

GENERAL TERMS AND CONDITIONS

BETWEEN

BW & AA HAWKES PTY LTD AS TRUSTEE FOR THE HAWKES FAMILY TRUST TRADING AS

BOWHILL ENGINEERING

ABN 33 911 388 370
(**Supplier**)

and

(**Client**)

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1. DEFINITIONS

- 1.1. “**Acceptance Date**” means the date the Goods are accepted by the Client;
- 1.2. “**Act**” means the Building and Construction Industry Security of Payment Act 2009 (SA);
- 1.3. “**Agreement**” means this agreement between the parties;
- 1.4. “**Business Day**” means any day that is not a Saturday or Sunday or a public holiday in South Australia;
- 1.5. “**Commencement Date**” means the date specified in **#item 3** of Schedule 1, when the supply of Goods and Services begins;
- 1.6. “**Completion Date**” means the date specified in **#item 4** of Schedule 1;
- 1.7. “**Compliance Tests**” means tests performed on the Goods to ensure they comply with the Supplier’s warranties in #clause 17;
- 1.8. “**Compliance Test Period**” means 14 calendar days from the Delivery Date.
- 1.9. “**Complying Goods**” are Goods that comply with the Supplier’s Warranties in #clause 17.
- 1.10. “**Contract Sum**” refers to the price/s set out in accordance with **#item 9** of Schedule 1
- 1.11. “**Confidential Information**” means information which is identified as confidential information by the Client, but does not include this Agreement;
- 1.12. “**Supplier**” means the Supplier named in **#item 1** of Schedule 1;
- 1.13. “**Material Documentation Records**” (MDR) means the reports and any data or other material specified in **#item 13** of Schedule 1 required to be delivered throughout the performance of the Services;
- 1.14. “**Delivery**” means the delivery of the Goods to the Delivery Point;
- 1.15. “**Delivery Date**” means the date specified in **#item 6** of Schedule 1 for delivery of the Goods;
- 1.16. “**Delivery Point**” means the location(s) described in **#item 7** of Schedule 1, where the Goods and/or Services will be delivered;
- 1.17. “**Document**” means any embodiment of any text or image however recorded;
- 1.18. “**Event of Default**” occurs if the Supplier:
 - 1.18.1. has an Insolvency Event;
 - 1.18.2. does not comply with any Law;
 - 1.18.3. is in breach of this Agreement and fails to rectify the breach within 21 calendar days of being notified of the breach by the Client;
- 1.19. “**Goods**” means the goods specified in #Schedule 2;
- 1.20. “**GST**” means the tax imposed by the GST Law;
- 1.21. “**GST Law**” has the meaning attributed in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- 1.22. “**Insolvency Event**” means:
 - 1.22.1. an administrator is appointed to the Supplier;
 - 1.22.2. the Supplier resolves to be wound up;
 - 1.22.3. a court order is made that the Supplier be wound up (for insolvency or otherwise);

- 1.22.4. the Supplier ceases business;
 - 1.22.5. a receiver or manager is appointed to the Supplier;
 - 1.22.6. a liquidator or provisional liquidator of the Supplier is appointed;
 - 1.22.7. the Supplier enters into an arrangement with its creditors; or
 - 1.22.8. the Supplier is unable to pay its debts when they are due;
- 1.23. **“Installation Date”** means the date specified in **#item** 8 of Schedule 1 for the installation of the Goods;
- 1.24. **“Intellectual Property Rights”** means all intellectual property rights, including:
- 1.24.1. patents, plant breeders’ rights, copyright, rights in circuit layouts, registered designs, trademarks, know-how and any right to have Confidential Information kept confidential; and
 - 1.24.2. any application or right to apply for registration of any of the rights referred to in subclause #1.23.1, but for the avoidance of doubt excludes moral rights and performers’ rights;
- 1.25. **“Intellectual Property Rights Owner”** means the entity described in **#item** 17 of Schedule 1;
- 1.26. **“Laws”** means all Acts of Parliament of the Commonwealth of Australia and of the State of South Australia, and the requirements of all ordinances, regulations, by-laws, orders, and proclamations;
- 1.27. **“Non-Compliance Notice”** means the notice described in #clause 16;
- 1.28. **“Payment Terms”** means **#item** 11 of Schedule 1;
- 1.29. **“Performance Criteria”** means the performance criteria for the Goods as specified in #Schedule 2;
- 1.30. **“Personnel”** means any subcontractors, employees, agents and any other person employed or engaged by the Supplier to perform this Agreement, and includes the Supplier’s Representative;
- 1.31. **“Price”** means the price/s set out in accordance with **#item** 9 of Schedule 1;
- 1.32. **“Rectification Period”** means the number of calendar days from the date of the Non-Compliance Notice specified at **#item** 15 of Schedule 1;
- 1.33. **“Services”** means the services specified in #Schedule 2 and includes the Material Documentation Records;
- 1.34. **“Specification”** means the specifications for the Goods and Services in #Schedule 2;
- 1.35. **“Taxable Supply”** has the meaning attributed in the GST Law;
- 1.36. **“Tax Invoice”** has the meaning attributed in the GST Law;
- 1.37. **“Term”** has the meaning given to it by clause 3 of this Agreement;
- 1.38. **“Warranty Period”** means the period set in **#item** 16 of Schedule 1.

