

# General Terms and Conditions

## 1. TERMS AND CONDITIONS

1.1 **Currency:** These Terms and Conditions apply to the supply of all Goods and Services by the Company to you from the date that you accept these Terms and Conditions.

1.2 **Acceptance:** You accept these Terms and Conditions when:  
(a) you make an application for credit with the Company;  
(b) you submit an Order;  
(c) you accept the provision of any Goods or Services pursuant to an Order;  
or  
(d) you make Payment, or partial Payment, for any Goods or Services supplied by the Company.

## 2. QUOTES & ORDERS

2.1 **Providing a Quote:** The Company may provide to you a Quote relating to the potential supply of Goods and/or Services, which may include the price and quantity of the Goods and/or Services proposed to be supplied by the Company and other relevant details as necessary. A Quote is only valid for 30 days (or such other period stated in the Quote) and may be withdrawn by the Company at any time.

2.2 **Placing an Order:** If the Company's Quote is acceptable to you, you may place an Order for the provision of Goods and/or Services. All Orders are subject to the Company's review and acceptance at the Company's absolute discretion.

2.3 **Additional conditions:** Unless otherwise agreed by the Company in writing, the Company will not be bound by any conditions added by you in an Order (express or implied).

## 3. PRICE

3.1 **Price:** In consideration of the Company providing the Goods and/or Services, you must pay the Company the price specified in the Order and any other money due under these Terms and Conditions which may be adjusted in accordance with the provisions of these Terms and Conditions.

3.2 **Additional costs:** You agree to pay for any additional applicable taxes, charges, special expenses of or incidental to putting the Goods in a deliverable state and delivery costs (if application) in relation to the supply of the Goods and/or Services.

3.3 **Time for Payment:** You must pay the Company the price specified in the Order progressively as the Goods and/or Services are completed and invoiced by the Company.

3.4 **Deposit:** The Company may request you pay a deposit. If requested by the Company, you must pay a deposit equalling up to 50% of the notified estimated total value of an Order prior to the Company commencing works and supplying Goods and/or Services and in any event must pay the deposit within 14 days of the Company accepting the Order. The Company has no obligation to undertake any work until the deposit has been received by the Company as requested.

3.5 **Variation of price:** You agree that the price specified in the Order may be adjusted by the Company to reflect any changes to the cost to the Company in providing the Goods and/or Services arising from:

- statutory charges, taxes, rates, levies or imposts which the Company are required to pay in relation to providing the Goods and/or Services;
- currency exchange rates; or
- other reasonable costs of operation and overheads.

## 4. DELIVERY

4.1 **Payment:** The Company will be under no obligation to part with possession or control of the Goods until Payment has been made in full.

4.2 **Collection:** Unless otherwise stated in the Order, you must take delivery of the Goods from the Company's warehouse within seven (7) days of notification by the Company that the Goods are ready for collection.

4.3 **Storage and handling costs:** If you delay or fail to take delivery in compliance with clause 4.2, you must pay to the Company all storage and handling costs arising from your delay or failure.

4.4 **Orders:** All Orders will be filled by the Company as promptly as is possible in the prevailing circumstances, having regard to such factors as availability of stock and supply and transportation timelines for obtaining stock.

4.5 **Separate portions:** The Company will be entitled to make delivery in multiple portions or by instalments if it considers that to be the most efficient or economical method of delivery.

4.6 **Delivery agent:** If it is agreed that the Company will send or bring the Goods to you, then consignment of the Goods to a carrier, whether named by you or not, for the purpose of transmission to you, will be deemed to be delivery of the Goods to you, and the Company is entitled to contract with a carrier on your behalf and determine the route and manner of delivery of the Goods.

## 5. PAYMENT TERMS

5.1 **Invoice:** Payment by you to the Company shall be made in accordance with the terms and conditions set out in the Company's Invoice, otherwise within seven (7) calendar days from the date of the Company's Invoice.

5.2 **Overdue Payments:** Without prejudice to the Company's rights, the Company is entitled to charge interest on all amounts not paid by you, at the Default Interest Rate calculated on a daily basis on all amounts not paid within the time specified in the Company's Invoice.

5.3 **Costs of enforcement:** In addition to the Company's right to charge interest pursuant to clause 5.2, the Company may recover from you any costs the Company incur in the collection of Payment of any Invoice, including but not limited to:

- any cost or expenses incurred to recover the Goods;
- any costs of any debt collector or solicitor on an indemnity basis;
- all charges of and incidental to the storage, handling of the Goods after they have been recovered;
- the amount (if any) by which the purchase price on resale of the Goods is less than the price in your Order.

5.4 **No Set Off:** You are not entitled to set off or deduct any amounts owing or due to the Company.

## 6. VARIATIONS & CANCELLATION

6.1 **Request for Variation or cancellation:** You may seek a variation to the Goods and/or Services or cancellation of an Order by a request in writing.

