

TERMS AND CONDITIONS OF TRADE V2 23 January 2018

1. Definitions

- 1.1. 'BTS' means Behind The Scenes (Aust.) Pty Ltd ATF GB Investment Trust T/As Behind The Scenes ABN 73 272 017 404; ACN 153 012 652, its successors and assigns or any person acting on behalf of and with the authority of Behind The Scenes (Aust.) Pty Ltd.
- 1.2. 'Client' means the person/s buying the Goods and/or Services as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3. 'Goods' means all Goods or Services supplied by BTS to the Client at the Client's request from time to time.
- 1.4. 'Price' means the purchase price of the Goods exclusive of GST in accordance with clause 3 below.
- 1.5. 'Contract' means this contract for the sale and purchase of Goods.
- 1.6. 'Installation' means the installation of the Goods at the site of installation as agreed in writing by BTS and the Client.
- 1.7. 'Intellectual Property' means all copyright in all designs, plans and drawings of the Goods, all Designs whether registered or unregistered, all trademarks and logos whether registered or unregistered, all patents granted and patents pending and all know-how and information pertaining to the manufacture and installation of the Goods.
- 1.8. 'Order' means a written order placed by the Client for the purchase of Goods.
- 1.9. 'Parties' means BTS and the Client.
- 1.10. 'Specifications' means BTS specifications applicable to the Goods and where applicable any specifications for installation.

2. Orders and Contract

- 2.1. The Contract date is the date BTS communicates acceptance to the Client for an order or if the Client accepts delivery of the Goods.
- 2.2. BTS may withdraw, revoke or vary a written quotation at any time prior to the Client submitting an order. The provision of an estimate by BTS is non-binding and does not constitute a Contract.
- 2.3. An order once placed may only be cancelled by the Client if BTS agrees in writing to its cancellation. Cancellation may be conditional on the Client paying the costs and expenses incurred by BTS up to the date of cancellation.
- 2.4. Where the Goods have to be made or adapted to the Client's particular specifications or requirements then the Client must also pay for all work in progress up to the date of cancellation.

3. Price and Payment

- 3.1. Unless otherwise agreed to in writing by BTS and subject to clause 3.2 and 3.3 below, all Goods are sold to the Client at BTS stated price upon acceptance of the order or as indicated on the invoice.
- 3.2. BTS reserves the right to change the price at any time and in its sole discretion and without any prior notice to the Client.
- 3.3. Where in the period prior to the delivery of the Goods to the Client, BTS incurs an increase in the cost of producing and/or delivering the Goods, BTS may increase the price of those Goods.
- 3.4. Unless otherwise agreed to in writing, the Client shall pay the price to BTS in full either upon placement of an order or at any time prior to the delivery of the Goods or failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by BTS.
- 3.5. Where there is partial delivery of the Goods, then BTS will be entitled to be paid by the Client that proportion or percentage of the price that relates to those Goods delivered on that partial delivery.
- 3.6. BTS may require a non-refundable deposit from the Client in specific circumstances.
- 3.7. BTS may require progress payments from the Client in specific circumstances and if so, BTS reserves the right to halt any further work until such time as the outstanding payment is forthcoming. In addition, penalty interest (as specified in 3.8) may be charged.
- 3.8. The Client shall pay to BTS accruing interest on any overdue invoices from the date when payment becomes due until the date of actual payment at a rate of 2.5% per calendar month. All payments made by the Client shall be first applied by BTS to the accrued interest (if any).
- 3.9. If more than one Client has entered into a Contract, then each Client shall be jointly and severally liable for the payment of the price to BTS.
- 3.10. All prices are exclusive of GST. The Client shall indemnify BTS in respect of any GST which may be payable as a result of any supply of Goods by BTS to the Client.
- 3.11. Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to one and a half per cent (1.5%) of the Price).