2. INTERPRETATION

In this Agreement (unless the context requires otherwise),

- 2.1. A reference to any legislation includes:
 - 2.1.1. all legislation, regulations, proclamations, ordinances, by-laws and instruments issued under that legislation; and
 - 2.1.2. any modification, consolidation, amendment, re-enactment or substitution of that legislation;
- 2.2. Any word importing:
 - 2.2.1. the singular includes the plural;
 - 2.2.2. the plural includes the singular; and
 - 2.2.3. a gender includes every other gender;
- 2.3. Words referring to individuals include corporations, unincorporated associations, partnerships, trusts and joint ventures;
- 2.4. A reference to a party includes that party's administrators, successors and permitted assigns;
- 2.5. where the day on or by which something is to be done is not a Business Day, that thing may be done on or by the next Business Day;
- 2.6. Where a word or phrase is given a defined meaning, then any other grammatical form of that word or phrase has the same meaning;
- 2.7. A reference to two or more persons means all of them together;
- 2.8. A reference to a clause, subclause, schedule or attachment is a reference to a clause, subclause, schedule or attachment of this Agreement.
- 2.9. A reference to a clause number includes its sub-clauses;
- 2.10. The word "or" is not exclusive;
- 2.11. Clause headings are for reference only and do not form part of this Agreement;
- 2.12. A reference to dollars is to Australian dollars;

3. TERM

This Agreement starts on the Commencement Date and ends on the Completion Date unless terminated earlier ("**Term**").

4. SUPPLY OF GOODS

- 4.1. The Supplier must:
 - 4.1.1. supply the Goods in accordance with this agreement;
 - 4.1.2. deliver the Goods to the Delivery Point on or before the Delivery Date;
 - 4.1.3. comply with any of the Client's reasonable directions and delivery instructions;
 - 4.1.4. supply the Goods in accordance with the Supplier warranties in #clause 17 and the Specifications;
 - 4.1.5. install the Goods on or before the Installation Date.
- 4.2. If the Supplier cannot comply with any of its obligations under #clause 4.1, the Supplier must notify the Client in writing.

5. SUPPLY OF SERVICES

- 5.1. The Supplier must supply the Services at the Delivery Point in accordance with this Agreement. The Services must at all times and for all purposes relevant to this Agreement conform with the Specifications.
- 5.2. The Supplier must supply the Services in accordance with the Supplier warranties in #clause 17 and the Specifications.

6. MATERIAL DOCUMENTATION RECORDS (MDR)

- 6.1. If the Supplier is to provide Material Documentation Records then the details of the MDR (if any) set out in #item 13 of Schedule 1 including the delivery dates and the form and content requirements, must be complied with by the Supplier;

