



# **BTP Standard Terms & Conditions of Sale**

## 1 Agreement

- 1.1 These Standard Terms and Conditions of Sale (**Standard Terms**), 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 Products (**Agreement**). By countersigning the Quote, issuing a purchase order or instructing BTP to proceed based on the Quote, the Buyer approves the Specifications and accepts the Special Conditions set out in the Quote and these Standard Terms.
- 1.2 If there is any inconsistency between the Quote, the Special Conditions, the Specifications and these Standard Terms, the order of priority for the purpose of construction is:
- the Special Conditions;
  - these Standard Terms;
  - the Quote (other than the Special Conditions); and
  - the Specifications.

## 2 Definitions and interpretation

- 2.1 In this Agreement, unless the context requires otherwise, the following definitions apply:
- Business Day** means a day that is not a Saturday, Sunday or public holiday in the state in which the Delivery takes place;
- Buyer** means the party identified in the Quote as the party to whom Products are being sold by BTP;
- Delivery** has the meaning in clause 5.1;
- Deposit** means the deposit amount that the Buyer is required to pay to BTP pursuant to clause 3, as set out in the Quote;
- Force Majeure** means an event which is not within the control of BTP claiming force majeure, and which will directly impact the ability of BTP to perform its obligations under the Agreement, including any act of god, war, revolution, pandemic, a governmental restraint or any industrial-related dispute;
- Intellectual Property Rights** means all statutory and other proprietary rights in respect of patents (including inventions), trademarks, 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:
- Commonwealth, State and local government legislation including regulations, by-laws, orders, awards and proclamations, including any amendments, revisions or updates to the foregoing from time to time;
  - common law and equity; and
  - authority requirements and consents;
- Party** means BTP or the Buyer, and **Parties** means both of them;
- PPSA** means the *Personal Property Securities Act 2009* (Cth);
- 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** means the equipment, parts or goods to be sold or the services to be provided as set out in the Quote and **Products** shall have a corresponding meaning;
- Quote** means the quote, proposal, invoice or response to query or order provided by BTP to the Buyer in relation to the Products;

**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 (if any);

**Standard Terms** means these Standard Terms & Conditions of Sale; and

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

- 2.2 In this Agreement unless the contrary intention appears:
- the singular includes the plural and vice versa;
  - the word "person" includes a firm, a body corporate, an unincorporated association or an authority;
  - the words "include" and "including" are to be construed without limitation;
  - a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure in this Agreement;
  - headings in this Agreement are for convenience and will not affect interpretation of this Agreement;
  - reference to a day or month means a calendar day or calendar month;
  - a reference to "AUD", "A\$", "\$A", "dollar" or "\$" is a reference to Australian currency;
  - a reference to any Legislative Requirement includes all amendments, consolidations, re-enactments or replacements to or of it, and all regulations or statutory instruments issued under it;
  - if the due date for anything to be done under this Agreement falls on a day that is not a Business Day, then it must be done on the next Business Day; and
  - no provision of this Agreement will be construed to the disadvantage of a Party because that Party was responsible for the preparation of this Agreement.

## 3 Deposit

Within five (5) Business Days of countersigning the Quote, issuing a purchase order or instructing BTP to proceed based on the Quote, the Buyer must pay BTP the Deposit, if applicable, in AUD. The Buyer agrees that the Deposit is paid in consideration for the Buyer securing one or a series of delivery slots for the Products, as the case may be. The Deposit may be applied by BTP towards costs associated with the supply of the Products to the Buyer. The Deposit is not refundable unless otherwise agreed in writing by BTP except if the Agreement is terminated by BTP under clause 18.3.

