

TERMS AND CONDITIONS OF SALE

1 TERMS AND CONDITIONS OF SALE

Unless otherwise specifically agreed in writing all goods sold by Brooks Equipment Sales Pty Ltd (ACN 646 171 217) as trustee for Brooks Equipment Sales Trust (ABN 92 455 723 027) (Brooks) are sold on the following terms and conditions, and the Purchaser agrees to be bound by the following terms and conditions.

2 DEFINITIONS AND INTERPRETATION

2.1 Definitions

In these terms and conditions unless the contrary intention appears:

Australian Consumer Law means the Australian Consumer Law in Schedule 2 of the Competition and Consumer Act 2010 (Cth).

Balance means the balance remaining after deducting the Deposit from the Purchase Price.

Business Day means, a day that is not a Saturday, Sunday, bank holiday or public holiday in Western Australia.

Cash Purchaser means a Purchaser who must pay for the Goods on or prior to Delivery.

Claim means any claim made (whether in the form of an allegation, demand, suit, action or other proceeding of any kind) under or in connection with these terms and conditions or its subject matter, whether arising under contract (including under any warranty or indemnity or any other breach, actual or anticipatory), in equity, in restitution, negligence or any other tort, strict liability, under statute or otherwise at all.

Collection Address means the address nominated by Brooks from which the Goods will be available for collection by the Purchaser.

Collection Date means the date and time frame for the Purchaser to collect the Goods from the Collection Address.

Consequential Loss means all loss of actual or anticipated profit, loss of use, loss of productivity, loss of revenue, business interruption of any nature, loss of contracts, loss of opportunity, increased costs and expenses, wasted expenditure, loss arising from delay, loss by reason of shutdown or non-operation or increase cost of borrowing capital or financing, loss of business reputation or goodwill and all special, indirect and consequential losses whether caused by or contributed to by a breach of contract or statute, breach of warranty (express or implied), tort, strict liability or any other cause whatsoever.

Credit Purchaser means a Purchaser approved by Brooks in its absolute discretion for trading on credit terms.

Delivery means when the Goods are collected by the Purchaser or delivered to a Delivery Address or as otherwise agreed in writing by the Parties.

Delivery Address means the address nominated by a Purchaser to which the Goods are to be delivered by Brooks.

Delivery Date means the date and time frame nominated by Brooks during which the Goods will be delivered to the Delivery Address.

Deposit means non-refundable deposit of 10% of the Purchase Price or such other amount as mutually agreed by the Parties.

Enquiry means an enquiry (whether in writing or otherwise) made by the Purchaser to Brooks for the purchase of goods sold by Brooks.

Goods means the goods specified in the Quote.

GST means the same as in the GST Law.

GST Law means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Parties means Brooks and the Purchaser, and Party means each of them.

PPS Law means the Personal Property Securities Act 2009 (Cth).

PPSR means the Personal Property Securities Register.

Purchase Order means a purchase order issued by the Purchaser to Brooks and which confirms acceptance by the Purchaser of the Quote.

Purchase Price means the total purchase price for the Goods as stated in a Quote.

Purchaser means the party purchasing the Goods and includes a Cash Purchaser or a Credit Purchaser.

Quote means a quote prepared by Brooks and provided to the Purchaser setting out a description of the goods specified in the Enquiry, their respective prices and any other terms and conditions of the sale as required by Brooks in its absolute discretion.

Security Interest has the meaning given to it under the PPS Law.

Tax Invoice means an invoice issued by Brooks in accordance with the GST Law setting out the Purchase Price.

2.2 Interpretation

In these terms and conditions, unless the context otherwise requires:

(a) the singular includes the plural and vice versa, and a gender includes other genders;

(b) other grammatical forms of a defined word or expression have corresponding meanings;

(c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, these terms and conditions, and a reference to these terms and conditions includes any schedules and annexures;

(d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;

(e) a reference to \$ is a reference to Australian dollars;

(f) a reference to time is to the time in Perth, Western Australia;

(g) a reference to party includes the party's executors, administrators, successors, assigns and substitutes;

(h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;

(i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re enactments or replacements of any of them;

(j) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;

(k) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) is for the benefit of and binds them jointly and severally;

(l) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these terms and conditions or any part of it;

(m) the words "include", "includes" and "including" are not words of limitation; and

(n) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

2.3 Headings

Headings are for ease of reference only and do not affect interpretation.

