

## TERMS AND CONDITIONS OF SALE

### 1. DEFINITIONS

In these Terms:

**"ACL"** means the Australian Consumer Law Schedule of the *Competition and Consumer Act*;

**"Agreement"** means any agreement for the provision of goods by BPT to the Purchaser;

**"consumer"** is as defined in the ACL and in determining if a person is a consumer, the determination is made if the person is a consumer under their agreement with the Purchaser;

**"customer-specific goods"** means goods manufactured by BPT to the design specifications provided by the Purchaser;  
**"BPT"** means Boss Polymer Technologies Pty Ltd (ABN 26 053 088 529);

**"goods"** means goods supplied by BPT to the Purchaser including both standard goods and customer-specific goods;

**"GST"** means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended;

**"Intellectual Property"** means all copyright, patents, trade marks, designs, drawings, specifications, confidential information, manufacturing processes and all modifications, improvements and derivations (whether registrable or not) in respect of the goods;

**"Purchaser"** means the person, jointly and severally if more than one, acquiring goods from BPT;

**"Purchaser's Intellectual Property"** means all drawings, blue prints and specifications supplied to BPT by the Purchaser for the manufacture and supply of customer-specific goods;

**"serviced goods"** means goods manufactured and supplied by BPT where the Purchaser acquired services from BPT in relation to the goods;

**"services"** means design, engineering and/or development services supplied by BPT to the Purchaser;

**"standard goods"** means goods manufactured and supplied by BPT that are not customer-specific goods;

**"Terms"** means these Terms and Conditions of Trade; and

**"Tooling"** means all tooling, gauges, jigs and other equipment manufactured or produced by BPT to produce the goods.

### 2. BASIS OF AGREEMENT AND ORDERS

2.1 Unless otherwise agreed by BPT in writing, the Terms apply exclusively to every Agreement and cannot be varied or replaced by any other terms, including the Purchaser's terms and conditions of purchase (if any).

2.2 Any quotation provided by BPT to the Purchaser for the proposed supply of goods is:

- (a) valid for [30] days,
- (b) an invitation to treat only, and
- (c) only valid if in writing.

2.3 The customer-specific goods are not supplied for sale by reference to sample.

2.4 The Terms may include additional terms set out in BPT's quotation.

2.5 An Agreement is accepted by BPT when BPT accepts, in writing or electronic means, an order from the Purchaser or provides the Purchaser with the goods.

2.6 BPT in its absolute discretion may refuse to accept any order.

2.7 The Purchaser must provide BPT with its specific requirements, if any, in relation to the goods.

2.8 All orders by the Purchaser to BPT for the provision of goods must be placed in accordance with the procedures specified by BPT from time to time.

2.9 BPT may vary or amend these Terms by written notice to the Purchaser at any time. Any variations or amendments will apply to orders placed by the Purchaser after the notice date.

### 3. PRICING

3.1 Prices quoted for the supply of goods or services exclude GST and any other taxes or duties imposed on or in relation to the goods or services.

3.2 If the Purchaser requests any variation to the Agreement, (ie, customisations or changes to the specifications of the goods), BPT may, in its discretion:

- (a) increase the price to account for the variation, or
- (b) provide a revised quote for the goods.

3.3 Where there is any change in the costs incurred by BPT in relation to the goods, BPT may vary its price to take account of

any such change, by notifying the Purchaser.

#### **4. PAYMENT**

4.1 Unless otherwise agreed in writing:

(a) Subject to 4.1(b), payment for the goods must be made in full within 30 days of the end of the month in which delivery occurred.

(b) BPT reserves the right to require payment in full on delivery of the goods.

4.2 Payment must be made in cash.

4.3 Payment terms may be revoked or amended at BPT's sole discretion immediately upon giving the Purchaser written notice.