## 4 Payment

- 4.1 BTP is not required to deliver the Products until the Buyer has paid for them in full. Payment of the Price less the Deposit is due in AUD in accordance with the Quote and in any case on or before delivery of the Products to the Buyer. Time for payment is of the essence. Any invoice issued by BTP to the Buyer is payable in full within thirty (30) days from the date on which such invoice is issued unless otherwise specified in the invoice.
- 4.2 If BTP is not paid for any part of the Products on or before the date that risk in the Products passes to the Buyer (**Delivery Date**), without prejudice to any other rights or remedies available to BTP:
- title in the Products will remain vested in BTP;
  - the Buyer will be liable for any costs incurred by BTP as a result of the Buyer's default;

- (c) any and all outstanding money payable to BTP will accrue interest at the Commonwealth Bank of Australia Business Lending Rate plus 5%; and
  - (d) BTP may recover the Price of the Products 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.
- 4.3 Unless otherwise stated, the Price excludes GST (as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) (a **GST-exclusive consideration**). 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.
- 4.4 Any GST payable under the Agreement is payable on the day that payment of the GST- exclusive consideration (or part thereof) for the supply that has given rise to the obligation to pay GST is required pursuant to this Agreement, or where the GST- exclusive consideration is non-monetary consideration, seven days after the Buyer receives a tax invoice for the supply.
- 4.5 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 tax credits for the GST in respect of supplies to which the invoice relates.

## 5 Delivery, title and risk

- 5.1 Delivery of the Products is Ex Works Incoterms 2020 (the place as specified in the Quote) (**Delivery**). Any transport or shipment of the Products by BTP to the Buyer will be subject to a separate agreement between the parties.
- 5.2 Title to the Products passes from BTP to the Buyer on payment of the Price (plus any amounts determined to be payable by the Buyer under clause 4.3) to BTP in full. Until that time, title in the Products remains with BTP.
- 5.3 Risk in the Products passes from BTP to the Buyer upon the actual or constructive Delivery of the Products to:
- (a) the Buyer, or any of its agents, representatives or subcontractors; or
  - (b) if BTP is to arrange transport or shipment of the Products, the transport or shipping subcontractor retained by BTP.
- 5.4 BTP will use reasonable endeavours to ensure that the Products 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.
- 5.5 While title in the Products remains with BTP:
- (a) the Buyer has no right or claim to any interest in the Products;
  - (b) the Buyer must not claim any lien over the Products;
  - (c) the Buyer must not create any absolute or defeasible interest in the Products in relation to any third party except as expressly authorised by BTP; and
  - (d) where the Buyer is in actual or constructive possession of the Products, the Buyer:
    - (i) must not deliver Products or any document of title to the Products to any person except as directed by BTP;

- (ii) is in possession of the Products as a bailee of the Products and owes BTP the duties and liabilities of a bailee;
- (iii) must not allow any person to have or acquire any security interest in the Products;
- (iv) must store the Products separately from all other equipment;
- (v) must insure the Products 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 Products are stored; and
- (vi) must not remove, deface or obliterate any identifying plate, mark or number on any of the Products.

- 5.6 Without limiting or waiving BTP's rights under clause 5.5(d), if the Buyer supplies any Products to any person before the Price (plus any amounts determined as payable by the Buyer under clause 4.3) has been paid to BTP in full, the Buyer agrees that:

- (a) the Buyer holds the proceeds of re-supply of the Products 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 Products 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 payable by the Buyer under clause 4.3) in full, at which time title in the Products (including the accessory) passes to the Buyer or the relevant person, as the case may be;
- (c) if any Products are used in any mining, manufacturing or other process or are mixed with other products, the Buyer must record the value of Products so used or consumed and upon sale of any item produced using the Products must immediately pay the balance of the Price (plus any amounts determined payable by the Buyer under clause 4.3) to BTP out of the proceeds of such sale; and
- (d) BTP may recover possession of the Products at the Buyer's cost, including at any site owned, possessed or controlled by the Buyer and 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 Products are situated, the Buyer agrees to use its best endeavours to procure access to such site for BTP.

## 6 PPSA

- 6.1 The Buyer acknowledges that BTP has a purchase money security interest in the Products.
- 6.2 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.
- 6.3 The Buyer acknowledges that BTP's rights and interest in proceeds derived from the Products constitute a security interest in such proceeds.
- 6.4 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 interests in the Products, with such expiry dates as BTP determines in its absolute discretion).

