

TERMS AND CONDITIONS

BWES offers for sale the Services covered in this Schedule subject to the terms and conditions below, unless otherwise agreed and specified in writing. Any additional or different terms already or hereafter proposed by the Client are objected to by BWES without need of further notice of objection, and will not be binding upon BWES unless specifically agreed to in writing signed by BWES. Unless otherwise specified, these terms and conditions apply to all parties (the Client) engaging in business with BWES.

It should be noted that:

1. In the event of any conflict between these Terms and Conditions and any written contract between BWES and the Client; the terms of the written contract shall prevail.
2. These Terms and Conditions constitute an Agreement between BWES and the Client.
3. By instructing BWES to provide any Services, you (the Client) are representing that you have the authority to enter this Agreement and that you have read and fully understand and agree to the Terms and Conditions of the same.
4. Headings in these terms and conditions are inserted for convenience and do not form part of the terms and conditions.
5. The singular includes the plural and vice versa. Persons include incorporated and unincorporated entities. Words implying one gender include the other. A reference to a clause or sub clause is a reference to a clause or a sub clause in these terms and conditions of contract.
6. If any provision of these terms and conditions is void, invalid, illegal or unenforceable, the existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
7. Failure of or delay in BWES enforcing any of these terms and conditions shall not be deemed to be a waiver of any of its rights under these terms and conditions.
8. Accepting the fees, terms and conditions contained in this document does not guarantee the provision of the Services, and BWES reserves the right to deny or provide the Services at its discretion.

DELIVERY

BWES shall deliver the Services in accordance with the agreed service levels to the Client (you). These agreed levels may form part of a fixed service level agreement, or be made on a project basis prior to commencement and agreed in principle by both BWES and the Client and documented in writing.

To ensure BWES meets the agreed service levels, representative samples, instructions, technical documents, marking information, packaging information and special requirements must be provided in a timely manner when requested by BWES.

The timeframes for completion specified by BWES and any estimated completion dates provided are indicative only. Whilst BWES shall use reasonable endeavours to complete the work by the estimated completion date or within the specified timeframe, it shall not be liable for any delay beyond the estimated completion date/indicative timeframe, or any resulting circumstances, for any reason whatsoever. The estimated completion dates and indicative timeframes only apply where the Client provides the necessary product samples and any requested information when required. Indicative timeframes may not apply where multiple projects are submitted simultaneously, or during periods of excessive workloads.

ACCEPTANCE OF SERVICES DELIVERED TO THE CLIENT

The Client has the right to check the Services delivered to the Client within 21 days of receipt and may reject the Services if they do not comply with the agreed specifications. The Services are deemed to be accepted if BWES does not receive a notification within 21 days after delivery to the Client. BWES shall be given the opportunity to rectify or amend any of the Services rejected by the Client within a reasonable and mutually agreed timeframe of receipt of a notice of rejection.

SAMPLES

Samples submitted to BWES may be damaged during the course of their evaluation and may be unsuitable for further use at the project's completion. BWES shall not be liable for any damage to test samples or other equipment submitted to BWES for any reason whatsoever.

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Samples will be disposed of without notification after a period of three months from the completion of the project unless other arrangements are made by the Client. Where the Client requests that the samples be returned any costs will be borne in full by the Client.

PAYMENT AND PRICING

The Client will pay BWES for all Services rendered in accordance with the rates specified in this Schedule. Unless otherwise agreed, prices shall exclude insurance, freight charges, bank fees, GST and associated expenses.

If BWES has approved a credit facility for the Client, BWES shall invoice the Client indicating the Services performed in AUDS with reference to the Schedule and payments will be due in Australian dollars within 30 days after the date the invoice is issued. If BWES has not approved a credit facility for the Client, payment will be required, in full, prior to the commencement of work.

If BWES has approved a credit facility for the Client, and work is conducted over an extended period, progress invoices may be issued to cover the work conducted to that date and payment of such invoices will be due in accordance with the previous clause.

If BWES has approved a credit facility for the Client, it may at its discretion require payment in full for associated expenses such as freight and testing fees prior to commencement of work.

BWES may, in its sole discretion, require payment for any previously issued invoice prior to the provision of any further Services to that Client.

BWES may also, at its sole discretion and without liability, withhold any reports or samples or suspend the provision of Services, pending payment of any invoice which has not been paid in full by the due date or if the Client commits an act of bankruptcy as defined in the Bankruptcy Act 1966.

The Client shall make all payments due under these terms and conditions without set-off or deduction of any kind.

Where the supply of Services by BWES is a taxable supply for the purposes of any legislation in respect of goods and Services tax ("GST"), GST at the appropriate rate will be added to all prices quoted in the Schedule and will be separately detailed on all invoices.

BWES shall be entitled to charge the Client a late fee of 2% per month of the total outstanding amount, on any invoices not paid by the agreed due date, as BWES is contractually obligated to promptly pay its affiliated entities and suppliers, all costs it incurs on the Client's behalf.