3 AMENDMENT TO TERMS AND CONDITIONS

(a) Brooks may amend these terms and conditions from time to time and will provide the Purchaser with replacement terms and conditions.

(b) The subsequent issue of a Purchase Order by the Purchaser is deemed as acceptance of these replacement terms and conditions.

4 ORDERING

(a) If the Purchaser wishes to purchase any goods sold by Brooks, the Purchaser must submit an Enquiry to Brooks.

(b) Upon receiving an Enquiry from the Purchaser, Brooks will prepare a Quote and provide it to the Purchaser.



(c) If the Purchaser accepts the Quote, the Purchaser must issue a Purchase Order to Brooks by no later than 30 days from the date of the Quote.

(d) The Purchase Order must specify amongst other things:

(i) the number of Goods which the Purchaser wishes to purchase; and

(ii) whether the Purchaser:

(A) requires the Goods to be delivered to it and if so, must specify the Delivery Address; or

(B) will collect the Goods from Brooks.

(e) The issue of a Purchase Order to Brooks is deemed to be acceptance of the Quote and upon such issue, the Purchaser must purchase the Goods in accordance with these terms and conditions and is not permitted to cancel the Purchase Order without the prior written consent of Brooks.

(f) If the Purchaser does not issue a Purchase Order to Brooks within 30 days from the date of the Quote, the Quote will expire at the end of the 30 days period and the Purchaser must submit a new Enquiry to Brooks.

(g) Upon receiving a Purchase Order from the Purchaser within the period stated in clause 3(c), Brooks will:

(i) source the Goods and prepare them for collection by or delivery to the Purchaser;

(ii) inform the Purchaser in writing of the expected date on which the Goods will be ready for collection or delivery (Expected Date); and

(iii) issue a Tax Invoice to the Purchaser.

5 PRICE

(a) All prices published or quoted by Brooks are exclusive of GST (unless otherwise notified in writing by Brooks to the Purchaser).

(b) The Purchaser acknowledges and agrees that GST is payable in addition to the Purchase Price.

(c) Unless otherwise specified by Brooks in the Quote, all prices quoted by Brooks are exclusive of freight costs, insurance costs, any duty and other charges in relation to the Goods and if applicable, the delivery of the Goods. The Purchaser must pay such duty, costs and charges upon demand by Brooks.

(d) If the Purchaser requires the Goods to be delivered by Brooks to the Delivery Address, Brooks will charge the Purchaser such fees and costs as are reasonably incurred by it in relation to such delivery. The Purchaser must pay such fees and costs prior to the Goods being delivered to it by Brooks.

(e) Brooks reserves the right to increase the prices stated in a Quote at any time:

(i) after 30 days from the date of the Quote if the Purchaser has not issued a Purchase Order within that period, without being required to give any prior notice to the Purchaser;

(ii) after a Quote is provided to the Purchaser but before a Purchase Order is issued by the Purchaser, by giving written notice of such increase (Increase Notice) to the Purchaser, in which case the Purchaser is allowed to withdraw the Purchase Order within 2 Business Days of the date of the Increase Notice;

(iii) after a Purchase Order is issued by the Purchaser, by giving an Increase Notice to the Purchaser, in which case the Purchaser is allowed to withdraw the Purchase Order within 2 Business Days of the date of the Increase Notice Purchaser; and/or

(iv) if such increase is required to reflect any increase in the cost incurred by Brooks as a result of factors beyond the control of Brooks including foreign exchange fluctuation, currency regulations or significant increases in the cost of manufacture, by giving written notice of such increase to the Purchaser.

(f) For the avoidance of doubt:

(i) the Purchaser may only withdraw a Purchase Order if Brooks issues an Increase Notice to the Purchaser in accordance with clauses 4(e)(ii) and 4(e)(iii); and

(ii) if the Purchaser does not withdraw a Purchase Order within 2 Business Days of the date of an Increase Notice, the Purchaser will be deemed to have accepted the revised prices specified in the Increase Notice.

6 PAYMENT

6.1 Deposit

(a) Unless otherwise agreed in writing by the Parties, the Purchaser must pay to Brooks the Deposit within 2 Business Days of issuing a Purchase Order to Brooks.