6.2 **Discretion:** The Company may refuse your request for a variation or cancellation at the Company's sole discretion.

6.3 **Variation:** If the Company agrees to a variation, the cost of the variation and the change to the estimated completion date (if applicable) will be determined by the Company having regard to:

- the rates derived from a price set out in the Order; and
- the Company's standard rates and prices for its Goods and Services.

6.4 **Cancellation:** If the Company agrees to a cancellation, you agree that the Company may charge you a cancellation fee of up to 2.5% of the purchase price of the Goods and/or to compensate the Company for the cancellation.

6.5 **Cancellation by Company:** The Company may cancel an Order if there is no available stock to satisfy an Order within a reasonable period time or if the costs of satisfying the Order have increased from the time the Quote was accepted by you and you have not agreed to accept those increased costs.

## 7. PERFORMANCE

7.1 **Standard of Services:** The Company will carry out the Services in a proper and workmanlike manner and in accordance with the plans and specifications (if any) and laws in force at the date of the performance of the Services.

7.2 **Supply of Goods:** The Company will supply the Goods which will be of suitable standard for the purpose of which they are intended. Unless otherwise specified, all Goods will be new.

7.3 **Modification of Goods:** If an Order includes any modifications or variations to the Goods as they have been manufactured by the manufacturer, the Company will not be liable for and you release and indemnify and will keep the Company indemnified against any claim by or loss or damage to directly or indirectly occasioned by or arising from the modification or variation of the Goods.

7.4 **Completion date:** The Company will complete the provision of the Goods and/or Services with due care and skill on or around the completion date, and in accordance with the agreed works program or scope of works (if any).

7.5 **Force Majeure Event:** The Company will be entitled to an extension of time to supply the Goods and/or complete the Services if a Force Majeure Event occurs which causes a delay to the supply of the Goods and/or the completion of the Services. The Company will notify you of the revised estimated completion date, if necessary.

7.6 **License:** You are responsible to obtain and must maintain all licences, permits or other governmental authorisations that are necessary (if any) for you to complete the performance of the Order.

7.7 **Company's authorisation:** If it becomes necessary for the Company to hold or obtain any license, permit or other governmental authorisation for the purposes of any Order, the Company will apply for the same but if such license, permit or governmental authorisation is refused then the Company may, by notice to you, terminate the Order and the Company's obligations will be deemed discharged by the refund to you of all Payment made and neither the Company nor you will be under any further liability whatsoever to each other or to any other person.

7.8 **Registration:** Unless specified in an Order, the Goods will be supplied unregistered.

## 8. ACCEPTANCE AND RETURNS

8.1 This clause 8 is subject to clause 9 (Exclusions & Limitations), the ACL and any other statutory or legal right whether under these Terms and Conditions or otherwise.

8.2 **Acceptance:** You must inspect the Goods and/or Services immediately upon delivery and completion and must, within seven (7) days of inspection, give written notice to the Company of whether the Goods and/or Services are not in accordance with the Order and provide sufficient evidence and particulars of non-compliance with the Order.

8.3 **Inspection:** You must allow the Company the opportunity to inspect the Goods within seventy-two (72) hours of the written notice under clause 8.2.

8.4 **Exclusion of liability:** The Company will have no liability for non-compliance with an Order where you fail to notify the Company under clause 8.2 within the seven (7) day period from the date of the supply of the Goods and/or Services is completed.

8.5 **Returns:** If the Goods are unsuitable or not in conformity with the Order, you may return them, at your cost, and exchange them for suitable alternative goods, provided that:

- the Goods are returned in the same condition as when they were delivered to you;
- if the alternative goods are more expensive, or are more expensive to deliver, you agree to pay any additional cost;
- a new Order must be issued to refer to the alternative goods;
- title and risk in the Goods will transfer back to the Company when the Goods are restored to the Company's possession or control; and
- if alternative goods are not available, the Company may provide with a credit to purchase other goods at a future time, or else you may receive a refund of any Payment, less an administration fee of 10% of the total price of the Order.

## 9. EXCLUSIONS, WARRANTIES & LIMITATIONS

9.1 **Excluded rights:** All express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise), relating to these Terms and Conditions, that are not contained in it, are excluded to the fullest extent permitted by the ACL and law.

9.2 **Warranties:** The Company warrants that:

- it has taken reasonable care to ensure that the Goods are in good order, of merchantable quality and fit for their advertised purpose;
- if the Goods are manufactured by a third party manufacturer, and have a defect that occurred during the manufacturing process, the Company will liaise with the manufacturer on your behalf to repair or replace the Goods.
- if the Goods are second-hand goods, then, in place of the warranty stated in clause 9.2(a), the Company warrants that it has taken reasonable care to ensure the Goods are of acceptable quality for second-hand goods.