7. PRICE

- 7.1. In consideration for the supply of the Goods and/or Services, the Client will pay the Price;
- 7.2. Notwithstanding clause 7.1, the Supplier reserves the right to change the Price immediately in the event of a variation, requested by the Client, to the Goods and/or Services;
- 7.3. Any variation to the Client's obligation to pay the Price in full must be expressly agreed to in writing by the Supplier;
- 7.4. The Supplier will serve a progress payment claim in the manner prescribed by s 13 of the Act to the Client every Payment Date;
- 7.5. A progress payment claim served on the Client under this clause 7 must be calculated on the basis of the value of construction work carried out by the Supplier and/or of related goods and services supplied or undertaken to be supplied by the Supplier (including but not limited to any off-site materials).
- 7.6. A progress payment claim served on the Client under this clause 7 must be paid in accordance to the Payment Terms included in #item 11 of Schedule 1.
- 7.7. A non-refundable deposit may be required before the supply of any Goods or Services if included in #item 10 of Schedule 1;
- 7.8. Payment may be made by any method as agreed between the Supplier and the Client;
- 7.9. GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price;
- 7.10. Time is of the essence in respect of the Client's payment obligations

8. DELIVERY OF GOODS

- 8.1. The Client shall be responsible for making any necessary arrangements to take delivery of the Goods, including preparation, security, and access to the Delivery Point.
- 8.2. The provisions of #clause 10 apply where Goods are delivered to a Delivery Point which is not attended.
- 8.3. The Client shall ensure that the Delivery Point remains accessible to the Supplier for the purpose of carrying out any further work deemed necessary by the Supplier.
- 8.4. Delivery of the Goods to any third party nominated by the Client (including carriers) is deemed to be delivery to the Client.
- 8.5. Should the Supplier, with or without notice, cancel and/or reschedule and/or make further/multiple appointments for the delivery of any Goods/Services, such circumstances shall not entitle either party to treat this Agreement as repudiated and the Supplier shall not be liable for any loss or damage incurred by the Client, or any of the Client's agents, customers, related companies, or contractors.

9. INSTALLATION

- 9.1. The Client shall be responsible for making all necessary arrangements to ensure installation may be commenced from the Delivery Date.
- 9.2. Should the Client fail to comply with #clause 9.1 herein, any additional costs associated with the installation shall be the responsibility of the Client.
- 9.3. Whilst all due care will be taken, the Supplier accepts no responsibility for damage to any of the Client's property or impeded performances at the Client's property as a result of Delivery and/or installation.
- 9.4. Unless specified otherwise in writing or at the Supplier's absolute discretion, the Client shall be responsible for the disposal of all unwanted surplus equipment, materials and rubbish.
- 9.5. Installation shall be deemed to be complete when all components are fitted.

10. RISK

- 10.1. Notwithstanding retention of title as specified in #clauses 11 and 15 herein, all risk passes to the Client upon delivery.
- 10.2. If any of the Goods are stolen, damaged or otherwise rendered less valuable than when they were supplied prior to title in them passing to the Client, the Supplier is entitled without prejudice to any of its other rights and remedies under any agreement, to any/all possible or actual insurance proceeds payable for the Goods.

11. TITLE

- 11.1. Ownership, property, and title in all Goods shall remain vested in the Supplier until the Client has paid all monies owing to the Supplier for all Goods and/or Services provided.
- 11.2. The Goods shall be kept separate and clearly identifiable as property of the Supplier until property and title in the Goods has passed to the Client pursuant to clause #11.1.
- 11.3. Until such time as property and title in the Goods passes to the Client, the Client shall hold the Goods as bailee for the Supplier, and shall hold any proceeds from the sale or disposal of the Goods up to the amount owed to the Supplier in a separate account for which separate records are kept.
- 11.4. The Supplier may request in writing that the Client return the Goods or any part of them at any time until property and title in the Goods has passed to the Client.
- 11.5. Should the Client fail to return the Goods to the Supplier upon such notice as outlined in #clause 11.4, the Supplier without prejudice to any of its other rights and remedies under this Agreement, reserves the right of entry to the Client's premises or any other premises where the Goods may be stored, by its servants or agents for the purpose of recovering and/or re-selling the Goods, and any cost incurred as a result of such action will be the responsibility of the Client.
- 11.6. If the Goods are attached, fixed or incorporated into any property of the Client, by way of any manufacturing or assembly process by the Client or any third party, title of the products and Services shall remain with the Supplier until the Client has made payment for all Goods and where those Goods are mixed with other property so as to be part of or constituent of any new Goods title to those new Goods shall be deemed to be assigned to the Supplier as security for the full satisfaction by the Client for the full amount owing by the Client to the Supplier.
- 11.7. In the event of non-payment or if payment of the Client's account is overdue the Supplier shall be entitled without prejudice to any right it has at law or in equity to enter the place where the Goods are stored whether at the Client's premises or property or the premises or property of a third party for the purpose of recovering and taking possession of the Goods supplied.
- 11.8. The Supplier may resell the Goods and apply the proceeds towards payment of the Client's outstanding account with the Supplier. Any shortfall will remain the liability of the Client. The Client indemnifies the Supplier for all costs and expenses including legal costs as between