4. Inspection of the Goods

- 4.1. The Client must inspect the Goods on delivery and must within seven (7) days of delivery notify BTS in writing of any evident defect, damage, shortage in quantity, or failure to comply with the description or quote. Upon such notification, BTS reserves the right to inspect the Goods and to seek its own assessment of the Goods.
- 4.2. If the Client fails to inspect the Goods ordered within seven (7) days of written notification from BTS that the Goods ordered are ready to be inspected, then the Client will be deemed to have accepted the Goods, waived all rights of inspection and consequent to inspection to have waived all rights in respect to all visible defects and to have those defects rectified.
- 4.3. Where the Client provides to BTS the full details of rectification work consequent upon inspection within the time provided, BTS will, if it accepts that such defects exist and require rectification, promptly at its own cost carry out all those requirements so as to cure the defects in the Goods ordered. Where the Goods ordered do not,

because of such defects, comply with any specifications, BTS will rectify the Goods ordered so that they comply with the terms of the specifications.

- 4.4. If in the reasonable opinion of BTS the details of rectification sought by the Client are outside the specifications, BTS shall within two working days of receiving full details of rectification inform the Client in writing or by facsimile or email of those parts of the details of rectification which BTS says are not required in order for the Goods Ordered to comply with the specifications.
- 4.5. If the Client and BTS cannot agree on the details of rectification, then either Party may require the Goods to be returned to BTS and the cost of such return or the risk involved will be borne by the Client.

5. Privacy Statement

- 5.1. The Client authorises BTS to collect, retain, record, use and disclose personal information about the Client, in accordance with the Privacy Act 1988, to persons and/or legal entities who are a Solicitor, or any other professional consultant engaged by BTS, a Debt Collector, Credit Reference Organisation and/or any other individual or organisation which maintains credit references and/or default listings.
- 5.2. The Client also authorises BTS to make enquiries with respect to the Client's credit worthiness; to exchange information with other Credit Providers in respect to previous defaults of the Client and to notify other Credit Providers of a default by the Client.
- 5.2. The Client authorises BTS to photograph goods and services delivered and/or installed on the Client's property and consent to publication, image modification and promotional purposes. You further waive all rights you may have to any claims or recompense in connection with publication of these images.
- 5.3. BTS does not sell, share or trade Client's personal information with third parties other than related companies and those third parties directly related to the delivery of the Goods. Personal information will only be disclosed within BTS for internal use only and for direct marketing purposes.

6. Warranties

- 6.1. To the fullest extent permitted by law, BTS excludes all warranties and representations in respect of the supply to the Client of the Goods. Where any of the consumer guarantees under the Competition and Consumer Act 2010 (the CCA) apply to any Goods supplied by BTS to the Client, and the CCA voids or prohibits provisions in a contract excluding, restricting or modifying such consumer guarantees, then, to the fullest extent permitted by law, the liability of BTS under or arising out of the supply of goods and services for breach of, or failure to comply with, any such consumer guarantees shall be limited, at the option of BTS, to:

If the breach or liability relates to goods:

- a) the replacement of the goods or the supply of equivalent goods;
 - b) the repair of the goods;
 - c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - d) the payment of the cost of having the goods repaired;
- If the breach or liability relates to services:
- e) the supplying of the services again; or
 - f) the payment of the cost of having the services supplied again.

- 6.2. Except to the extent that the law, including the CCA, provides that liability is not able to be excluded, BTS shall not be under any liability to the Client in respect of any loss or damage (including consequential or indirect loss or damage) however caused, which may be suffered or incurred or which may arise directly or indirectly in respect of the Goods, any services supplied by BTS or the failure of BTS to comply with these terms and conditions.

- 6.3. BTS Manufactured Goods and Works supplied (Installation, maintenance, repairs) – BTS warrants to the Client that:

- a) Goods will be manufactured by BTS using good and suitable materials and components;
- b) The Goods ordered as manufactured will be fit and merchantable having regard to the purposes (if any) communicated by the Client to BTS at or simultaneously with the placement of the order. If no purposes have been communicated, the Goods will be fit and merchantable for their general purposes having regard to the nature of the Goods ordered;
- c) the Goods/installation will conform in all material respects with any specifications agreed to in the order;
- d) BTS will replace or remedy any faulty part or component of any item of the Goods ordered that the Client communicates to BTS as faulty or requiring replacement within three (3) months of delivery;
- e) the Goods ordered will be manufactured and/ or installed so that they are safe if properly used for their intended purpose;
- f) Where the Goods ordered are to be installed by the Client that those Goods will be suitable and capable of being so installed in accordance with the specifications.