(b) The Purchaser acknowledges and agrees that the Deposit will not be refunded to the Purchaser in any circumstances.

6.2 Cash Purchaser

If the Cash Purchaser has opted:

(a) to collect the Goods from Brooks, the Purchaser must pay the Balance in cleared funds to Brooks upon collection of the Goods; or

(b) for the Goods to be delivered by Brooks to the Delivery Address, the Purchaser must pay the Balance in cleared funds to Brooks at least 2 Business Days prior to such delivery. The Purchaser must pay to Brooks any delivery fees at the same time as the Balance.

(c) The Purchaser acknowledges and agrees that it will not receive the Goods unless it has paid the Balance in full and in cleared funds prior to or at the time of collection.

6.3 Credit Purchaser

(a) The Purchaser acknowledges and agrees that Brooks may refuse in its absolute discretion:

(i) refuse to accept the Purchaser for trading on credit terms; or

(ii) at any time upon providing written notice, refuse to allow a Purchaser who was previously accepted for trading on credit terms to continue trading on credit terms.

Any Purchaser who is not accepted for trading on credit terms or whose acceptance for trading on credit terms is revoked will become a Cash Purchaser and the provisions in clause 5.2 will apply to such Purchaser.

(b) The purchaser acknowledges that trading terms are only valid for the purchase of spare parts. Purchases outside of spare parts will be treated as a cash sale, unless accepted on credit terms in writing by the Equipment General Manager, and Chief Financial Officer.

(c) If the Purchaser is approved by Brooks as a Credit Purchaser, the Purchaser must pay the Balance to Brooks without deduction or set-off by no later than 30 days from the date of the Tax Invoice or such other date as mutually agreed by the Parties.

(d) If the Purchaser does not make a payment by the date stated in clause 5.3(b):

(i) Brooks shall be entitled to charge interest on the outstanding amount at the rate of 2% per month accruing daily from the date of the Tax Invoice until the amount outstanding is paid in full;

(ii) the Purchaser will be liable to pay all costs and expenses incurred by Brooks in relation to recovering any monies owing to it by the Purchaser, and must pay such costs and expenses by no later than 7 days after receiving a demand from Brooks;

(iii) the Purchaser grants to Brooks a non-exclusive and irrevocable licence to, at any time and without notice, via its representatives, enter

the Purchaser's premises and to repossess the Goods or any part of them; and

(iv) the Purchaser indemnifies Brooks against any losses, costs or fees incurred from or arising in connection with recovery of any overdue payment.

7 EXPECTED DATE OF COLLECTION OR DELIVERY

(a) The Purchaser acknowledges and agrees that the Expected Date is an estimated time based on the order commitments of Brooks on the date of the Purchase Order.

(b) The final date of collection or delivery of the Goods is subject to confirmation by Brooks and can only be stated after Brooks is in receipt of the Deposit.

(c) Brooks will not be liable and will assume no responsibility for any loss (including Consequential Loss) or damage sustained by the Purchaser due to the inability of Brooks to meet a specified collection date or delivery date.

(d) Brooks will not be responsible for delays or changes in shipment schedules or failure to deliver caused by accident, fires, floods, earthquakes, labour disputes, governmental regulation, shortage of materials, embargoes, insurrection, riot, civil commotion, war, act of God, epidemic, pandemic or any cause or contingency beyond the control of Brooks. Accordingly, under no circumstances will any liability be accepted by Brooks for any delay in getting the Goods ready for collection or delivery.

8 COLLECTION

(a) This clause applies if the Purchaser has opted to collect the Goods from Brooks.

(b) When the Goods are ready, Brooks will notify the Purchaser in writing of the Collection Address and the Collection Date.

(c) The Purchaser must, at its own costs, arrange for the Goods to be collected from Brooks at the Collection Address on the Collection Date.

(d) If the Purchaser refuses or fails to collect the Goods within 7 days after the Collection Date, Brooks may charge a storage fee (determined by Brooks in its absolute discretion) to the Purchaser from the Collection Date until the date that the Purchaser collects the Goods from Brooks.

(e) Brooks will not be responsible for any loss or damage to the Goods if the Goods are not collected by the Purchaser on the Collection Date unless such loss or damage is caused by a negligent act or omission of Brooks.

9 DELIVERY

(a) This clause applies if the Purchaser has opted for the Goods to be delivered by Brooks to the Delivery Address.