solicitor and Client which the Supplier may incur in recovering the Goods and any monies owed to it.

12. PERSONAL PROPERTY SECURITIES ACT (“PPSA”)

In consideration of the Supplier supplying the Goods to the Client, at the request of the Client, the Client, by agreeing to this Agreement:

- 12.1. Grants to the Supplier a purchase money security interest (“**PMSI**”) as defined by the PPSA in the Goods;
- 12.2. Agrees that any of the Goods or proceeds of the sale of the Goods coming into existence after the date of this Agreement will come into existence subject to the PMSI granted herein and this Agreement without the need for any further action or agreement by any party;
- 12.3. Acknowledges that the Client has received valuable consideration from the Supplier and agrees that it is sufficient;
- 12.4. Agrees that the PMSI has attached to all Goods supplied now and in the future to the Client and that the attachment of the PMSI has in no way been deferred or postponed from the date recorded herein;
- 12.5. The Supplier reserves the right to register a financing statement in respect of any Goods supplied by the Supplier to the Client pursuant to this Agreement and in respect of which credit has been extended by the Supplier to the Client. The costs of registering a financing statement or a financing change statement shall be paid by the Client and may, where applicable, be debited against the Client’s account, with the Supplier;
- 12.6. The Client waives their right to receive a copy of the verification statement confirming registration of a financing statement, or a financing change statement relating to the security interest under this Agreement ;
- 12.7. The Client shall promptly, on request by the Supplier, execute all documents and do anything else reasonably required by the Supplier to ensure that the PMSI created by this Agreement constitutes a perfected security interest over all Goods supplied;
- 12.8. The Client shall not agree to allow any person to register a financing statement over any of the Goods supplied by the Supplier without the prior written consent of the Supplier and will immediately notify the Supplier if the Client becomes aware of any person taking steps to register a financing statement in relation to such Goods;
- 12.9. The Client shall not allow the Goods to become accessions or commingled with other goods unless the Supplier has first perfected any security interest that the Supplier has in relation to the Goods;
- 12.10. If the Supplier perfects any security interest that the Supplier has in relation to the Goods, the Client shall not do anything that results in the Supplier having less than the security or priority granted by the PPSA that the Supplier has assumed at the time of that perfection;
- 12.11. The Client irrevocably grants to the Supplier the right to enter upon the Client’s property or premises, without notice, and without being in any way liable to the Client or to any third party, if the Supplier has cause to exercise any of the Supplier’s rights under the PPSA, and the Client shall indemnify the Supplier from any claims made by any third party as a result of such exercise; and
- 12.12. The Supplier and the Client agree that nothing in sections 95, 96, 121(4), 130, 132(3)(d), 132(4), 142 and 143 of the PPSA will apply to this Agreement, or the security interest under this Agreement. The Client unconditionally ratifies any actions taken by the Supplier under this clause.

13. ADDITIONAL SECURITY

- 13.1. For better securing the Price of the Goods or Services supplied pursuant to this Agreement, the Supplier shall have the right to mortgage or charge the property of the Client to which the Goods

and Services are being supplied, or any other property owned by the Client, whether tangible or intangible.