4.4 The time for payment is of the essence.

#### **5. PAYMENT DEFAULT**

5.1 If the Purchaser defaults in payment by the due date of any amount payable to BPT, then all money which would become payable by the Purchaser to BPT at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Purchaser, and BPT may, without prejudice to any of its other accrued or contingent rights:

(a) charge the Purchaser interest on any sum due at the prevailing rate pursuant to the Penalty Interest Rates Act 1983 (Vic) plus 4 per cent for the period from the due date until the date of payment in full;

(b) charge the Purchaser for, and the Purchaser must indemnify BPT from, all costs and expenses (including without limitation all legal costs and expenses) incurred by BPT resulting from the default or in taking action to enforce compliance with the Agreement, to recover any goods, or to recover any sum due;

(c) cease or suspend supply of any further goods or services to the Purchaser;

(d) by written notice to the Purchaser, terminate any uncompleted contract with the Purchaser.

5.2 Clauses 5.1(c) and (d) may also be relied upon, at BPT's option:

(a) where the Purchaser is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or

(b) where the Purchaser is a corporation and enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver, manager or similar functionary

appointed in respect of its assets, or any action is taken for or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Purchaser.

#### **6. CHANGES TO ORDERS AND SPECIFICATIONS**

6.1 Changes to, or customisations of, the specifications of the goods will not be accepted by BPT once the goods have entered production.

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6.2 BPT reserves the right to refuse the Purchaser's requested changes or customisations where such changes would, in BPT's opinion result in a safety issue or non-compliance with applicable Australian Standards and/or Australian Design Rules.

6.3 BPT reserves the right to change the specifications of standard goods at any time without notice and without liability.

6.4 The Purchaser acknowledges that customisations will change the weight or other characteristics of the goods. Any description of weight or other characteristic provided prior to completion of the goods is an estimate only.

#### **7. PASSING OF PROPERTY**

7.1 Until BPT receives full payment in cleared funds for all goods supplied by it to the Purchaser, as well as all other amounts owing to BPT by the Purchaser:

(a) title and property in all goods remain vested in BPT and do not pass to the Purchaser;

(b) the Purchaser must hold the goods as fiduciary bailee and agent for BPT;

(c) the Purchaser must keep the goods separate from its goods and maintain the Seller's labeling and packaging;

(d) the Purchaser must hold the proceeds of sale of the goods on trust for BPT in a separate account however failure to do so will not affect the Purchaser's obligation to deal with the proceeds as trustee; and

(e) BPT may without notice, enter any premises where it suspects the goods are and remove them, and for this purpose the Purchaser irrevocably licences BPT to enter such premises and also indemnifies BPT from and against all costs, claims, demands or actions by any party arising from such action.

#### **8. RISK AND INSURANCE**

8.1 The risk in the goods and all insurance responsibility for theft, damage or otherwise will pass to the Purchaser immediately on the goods being delivered to the Purchaser.

8.2 The goods are sold to the Purchaser on the basis that the Purchaser has obtained all necessary licenses or permits under

all relevant laws and regulations in relation to the goods.

8.3 The Purchaser assumes all risk and liability for loss, damage or injury to persons or to property of the Purchaser, or third parties arising out of the use or possession of any of the goods sold by BPT, unless recoverable from BPT on the failure of any statutory guarantee under the ACL.

## **9. PERFORMANCE OF AGREEMENT**

9.1 Any period or date for delivery of goods stated by BPT is an estimate only and not a contractual commitment.

9.2 BPT will use its reasonable endeavours to meet any estimated dates for delivery of the goods but will not be liable for any loss or damage suffered by the Purchaser or any third party for failure to meet any estimated date.

9.3 If BPT cannot complete the services by any estimated date, it will complete the services within a reasonable time.

## **10. DELIVERY**

10.1 Subject to clause 10.7, BPT will arrange for delivery of the goods to the Purchaser.

10.2 Delivery of the goods will be deemed to occur when the goods leave BPT's premises.

10.3 The Purchaser is responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of collection of the goods.

10.4 BPT may make part delivery of goods and may invoice the Purchaser for the goods provided.

10.5 The Purchaser indemnifies BPT against any loss or damage suffered by BPT, its sub-contractors or employees as a result of delivery, except where the Purchaser is a consumer and BPT has not used due care and skill.

10.6 If delivery is attempted and is unable to be completed the Purchaser is deemed to have taken delivery of the goods. The Purchaser is liable for storage charges payable monthly on demand.