(b) Upon receiving payment in full from the Purchaser, Brooks will notify the Purchaser in writing of the Delivery Date.

(c) The Purchaser must ensure that the Purchaser is able to receive delivery of the Goods from Brooks at the Delivery Address on the Delivery Date.

(d) If Brooks is unable to deliver the Goods at the Delivery Address on the Delivery Date due to the Purchaser not being able to receive delivery on that date, the Purchaser must pay to Brooks any fees and costs incurred by it to organise re-delivery of the Goods on a different date (Re-Delivery Date).

(e) Brooks will only organise re-delivery of the Goods once. If the Goods are unable to be delivered to the Delivery Address on the Re-Delivery Date, Brooks will not organise a further re-delivery, and the Purchaser will be solely responsible to liaise with Brooks to organise collection of the Goods. Brooks will not be responsible for any loss or damage to the Goods if the Goods are not collected by the Purchaser, and the Purchaser must pay all costs incurred by Brooks in relation to this clause.

(f) Brooks will not be responsible for any loss or damage to the Goods during the delivery process unless such loss or damage is caused by a negligent act or omission of Brooks.

10 RISK AND TITLE

(a) Title to the Goods will not pass to the Purchaser until payment of the Purchase Price has been received in full by Brooks, or the Goods have been collected or delivered, whichever is the last to occur.

(b) Prior to title to the Goods passing to the Purchaser, the Purchaser must:

- (i) keep the Goods in its possession and control;
- (ii) keep the Goods in good repair and condition (fair wear and tear excepted);
- (iii) keep the Goods stored separately and marked so that the Goods are clearly and easily identifiable as the property of Brooks and if requested, promptly inform Brooks of the location of the Goods; and
- (iv) not sell, assign or lease the Goods or any interest in them, or permit any Security Interest, charge, pledge, lien or other encumbrance to be created in relation to the Goods.

(c) Risk of theft or other loss or damage to the Goods passes to the Purchaser upon collection by the Purchaser or delivery to the Delivery Address.

(d) The Purchaser must, at all times from the Collection Date or the Delivery Date, take out and maintain all insurance policies for the full replacement value of the Goods, and must if requested by Brooks provide a copy of such insurance policies to Brooks.

11 CLAIMS, RETURNS AND ALLOWANCES

(a) It is the Purchaser's responsibility to contact Brooks within 10 Business Days of collection or delivery (Returns Claims Period) to notify Brooks in writing of any missing or damaged Goods (Returns Claim).

(b) The Returns Claim must contain:

- (i) the relevant Invoice number for the missing or damaged Goods;
- (ii) in relation to missing Goods, a detailed description of the missing Goods; and
- (iii) in relation to damaged Goods, a detailed description of the damage.

(c) Brooks may refuse a Returns Claim if it does not comply with the requirements of clause 10(b).

(d) If Brooks accepts a Returns Claim for damaged Goods, the Purchaser will be solely responsible for all costs incurred in returning the damaged Goods to Brooks and for re-delivery to the Purchaser. The Purchaser acknowledges and agrees that unless otherwise agreed by Brooks, such costs may include without limitation a restocking fee equivalent to 5% of the Purchase Price.

(e) Brooks will issue a credit note to the Purchaser if after inspecting the damaged Goods, it determines in its sole opinion that they were:

- (i) faulty, damaged, defective or otherwise in an unsatisfactory condition on supply; and
- (ii) not damaged after supply by the Purchaser's misuse or unreasonable use.

(f) Brooks is not taken to agree to issue a credit note to the Purchaser merely by accepting delivery of returned Goods.

(g) If the Purchaser does not make a Returns Claim within the Returns Claims Period, then the Purchaser will not be entitled to make a Returns Claim or receive a credit from Brooks at any time after the expiry of the Returns Claims Period.

(h) Unless otherwise stated in this clause, Brooks will not accept a return of Goods merely due to the Purchaser's change of mind or wrong selection of Goods.

12 WARRANTIES

(a) Brooks gives to the Purchaser the same warranties given by the respective manufacturers of the Goods, but does not make any other warranties whatsoever in relation to the Goods.

(b) All Goods are sold "as seen" unless otherwise agreed by Brooks in writing

prior to the Purchaser issuing a Purchase Order.