- 13.2. The Supplier shall be entitled to lodge a caveat which notes its interest in any real property of the Client.
- 13.3. The Client hereby irrevocably nominates and appoints the Supplier to be the attorney of the Client for the purposes of giving and executing in favour of the Supplier a registrable memorandum of mortgage as described in this clause pursuant to section 5 of the *Powers of Attorney and Agency Act 1984* (SA).
- 13.4. The Client at or prior to the Commencement Date shall arrange for the provision from an Australian Bank (in accordance with the meaning of Bank as defined in the *Banking Act 1959* (Cth) or established by an Act of the Parliament of South Australia) of an irrevocable and continuing bank guarantee for the amount equal to the amount in **#item** 16 of Schedule 1 in favour of the Supplier.
- 13.5. The entirety of this #clause 13 shall only have effect if **#item** 16 of Schedule 1 states that this #clause 13 shall have effect.

14. DIRECTOR OR THIRD PARTY GUARANTEE

- 14.1. The Guarantor unconditionally guarantees the due and punctual payment by the Client to the Supplier of all monies payable by the Client to the Supplier pursuant to this Agreement and hereby charges all their rights and interest in any real estate and personal property they own or may own with such monies due hereunder.
- 14.2. This Guarantee:
 - 14.2.1. is a principal obligation and will not be treated as ancillary or collateral to any other right or obligation however created or arising;
 - 14.2.2. may be enforced against the Guarantor without the Supplier first being required to exhaust any remedy it may have against the Client or to enforce any security it may hold with respect to the Price;
 - 14.2.3. is a continuing guarantee and indemnity for the whole of the monies due pursuant to this Agreement and will be irrevocable and will remain in full force and effect until discharged; and
 - 14.2.4. will not be considered as wholly or partially discharged by the payment at any time of any part of the monies and will apply to the present and future balances due and payable.
- 14.3. The liability of the Guarantor is absolute.
- 14.4. If the Client becomes insolvent, the Guarantor authorises the Supplier to prove for all moneys the Guarantor may have paid under this Guarantee and to retain and to carry into a suspense account and to appropriate at the discretion of the Supplier any dividends received in the liquidation, bankruptcy or other insolvency of the Client and all other moneys received in respect of the monies outstanding until the Supplier has been paid the monies and all costs and interest thereon in full.

15. UNPAID SUPPLIERS RIGHTS

- 15.1. If payment has not been received by the Supplier when due, and the Supplier has made a verbal or written demand for payment, and the Goods are in possession or control of the Supplier, the Supplier reserves the right to dispose of the Goods, and claim from the Client any loss arising as a result of such disposal.
- 15.2. Where the Client has left any item with the Supplier for repair, modification or for the Supplier to perform any other service in relation to the item and the Supplier has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Supplier shall have:

- 15.2.1. A lien on the item;
- 15.2.2. The right to retain the item for the Price while the Supplier is in possession of the item;
and
- 15.2.3. A right to sell the item.

The lien of the Supplier shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.

16. ACCEPTANCE OF THE GOODS

- 16.1. During the Compliance Test Period the Client may perform Compliance Tests.
- 16.2. If the Goods fail a Compliance Test:
 - 16.2.1. the Client must provide written notice of the non-compliance ("**Non-Compliance Notice**");
and
 - 16.2.2. the Supplier must rectify (and install if applicable) the Goods within the Rectification Period if the Client has provided all necessary instructions and done all things to enable the Supplier to rectify (and install if applicable) the Goods at the time of the issuance of a Non-Compliance Notice. If not, the Supplier must rectify (and install if applicable) the Goods within a reasonable time.
- 16.3. If the Supplier provides rectified Goods, the Client may perform Compliance Tests on the rectified Goods in accordance with #clause 16.1 and #clause 16.2 applies.
- 16.4. The Client must accept the Goods when satisfied that the Goods are Complying Goods. On acceptance, the Client must provide the Supplier with a written acceptance notice that includes the Acceptance Date.
- 16.5. The Client will be taken to have accepted the Goods supplied if the Client does not issue a Non-Compliance Notice within 14 calendar days of expiry of the Compliance Test Period or within 14 calendar days of receipt of the Goods after rectification pursuant to #clause 16.2.2.
- 16.6. The entirety of this #clause 16 shall only have effect if **#item** 15 of Schedule 1 states that this #clause 16 shall have effect.

