

1. APPLICATION

These Standard Terms apply to any offer, or acceptance of any offer, by BayWa to supply Goods to the Customer. To the extent of any inconsistency between a Quotation, Purchase Order, or Order Confirmation, and these Standard Terms, these Standard Terms will prevail.

2. AGREEMENT: QUOTATION

2.1 A Quotation issued by BayWa to the Customer is an offer to supply Goods to the Customer on the terms of the Quotation and these Standard Terms. Upon acceptance by the Customer, the Quotation and the Standard Terms will together constitute a binding contract between BayWa and the Customer.

2.2 The Customer may accept a Quotation issued by BayWa by:

2.2.1 signing and returning the Quotation to BayWa;

2.2.2 confirming acceptance by separate letter, email, text message, or telephone call;

2.2.3 issuing a purchase order in response to the Quotation;

2.2.4 otherwise confirming in writing that BayWa should proceed to supply the Goods; or

2.2.5 collecting or accepting delivery of the Goods.

2.3 BayWa may withdraw the Quotation at any time before the Customer accepts it.

2.4 A Quotation expires and will no longer be open for acceptance on the date specified as the expiry date in the Quotation. If no expiry date is specified, the Quotation expires 30 days after the date of issue.

2.5 Unless expressly agreed in writing by BayWa, any terms or conditions purported to be attached to, or included with, the Customer's acceptance of the Quotation will be of no force or effect and will not be binding upon BayWa. An acceptance of the Quotation by the Customer will be deemed to be an acceptance of the Quotation and these Standard Terms in full and without amendment or addition and will supersede any terms or conditions proposed by the Customer.

3. AGREEMENT: PURCHASE ORDER

3.1 Where no Quotation has been issued by BayWa, the Customer may offer to purchase Goods from BayWa by issuing a purchase order (**Purchase Order**) to BayWa in writing. The Purchase Order may, without limitation, be given by email, text message or other written communication.

3.2 An order placed on BayWa's website will be a Purchase Order for the purposes of these Standard Terms.

3.3 Customers are requested to include with each Purchase Order the following information:

3.3.1 full legal name of the person placing the Purchase Order;

3.3.2 contact details of person placing the Purchase Order (contact person, email, postal address, and telephone number);

3.3.3 delivery address or confirmation that the Customer will collect the Goods;

3.3.4 desired delivery or collection date or period; and

3.3.5 description (or product code by reference to BayWa's current price list) and quantity of Goods ordered, and any additional Services requested to be performed by BayWa,

however, failure to include the above information in the Purchase Order will not prevent BayWa from accepting a Purchase Order and will not prevent the formation of a binding contract between BayWa and the Customer.

3.4 If the Customer has purchased Goods from BayWa on a previous occasion, and the Purchase Order does not include the details stated at clause 3.3, the Purchase Order is deemed to include the same details as the previous agreement between the Customer and BayWa to purchase Goods to the extent of the omission.

3.5 Any Purchase Order issued by the Customer is deemed to be an offer by the Customer to purchase the relevant Goods on the terms of the Purchase Order and these Standard Terms.

3.6 BayWa may accept the Purchase Order by issuing a written order confirmation to the Customer (**Order Confirmation**) and a

binding contract will thereafter be formed between BayWa and the Customer on the terms of the Purchase Order, Order Confirmation, and these Standard Terms. To the extent of any inconsistency, the Order Confirmation and these Standard Terms will prevail.

3.7 If BayWa does not issue an Order Confirmation, the Purchase Order is deemed accepted by BayWa upon BayWa delivering or permitting collection of the Goods and a binding contract will thereafter be formed between BayWa and the Customer on the terms of the Purchase Order and these Standard Terms. To the extent of any inconsistency, these Standard Terms will prevail.

3.8 The Customer may withdraw the Purchase Order within 5 Business Days after the date of issue, or before the Purchase Order is accepted by BayWa, whichever is earlier.

3.9 Unless expressly agreed in writing by BayWa, any terms or conditions purported to be attached to, or included with, the Customer's Purchase Order (other than those listed at clause 3.3 above) will be of no force or effect and will not be binding upon BayWa. By issuing a Purchase Order to BayWa, the Customer will be deemed to have accepted and incorporated into its Purchase Order these Standard Terms in full and without amendment or addition and these Standard Terms will supersede any terms or conditions proposed by the Customer.

4. PRICE

4.1 Notwithstanding anything to the contrary stated in a Purchase Order, the unit price of the Goods will be:

4.1.1 subject to clauses 4.2 and 4.3, if the Quotation states a unit price, as stated in the Quotation; or

4.1.2 if the Quotation does not state a unit price, or there is no Quotation, the unit price of the Goods stated in BayWa's current standard price list as at the date of dispatch or collection. BayWa's current standard price list is available to the Customer upon request to BayWa.