10.7 If agreed that the Customer will collect the goods:

(a) The Purchaser must arrange for collection of the goods within [3] days of notification that they are ready;

(b) If the Purchaser does not collect the goods within this timeframe, the Purchaser is deemed to have taken delivery of the goods and is liable for storage charges payable weekly on demand.

## **11. LIABILITY**

11.1 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the goods or services, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or

services or any contractual remedy for their failure.

11.2 If the Purchaser is a consumer nothing in these Terms restricts, limits or modifies the Purchaser's rights or remedies against BPT for failure of a statutory guarantee under the ACL.

11.3 Subject to clause 11.4, if the Purchaser on-supplies the goods to a person who is a consumer or uses up or transforms the goods in the course of trade and:

(a) the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of BPT's liability to the Purchaser;

(b) the goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption, then payment of any amount required under section 274 of the ACL is the absolute limit of BPT's liability to the Purchaser; howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods by the Purchaser or any third party.

11.4 If:

(a) the Customer uses up or transforms the goods in the course of trade, and when the Customer supplies its own goods to a consumer the goods are no longer "goods" as defined under the ACL; or

(b) clauses 11.2 or 11.3 do not apply, then other than as stated in the Terms or any written warranty statement; the Supplier will not be liable to the Customer or the consumer in any way arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Customer or any third party.

11.5 BPT is not liable for any indirect or consequential losses or expenses suffered by the Purchaser or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, other than, if the Purchaser is a consumer, then to the extent of liability imposed by the ACL.

11.6 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.

## **12. ACKNOWLEDGEMENTS**

12.1 The Purchaser acknowledges that:

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(a) unless the Purchaser acquired serviced goods, the Purchaser has not relied on any service involving skill and judgment, or on any advice, recommendation, information or assistance provided by BPT in relation to the goods or their use or application.

(b) unless the Purchaser acquired serviced goods, the Purchaser has not made known, either expressly or by implication, to BPT any purpose for which it requires the goods and it has the sole responsibility of satisfying itself that the goods are suitable for the Purchaser's use.

(c) the specifications and particulars detailed on the Order Form are an accurate statement of the Purchaser's requirements for the goods including any minimum number of goods required.

### **13. CANCELLATION**

13.1 If BPT is unable to deliver or provide the goods, then BPT may cancel the Purchaser's order (even if it has been accepted) by written notice to the Purchaser.

13.2 No purported cancellation or suspension of an order or any part of it by the Purchaser is binding on BPT once the order has been accepted.

13.3 A cancellation by the Purchaser is only accepted if BPT accepts the cancellation in writing. Any costs that have been incurred by BPT up to the cancellation date must be paid by the Purchaser.

### **14. ACCEPTANCE AND CONFORMITY OF GOODS**

14.1 Subject to clause 14.2 and 14.4, BPT will not be liable for any shortages, damage or non-compliance with the specifications in the Agreement unless the Purchaser notifies BPT with full details and description within 3 days of delivery otherwise the Purchaser is deemed to have accepted the goods.

14.2 Unless the Purchaser has expressed a minimum number of goods required on the Order Form in which case BPT must not deliver less than that number, the quantity of goods delivered must not exceed nor fall short of the amount specified in the Order to an extent greater than 10%. If BPT delivers a quantity of goods that exceeds or falls short of the amount specified in the Order by less than 10%, then the Purchaser must accept delivery of the goods.

14.3 Subject to clause 14.2, any claim for damage or noncompliance with the Agreement specifications is accepted by the BPT, BPT may, at its option, replace the goods, or refund the price of the goods.

14.4 Subject to clause 14.4, BPT will not under any circumstances accept goods for return that:

(a) have been specifically produced, imported or acquired to fulfil the Agreement;

(b) are discontinued goods or no longer stocked by BPT;

(c) have been altered in any way; or

(d) have been used; or

(e) are not in their original condition and packaging.

14.5 If the Purchaser is a consumer, nothing in this clause 14 limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.

### **15. INTELLECTUAL PROPERTY**

15.1 The Purchaser acknowledges that it has no proprietary right or interest in the Intellectual Property relating to the standard goods and Tooling.

15.2 The Purchaser must not register or record or attempt to register or record anywhere in the world the Intellectual Property described in clause 15.1 or any part or any patents, inventions, trade marks or designs derived from or similar to that Intellectual Property or aid or abet anyone else in doing so.