17. WARRANTY PERIOD

- 17.1. The Warranty Period is as stated in **#item** 16 of Schedule 1, and starts on the Acceptance Date.
- 17.2. If, in the Client's reasonable opinion, the Goods fail to comply with any of the Supplier's Warranties in #clause 24.4 during the Warranty Period, the Client may perform a Compliance Test.
- 17.3. If the Goods fail any such Compliance Test:
 - 17.3.1. the Client may issue a Non-Compliance Notice; and
 - 17.3.2. at the Client's election, upon receiving the Non-Compliance Notice, the Supplier must provide (and install if applicable) rectified Complying Goods within the Rectification Period, or refund the Price.
- 17.4. If the Supplier provides rectified Goods, the Client may perform Compliance Tests on the rectified Goods in accordance with #clause 16.

18. INTELLECTUAL PROPERTY RIGHTS

- 18.1. The Intellectual Property Rights Owner will own all Intellectual Property Rights in anything that is delivered to the Client or produced in the course of the supply of the Goods and provision of the Services (including without limitation, Material Documentation Records specified in **#item** 14 in Schedule 1).

19. INSURANCE

- 19.1. The Supplier must effect and maintain all insurance policies set out in **#item** 12 in Schedule 1 ('Insurance Policies').
- 19.2. The Insurance Policies must provide coverage to the Supplier and all the Supplier's Personnel.
- 19.3. The Client may, if indicated in **#item** 12 in Schedule 1, require that the Supplier provide certificates of currency for the Insurance Policies and the Supplier must provide the same within 7 days of receiving such a written request.
- 19.4. This clause may be modified by the wording in clause

20. TERMINATION

The Client shall be entitled to terminate this Agreement immediately by written notice, if:

- 20.1. an Event of Default occurs; or
- 20.2. under #clause 16.6 for the Supplier's failure to comply with clause 16.

21. EFFECT OF EXPIRY OR TERMINATION OF THIS AGREEMENT

- 21.1. Any termination of this Agreement by the Client does not affect any accrued right of either party.
- 21.2. Despite termination or completion of this Agreement, #clauses 16, 18, 19 and 24.17 survive.

22. PRIVACY ACT 1988

- 22.1. The Supplier shall be entitled to obtain a personal credit report to collect overdue payment on commercial or consumer credit (Section 18K(1)(h) Privacy Act 1988).
- 22.2. The Client agrees that individual data provided may be used and retained by the Supplier for the following purposes and for other purposes as agreed to between the Client and Supplier or required by law from time to time:
 - 22.2.1. Provision of Goods/Services.
 - 22.2.2. Providing instruction to Personnel.
 - 22.2.3. Marketing of Goods/Services by the Supplier, its agents, distributors, or contractors.
 - 22.2.4. Assessing the credit worthiness of the Client in relation to extending credit.
 - 22.2.5. Exchanging of information with credit reporting agencies, or with any trade reference/s named by the Client.
 - 22.2.6. Processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client.
 - 22.2.7. Collection of amounts outstanding in the Client's account by the Supplier's nominated collection agent or solicitor.

23. GENERAL

- 23.1. This Agreement (incorporating the Schedules) contains the entire agreement between the parties with respect to its subject matter and supersedes any prior agreement, understanding or representation of the parties on the subject matter.
- 23.2. Any notice relating to this Agreement must be in writing and sent to the address or email address of the recipient party as set out in **#items** 1 and 2 of Schedule 1.
- 23.3. Nothing in this Agreement constitutes any relationship of employer and employee or partnership between the parties
- 23.4. The Supplier must comply with the requirement of all Laws.