(c) Brooks gives no warranty as to the suitability of the Goods for the purpose of the Purchaser and the Purchaser confirms that it has satisfied itself through its own enquiries and investigations in this regard.

(d) The Purchaser must ensure that it complies with all requirements of the original manufacturer relating to the Goods, their transportation, storage, installation, and use.

13 STATUTORY RIGHTS

(a) Despite any clause in these terms and conditions and in accordance with section 102 of the Australian Consumer Law:

(i) The Purchaser:

(A) has the benefit of guarantees in relation to the Goods which cannot be excluded under the Australian Consumer Law;

(B) is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage; and

(C) is entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.

(ii) To the extent that the Goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, Brooks may limit its liability to repair or replacement of the Goods or the payment of the costs of repairing or replacing the Goods.

(b) In this clause, a major failure occurs when the Goods purchased:

(i) have a problem that would have stopped the Purchaser purchasing them if they had known about it;

(ii) have multiple minor problems that, when taken as a whole, would have stopped the Purchaser from buying them if they had known about it;

(iii) are significantly different from their description;

(iv) are substantially unfit for their common purpose and cannot be easily repaired within a reasonable time;

(v) do not operate as intended and cannot be easily repaired within a reasonable time; or

(vi) are unsafe.

14 LIMITATION OF LIABILITY

To the extent permitted by law and subject always to clause 12:

(a) Brooks does not accept responsibility and/or liability for any loss or damage, however caused, in relation to the quality, suitability or fitness for purpose of the Goods;

(b) Brooks will not be liable for any Consequential Loss or damage arising from the use or output of the Goods or from delays in repairs arising from or due to any cause whatsoever;

(c) Brooks does not accept responsibility for any loss (including Consequential Loss) arising out of the Purchaser's use of or reliance on any information contained on or access through Brooks Sale Equipment Sales' website;

(d) any condition or warranty which would otherwise be implied into these terms and conditions is hereby excluded; and

(e) the total cumulative liability of Brooks to the Purchaser for all liabilities, damages, losses, costs and expenses suffered or incurred under or in connection with these terms and conditions by the Purchaser, for all Claims in the aggregate, is limited to the amount paid by the Purchaser to Brooks for the Goods the subject of the Claim.

15 RELEASE

(a) The Purchaser releases Brooks from, and are liable for and indemnifies Brooks against, all liability, Claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Brooks and any environmental loss, cost, damage or expense) in respect of:

(i) personal injury;

(ii) damage to tangible property;

(iii) a Claim by a third party;

(iv) defects in the Goods,

and any other losses Brooks incur in respect of the Purchaser's use of the Goods or the Purchaser's breach of these terms and conditions.

(b) The Purchaser will indemnify Brooks for any loss Brooks may suffer (including actual and Consequential Loss of every kind and nature, known and unknown) as a result of the Purchaser's use of the Goods, the Purchaser's breach of these terms and conditions or any breach by the Purchaser of any law or regulation.

16 PERSONAL PROPERTY SECURITIES ACT 2009

(a) The Purchaser must do all things, including providing Brooks with all details and information necessary for Brooks to register a "financing statement" or a "financing change statement" under the PPS Law with respect to any security interest the subject of these terms and conditions.

(b) Brooks may refuse to sell or supply goods to the Purchaser until the Purchaser complies with clause 15(a).

(c) Notwithstanding any other provision of these terms and conditions, the Purchaser is not entitled to obtain possession of any Goods until after any security interest Brooks has in the Goods (as contemplated by these terms and conditions) is perfected by registration on the PPSR.

(d) If the Purchaser makes any payment to Brooks, Brooks may apply the payment to satisfy any obligation of the Purchaser to Brooks (whether the obligation is unsecured, secured by security interest, or secured by purchase money security interest). Brooks may:

(i) apply the payment in any order or manner that it (in its absolute discretion) thinks fit; and

(ii) amend or re-apply any application made.

(e) With respect to any security interest and collateral the subject of these terms and conditions:

(i) Sections 95, 121(4), 125, 130, 132(3)(d), 132(4), and 135 of the PPSA are excluded and contracted out of to the full extent permitted by section 115 of the PPSA; and

(ii) the Purchaser waives the right under PPSA section 157 to receive a notice in relation to registration events which relate to collateral that is described in the registration as commercial property.

