

Build Run Repair - Terms and Conditions for Supply of Services

1 INCORPORATION:

These terms and conditions of business apply to every Proposal by BRR. Any terms or conditions incorporated into any purchase order or other document furnished by the Customer in connection with its request to purchase Services shall not bind BRR, unless otherwise expressly agreed in writing by BRR. Purchase Orders shall not become binding on BRR until BRR has communicated its acceptance in writing.

2 ENGAGEMENT & SCOPE OF SERVICES

The Customer engages BRR to provide the Services in accordance with this Agreement. BRR will be entitled to an extension of time for the performance of the Services where it is delayed by an event beyond its reasonable control. Where BRR informs the Customer that it requires further information to enable it to satisfactorily perform the Services, the Customer must promptly provide such further information to BRR. BRR may engage a third party to assist it in providing the Services. The Customer may by notice in writing, request that BRR change the scope of the Services. Any such change must be within the general scope of the Services. BRR will give the Customer an estimate of any additional fees and/or Reimbursable Expenses the Customer will be liable to pay as a result of the change to the scope of the Services.

3 FEES AND PAYMENT:

The Fees for the Services shall be set out in the Proposal and, unless otherwise agreed, shall be payable in Australian dollars. Terms of payment are 7 days of invoice unless an alternate arrangement has been agreed in writing with the Customer. The Fees do not include GST or any government taxes, charges or duties applicable to the supply, which shall be paid by the Customer. The Fees do not include Reimbursable Expenses which the Customer agrees to pay. BRR reserves the right to charge interest at the rate of 10% per annum calculated daily on any overdue amounts.

4 SCOPE AND WARRANTY:

BRR warrants to the Customer that it will provide the Services materially in accordance with the Proposal, and exercise the degree of skill, care and diligence normally exercised by professional consultants performing services of a similar nature. The warranty set out above shall not apply, and BRR shall have no liability, in respect of any defects or claims which arise from or in connection with: (i) any failure by the Customer to provide BRR accurate, relevant and material information reasonably required to carry out the Services; or (ii) reliance by the Customer on any specifications, descriptions, weights, dimensions or performance figures set out in the Proposal or Contract Documents which are approximations. In the event BRR engages a third party to assist perform the Services, in respect of those Services that are performed by the third party, BRR's warranty will in all cases be further limited by the warranty provided by such a third party.

5 LIMITATION OF LIABILITY:

The Customer acknowledges that it has not relied on and BRR has not provided to the Customer any representation or warranty relating to the Services other than the warranties expressly set out in the Agreement. Except for the warranties in the Agreement, all warranties, representations or conditions (express or implied) in relation to the Services are excluded to the full extent permitted by law. If the Services fail to comply with the Agreement BRR shall, at its option and at its cost, re-supply the non-complying Services or refund the invoiced Price of such Services (where this has already been paid by the Customer to BRR), provided that the Customer has provided BRR written notice of the non-compliance promptly (and no later than 30 days after delivery of the Services). These remedies are the Customer's entire remedies in respect of any failure by BRR to comply with the terms of the Agreement. In no event will BRR be liable to Customer (or any of its employees, agents, contractors or customers) for any indirect loss or any loss of production, revenue, profit, contract, reputation or any other economic or consequential loss of the Customer arising out of or in connection with the performance or nonperformance of the Services (whether under the law of contract, tort or otherwise).

The Customer indemnifies BRR from and against all claims, costs, demands, expenses, losses or damages suffered or incurred by BRR arising out of or in connection with: (i) any claims by any person that has contracted with the Customer and for which the Services are being procured by the Customer; or (ii) any claims arising out of or in connection with the Customer using or permitting the use of the Contract Documents in a manner not authorized by BRR.

6 CONSTRUCTION PROJECTS

Where the Services are provided in connection with a project involving the construction (including refurbishment) of works ("construction work") the Customer must: (a) require any construction contractor it engages to include BRR as an additional insured on its contractors all risk and public liability insurance policies in respect of the construction work; and (b) if any legislative requirements relating to occupational health and safety require the appointment of a person to be responsible for the overall management of safety at the site ("principal contractor") for the construction work, appoint or procure the appointment of the person responsible for the construction work as the "principal contractor" and notify BRR of that appointment.