- 6.5 The Buyer must provide BTP with any information it requires for the purposes of giving effect to such registration.
- 6.6 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:
- seizes the Products, whether under PPSA section 123 or otherwise, for the purposes of enforcement; or
  - becomes entitled to seize the Products.
- 6.7 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 Products.
- 6.8 The Buyer agrees that any action taken by BTP in relation to BTP's security interest in the Products is at the cost of the Buyer.
- 6.9 If chapter 4 of the PPSA would otherwise apply to the enforcement of any security interest created under this agreement then, to the maximum extent permitted under law, the provisions of chapter 4 are excluded.
- 6.10 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:
- obtaining and giving any consents;
  - producing and providing any receipts or information in respect of the Products;
  - signing or procuring the signing of any documents;
  - facilitating registration of any security interest on the PPSR Register;
  - 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 Products; and
  - facilitating the exercise of BTP's rights in enforcing any security interest.
- 6.11 The parties agree that other than the existence of a security interest in any Products, and details of the relevant Products, and the amount (if any) owing by the Buyer to BTP from time to time in relation to any Products, 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 17.

## 7 Specification

- 7.1 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 Products, and any BTP engineering measurements of any vehicle, parts or equipment to which the Products is or are to be installed or attached by BTP (where relevant).
- 7.2 BTP has relied on the correctness, accuracy and completeness of, and 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.
- 7.3 BTP reserves the right to make changes to one or all of the Specifications, the Price and the proposed Delivery Date if, at any time after the Buyer countersigns the Quote, issues a purchase order or instructs BTP to proceed based on the Quote:

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

## 8 Warranty

- 8.1 BTP warrants that Products, excluding Used Equipment, will be free from defects in material or workmanship for the period set out in Item 1 of Annexure A (**Warranty Period**). The Warranty Period shall not be extended for any repaired or replaced Products or part thereof, or for any reperfomed services.
- 8.2 Subject to clause 8.4, the Buyer's sole and exclusive remedy for any breach of the warranty set out in clause 8.1 is, at BTP's option and cost:
- repair of the defective Products or part thereof at BTP's premises during BTP's normal working hours;
  - replacement of the defective Products or part thereof or supply of an equivalent product or part; or
  - reperformance of any defective services.
- 8.3 If despite reasonable endeavours BTP is unable or unwilling to provide the remedies set out in clause 8.2, BTP will pay the Buyer the reasonable costs of replacing or repairing the Products or reperforming the services.
- 8.4 BTP has no obligation for any defects in, non-conformance of, or consequential damage to Products to the extent that the defect, non-conformance or consequential damage is caused by or occurs as a result of:
- an accident in relation to, improper storage of, negligent or wrongful use, calibration or operation of or incorrect or third party installation of the Products;
  - inadequate or insufficient maintenance or servicing of the Products, or failure of the Buyer to otherwise maintain Products in accordance with original equipment manufacturer guidelines and/or specific BTP guidelines on maintenance of the Products;
  - modifications, repairs, alterations, welded additions or design changes to the Products that are not approved by BTP in writing;
  - unreasonable delay in the granting of, or the prevention of, access to BTP to defective Products sufficient for BTP to carry out BTP's warranty obligations in relation to the defective Products where such delay or prevention is caused by the Buyer;
  - any 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 Products;
  - 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;
  - the information provided by the Buyer to BTP in respect of the supply of the Products, including with regard to the Specifications, being incorrect, inaccurate or incomplete;

- (h) normal or fair wear and tear, including corrosion; or
- (i) the use of replacement parts, consumables or other equipment other than those supplied by or recommended by BTP.

8.5 BTP's liability in respect of any breach of warranty does not cover costs associated with:

- (a) the removal or reinstallation of Products;
  - (b) transport or shipping of Products, parts, materials or equipment to and from the place at which warranty work is performed;
  - (c) labour costs except where the initial labour was the predominant cause of the breach of warranty;
  - (d) replacement of items attached to the Product, or to which Products are attached, where such attachment was carried out by any person other than BTP;
  - (e) travel and associated accommodation and sundries for BTP employees required to perform warranty work; or
  - (f) equipment rental charges associated with the performance of warranty work, and
- such costs will be separately invoiced by BTP to the Buyer.

