the Products and Services specified in the Quotation.

**Services** means the services specified in an Order Confirmation or Purchase Order.

**Specification** means the product safety sheet, user manual, product description and other documentation issued by Balmoral and available on the Downloads section of Balmoral's website which describe the functionality and use of Products and other technical documentation made available by Balmoral to Customer at the time of delivery of the Products.

## **15.2 Interpretation**

In this Contract, unless the context indicates a contrary intention:

- (a) the expression person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity, a corporation, an association (incorporated or unincorporated) and a government authority;
- (b) words importing the singular include the plural (and vice versa);
- (c) a reference to a clause, schedule or annexure is a reference to a clause, schedule or respectively of this Contract;
- (d) a reference to any thing includes a part of that thing;
- (e) a reference to include or including means includes, without limitation, or including, without limitation, respectively;
- (f) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (g) headings are for convenience only and do not affect interpretation.

## **15.3 Notices**

Any notice or other formal communication under this Contract:

- (a) must be in writing and signed by an authorised representative of the sender;
- (b) must be marked to the attention of the recipient's authorised representative as specified on the first page of this Contract and be delivered to the recipient by hand, pre-paid post, fax or email at the address or number shown on the first page of this Contract (or as last notified); and
- (c) will be effective once received, and will be deemed to be received, if:
  - (i) delivered by hand – when it is delivered to the recipient;
  - (ii) posted from within Australia – on the third day after posting;
  - (iii) posted from outside Australia – on the seventh day after posting;
  - (iv) faxed – at the time shown on the transmission report produced the machine from which the facsimile was sent which confirms that the facsimile was transmitted to the addressee in its entirety; and
  - (v) emails – at the time at which the recipient's email server issues a receipt of the email irrespective of whether the recipient has in fact read the email.

**15.4 Entire Agreement**

This Contract contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Contract and has no further effect.

**15.5 Applicable Law and Jurisdiction**

This Contract will be governed by and construed in accordance with the laws of New South Wales, Australia. The United Nations Convention on Contracts for the International Sale of Goods is specifically disclaimed. The parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia and any court that may hear appeals from any of those courts.

**15.6 Severance**

Any provision of this Contract which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Contract enforceable, unless this would materially change the intended effect of this Contract.

**15.7 No Waiver**

- (a) No failure to exercise and no delay in exercising any right, power or remedy under this Contract will operate as a waiver.
- (b) A single or partial exercise of any right, power or remedy will not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A waiver of any provision of this Contract or any rights or obligations of a party will only be effective if effected by written notice signed by authorised representative of the party. Any such waiver will be effective only in the specific instance and for the specific purpose specified in the notice.

**15.8 Consents**

Where this Contract contemplates that a party may approve, agree or consent to something (however it is described), that party may:

- (a) approve, agree or consent, or not approve, agree or consent, in its absolute discretion; and
- (b) approve, agree or consent subject to conditions, unless this Contract expressly contemplates otherwise.