4.2 Unit prices are revised by BayWa from time to time. If the date of delivery or collection of the Goods is more than 4 weeks after the date of the Quotation, the unit price of the Goods will be the unit price stated in the Quotation (if applicable) or the unit price stated in BayWa's current price list as at the date of dispatch or

collection, whichever is greater. The current unit price of the Goods is available on request from BayWa.

4.3 Without limiting clause 4.2, if, at any time prior to delivery, there is a material increase in the cost to BayWa of supplying the Goods (including due to a change in any applicable law or a shortage of Goods, equipment or materials), or BayWa holds insufficient stock of the Goods to fill the order on the date for delivery or collection, which is beyond BayWa's reasonable control, BayWa may notify the Customer of a reasonable increase to the unit price of the relevant Goods, or a reasonable change to the type, nature or quantity of Goods to be supplied. If the Customer does not agree to the change, the Customer may, within 2 Business Days, terminate the Agreement by written notice to BayWa. If the Customer does not terminate the Agreement within this time, the price notified by BayWa will be the new unit price of the relevant Goods, and/or the Goods will be substituted for the type, nature or quantity of Goods proposed by BayWa in its notice.

5. OTHER FEES AND CHARGES

In addition to the unit price applying to each item of the Goods, the Customer must pay on demand by BayWa:

5.1.1 the cost of delivery of the Goods (including delivery appointments, lift gates, residential deliveries, re-consignment, blind shipments, and storage fees);

5.1.2 demurrage and/or waiting time costs or charges for delays in delivery caused or contributed to by the Customer;

5.1.3 costs arising from a change requested by the Customer to an agreed delivery schedule, including double handling and storage;

5.1.4 storage charges where the Goods are not collected immediately upon being made available for collection at BayWa's premises, or where the Customer has requested that delivery or collection be delayed, or where BayWa cannot deliver the Goods at the delivery address on the delivery date or during the delivery period for reasons beyond BayWa's reasonable control;

5.1.5 fees and charges associated with any Services provided in connection with the Goods,

- including installation, commissioning, testing or inspection of the Goods;
- 5.1.6 any liability incurred by BayWa for taxes, fees, charges, or duties in connection with the supply of the Goods or Services, including any import or export duties; and
- 5.1.7 GST.
- The Customer may request from BayWa a written estimate of the fees and charges applying in addition to the unit price of the Goods. Any such estimate is an estimate only and is not a fixed or capped fee.
- 6. DELIVERY AND COLLECTION**
- 6.1 The Agreement may provide that BayWa will deliver, or the Customer will collect, the Goods. If the Agreement is silent, the Customer must collect the Goods from BayWa (unless otherwise notified by BayWa).
- 6.2 If BayWa delivers the Goods:
- 6.2.1 BayWa will deliver the Goods to the delivery address, or as close to the delivery address as, in the opinion of BayWa or its transport subcontractor, it is safe and prudent to do so, by any means in its absolute discretion;
- 6.2.2 BayWa may deliver the Goods in one shipment or by instalments;
- 6.2.3 BayWa will deliver the Goods during BayWa's ordinary business hours only;
- 6.2.4 delivery will be effected when BayWa has brought the Goods to the location stated in clause 6.2.1 and made the Goods available to be unloaded by the Customer; and
- 6.2.5 the Customer must unload the Goods at the delivery address at its own cost and risk. The Customer must be ready, willing, and able to unload the Goods at the delivery address at the time of delivery.
- 6.3 If the Customer collects the Goods from BayWa's premises:
- 6.3.1 the Customer must collect the Goods as soon as reasonably practicable and within the time stated in the Order Confirmation (if applicable) after being notified by
- 6.3.2 BayWa that the Goods are ready for collection;
- 6.3.2 the Customer must collect the Goods from the location notified by BayWa during BayWa's ordinary business hours;
- 6.3.3 collection is effected when the Goods are set down in or on the Customer's or its representative's vehicle, or upon the Customer or its representative otherwise taking possession of the Goods; and
- 6.3.4 if the Customer fails to collect the Goods within the time stated in clause 6.3.1, BayWa may terminate the Agreement and reallocate the Goods to another customer and a re-stocking fee will be payable by the Customer in accordance with clause 17.
- 6.4 BayWa is not liable for and the Customer irrevocably releases and discharges BayWa from any claim in connection with any delay in delivering the Goods or in the Goods being available for collection. Any delivery or collection period, date or time provided by BayWa (in a Quotation or otherwise) or agreed by the Parties is an estimate only.
- 7. RISK AND TITLE**
- 7.1 Risk in the Goods passes to the Customer:
- 7.1.1 if the Goods are delivered by BayWa, at the point that the Goods leave BayWa's premises for the purposes of delivery; or
- 7.1.2 if the Goods are collected by the Customer, at the point that the Goods are set down in or on the Customer's or its representative's vehicle, or upon the Customer or its representative otherwise taking possession of the Goods.
- 7.2 Subject to clauses 14 and 15, BayWa has no obligation or liability in respect of any claim, loss or damage caused to or by the Goods on or after the point at which risk in the Goods has passed to the Customer.
- 7.3 Legal and beneficial ownership to the Goods is retained by BayWa until BayWa has received payment in full for the relevant Goods, any Services performed in connection with the relevant Goods, and all other fees, charges and disbursements associated with the relevant Goods.