8.6 The *Competition and Consumer Act 2010* (Cth), 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. Subject to the legislation referred to above and to the maximum extent permitted by law:

- (a) the liability of BTP in respect of a breach of a Prescribed Term relating to the Products or any part thereof (but only to the extent that a Prescribed Term applies to the supply of Products under this Agreement) is limited to the remedies set out in clause 8.2; and
- (b) other than as set out in paragraph 8.6(a) (to the extent it applies) and clauses 8.1 to 8.5, 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 Products or any part thereof; 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 Products or any part of the Products, and

the Buyer indemnifies BTP against any such claim or liability.

## 9 Used Equipment

The warranty referred to in clause 8.1 does not apply to Used Equipment. Warranty terms applicable to Used Equipment are set out in Item 2 of Annexure A. For avoidance of doubt, the warranty for Used Equipment stated in Item 2 of Annexure A is BTP's sole liability for the Buyer's purchase, use or re-sale of Used Equipment and the Buyer indemnifies and keeps BTP harmless from any claim, loss, damage or expense arising from or connected to the Buyer's purchase, use or re-sale of Used Equipment.

## 10 Returns

Except as provided in clause 8, 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 for acceptance of return of any Product.

## 11 Liability

- 11.1 BTP is not liable for any loss whatsoever arising from the late Delivery of the Products, 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 Products.
- 11.2 To the maximum extent permitted by law, BTP is not liable for and the buyer indemnifies BTP and agrees to keep BTP indemnified from any claims, losses, actions, damages, costs and expenses of whatever nature, whether in contract, warranty, tort (including negligence), product liability or otherwise (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, supply of the Products, or use, operation or resale of Products by the Buyer or any other person.
- 11.3 Notwithstanding any other provision of this Agreement and to the maximum extent permitted by Law:
  - (a) BTP will not be liable to the Buyer for any indirect, special, contingent or consequential Loss, including any loss of actual or anticipated profits, loss of opportunity, loss of use, loss of goodwill, loss of revenue, loss or production, loss of plant or facility, wasted overheads or business interruption of any nature; and
  - (b) BTP's maximum liability to the Buyer, if any, howsoever arising, is limited:
    - (i) in the case of Products to which a manufacturer's warranty applies, that warranty; or
    - (ii) for any other Products, at the discretion of BTP, the repair or replacement of the Products.
- 11.4 The environmental management at any site at 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.
- 11.5 The limitations and exclusions in this clause 11 shall apply regardless of whether a claim is based in contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability, statute or otherwise.

## 12 Intellectual Property Rights

Each party shall retain ownership of all confidential information and Intellectual Property it had prior to this Agreement. All new Intellectual Property conceived or created by BTP in the performance of this Agreement, whether alone or with any contribution from the Buyer, shall be owned exclusively by BTP.

**13 Taxes and duties**

Subject to clause 4.3 and notwithstanding any other provision of this Agreement the parties agree that the Buyer must pay the costs of customs formalities as well as any duties, taxes and other charges payable in connection with the export, import and transportation of the Products to any country outside of Australia.

**14 Buyer Warranties**

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;
- (c) it is able to pay its debts as and when they are due and payable and no Products are liable to a claim by a trustee in bankruptcy or a liquidator;
- (d) it acknowledges and agrees that:
  - (i) BTP has not supplied any sample of the Products to the Buyer and if the Buyer sells the Products to any person by reference to a sample, that sample has not been supplied to that person by BTP; and
  - (ii) any sale by reference to a sample by the Buyer to any person (including any 'consumer' within the meaning of the *Competition and Consumer Act 2010* (Cth)) is not referable to the sale or supply of the Products by BTP to the Buyer under this Agreement;
- (e) 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 15;
- (f) it has independently and without the benefit of any inducement, representation or warranty (other than as set out in clause 15) from BTP or its agent determined to enter into the Agreement;
- (g) the disclosures made before the parties entered into the Agreement regarding the Products 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; and
- (h) it acknowledges and accepts that neither BTP nor any of its representatives is liable to the Buyer:
  - (i) for any duty of care in relation to the Buyer in respect of any disclosure or the provision of any information referred to in clause 14(e); or
  - (ii) if, for whatever reason, any such information is or becomes inaccurate, incomplete or misleading in any particular way.

