

1. INTERPRETATION

- a. "Purchaser" means the person named in the Sales Invoice Form or Quotation. A reference to "Purchaser" shall include its successors and assigns (if a corporation) and the legal personal representative (if an individual or partnership of individuals).
- b. "Vendor" refers to the Bromic Group, or 'Bromic' which for the purposes of these Terms and Conditions includes the following entities: Ambro Controls Pty Ltd, Ambro Controls Inc, Bromic Pty Ltd, Bromic Heating Pty Ltd, Bromic Plumbing & Gas Pty Ltd, Bromic Refrigeration Pty Ltd, Bromic Japan K.K., Bromic India Private Limited, BPS International Holdings Pty Ltd, BPS 2 Pty Ltd

Where the sale is expressed to be made by the Vendor as agent for a manufacturer, a reference to "Vendor" shall mean the manufacturer so-named and where the context admits or requires shall also include Bromic Group as agent of the manufacturer.

- c. "Contract for Sale" means any contract arising from the Vendor's acceptance of any order made by the Purchaser.
- d. "Quotation" means any written quotation submitted by the Vendor to the Purchaser.
- e. "Goods" means the goods and services the subject of the Contract for Sale.

2. CONDITIONS PRECEDENT

- a. This Quotation or Contract for Sale includes these terms and includes any special conditions set forth in any Quotation which gives rise to any Contract for Sale comprised by this document.
- b. A Quotation may be withdrawn by the Vendor at any time before acceptance and in any event shall lapse unless accepted by the Purchaser within 7 days or such other period as is stated in the Quotation.
- c. The Quotation is not to be construed as an offer to sell and no contractual relationship shall arise therefrom until the Vendor confirms the Purchasers order in writing.
- d. These conditions apply to all sales of the Vendor's goods despite any contrary terms in any of the Purchaser's documents and constitutes the entire agreement between the parties to the exclusion of all other conditions. Acceptance of delivery of the Goods indicates Purchasers acceptance of these conditions unamended. No representations, inducements, promises, or agreements between the parties shall be of any force or effect in varying these conditions unless in writing and signed by both parties.

3. DELIVERY

- a. The Purchaser may not reject the Goods due to short delivery.
- b. Delivery times are estimates only. The Vendor shall not be liable for any loss or damage howsoever arising resulting from delays in delivery. Delay in delivery shall not entitle the Purchaser to cancel the Contract for Sale.
- c. Should the performance of the Vendor's obligations be hindered or delayed by any circumstances beyond the Vendors reasonable control, including but without limiting the generality thereof, strikes, lock-outs, rebellions, fire, acts of God, war, epidemics, governmental intervention, accidents or the inability of the Vendor to procure necessary materials or services, the time for such performance shall be extended for such time as may be reasonable and any such extension of time shall exonerate the Vendor from any liability in respect of such hindrance or delay.
- d. The Vendor may deliver the Goods by instalments. Instalment deliveries must be requested within the times stipulated in the Contract for Sale and default or delay by the Purchaser in so notifying the Vendor or accepting instalment deliveries will entitle the Vendor to store the undelivered Goods at the risk and cost of the Purchaser and shall be deemed to be a default by the Purchaser in payment.
- e. The Quotation or Contract for Sale is for supply of the Goods only. Installation and commissioning (if any) is at the Purchaser's expense unless otherwise specified in writing by the Vendor.
- f. The Vendor reserves the right to over or under-supply an order within reasonable limits and the Purchaser accepts that it shall, in the event of oversupply, pay for Goods delivered in addition to those ordered at the contract rate for such Goods.

4. STANDING ORDERS

Should the Purchaser enter a Contract for Sale whereby the Vendor is to deliver Goods to the Purchaser on an instalment basis for an indefinite period, then the Purchaser hereby acknowledges that such Contract for Sale shall entitle the Vendor to purchase and hold, at any time, Goods sufficient to satisfy the Purchasers requirements for one year.

5. PRICES

- a. All prices are Ex Bromic Metro warehouse (Brisbane, Sydney, Melbourne, Perth). Delivery costs are not included.
- b. The Goods are sold on condition that the Purchaser will pay any additional costs or expenses not specifically provided for in the Quotation or Contract for Sale including without limitations any tax, stamp duty, fee, levy or charge of any nature whatsoever imposed by any semi-government or government authority in respect of the sale.
- c. The Purchaser will pay all costs and expenses incurred by the Vendor in arranging carriage, unloading and reloading of Goods on the Purchaser's instructions.