BWES may at its discretion add an administration charge to all invoices, which may be discounted on prompt payment of the same. BWES also reserves the right to charge a premium for urgent or unscheduled projects.

BWES will add a \$30 international transfer fee to all invoices to clients outside of Australia to cover the costs it incurs from receiving these monies.

BWES may, at its sole discretion, refer overdue invoices to the agency of its choice for debt recovery. The Client is liable to BWES for all costs and expenses incurred by BWES in recovering money or in connection with the exercise of any of its rights or remedies under these terms and conditions, including commissions, debt collection agency fees and legal costs on a solicitor and client basis.

BWES will strive to maintain the cost structure as outlined in the Schedule, however reserves the right to increase its pricing in accordance to the Consumer Price Index (CPI: 6401.0). This review shall occur annually at the commencement of the financial year and use the latest published 'percentage change' calculated by the ABS based on the weighted average of 8 cities for all groups for the previous twelve months found on the ABS website. Should the index used be renamed, varied or discontinued, an equivalent appropriate index or price adjustment mechanism based on ABS data shall be used. BWES's full trading terms and conditions in relation to payment and pricing are detailed in the Credit Application form. Acceptance of this agreement by the Client will be taken as acceptance of these terms and conditions.

EXTRA CHARGES

For agreed work BWES will on-charge associated expenses such as additional freight and testing fees at cost. Associated expenses typically include courier charges, testing laboratory fees, regulatory approval fees, travel expenses and special tools. BWES also reserves the right to charge a handling fee at its discretion. The minimum courier charge will be \$40.

PRODUCT RE-EVALUATION, RE-ISSUING OF REPORTS AND MODIFICATIONS

Unless otherwise specified, the prices quoted in the Schedule exclude the re-evaluation of products and/or re-issuing of reports arising from product modification, incorrect Client instructions or any other reason.

Where the re-evaluation of products and/or re-issuing of reports is required, any additional costs incurred shall be borne in full by the Client.

Re-evaluation of products and/or re-issuing of reports by BWES shall only be conducted at the discretion of BWES and upon written authorisation of the Client.

INDEMNITY

Any reports, recommendations, and approval certificates provided by BWES are applicable only to the sample(s) evaluated and BWES shall not be liable for any variance between reported results and the characteristics of other product samples.

BWES shall not be liable for any damages, loss or injury suffered, including consequential loss and non-compensatory damages (including punitive, aggravated, multiple, exemplary or liquidated) and whether suffered by the Client or another person, as the result of using or relying upon any Services or information provided by BWES.

The Client shall indemnify BWES against all claims and losses of any kind whatsoever and however caused or arising brought by any person in connection with any matter, act, omission or error by BWES, its agents or employees in connection with the Services provided.

Specifically, BWES will not be responsible for the following:

- Failure of the product to meet the SAA testing requirements or final approval by a regulator
- Any decisions or actions taken by the Client or for incorrect interpretations of information made by the Client
- Product recalls
- Any injury or damage to a person or property caused by the Client's product.
- Any consequential damages caused by the supply or non-supply of the Client's product

The Australian Competition and Consumer Act 2010 and other Acts of Parliament imply warranties or conditions or impose obligations on BWES which cannot (or only to a limited extent) by law be excluded or modified. In regard to any such implied warranties, conditions or obligations, BWES's liability shall, where it is permitted, be excluded or, if not able to be excluded, only apply to the minimum extent required by the relevant statute.

DISPUTES

No claim relating to the supply of Services shall be considered unless made within 21 days of dispatch of BWES's final communication/report to the Client.

Neither the Client nor BWES may bring against the other party any action in any country involving any dispute arising out of or in relation to this Agreement or breach thereof without first:

1. engaging in a period of sixty (60) days of good faith negotiation with the other Parties in an attempt to resolve such dispute without resort to such action;
2. attempting to settle the dispute by mediation administered by a qualified mediator appointed by a neutral professional body; and
3. participating in a non-binding mediation involving the now current ICC ADR Rules.

Both parties agree to cooperate reasonably with respect to the resolution of disputes pursuant to this Clause. This clause shall survive the termination of this Agreement.

LIABILITY

Except with respect to a breach of the confidentiality clause, neither the Client nor BWES shall be liable for any special, incidental, indirect and/or consequential damages of any kind, resulting from either party's performance or failure to perform pursuant to the terms of this Agreement or any of the attachments or exhibits hereto unless caused by intentional or gross negligence.

BWES's liability to the Client under any provision of this Agreement shall be limited to the amounts actually paid by the Client to BWES for the disputed

service. The existence of more than one claim shall not enlarge or extend the limit.

The Client releases BWES from all obligations, liability, claims or demands related to the Services supplied under this Agreement in excess of the limitation provided for in this clause.

The Client and BWES acknowledge that the limitations set forth in this section are integral to the amount of fees charged for the Services provided under this Agreement and recognize that if BWES were to assume any further liability beyond that set forth in this section, such fees would be substantially higher.