**15 BTP Warranties**

BTP warrants to the Buyer that:

- (a) it has and will have the right to sell and transfer title to and property in the Products to the Buyer;
- (b) it is able to pay its debts as and when they are due and payable and no Products 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 this Agreement and to carry out the transactions contemplated by this Agreement.

**16 Force Majeure**

- 16.1 If BTP is prevented from carrying out the whole or any part of its obligations under this Agreement by reason of Force Majeure, that Party must give written notice to the Buyer. BTP must keep the Buyer informed of any changes in the circumstances causing the Force Majeure.
- 16.2 The obligations of BTP, so far as they are affected by Force Majeure, will be suspended for the period that the Force Majeure persists and BTP will not be in default under the Agreement. BTP must use its best endeavours to remedy or mitigate the effect of any Force Majeure and comply with its obligations under the Agreement.
- 16.3 Notwithstanding any other provisions of this Agreement, if the Force Majeure causes the suspension of BTP's obligations for a continuous period of 60 days, BTP may terminate the Agreement by written notice to the Buyer.

**17 Confidentiality**

- 17.1 The Buyer acknowledges and agrees that any information provided by BTP under or in relation to this Agreement, including but not limited to pricing, technical specifications and other information is commercial in confidence. Such information must at all times remain confidential and must not be disclosed to any third party without BTP's prior written consent.
- 17.2 The Buyer must not, and must ensure that its Personnel do not, disclose or use any confidential information relating to this Agreement (including Intellectual Property), unless written consent has been given by BTP.
- 17.3 The Buyer agrees to comply with the *Privacy Act 1988* (Cth) in respect to the collection, management and disclosure of any personal information obtained or disclosed to them in the performance of this Agreement.
- 17.4 The Buyer shall indemnify, and keep indemnified, BTP from and against all Claims arising from a breach of this clause 17 by the Buyer.

**18 Termination**

- 18.1 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* (Cth)) 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.
- 18.2 Upon termination of this Agreement by BTP under clause 18.1, BTP will be entitled to cease the supply of the Products, retain the Deposit and recover from the Buyer any amounts due from the Buyer for the supply of any Products up to the date of termination and costs incurred in respect of any loss or damage suffered by BTP as a result of such termination.

18.3 BTP may at any time by written notice to the Buyer immediately terminate the Agreement for convenience. If BTP terminates the Agreement under this clause 18.3, any amounts due from the Buyer for supply of Products up to the date of termination shall be immediately due and payable by the Buyer.

## 19 Disputes

- 19.1 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.
- 19.2 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.
- 19.3 If the Dispute is unable to be resolved under clause 19.2 within 14 Business Days, the parties will endeavour in good faith to settle the Dispute at least once by a meeting between the chief executive officers of the parties before commencing legal proceedings to finally determine the Dispute.
- 19.4 The Parties must continue to perform their respective obligations under the Agreement (including obligations to pay money), pending the resolution of any Dispute.
- 19.5 Nothing in this Agreement is to be taken as preventing any party from seeking interlocutory relief in respect of any Dispute.

## 20 Notices

- 20.1 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.
- 20.2 A notice or other communication is effective:
- if delivered by hand, when delivered;
  - if delivered by post, 3 days after posting (or 9 days after posting if sent to or from a place outside Australia);
  - if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; and
  - if sent by email, at the time when the email is received in the recipient's email server.
- 20.3 A notice or other communication received after 5pm in the place of receipt or on a non-Business Day is taken to be received at 9am on the next Business Day.