- 6.4. BTS will not be responsible for any damage to the Goods which occurs at any time after delivery and/or installation unless the Client can provide reasonable evidence that the damage was a direct result of any fault or defect:

- a) in the manufacture of the Goods ordered;
- b) in the materials or components used in the manufacture of the Goods ordered;
- c) in the packing of the Goods ordered;
- d) in the Goods ordered which the Client can show was caused prior to delivery.

- 6.5. BTS will not be liable to the Client for any damage or destruction of the Goods caused by:

- a) any failure by the Client to properly or safely store the Goods;
- b) any failure by the Client to properly move the Goods after Delivery;
- c) any failure by the Client to properly install the Goods;
- d) any failure by the Client to use the Goods for their purpose;

- e) any use by the Client or any other Person of the Goods contrary to their specifications;
- f) any act or omission by the Client or any Person after Delivery;
- g) any failure to properly repair or maintain the Goods.
- 7. Delivery**
- 7.1. The cost of delivery is either included in the Price or is in addition to the Price and is specified in the order.
- 7.2. Unless specified by the Client in the order, deliveries will be made by BTS or a carrier nominated by BTS.
- 7.3. The Client or the Client's representative must be present on delivery to inspect the Goods ordered and sign for acceptance of the Goods on delivery.
- 7.4. BTS will take all reasonable commercial endeavours to ensure that the Goods ordered are delivered on the agreed date for delivery set out in the order.
- 7.5. Where there is a schedule of times for Delivery referred to in the order then BTS will take all reasonable commercial endeavours to ensure that the Goods are delivered on the agreed scheduled dates for delivery.
- 7.6. If BTS is unable to deliver the Goods to the Client by the date or dates of delivery set out in the order, then BTS will promptly notify the Client to that effect with estimates of the revised time for the delivery of the Goods ordered.
- 7.7. Provided BTS has used all reasonable commercial endeavours to deliver the Goods to the Client in accordance with the date or dates for delivery in the order, BTS will not be liable to the Client for any delay in delivery of the Goods or any part thereof.
- 7.8. The Client acknowledges that BTS may be dependent upon various supplies of materials and components from third parties in order to be able to deliver the Goods to the Client by the agreed date or dates for delivery. Any delay in the manufacture of the Goods ordered caused by any shortage or unavailability of materials or components may give rise to a delay in delivery and the Client acknowledges and agrees that in such circumstances BTS will not thereby be in breach of its delivery obligations.
- 7.9. BTS reserves the right to invoice the Client and receive payment for the Goods even though delivery has not occurred through the Client's failure to take delivery of the Goods ordered.
- 8. Title and Risk**
- 8.1. Unless otherwise agreed in writing by BTS and the Client, title in the Goods ordered will not pass to the Client until the Goods are fully paid for by the Client. Where the Goods have been delivered to the Client prior to having been fully paid for, the Client will hold the Goods until full payment has been made as a bailee at will for BTS and until that time:
- The Client is not entitled to sell the Goods but only in the ordinary course of business;
 - The Client must not encumber or otherwise charge the Goods;
 - The Client shall be fully responsible for any loss or damage to the Goods whatsoever and howsoever caused following delivery or installation of the Goods to the Client.
- 8.2. Notwithstanding the delivery of the Goods or their installation, title in any particular Goods shall remain with BTS regardless of whether the Goods are on-sold by the Client until the Client has paid and discharged any and all monies owing pursuant to any invoice issued by BTS for the Goods, including all applicable GST and other taxes, levies and duties.
- 8.3. If the Client commits an act of bankruptcy, enters into any form of administration or liquidation, makes any composition or arrangement with its creditors, ceases to carry on business or breaches any fundamental clause of this agreement, then BTS may, without prejudice to any other remedies it may have, repossess any Goods delivered to the Client on any account which has not been paid in accordance with the terms and conditions herein and commence proceedings to recover the balance of any monies owing BTS by the Client.
- 9. Default and Abandonment**
- 9.1. All accounts are to be settled in full within the agreed trading terms noted on the BTS invoice.
- 9.2. Should the Applicant default in making any payment in accordance with the agreed trading terms, then all monies owing to BTS shall immediately become due and payable. BTS shall be entitled to charge interest as specified in clause 3.8.
- 9.3. Any expense and/or costs or disbursements incurred by BTS in recovering any outstanding monies shall be paid by the Client.
- 9.4. Where the Client has left any item with BTS for repair, modification, or any other service in relation to the item and is not collected within 90 days, BTS has the right to retain or sell the item in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 10. PPSA**