- 23.5. The Supplier assumes no responsibility for changes in the laws of South Australia, or the Commonwealth of Australia which may affect the supply of Goods/Services.
- 23.6. The Supplier may sub-contract part or all of its obligations under this Agreement without the Client's consent. The Client shall not assign any of the rights or obligations under this agreement without the written consent of the Supplier.
- 23.7. Neither the Supplier nor the Client shall be liable for any breach of any provisions of any contract arising from an act of God, natural disaster, terrorism, war, or any other occurrence beyond the control of either party.
- 23.8. If any clauses, provisions, parts, terms or conditions contained in this document are found to be unenforceable for reasons of invalidity, illegality or any other reason, the remaining clauses, provisions, parts, terms or conditions shall not be affected in any way.
- 23.9. The Client disclaims any right to cancel the Agreement, or to seek compensation for loss or damages arising from any innocent misrepresentation made to the Client by the Supplier, or any related corporations of the Supplier, and their respective officers, employees, agents and contractors.
- 23.10. The liability of the Supplier to the Client for any reason related to the performance of the Goods/Services under this Agreement shall be limited to the amount paid or payable by the Client to the Supplier for such Goods/Services.
- 23.11. The Supplier accepts no liability for Goods supplied based on measurements and specifications supplied by the Client or any other third party, and the Client shall be responsible for any additional costs associated with subsequent alteration of the Goods or installation.
- 23.12. The Client is responsible, at the Client's own cost, for arranging all licences, permits, government and or landlords consents, and approvals which may be required for the performance of any works under any agreement.
- 23.13. Where clauses of this Agreement are at variance with the order or instructions from the Client this Agreement shall prevail.
- 23.14. Any delay or failure to enforce any of this Agreement by the Supplier will not be deemed to be a waiver of any of this Agreement.
- 23.15. This Agreement may be executed on one or more counterparts, and each signed copy will be considered as the same Agreement.
- 23.16. This Agreement and any contract to which they apply shall be governed by the laws of South Australia and are subject to the jurisdiction of the Courts of South Australia.

24. CLIENT SECURITY

24.1. Bank Guarantee

- 24.1.1. The Supplier at or prior to the Commencement Date shall arrange for the provision from an Australian Bank (in accordance with the meaning of Bank as defined in the *Banking Act 1959* (Cth) or established by an Act of the Parliament of South Australia) of an irrevocable and continuing bank guarantee for the amount equal to the amount in **#item 16** of Schedule 1 in favour of the Client.

24.2. Retention of Monies

- 24.2.1. The Client may withhold payment of the sum outlined in **#item 16** of Schedule 1 only until 14 days after the Delivery Date or 14 days after the provision of rectified Goods within the meaning of **#clause 16.2.2**.

24.3. Liquidated Damages

- 24.3.1. The Supplier will be liable to pay liquidated damages to the Client pursuant to this clause if the Supplier has not provided the Goods and/or Services to the Client by the Completion Date.
- 24.3.2. #Clause 24.3.1 will not be enforceable by the Client in situations where the delay in providing Goods/and or Services to the Client is attributable to the actions or inaction of the Client.
- 24.3.3. Liquidated damages shall be limited to the amount stated in **#item** 16 of Schedule 1.
- 24.3.4. The total of all damages and costs claimed by the Client under the Terms whether liquidated or otherwise shall be limited to a maximum of 5% of the Tendered Price.

24.4. **Warranty**

- 24.4.1. The Supplier warrants that the Goods:
- (a) are new (unless otherwise specified);
 - (b) conform with the Specifications;
 - (c) conform with the Supplier's technical specifications;
 - (d) meet the Performance Criteria in #Schedule 2;
 - (e) are free from defects in materials, manufacture, workmanship and installation;
 - (f) conform to any legally applicable Australian standards or other standards nominated in this Agreement;
 - (g) are of merchantable quality;
 - (h) are installed correctly (if the Supplier is responsible for installation); and
 - (i) are fit for their intended purpose.
- 24.4.2. The Supplier warrants that the Goods are manufactured and supplied without infringing any person's Intellectual Property Rights.
- 24.4.3. The Supplier warrants that the Services will:
- (a) be provided in full, with due care and skill;
 - (b) be performed by the Supplier and/or its Personnel;
 - (c) be provided without infringing any person's Intellectual Property Rights; and
 - (d) comply with the Specification.
- 24.4.4. In the case of any breach of warranty in relation to Goods in this #clause 17, the Supplier must rectify the Goods as soon as is practicable.
- 24.4.5. The Supplier must ensure that the Client receives the full benefit of any manufacturer's warranties in respect of the Goods.
- 24.5. The subclauses of this clause #24 shall only have effect only as outlined in **#item** 16 of Schedule 1.