7 INTELLECTUAL PROPERTY RIGHTS & USE OF CONTRACT DOCUMENTS:

(a) Unless the Customer and BRR agree otherwise in writing, the Customer agrees that all Intellectual Property in the Services, Proposal and Contract Documents and any other material produced or developed by or on behalf of BRR in relation to the supply of the Services, shall be the sole and absolute property of BRR and/or its licensors.

(b) The Customer assigns all such Intellectual Property to BRR and agrees to execute any document required to evidence such assignment or to perfect BRR's ownership of such Intellectual Property.

(c) If BRR does provide any Software to the Customer in connection with the supply of the Services, BRR grants to the Customer a non-exclusive, perpetual (unless terminated in accordance with clause 9) licence to use the Software in connection with the Services. This licence does not permit the Customer to sub-licence or rent to Software or use the Software to provide services to any third party without the written approval of BRR.

(d) The Customer warrants that any design or instruction furnished to BRR shall not be such as will cause BRR to infringe any third party rights relating to Intellectual Property, and the Customer agrees to indemnify BRR in respect of all such claims of infringement.

(e) BRR is not required to provide the Customer with an editable version of any of the Contract Documents, The Customer must not without the prior written approval of BRR alter or authorise or permit the alteration of any editable version of the Contract Documents. The Customer has a license to use the Contract Documents for the purposes for which those documents are prepared and provided to the Customer. The Customer must not use the Contract Documents for any purposes other than that for which they were originally prepared.

8 CANCELLATION:

BRR may agree to a Customer's request to cancel any order for the Services in its absolute discretion. In the event of cancellation, the Customer must reimburse BRR for any Fees or Reimbursable Expenses incurred or committed by BRR in preparation for and in delivery of the Services, which shall include without limitation an amount equal to the net profit relating to the supply of the Services to the Customer.

9 DEFAULT AND TERMINATION:

If the Customer:

(a) fails to make a payment due to BRR, within 7 days of notice from BRR specifying such payment is due;

(b) is in breach of any other obligation set out in this Agreement, provided that BRR has provided a notice to the Customer setting out the circumstances of the breach and at least 14 days have elapsed from the date of such notice; or

(c) suffers an Insolvency Event,

then BRR without prejudice to any other remedy that may be available to it, has the immediate right to do one or more of the following:

(d) demand that the Customer immediately account to BRR for any money or property owed to BRR under this Agreement or on any other account (and the Customer shall comply with such demand);

(e) withhold further delivery of Services; and

(f) terminate the Agreement and recover from the Customer, at a minimum, reasonable compensation for materials purchased or ordered, and labour expended, in complying with the Agreement.

10 FORCE MAJEURE:

Neither party is liable for any loss, liability or damage incurred by the other party as a result of any delay or failure to observe any obligation under the Agreement (other than an obligation to pay money) as a result of any circumstance beyond the party's control, including but not limited to any strike, lock-out, labour dispute, act of God, fire, flood, accidental or malicious damage, breakdown in machinery or delay or failure of a supplier to supply. The party affected must notify the other party as soon as possible of such circumstance. During the continuance of such circumstances the obligations of the party affected, to the extent that they are affected by the force majeure event, are suspended and resume as soon as practical after the circumstances have ceased to have effect.

11 GENERAL:

(a) The Agreement represents the entire agreement between BRR and the Customer relating to the supply of Services and any modification or variation to the Agreement must be agreed in writing by BRR.

(b) The Customer may not assign any right or obligation under the Agreement without the written consent of BRR.

(c) The Customer may not exercise any right of withholding, deduction or set off.

(d) The Customer agrees that BRR may apply payments to Amounts Outstanding as it sees fit, notwithstanding any contrary appropriation by the Customer.

(e) If any provision of the Agreement is unenforceable or void either in whole or in part for any reason then that provision (or part) is deemed to be deleted without in any way affecting the validity or enforceability of any other provision.