## 21 General

21.1 These Standard Terms supersede and exclude all prior and other discussions, representations between the Parties (contractual or otherwise) and arrangements relating to the supply of the Products or any part of the Products whether written or oral, including, without limitation, those relating to the performance of the Products or any part of the Products or the results that ought to be expected from using the Products.

- 21.2 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) or similar legislation in force in any other Australian state or territory 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) and such similar legislation to the extent of their inconsistency with the Agreement.
- 21.3 The terms and conditions of the *United Nations Conventions on Contracts for the International Sale of Goods* do not apply to this Agreement.
- 21.4 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.
- 21.5 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.
- 21.6 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.
- 21.7 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.
- 21.8 This Agreement is not assignable or transferable 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.
- 21.9 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.
- 21.10 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.
- 21.11 Clauses 4, 5, 6, 8, 11, 12, 14, 17, 19 and 21 survive the expiration or termination of this Agreement.

## ANNEXURE A – BTP Group Warranty Terms

**1. Warranty Periods Generally**

The warranty set out in clause 8 of BTP Standard Terms & Conditions of Sale applies for the periods stated in the table below commencing at Delivery of the relevant Product:

Item	Product	Warranty Period
1	Engines	12 months warranty – unlimited hours.
2	Transmissions	12 months warranty – unlimited hours.
3	Torque converters	12 months warranty – unlimited hours.
4	Differentials	12 months warranty – unlimited hours.
5	Wheel groups	14 months warranty – unlimited hours.
6	Track frame groups D10T and D11T	12 months OR 4,000hrs, whichever is the earlier, warranty on frames. Limited warranty on track adjusters, suspension pads and cartridge pins – 3 months.
7	Grader front axle assemblies and 'A' frame circle assemblies	12 months warranty.
8	Aftermarket solid billet equalizer bars	12 months warranty.
9	All other equalizer bars	6 months warranty.
10	Hydraulic cylinders, valves, pumps	6 months warranty.
11	Radiators	6 months warranty.
12	New Parts – OEM or aftermarket sourced	6 months warranty.
13	Parts reconditioned to the Buyer's specifications	3 months warranty unless otherwise agreed in writing by BTP.
14	Services including labour and machining	1 month warranty from the date of completion of services.

**2. Used Equipment Warranty**

- a) Where BTP has notified the Buyer that Used Equipment purchased by the Buyer has no discernable maintenance or use history, such Used Equipment can, subject to paragraph c) below, be returned within 30 days of Delivery for a full refund of the Price paid for such Used Equipment but is not covered in any way under any warranty offered under clause 8 of BTP Standard Terms & Conditions of Sale.
- b) Used Equipment which has a discernable maintenance and operational history will, in addition to the right of return set out in paragraph a) above, carry a warranty pursuant to clause 8 of BTP Standard Terms & Conditions of Sale for a period of 3 months from the date of Delivery.
- c) Where Used Equipment is returned pursuant to paragraphs a) or b) above, a refund will only be provided if such Used Equipment is returned fully assembled.





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# SALES & SUPPORT



## **BTP HAZELMERE (PERTH), WESTERN AUSTRALIA**

- 📍 Lot 6 Bushmead Rd, Hazelmere WA 6055
- ☎ (08) 9374 9088 (International: +61 8 9374 9088)
- ✉ [wasales@btpgroup.com.au](mailto:wasales@btpgroup.com.au)



## **BTP MACKAY, QUEENSLAND**

- 📍 191 Connors Rd, Paget QLD 4740
- ☎ (07) 4952 9600 (International: +61 7 4952 9600)
- ✉ [qldsales@btpgroup.com.au](mailto:qldsales@btpgroup.com.au)



## **BTP MT THORLEY, NEW SOUTH WALES**

- 📍 Corner Kime Rd and Mt Thorley Rd, Singleton NSW 2330
- ☎ (02) 6574 6655 (International: +61 2 6574 6655)
- ✉ [nswsales@btpgroup.com.au](mailto:nswsales@btpgroup.com.au)



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