9.3 **Limitations:** Other than the warranties provided in clause 9.2, no warranty is given in relation to the Goods and/or Services and the Company will not be liable for loss caused by any factors beyond the Company's control.

# Terms and Conditions (Continued)

- 9.4 **Acknowledgments:** You acknowledge that:
- you have had full opportunity to examine and inspect the Goods properly before purchase;
  - if the Goods are second-hand goods, the Goods may have latent or defects and that the goods may be of a lower quality to new Goods; and
  - any Services which modify or varies the Goods may void the manufacturing warranty of the Goods.
- 9.5 **Indirect loss:** The Company will not be liable for any special, indirect, consequential or economic loss or damage or loss of profits (in contract or tort or arising from any other cause of action) suffered by you or any other person resulting from any act or omission by the Company (including breach, termination or non-observance of the terms of an Order or agreement which incorporates these Terms and Conditions).
- 9.6 **Total liability:** The Company's total liability for breach of these Terms and Conditions or breach of the Company's contractual obligations or duties at law or in equity (however arising) is limited at the Company's option to:
- the repair or rectification of the Goods and/or Services; or
  - the reasonable direct costs of replacing the Goods and/or Services.
- 9.7 **Conditions or repair and replacement of Goods and Services:** To the fullest extent permitted by law, the Company will not be liable to repair or replace any Goods where the Goods are defective due to:
- improper adjustment, calibration or operation by you;
  - any modifications of the Goods or Services which were not authorised in writing by the Company;
  - any misuse of the Goods or Services by anybody other than the Company; or
  - inadequate or improper storage or maintenance of the Goods or Services.
- 9.8 **No Liability:** The Company will not be liable for, and you release and indemnify and will keep the Company indemnified against, any claim, loss or damage to any person or property, directly or indirectly occasioned by or arising from the Company's supply of the Goods and/or Services and the use, operation or possession of the Goods by you and your employees and agents, and from any negligence, fault or misuse by you or of any other person in relation to the Goods, other than arising directly due to the Company's negligent acts or omissions, fraud or illegal conduct.
10. **RISK & TITLE**
- 10.1 **Subject to the PPSA:** The provisions of this clause 10 are subject to the provisions of the PPSA and any security interest grants in the Goods.
- 10.2 **Perfection:** You irrevocably give authority to us to register a financing statement with respect to the Security Interest on the PPSR. Despite this providing, we may perfect this Security Interest by any other means in accordance with the PPSA and you waive any right to receive notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.
- 10.3 **Passing of risk:** The risk in the Goods shall pass to you upon the first occurrence of the any of the following:
- the transfer of possession or control of the Goods to you, including any agent or bailee of you or a carrier who is taking the Goods to you or accepting them on your behalf.
  - the expiration of the notice given in clause 4.2.
- 10.4 **Possession as bailee:** After delivery of the Goods, until the full Payment has been made you shall possess the Goods as bailee only.
- 10.5 **Title:** The Company will retain absolute title over the Goods until the Company have received Payment in full in respect of the Goods.
- 10.6 **Inspection of repair:** If the Goods are returned by you to the possession or control of the Company for inspection, repair or maintenance; the title and risk do not revert to the Company, but the Company may accept or decline risk separately under a repair agreement.
- 10.7 **Identification:** Until full title in the Goods has passed to you, you will ensure that:
- any identifying plate, mark or packaging number on any of the Goods is not removed, defaced or obliterated; and
  - the Goods are identifiable and distinguishable from any other goods that may be in your possession and as to each particular Invoice of Goods.
11. **GST**
- 11.1 **Prices exclusive of GST:** Unless otherwise agreed, prices with respect to any taxable supply are exclusive of GST.
- 11.2 **GST payable in addition:** You must pay to the Company all GST in addition to any other amounts payable by you to the Company, which will be payable by you when required to pay for the Goods.
- 11.3 **Issue of tax invoice:** The Company will issue a tax invoice for any taxable supply to you, which will enable you, if permitted by the GST Law, to claim a credit for GST paid by you.
- 11.4 **Third party supplies:** If GST is payable for a taxable supply by a third party, the Company will request that party to provide you with a tax invoice.
12. **GENERAL**
- 12.1 **Notice:** Any notice, request, consent, demand or application required to be given by you or the Company to the other pursuant to these Terms and Conditions:
- must be in English and in writing; and
  - must be either:
    - delivered to the other party personally; or
    - left at the address or sent by prepaid post addressed to the other parties address; or
    - sent by email addressed to the other party.
- 12.2 **Termination:** If a Default Event occurs:
- the Company may, without limiting any other right the Company have under these Terms and Conditions, terminate any outstanding Order and any contract for the supply of Goods and/or Services to you; and
  - all Payments and any other money under these Terms and Conditions become immediately payable.
