

GENERAL TERMS & CONDITIONS OF SALE AND/OR SUPPLY

INCLUDING INSTALLATION, ERECTION AND/OR COMMISSIONING

1. General

All goods and services purchased from Breseight Australia Pty. Ltd. (Breseight) are sold subject to the following terms and conditions set forth here-further and comprise the whole contract between Breseight and the Purchaser and these terms and conditions shall prevail to the exclusion of all terms and conditions of the client whether express or implied.

2. Validity

Breseight Australia Pty. Ltd. (Breseight) quotations are valid for 30 days from date thereon. Prices, terms and delivery times are subject to review thereafter.

3. Warranty

3.1 Breseight Manufactured Items

If within a period of 12 months from the date of dispatch parts manufactured by Breseight are found by Breseight to be defective in material or workmanship. Breseight will, at its discretion repair the defective item or supply a new item.

3.2 Items Bought in by Breseight

Breseight will extend to the Purchaser all guarantees/warranties extended to Breseight by its suppliers.

3.3 The provisions of 2.1 and 2.2 above are in addition to any warranty enforceable by N.S.W. legislation.

3.4 Breseight does not accept any obligations beyond Statutory Provisions of N.S.W. and Australian Law and the provisions of 2.1 and 2.2 above unless agreed to by Breseight in writing.

4. Where a contract involves Breseight processing product which is supplied to Breseight by the Purchaser, the Purchaser accepts responsibility for verification that such a product conforms to contract requirements before dispatch to Breseight.

5.0 Prices

5.1 The price quoted herein are nett plus GST sales tax and/or State or Federal Duty if or other similar tax applicable to the Goods that applicable. Or any future sales, consumption, use or other similar tax applicable to the Goods that is added to the price quoted.

5.2 Prices are subject to labour conditions and cost of raw materials remaining unaltered from the date on quotation. If any rise or fall in these items shall take place prior to and/or during manufacture the price quoted may be varied accordingly. Any variation in conditions of employment shall be related to an equivalent wage variation due to such alteration and recovered in a similar manner to a wage variation.

6 Orders

6.1 Any orders placed by the purchaser is deemed to be an order incorporating these terms and conditions of sale notwithstanding any inconsistencies which may be introduced in the clients order of acceptance unless expressly agreed to in writing by Breseight.

6.2 Orders entered upon our books cannot be varied, delayed, suspended, terminated or cancelled except with our consent in writing and upon terms that will indemnify us against loss.

7 Delivery

7.1 Our best efforts are put forth to complete the work within the time estimated but failure to make delivery as estimated will not be considered cause for cancellation and/or claims arising from such delay.

7.2 Breseight is not responsible for loss or damage of goods in transit except when the goods are carried in the Breseight's own vehicles or by contractors retained by Breseight to deliver such goods.

7.3 No claims will be recognized if lodged after 7 working days from delivery/dispatch date.

8 Payment

8.1 The purchaser shall be invoiced for the goods or the services as stated in the seller's quotation or tender or where not so stated from time to time as the seller in its sole discretion considers appropriate.

8.2 All invoices shall be due and payable within 30 days after the date of invoice.

- 8.3 The purchaser shall pay interest to the seller on the moneys outstanding from the date 30 days after the date of the invoice (“ the interest date”) calculated at monthly rests at the rate of the maximum per annum commercial overdraft rate determined by the Commonwealth Bank of Australia on the interest date plus 3%. Payments received by the seller shall be credited first against any interest accrued.
- 8.4 Property in the goods shall not pass to the purchaser until the full contract price has been paid.

Breseights Intellectual Property

9. It is a condition of sale and/or supply of an article or drawing or design or specification or prototype that the intellectual property rights, copyrights, patent rights and design rights contained in the Article or in the article to which this design, drawing prototype or product relates remain the property of BRESEIGHT, and no transfer of any such rights is included in the price paid or agreed to be paid whether or not such price includes a figure for designing or producing the article. All persons are warned that any unauthorised manufacture, use or sale of such item may constitute an infringement of such rights, a breach of contract and gives rise to an action for damages.
10. The article or drawing or specification or design or prototype has or will be made available in a confidential capacity for the sole purpose of quoting for manufacture or supply. Any unauthorised publication or disclosure or manufacture of the article or the design is an actionable breach of such confident.
11. Breseight may issue written licence(s) to others to use Breseight’s intellectual property and charge fees for such licenced use.