In no circumstances is BWES liable for any indirect or consequential losses or expenses, howsoever caused, and including, without limitation, loss of anticipated profits or savings, goodwill, reputation, business receipts, or contracts, or losses or expenses resulting from third party claims.

Furthermore, BWES shall not be liable for the Client's product, but shall be accountable for the quality of any refurbishment or repairs conducted by itself or its affiliates for a period of three months after the sale of the product to a consumer. The Client will remain responsible for its products for the remainder of their lifecycle.

FORCE MAJEURE

Neither BWES nor the Client shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control. These include, but are not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

Neither BWES nor the Client shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are proximately caused by causes beyond that party's reasonable control and occurring without its fault or negligence, including, without limitation, failure of suppliers, subcontractors, and carriers to substantially meet performance obligations. As a condition to the claim of non-liability, the party experiencing the difficulty shall give the other prompt written notice, with full details following the occurrence of the cause relied upon. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

OWNERSHIP

Any reports or documentation prepared by BWES remain the property of BWES until such time as payment for Services provided has been made in full.

CONFIDENTIALITY

As per the signed 'Mutual Confidentiality Agreement' both parties shall take reasonable precautions to preserve in strict confidence any confidential or proprietary information obtained by them, their agents or employees concerning the business, products, equipment or Services of the other party, including without limitation, trade secrets. Such reasonable precautions shall include exercising precautionary measures designed to preserve the secrecy of such information and to prevent its disclosure to third parties, except following prior consent of the other party, with such precautions being at least equivalent to those taken by each party with respect to its own confidential information.

As per the signed 'Mutual Confidentiality Agreement' BWES will not be bound to keep information confidential that is required to be disclosed by a government or regulatory body or court of comparable and competent jurisdiction. In the event that BWES is required to disclose the Client's confidential information by law, it will first inform the Client and provide them the opportunity to provide the information directly.

The Client notes that the content of this document and all other documents created by BWES are intended for the Client only and must not be disclosed to any third party without written authority from BWES.

INTELLECTUAL PROPERTY

The Client warrants to BWES that BWES will not infringe or contribute to the infringement of any patents, trademarks, designs or copyrights by providing

Services to the Client. The Client shall indemnify and keep indemnified BWES against any loss or damage (including legal fees and costs) arising from breach of this warranty. BWES reserves the right to deny Services to Clients if it believes the provision of the same will infringe upon the patents, trademarks, designs or copyrights of another person, company or entity or damage their goodwill or reputation. Completion of approval by BWES does not imply that any searches on patents, copyrights, designs or trademarks have been made unless agreed otherwise.

PUBLICITY

BWES and the Client agree not to use the name of the other party or any member of its staff in sales promotion, or advertising, or in any other forms of publicity without the written approval of an authorized representative of the said other party, except as required by law and then only with prior notice as soon as possible to the said other party.

PRIVACY ACT 1988 (CWLTH), PRIVACY AND PERSONAL INFORMATION PROTECTION ACT 1998 (NSW)

So far as is permitted by the relevant legislation, the Client authorises BWES to collect, retain and use any information about the Client to assess the Client's creditworthiness, to enforce rights under this contract or to market Services to the Client and the Client authorises BWES to disclose any information obtained to any other person for these purposes.

TERM AND TERMINATION

These terms and conditions will apply throughout the period in which BWES performs work for the Client unless re-negotiated by either party or terminated as detailed below.

Both parties may terminate the Agreement with immediate effect ONLY when the following apply:

- If either party breaches a material term of the Agreement
- In case of a merger or change of key management or control
- In case of bankruptcy or similar

The Client may terminate this agreement without cause by giving thirty (30) days written notice to BWES. BWES may likewise terminate this agreement without cause by giving thirty (30) days written notice to the Client.

In the event of this agreement being terminated, all unfinished projects must be completed, and original documentation returned to the Client within thirty (30) days. Furthermore, all outstanding monies must be remitted within the same timeframe.

Moreover BWES and the Client covenant and agree that except with prior written consent by the other party, not to, for a period of one (1) year from the termination of this agreement:

- a. Solicit or obtain the custom of any person, supplier, sub contractor or Client introduced by the respective other party;
- b. Use its knowledge or influence with any person or third party to the detriment of the respective other party;
- c. Induce any employee of the respective other party to leave his/her employment or to enter into any contractual arrangement; or
- d. Disclose information to any person or third party.

GOVERNING LAW

This Agreement is governed by the law of New South Wales and the Parties submit to the exclusive jurisdiction of the courts in Sydney.

INSURANCE

Whilst BWES shall take due care to ensure the security of the Client's property under its care, custody or control, it will not be responsible for any losses or damages that occur to the Client's property whilst stored on its premises, or during its transit between the Client and BWES.

The Client shall at its own expense obtain and maintain with an insurer, adequate insurance coverage in respect of any of the Client's property whilst under the care, custody or control of BWES.

BWES shall immediately notify the Client in writing of any theft, loss or damage to any of the Client's property.