6. TERMS OF PAYMENT

- a. The terms of payment stipulated in the Quotation of Sales or Sale Invoice shall be strictly adhered to and in this regard time shall be of the essence. If no terms of payment are stipulated, all invoices,

additional costs and charges of any kind are payable by the last working day of the month immediately following the month of supply.

- b. Should the Purchaser fail to comply with the Vendors terms of payment, the Vendor reserves to itself the right to: -
 - Cancel all agreed trade discounts or rebates; and
 - Charge interest upon all outstanding amounts at an interest rate not more than 3 per cent in excess of the ANZ Banking Group Ltd indicator lending rate as published from time to time.

7. DEFAULT BY PURCHASER

In the event that the Purchaser defaults in any payment due to the Vendor and such default continues for a period of seven (7) days after notice is issued by the Vendor to the Purchaser in writing requiring the Purchaser to rectify such default, or if the Purchaser commits any act of bankruptcy or enters into voluntary liquidation or a petition to wind-up the Purchaser is presented in any Court of competent jurisdiction the Vendor may in its sole discretion, and without prejudice to any other right or remedies available to it, terminate the Contract for Sale by notice in writing or to suspend delivery of goods hereunder and, where it still retains title to the Goods hereunder, retake possession of them.

8. RETENTION OF TITLE

- a. Notwithstanding that the Goods have been put into transit or actually delivered to the Purchaser, until the whole of the purchase price and transport and other charges have been paid by the Purchaser, and until payment in respect of any other goods previously supplied by the Vendor:
 - i. Legal title to the Goods will remain with the Vendor;
 - ii. The risk in the Goods will pass to the Purchaser on delivery to the Purchaser or its agent;
 - iii. The relationship between the Vendor and the Purchaser will be fiduciary;
 - iv. The Purchaser will:
 - (A) Hold the Goods as bailee for the Vendor;
 - (B) Keep the Goods separate from other goods; and
 - (C) Label the Goods so that they are identifiable as the goods of the Vendor;
 - v. With the Vendor's consent (which is given), the Purchaser is at liberty to sell the Goods, in the ordinary course of the Purchaser's business, provided that the money resulting from the sale will:
 - (A) be held in a separate account on trust for the Vendor;
 - (B) not be mingled with other money; and
 - (C) not be placed into an overdrawn account; and
 - vi. In the event that the Purchaser uses the Goods in some manufacturing or construction process of its own or of some third party then the Purchaser will hold such part of the proceeds of such manufacturing or construction process as relates to the Goods on trust for the Vendor. Such part will be deemed to equal in dollar terms the amount owing by the Purchaser to the Vendor at the time of receipt of such proceeds.
- b. The Purchaser is not an agent of the Vendor in any sale of the Goods by the Purchaser.
- c. If the Purchaser makes default in paying the whole or any part of the purchase price or transport or other charges or if the Purchaser parts with possession of the Goods otherwise than by way of sale to a customer in the ordinary course of the Purchaser's business or, being a company, commences to be wound up or a receiver is appointed or an encumbrancer takes possession of its undertaking or property or any part thereof or, being an individual, becomes insolvent or bankrupt or commits an act of bankruptcy, it shall be lawful for the Vendor without previous notice to retake possession of the Goods and for that purpose to enter upon any premises occupied by the Purchaser or any other place where the Goods may be and to thereafter, without notice, sell the Goods on such terms and in such manner as it determines and in doing so will be entitled to deduct from the sale proceeds all expenses incurred.