LIMITATION OF LIABILITY

12. (a) Subject only to clause 12 (d) and notwithstanding any other provision of the contract if any liability on the part of the seller arises to the purchaser (whether in contract, tort or otherwise) for any loss, damage, harm or injury arising out of or in any way connected with the provision of or failure in provision of or purported provision of the goods or the services as a result of the seller's liability for all such loss, damage, harm or injury and for which the seller is or may be liable in all and any circumstances shall be limited to the payment by the seller of a sum not exceeding in the aggregate \$1,000.00 or the contract price, whichever is the lesser.
- (b) Subject only to clause (d) and notwithstanding any other provision of the contract the seller shall not be liable to the purchaser for any special consequential, direct or indirect loss damage, harm or injury suffered by the purchaser or any other person arising out of or in any way connected with the provision of or failure in provision of or purported provision of the good or the services including without limitation loss of market, loss of profit or loss of contract, and the purchaser shall indemnify the seller in respect of any claims, demands, damages' proceedings, costs charges and other expenses caused by or in any way connected with such loss, damage, harm or injury.
- (c) Except as otherwise expressly provded in these conditions and subject to clause (d), the seller excludes all statements representations, warranties, conditions, promises, undertakings covenants and other provisions, express or implied (and whether implied by law including Act or Parliament or otherwise) relating to the quotation or tender, the goods (whether as to their quality, fitness for any purpose, correspondence with any description or sample or otherwise) or the services of their delivery or supply, being provisions that might otherwise form part of these conditions or any contract or be collateral to or form part of any agreement that is collateral to these conditions or any contract.
- (d) These conditions do not, and no provision of these conditions purports to, exclude, restrict or modify or have the effect of excluding, restricting or modifying;
- (i) the application in relation the supply of the goods or services of any provision of the Trade Practices Act 1974
- (ii) the exercise of a right conferred by such provision; or
- (iii) subject to clause 2.1, 2.2 any liability of the seller for breach of a condition or warranty implied by such provision
13. Any variation in these conditions will be subject to mutual agreement in writing.

ADDITIONAL CONDITIONS APPLICABLE TO CONTRACTS FOR INSTALLATION, ERECTION OR COMMISSIONING OF PLANT

1. Access to the Site

- a) The purchaser shall permit the seller such access to the site as the seller requires to perform its work under the contract and shall take all reasonable measures to avoid interference with the work of the seller including without limitation co-ordinating the seller's work with that of others on the site.
- b) The purchaser shall provide without cost to the seller every facility for the performance of the seller's work under the contract including without limitation providing proper foundations to receive the goods the subject of the contract, in these additional conditions called "the plant", adequate cranes, lifting tackle and scaffolding, suitable protection for the plant from the time of delivery until the time of taking over and proper fencing, lighting and guarding of the plant until the time of taking over.
- c) The purchaser shall provide without cost to the seller electricity, water and other supplies necessary for the installation, erection or commissioning of the plant.

2. Tests on Site

- a) Where the contract provides for tests on site, the purchaser shall provide free of charge to the seller such labour, materials, electricity, water, apparatus, instruments or other items as may be required to carry out such tests.
- b) Site tests shall be carried out within 1 month after completion of installation or erection.
- c) A Taking Over Certificate shall be issued by the purchaser when satisfactory tests have been completed in accordance with the provisions.

3. Payment

- a) The purchaser shall be invoiced for the plant and installation, erection or commissioning of the plant as stated in the seller's quotation or tender or where not so stated from time to time as the seller in its sole discretion considers appropriate.

4. Time of Take Over

- a) The plant shall be deemed to have been taken over by the purchaser when, except for minor omissions or defects, installation or erection or commissioning, as the case may be, has been completed or when the plant has been put into commercial use, whichever is the earlier.
- b) Notwithstanding any other provision of these conditions the plant shall be deemed to have been taken over at the expiry of 2 calendar months after the seller has given the purchaser written notice that installation or erection is complete unless tests on site in the meantime demonstrate that the plant does not comply with the provisions of the contract.
- c) The seller shall remedy the minor omissions and defects referred to in clause 26(a) and 26(b) as soon as practicable after such minor omissions or defects have been notified in writing by the purchaser to the seller otherwise than in relation to minor omissions or defects.

5. Extra Cost

- a) Any increase in the cost of installing, erecting or commissioning the plant caused by any act, matter or thing beyond the control of the seller shall be borne by the purchaser.