SCHEDULE 1

Item 1 Supplier	BW & AA Hawkes Pty Ltd as Trustee for The Hawkes Family Trust trading as Bowhill Engineering ABN 33 911 388 370 of 68 Weber Rd, Bowhill SA 5238.	
Item 2 Client	Project Name	
	Client Reference	
	Trading Name	
	Registered Name	
	Address	
	ABN/CAN	
	Contact:	
	Contact Details:	
	Email address:	
	Email for accounts:	
Item 3	Commencement Date	The date of execution of this Agreement
Item 4	Completion Date	[please instruct:] [X-Weeks from Commencement Date] [Insert Date here] [to be agree to in writing at a later time]
Item 5	Acceptance Date	Completion Date, Delivery Date, Delivery Point, Installation Date, Compliance Test Date
Item 6	Delivery Date	as agreed to in writing at a later date
Item 7	Delivery Point	as agreed to in writing at a later date
Item 8	Installation Date	as agreed to in writing at a later date
Item 9	Price (GST Excl)	
Item 10	Deposit	N/A
Item 11	Payment Terms	<ul style="list-style-type: none"> • Payment Claims will be submitted monthly on the 25th • Payment Terms are 30 days EOM • This includes payment for offsite materials.
Item 12	Insurance	<p>PUBLIC LIABILITY:</p> <ul style="list-style-type: none"> • STERLING INSURANCE - LLOYDS OF LONDON - PE. QPS.1992262/ Q-00184 • \$20,000,000.00 exp 03/08/2016 <p>WORKCOVER REGISTRATION</p> <ul style="list-style-type: none"> • Registered from 1/7/1995 • Employer No. 13282201 <p>Copy required by client: YES / NO</p>
Item 13	MDR Requirements	<ul style="list-style-type: none"> • Material Certification only • Basic MDR (Materials Certs & NDT) • As Specified XXX
Item 14	Intellectual Property Rights	<ul style="list-style-type: none"> • The Supplier • The Client
Item 15	Acceptance of Goods	<ul style="list-style-type: none"> • Clause 16 does not form part of this Agreement. • Clause 16 forms part of this Agreement and shall have effect as such: <ul style="list-style-type: none"> ○ Compliance Test Period – 14 days ○ Rectification Period – 14 days from receipt of written notice

Item 16 Security	The Supplier and Client agree that the following clauses form part of this Agreement. If not applicable, the clauses referred to below will be struck out and will not form part of this agreement.	
	Clause 13 – Client Caveat or Bank Guarantee	N/A
	Clause 24.1 – Supplier Bank Guarantee	5% contract sum; 2.5% Practical Completion, 2.5% Defects Liability Defects Liability Period – 12 months
	Clause 24.2 – Retention of Monies	0.5% contract sum per week. Limited to a maximum of 5% of original contract sum.
	Clause 24.3 – Liquidated Damages	5% of the Contract Sum per week until the goods/services have been provided to the client, to a maximum of
	Clause 24.4 – Warranty	12 months from Acceptance Date

SCHEDULE 2

The Goods
The Services
Performance Criteria
Specifications

EXECUTION

<p>Executed by BW & AA HAWKES PTY LTD ACN 069 189 519 in accordance with S127(1) of the Corporations Act 2001</p> <p>..... Director</p> <p>..... Print Full Name</p> <p>..... Date</p> <p>..... Director/Secretary</p> <p>..... Print Full Name</p> <p>..... Date</p>	<p>Executed by</p> <p>.....</p> <p>..... ACN</p> <p>..... in accordance with S127(1) of the Corporations Act 2001</p> <p>..... Director</p> <p>..... Print Full Name</p> <p>..... Date</p> <p>..... Director/Secretary</p> <p>..... Print Full Name</p> <p>..... Date</p>
	<p>..... Signature of GUARANTOR</p> <p>..... Print Full name of GUARANTOR</p> <p>.....</p> <p>..... Address of GUARANTOR</p> <p>.....</p> <p>..... Signature of WITNESS - Signed in my presence by GUARANTOR who is either personally known to me or has satisfied me as to his or her identity. A penalty of up to \$2000 or 6 months imprisonment applies for improper witnessing.</p> <p>..... Print Full name of Witness (BLOCK LETTERS)</p> <p>.....</p> <p>..... Address of Witness</p> <p>..... Business Hours Telephone No</p> <p>..... Date</p>