9. PPS LAW

- a. This clause applies to the extent that this Contract provides for a "security interest" for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPS Law"). References to PPS Law in this Contract include references to amended, replacement and successor provisions or legislation.
- b. The Vendor may register its security interest. The Purchaser must do anything (such as obtaining consents and signing documents) which the Vendor requires for the purposes of:
 - i. Ensuring that the Vendor's security interest is enforceable, perfected and otherwise effective under the PPS Law;
 - ii. Enabling the Vendor to gain first priority (or any other priority agreed to by the Vendor in writing) for its security interest; and
 - iii. Enabling the Vendor to exercise rights in connection with the security interest.
- c. The rights of Vendor under this document are in addition to and not in substitution for its rights under other law (including the PPS Law) and the Vendor may choose whether to exercise rights under this document, and/or under such other law, as it sees fit.
- d. To the extent that Chapter 4 of PPS Law applies to any security interest under this Contract, the following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of this Contract in respect of all goods to which that section can be applied: section 95 (notice of removal of accession to the extent it requires the Vendor to give a notice to the Customer);

section 96 (retention of accession); section 121 (4) (notice to grantor); section 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires the Vendor to give a notice to the Purchaser); section 129(2) and 129(3); section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (re-instatement of security agreement).

- e. The following provisions of the PPS Law: section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134(1) (retention of collateral) confer rights on the Vendor. The Purchaser agrees that in addition to those rights, the Vendor shall, if there is default by the Purchaser, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this document and the Purchaser agrees that the Vendor may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or license.
- f. The Purchaser waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.
- g. The Vendor and the Purchaser agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Purchaser must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply. The agreement in this sub-clause is made solely for the purpose of allowing to the Vendor the benefit of section 275 (6)(a) and the vendor shall not be liable to pay damages or any other compensation or be subject to injunction in respect of any actual or threatened breach of this sub-clause.
- h. The Purchaser must not dispose or purport to dispose of, or create or purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the Goods other than with the express written consent of the Vendor.
- i. The Purchaser must not lease, hire, bail or give possession ('sub-hire') of the Goods to anyone else unless the Vendor (in its absolute discretion) first consents in writing. Any such lease/hire must be in writing in a form acceptable to the Vendor and must be expressed to be subject to the rights of the Vendor under this Contract.
- j. The Purchaser must take all steps including registration under PPS Law as may be required to:
 - i. Ensure that any security interest arising under or in respect of the lease/ hire of the Goods by the Purchaser is enforceable, perfected and otherwise effective under the PPS Law;
 - ii. Enabling the Purchaser to gain (subject always to the rights of the Vendor) first priority (or any other priority agreed to by the Vendor in writing) for the security interest; and Enabling the Vendor and the Purchaser to exercise their respective rights in connection with the security interest.
- k. To assure performance of its obligations under this agreement, the Purchaser hereby gives the vendor an irrevocable power of attorney to do anything the vendor considers the Purchaser should do under this agreement and the Vendor may recover from the Purchaser the cost of doing anything under this clause [11], including registration fees.

10. EXCLUSION OF LIABILITY

Subject to Clause 10 and any legislation to the contrary: -

- a. The Vendor provides no warranty of any kind where the Goods are installed and/or used in conjunction with the Goods of a supplier other than the Vendor and denies all liability for any damage whatsoever suffered by any person arising from such use:
- b. Representations and agreements not expressly contained herein shall not be binding upon the Vendor as conditions, warranties and representations. All such conditions, warranties and representations on the part of the Vendor, whether express or implied, statutory or otherwise, whether collateral or antecedent or otherwise are hereby expressly negated and excluded;
- c. The Vendor shall be under no liability to the Purchaser for any loss (including but not limited to loss of profits and consequential loss) or for damage to persons or property or for death or injury caused by any act or omission (including negligent acts or omissions) of the Vendor or the Vendors agents;
- d. The Purchaser shall indemnify the Vendor against any claims made against the Vendor by any third party in respect of any such loss, damage, death or injury as is set out in sub-paragraph (c) hereof and the Purchaser further agrees to indemnify the Vendor against all losses and expenses which the Vendor may suffer or incur due to the failure of the Purchaser fully to observe its obligations under this Contract;
- e. Where goods are manufactured by the Vendor in accordance with a specification provided by the Purchaser, the Purchaser shall indemnify the Vendor against claims made against the Vendor by any third party in respect of any infringement by such manufacture of a patent, registered design, trade mark or copyright owned by any third party.
- f. The purchaser hereby acknowledges that the Goods require periodic maintenance, inspection and replacement. The purchaser agrees that it shall inform any person to whom it sells the Goods (whether or not the Goods are installed and/or used in conjunction with the goods of a supplier other than the Vendor) of the necessity for such periodic maintenance, inspection and replacement.
- g. Nothing contained in this Clause shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of the Goods of all or any of the provisions of Part IV of the Competition and Consumer Act 2010 (Cth) and Australian Consumer Law or any relevant State or Territory Statute which by law cannot be excluded, restricted or modified PROVIDED THAT to the extent that any such Statute permits the Vendor to limit its liabilities to compensate or indemnify

any person for breach of a condition or warranty implied thereby, then the respective liabilities of the Company for such breach shall be limited in the case of goods to the replacement of the goods or supply of equivalent goods and in the case of services, to the resupply of the services.