15.3 The Purchaser must not at any time create, sell, manufacture or process any goods or services using or taking advantage of the Intellectual Property described in clause 15.1.

15.4 If the Purchaser provides to BPT the Purchaser's Intellectual Property then the Purchaser warrants that:

(a) it owns or is licensed to use the Purchaser's Intellectual Property that is the subject of any patent, trade mark, design, copyright or any other form of intellectual property; and

(b) it has not included in the design of the customer-specific goods any third party contributions which it is not authorized to release or deliver.

15.5 The Purchaser licenses BPT to use the Purchaser's Intellectual Property described in clause 15.4(a) for the sole purpose of undertaking and complying with its obligations under this Agreement and the manufacture of the goods for the Purchaser.

15.6 The Purchaser indemnifies and agrees to keep BPT indemnified against all liability, losses or expenses incurred by BPT in relation to, or in any way directly or indirectly connected with, any breach of any intellectual property rights in relation to the Purchaser's Intellectual Property provided by the Purchaser to BPT in regard to the supply of the goods.

15.7 All intellectual property other than the Purchaser's Intellectual property, related to the goods or their manufacturing method, is and remains the property of BPT.

## **16. PURCHASER'S INTELLECTUAL PROPERTY**

16.1 The Purchaser's Intellectual Property remain the Purchaser's property.

16.2 The Purchaser's Intellectual Property must not be used in the manufacture of goods to any party other than the Purchaser, unless the Purchaser agrees in writing.

## **17. TOOLING**

17.1 All Tooling is owned by BPT.

17.2 All tooling will be held by and used by BPT only.

17.3 Subject to clause 17.4, if the Tooling has been constructed to manufacture customer-specific goods and has been specifically charged for and paid for by the Purchaser, BPT must not use the Tooling except as permitted or required under this Agreement for the purpose of supplying the Purchaser with customer-specific goods unless otherwise agreed in writing.

17.4 Subject to intellectual property in customer-specific goods, if the Purchaser does not purchase the customer-specific goods from BPT for a period of 12 months, BPT reserves the right to use the tooling for purposes other than those in clause 17.4.

## **18. DESIGN , ENGINEERING & DEVELOPMENT COSTS**

18.1 Subject to clause 18.4, the cost of services (as outlined in the quotation) gives the Purchaser an exclusive right over the serviced goods unless otherwise agreed in writing.

18.2 All intellectual property created by BPT in providing the services, including drawings and tooling remain the property of BPT.

18.3 BPT's drawings must be returned to BPT on request and the Purchaser must not copy, reproduce or exhibit BPT's drawings without BPT's prior written consent.

18.4 Subject to intellectual property in the serviced goods, if the Purchaser does not purchase the serviced goods for a period of 12 months, the Purchaser's exclusive right to the serviced goods ceases.

## **19. FORCE MAJEURE**

19.1 BPT is not liable in any way howsoever arising under the Contract to the extent that it is prevented from acting by events beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of god, acts or threats of terrorism or war. If an event of force majeure occurs, BPT may {D1520722:1} suspend or terminate the Contract by written notice to the Purchaser.

## **20. MISCELLANEOUS**

20.1 The law of Victoria from time to time governs the Terms. The parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.

20.2 BPT's failure to enforce any of these Terms shall not be construed as a waiver of any of BPT's rights.

20.3 If any Term is unenforceable it must be read down to be enforceable or, if it cannot be read down, the term must be severed from these Terms without affecting the enforceability of the remaining terms.

20.4 A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed to be received upon confirmation of successful transmission.

20.5 The Purchaser cannot assign, transfer or otherwise dispose of any of the benefits or the burdens of this or any other contract without the prior written consent of BPT.

## **21. PRIVACY**

21.1 BPT is bound by the Privacy Act 1988 and takes steps to ensure that all personal information obtained in connection with the Purchaser will be appropriately collected, stored, used, disclosed and transferred in accordance with the National Privacy Principles ("NPPs"). Such information may be accessed by request to BPT in accordance with the Privacy Act.

21.2 The Purchaser must comply with the NPPs in connection with any personal information supplied to it in connection with this Agreement.