- 12.3 **Entire Agreement:** The written terms of an Order and these Terms and Conditions constitute the entire agreement between the parties regarding the subject matter of an Order and all prior or separate negotiations and understandings are hereby excluded.
- 12.4 **Binding:** These Terms and Conditions shall bind the Company's successors, administrators and permitted assigns and your executors and permitted assigns, or being a company, its successors, administrators and permitted assigns.
- 12.5 **Assignment:** The Company may, upon providing written notice to you, assign, sub-contract or otherwise delegate the Company's rights or obligations under these Terms and Conditions. You may not assign, sub-contract or otherwise delegate (including to a trustee holding on trust for your benefit) any of your rights or obligations under these Terms and Conditions without the Company's prior written consent.
- 12.6 **New Terms and Conditions:** If the Company adopts new terms and conditions:
- you will be given written notice if you are a Customer at the relevant time; and
  - unless otherwise agreed, they will apply to the supply of Goods and/or Services after you accept such new terms and conditions.
- 12.7 **Severability:** Each clause in these Terms and Conditions is severable and if any clause is held to be illegal or unenforceable, then the remaining clauses will remain in full force and effect.
- 12.8 **Privacy:** You hereby consents to the Company conducting a credit history check and any other reasonable inquiry that the Company may consider appropriate into the bona fides or capacity of you to pay.
- 12.9 **Agency:** You will be deemed to have performed any action or failed to take any action for the purposes of these Terms and Conditions if its principal, employee or agent does so.
- 12.10 **No merger:** These Terms and Conditions do not merge on completion of an Order.
- 12.11 **Waiver:** No failure, delay, relation or indulgence on the Company's part in exercising any power, right or remedy precludes any other or further exercise of that or any other power, right or remedy.
- 12.12 **Governing law:** These Terms and Conditions shall be governed by the laws of the State of Western Australia.
- 12.13 **Compliance with Laws:** Each party will comply with all applicable laws in the performance of its obligations under any Order.
13. **INTERPRETATION & DEFINITIONS**
- 13.1 **Personal pronouns:** Except where the context otherwise provides or requires:
- the terms we, the Company or our refers to the Company; and
  - the terms you or your refers to the Customer.
- 13.2 **Defined terms:** In these Terms and Conditions, unless otherwise provided, the following terms shall have their meaning as specified:
- ACL** means the *Australian Consumer Law under the Consumer and Competition Act 2010* (Cth) as amended.
- Company** means Boya Equipment Pty Ltd ABN 52 113 093 360.
- Customer** means any person or entity that places an Order with the Company and agrees by conduct or by virtue of notice or otherwise to be bound by these Terms and Conditions, including any related company, related party, officer and authorised person of the relevant person.
- Default Event** means any one of the following events:
- you fail to make any Payment when due;
  - an Insolvency Event occurs.
- Default Interest** means interest at the rate of 12% per annum.
- Force Majeure Event** means circumstances beyond the Company's reasonable control shall include, but not be limited to compliance with any laws, regulations, orders, acts, instructions or priority request of any government, or any department or agency, civil or military authority, acts of God, acts of the public enemy, your acts or omissions, fires, floods, strikes, lockouts, embargoes, wars, labour or material shortages, riots, insurrections, pandemics, epidemics, defaults of the Company's suppliers or subcontractors, delays in transportation, or loss or damage to Goods in transit.
- Goods** means goods sold by the Company from time to time.
- GST** means a goods and services tax, or a similar value added tax, levied or imposed by the GST Law.
- GST Law** has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- Insolvency Event** means the occurrence of any of the following events in relation to you:
- commencing winding up;
  - you become bankrupt or commit an act of bankruptcy; or
  - a mortgagee taking possession of your assets;
  - a liquidator, provisional liquidator, receiver, receiver and manager, voluntary administrator, administrator of a deed of company arrangement being appointed to you;
  - making any composition or arrangement or assignment with or for the benefit of its creditors;
  - ceasing to carry on its business;
  - proceedings are commenced or an application is made for the appointment of any persons listed in item (c) above; or
  - becoming insolvent within the meaning of section 95A of the *Corporations Act 2001* (Cth).
- Invoice** unless otherwise agreed means the invoice issued by the Company to you upon provision of the Goods and/or Services specified in your Order.
- Order** means an order for supply of Goods and/or Services in writing received by the Company.
- Payment** means payment of any amount relating to the Goods and/or Services in accordance with these Terms and Conditions.
- PMSI** means a purchase money security interest as defined by s 14 of the PPSA.
- PPSA** means the *Personal Property Securities Act 2009* (Cth) as amended, including any regulations made pursuant to it.
- PPSR** means the Personal Property Securities Register.
- Quote** means a quotation by the Company for the provision of Goods and/or Services containing details as specified in clause 2.1
- Services** means the services set out in the Order including the supply and installation of any Goods by the Company to the Customer.