(f) Subject to paragraph (g) below, this Agreement shall be governed by the law in force in Victoria, Australia and the parties submit to the non-exclusive jurisdiction of the courts of Victoria in relation to any dispute arising under the Agreement.

(g) Where the BRR supplier identified in the Proposal is Build Run Repair Pte Ltd (a registered Singapore company), then any dispute arising out of this Agreement is governed by the laws of Singapore. In case of any dispute which cannot be settled under clause 12, the parties agree that either party may submit the dispute to arbitration for final and binding resolution. The arbitration shall be conducted in accordance with the Arbitration Rules of the Singapore International Arbitration Centre for the time being in force and (i) the language of arbitration will be English; (ii) the arbitration shall be conducted by a single arbitrator to be appointed by the Chairman of the SIAC; and (iii) the place of the arbitration shall be Singapore.

(h) The Customer will not divulge to any person the forms of the Agreement or any information provided by BRR in relation to the Agreement without the prior written consent of BRR, except as required by law or for the purposes of obtaining professional, legal, financial or taxation advice.

(i) If and to the extent that the supply of Services to the Customer under this Agreement is a taxable supply within the meaning of the GST Law, the Fees for the Services will be increased to include GST payable by the Customer in respect of the supply. BRR and the Customer agree that they will be registered persons within the meaning of the GST Law, and that BRR shall provide tax invoices to the Customer in the form prescribed by the GST Law.

12 DISPUTE RESOLUTION:

BRR and the Customer agree that any dispute arising under the Agreement shall be determined in accordance with this clause. Prior to a party commencing any legal proceedings or arbitration in respect of any matter arising under the Agreement, the party must issue a written notice to the other party outlining the circumstances of the dispute. Following issue of a notice by a party, as soon as reasonably practicable, but in any event no longer than 14 days from the date of the notice, appropriately authorised representatives of each of the parties must meet to discuss the matters set out in the notice provided under this clause. In the event that the parties cannot resolve the dispute within 14 days of the discussions between the authorised representatives, either party may commence litigation (or where clause 11(g) applies, arbitration) in respect of the matters in dispute, provided it has given notice to the other party of its intention to do so.

13 DEFINITIONS:

"*Agreement*" means the Proposal and these terms and conditions.

"*BRR*" means Build Run Repair (Australia) Pty Ltd (ACN 155 555 052) or such other BRR group entity identified in the Proposal.

"*Customer*" means the person (including its successors and permitted assigns) acquiring the Services from BRR.

"*Contract Documents*" means any drawings, designs, reports, electronic records and other documents and concepts provided by BRR to the Customer as part of or in connection with the Services.

"*GST*" means has the meaning in the GST Law.

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

"*Insolvency Event*" means the occurrence of any event which results in BRR holding the reasonable belief that the Customer has become unable to pay its debts as and when they fall due, including the Customer proposing any arrangements with its creditors, the Customer being placed in administration, a resolution is passed or proposed or a petition is presented or application filed or an order is made for the winding up or liquidation of the Customer or a receiver or controller is appointed over any property of the Customer.

"*Intellectual Property*" means any invention, discovery, patent, trade mark, copyright, design, trade secret or know-how, including "works" as that term is defined in section 10(1) of the Copyright Act 1968 (Cth), whether or not registered.

"*Fees*" means the fees relating to the Services, set out in the Proposal.

"*Proposal*" means commercial proposal documents delivered to Customer by BRR outlining scope of services and fees.

"*Purchase Order*" means the purchase order or similar document placed by the Customer with BRR which evidences the Customer's request for the Services.

"*Reimbursable Expenses*" means the cost of air travel and accommodation, equipment use/hire, communications, printing, photocopying, third party fees and other out of pocket expenses incurred by BRR in the course of performing the Services, plus a 15% administration fee.

"*Services*" means the services specified in the Proposal.

"*Software*" means all software specified in the Proposal that will be provided to the Customer and any software developed by BRR or provided to the Customer for use in connection with the Agreement.