11. WARRANTY

- a. The Vendor warrants that in the event of any short delivery of the Goods or any defect in the Goods due to either faulty material or workmanship which is notified to the Vendor by the Purchase within seven (7) days from delivery of the Goods, then the Vendor may in its absolute discretion either: -
 - i. Replace the Goods, or
 - ii. Accept the return of the Goods and repay the purchase price to the Purchaser. PROVIDED THAT the Goods are returned to the Vendor within this period of seven (7) days, and the original invoice number and invoice date are provided to the Vendor and Vendor in its sole and unfettered opinion is satisfied that the Goods were defective at the time of delivery.
- b. Subject always to clause 12 hereof (RETURN OF GOODS) Bromic requires any defective part to be returned, including prepayment of transportation and insurance, in order to give consideration to the warranty claim.
- c. For the avoidance of doubt, any warranty given by Bromic may vary depending on the Goods supplied.
- d. Any warranty provided is subject to the relevant Goods having been installed and operated in the correct manner.
- e. In addition to any warranties provided by Bromic, Goods procured by Bromic and sold to the Purchaser shall carry the manufacturer's warranty against defects in material.
- f. To the maximum extent permitted by law all implied conditions and warranties are expressly excluded.

12. RETURN OF GOODS

- a. Should the Purchaser return to the Vendor any Goods which are not defective or incorrectly supplied, the Vendor may, in its absolute discretion:
 - i. Accept the return of the Goods and provide a credit for the value of the Goods to the Purchaser's account;
 - ii. Apply a re-stocking fee
 - iii. Refuse to grant any credit to the Purchaser's account should the manufacturer of the Goods not accept their return;
 - iv. Reduce any credit provided to the Purchaser's account or reject such Goods as are not in their original packages or are in any way damaged, shop soiled or obsolete. PROVIDED THAT the Vendor will not accept the return of non-standard Goods or Goods designed to Purchasers specifications.
- b. Before returning the Goods or the relevant part the subject of a claim under Warranty, the Purchaser must first obtain a return authorisation number from Bromic. The Goods/part then returned must be adequately packaged, accompanied by a copy of Bromic's sales invoice.
- c. Where applicable the specific unit serial number, date of purchase and date of installation must also be supplied at the same time. If faulty parts are not returned within 30 days of the replacement part being supplied to the Purchaser, the new part and any transportation costs will be charged to the Purchaser.

13. PROMOTIONAL MATERIAL

Photographs, drawings, illustrations, specifications, samples and any other particulars accompanying or associated with either a Quotation or any catalogue, price list or advertising material provided by the Vendor represent generally the goods described therein but do not form part of the Contract for Sale and the Vendor accepts no responsibility as to the accuracy thereof nor will the Vendor be liable for any consequential loss or damage caused by any\ defect of otherwise.

14. SUBSTITUTION

Unless agreed to the contrary in writing, the Vendor reserves the right to supply goods and services with the same properties and capacities as the Goods in substitution for the Goods.

15. WAIVER

No provision hereof and no breach of any provision shall be deemed waived by reason of any previous waiver of any breach hereof.

16. INACTIVE ACCOUNT

Bromic Group will close any accounts which are inactive for a contiguous period of 6 months. A new application to 'open an account' is required to be submitted for approval.

17. APPLICABLE LAW

The applicable law shall be the law of the State of New South Wales and the parties hereto agree to submit to the jurisdiction of the Courts of the State of New South Wales.

18. SERVERENCE

If any provision or part of any provision of these Terms and Conditions is unenforceable it shall be severed from the Terms and Conditions and such severance or unenforceability shall not affect the enforceability of any other part or provision hereof.