- 10.1. This Terms and Conditions of Trade is a security agreement for the purposes of the PPSA.
- 10.2. The Client consents to BTS effecting a registration on the PPSR in relation to any Security Interest arising under or in connection with these Terms and Conditions of Trade and the Client agrees to provide all assistance required by BTS to facilitate registration.
- 10.3. The Client shall pay on demand any losses arising from, and any costs and expenses incurred in connection with any action taken by BTS under or in relation to the PPSA.
- 10.4. Any notices or documents required or permitted to be given to BTS for the purposes of the PPSA must be given in accordance with the PPSA.
- 10.5. The Client waives the right to receive any notice under the PPSA (including notice of verification statement) unless the notice is required by the PPSA and cannot be excluded.
- 10.6. The Client agrees to immediately notify BTS of any changes to its name or address.
- 10.7. For the purposes of section 275(6)(a) of the PPSA the parties agree not to disclose information of the kind mentioned in section 275(1) of the PPSA, except in circumstances required by sections 275(7)(b) to (e) of the PPSA.
- 10.8. If Chapter 4 of the PPSA applies to the enforcement of the Security Interest arising under or connection with this Agreement; the Client agrees that:
- to the extent that section 115(1) of the PPSA allows, the following provisions of the PPSA will not apply and the Client will have no rights under them: section 95 (to the extent it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and
 - the following provisions of the PPSA will not apply and the Client will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.
- 10.9. For the purposes of section 20(2) of the PPSA, the collateral is the Client's Goods including any of the Client's Goods held or retained by BTS.
- 11. Installation**
- 11.1. Unless otherwise agreed to in the order, Installation of the Goods ordered is not part of this Contract. Installation of the Goods ordered is the Client's exclusive responsibility and BTS will not be responsible for any damage done to the Goods ordered during, or as a consequence of, their Installation or during or as a consequence of the Client taking delivery of the Goods ordered at the site of Installation and attempting to Install them.
- 11.2. Where BTS is required to install the Goods the Client warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is without defect and suitable for planned work and BTS shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation.
- 12. Ownership of Intellectual Property**
- 12.1. Nothing in the Contract between the Parties gives the Client any interest or right to the Intellectual Property in the Goods ordered which Intellectual Property the Client acknowledges is exclusively owned by BTS.
- 12.2. All copyright in all manuals, diagrams, drawings, plans and specifications that are provided to the Client with the Goods ordered remains the sole and exclusive property of BTS and such items are not to be reproduced without prior written permission of BTS.
- 13. Waiver**
- 13.1. The failure by either the Client or BTS to exercise or enforce any rights conferred hereunder shall not, except where there is an express term to the contrary, be construed or deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or other times thereafter.
- 13.2. A waiver of any right must be in writing signed by the Party waiving that right.
- 14. General**
- 14.1. The Client agrees that BTS may amend these terms and conditions at any time. If BTS makes a change to these terms and conditions, then that change will take effect from the date on which BTS notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for BTS to provide Goods to the Client.
- 14.2. BTS may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are due to be delivered by giving written notice to the Client. On giving such notice BTS shall repay to the Client any money paid by the Customer for the Goods. BTS shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.3. This Contract shall be governed by and construed and interpreted in accordance with the laws of the Queensland in which BTS has its principal place of business.
- 14.4. BTS shall not be under any liability whatsoever for the consequences of any failure on its part to perform or delay in performing any obligation under the Contract when due, whilst and to the extent that such failure or delay is due directly or indirectly to any event of force majeure. Without limiting the generality of the foregoing, this includes any liability whatsoever for any delay in completion, delivery, despatch, shipment or arrival of the goods or in the tender of any documents or the like. "event of force majeure" includes any acts of God, war, riots, strikes, lock outs, trade disputes, fires, break downs, mechanical failures, interruptions of transport, Government action or any other cause whatsoever, whether or not of a like nature to those specified above, outside the reasonable control of BTS.
- 14.5. Any dispute will be subject to the exclusive jurisdiction of the Courts of that State or Territory.

A LARGER PRINT VERSION IS AVAILABLE ON REQUEST.