17 TERMINATION

(a) Brooks may by written notice to the Purchaser terminate these terms and conditions immediately in any of the following circumstances:

(i) the Purchaser fails to perform any of its obligations under these terms and conditions or otherwise;

(ii) the Purchaser dies or becomes incapacitated, or ceases, or indicates that it is about to cease to trade;

(iii) anything happens that reasonably indicates in Brooks' opinion that there is a significant risk that the Purchaser is, or will become, unable to pay its debts as they fall due;

(iv) steps are taken to have a receiver, a receiver and manager, a provisional liquidator, a liquidator or an administrator appointed to the Purchaser or any of its assets.

(b) If Brooks terminates these terms and conditions pursuant to clause 16(a) and the Purchaser owes Brooks any money, that money becomes payable immediately to Brooks and bears interest in accordance with clause 5.3(c)(i).

(c) Termination of these terms and conditions do not affect any other rights or remedies available to Brooks at law or in equity.

18 DISPUTE RESOLUTION



18.1 No Proceedings

A Party must not start court proceedings about a dispute arising out of these terms and conditions unless it first complies with this clause, except:

- (a) where the Party seeks urgent injunctive relief; or
- (b) where the dispute relates to compliance with this clause.

18.2 Notice

A Party claiming a dispute has arisen must notify the other Party to the dispute giving details of the dispute.

18.3 Best efforts to resolve

Each Party must use its best endeavours to resolve the dispute within 28 days of receiving notice of the dispute or a longer period agreed by the Parties to the dispute.

18.4 Mediation

If, at the end of the 28 day period, the Parties have been unable to resolve the dispute, the matter shall be referred to an independent mediator agreed by the Parties (or failing agreement appointed by the Chairman of the Western Australian Chapter of the Institute of Arbitrators and Mediators). Each Party agrees to act in accordance with the directions of the mediator in respect of the mediation but the mediator's recommendations shall not be binding on the Parties.

19 NOTICES

19.1 Method of giving Notices

A notice, consent, approval or other communication (Notice) must be in writing, signed by or on behalf of the Party giving it, addressed to the Party to whom it is to be given and:

- (a) delivered to that Party's address;
- (b) sent by pre-paid mail to that Party's address; or
- (c) sent by email to that Party's email address.

19.2 Time of Receipt

A Notice given to a Party in accordance with this clause is given and received:

- (a) if delivered to a Party's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
- (b) if sent by pre-paid mail, on the third Business Day after posting; and
- (c) if sent by email to a Party's email address and no failure message is received, then on the day the email was sent if it was sent if a Business Day, otherwise on the next Business Day.

19.3 Addresses for Notices

For the purpose of these terms and conditions, the address or email address of a Party is the address or email address set out in the Application.

20 GENERAL

20.1 Amendments

- (a) Brooks reserves the right to amend these terms and conditions from time to time, and will notify the Purchaser in writing of such amendments.
- (b) Amendments will be effective immediately upon the Purchaser being notified by Brooks.

20.2 Governing Law

These terms and conditions are governed by the laws in force in Western Australia. The Purchaser agrees to submit to the exclusive jurisdiction of the courts of that jurisdiction.

20.3 Entire Agreement

These terms and conditions contain the full and complete understanding between the Parties and supersedes all prior agreements and understandings, whether written or oral, and cannot be modified except by a written instrument signed by both Parties.

20.4 Assignment

- (a) The Purchaser must not assign, delegate, sub-contract, mortgage, charge or otherwise transfer any or all of its rights and obligations under these terms and conditions without the prior written consent of Brooks, except that the Purchaser may assign and transfer all its rights and obligations under these terms and conditions to

any person to which it transfers all of its business, provided that the assignee undertakes in writing to Brooks to be bound by the obligations of the assignor under these terms and conditions.

- (b) Brooks may assign and transfer all its rights and obligations under these terms and conditions to any person without the prior consent of the Purchaser provided that the assignee undertakes in writing to Brooks to be bound by the obligations of the assignor under these terms and conditions.

20.5 Time

Time is of the essence of these terms and conditions.

20.6 Force Majeure

A Party shall not have any liability under or be deemed to be in breach of these terms and conditions for any delays or failures in performance of these terms and conditions (except an obligation to pay money) which result from circumstances beyond the reasonable control of that Party. The Party affected by such circumstances must promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.