8. SERVICES

8.1 The Agreement may provide that BayWa will provide certain Services in connection with the Goods.

8.2 The price of the Services will be:

8.2.1 if the Quotation states a price, as stated in the Quotation; or

8.2.2 if the Quotation does not state a price, or there is no Quotation, BayWa's ordinary rates and prices for the type of Service current as at the date of performance of the Service. The Customer may request from BayWa the applicable rates and prices and a written estimate of the price applying to the Services. Any such estimate is an estimate only and is not a fixed or capped fee.

8.3 If the Services are to be performed at the Customer's premises or site, or the site of any third-party principal of the Customer (**Site**), the Customer must, at its cost and to BayWa's satisfaction:

8.3.1 provide BayWa's personnel with Site-specific induction;

8.3.2 provide a safe and secure working environment for BayWa's personnel, provide appropriate safety equipment, and ensure that appropriate workplace health and safety systems, procedures, and policies are in place;

8.3.3 comply, and ensure its personnel, representatives and the principal comply, with all applicable laws concerning occupational health, safety, and the environment; and

8.3.4 obtain an appropriate public liability insurance policy and any other insurance policy reasonably directed by BayWa and give BayWa certificates of currency in respect of the same,

and if, in BayWa's sole discretion, clause 8.3 has not been complied with, BayWa may remove its personnel from the Site (at the Customer's cost) and BayWa will be released from any further obligation to perform the Services. The Customer indemnifies BayWa from any loss, damage or claim in connection with a breach of this clause 8.3 by the Customer.

9. PAYMENT (NO CREDIT TERMS)

If BayWa has not agreed to extend credit to the Customer:

9.1.1 BayWa will issue an invoice for the Goods and Services, and any other applicable fees and charges, promptly after the Agreement is formed;

9.1.2 the Customer must pay BayWa's invoice in full within the time stated in the Agreement after issue, or, if the Agreement is silent, within 30 days; and

9.1.3 payment for the Goods and Services must be received in full by BayWa before BayWa will deliver, or the Customer will be entitled to collect, the Goods, or BayWa will perform any of the Services.

9.2 BayWa may subsequently issue invoices to the Customer for any additional fees and charges accruing and such invoices must be paid in full within the time stated in the Agreement after issue, or, if the Agreement is silent, within 30 days.

10. PAYMENT (CREDIT TERMS)

If BayWa has agreed in writing to extend credit to the Customer ("**Credit Terms**"):

10.1.1 BayWa will issue invoices at the frequency stated in the Quotation or Purchase Order or Credit Terms, or, if silent, from time to time in BayWa's discretion, for Goods and Services as they are delivered together with any other applicable fees and charges; and

10.1.2 the Customer must pay BayWa's invoice in full within the time stated in the Quotation, Credit Terms, Order Confirmation, or as otherwise agreed in writing between the Customer and BayWa, or, if silent, within 30 days.

11. CREDIT TERMS

11.1 BayWa may withdraw Credit Terms extended to the Customer at any time in its sole discretion by written notice. If Credit Terms are withdrawn, BayWa may issue an invoice in respect of any Goods or Services which have been delivered or collected, plus any other applicable fees and charges, which will be immediately due and payable by the Customer.

- 11.2 The Customer must, if requested by BayWa, deliver to BayWa within 2 Business Days a valid statutory declaration by the Customer (or a director of the Customer, if the Customer is a corporation) declaring that the Customer is solvent and able to pay its debts as they fall due, together with such other information and documents as BayWa may reasonably request to confirm the Customer's solvency. The Customer acknowledges that failure to comply with this sub-clause may result in BayWa exercising its right under clause 11.1.
- 11.3 Credit Terms will automatically expire after 12 months, unless extended in writing by BayWa in its sole discretion. Any outstanding credit extended to the Customer will become due and payable immediately upon such expiry.
- 12. PAYMENT (GENERAL)**
- 12.1 If delivery of the Goods is effected by way of part delivery or delivery by instalments, BayWa may invoice the Customer pro-rata in respect of the Goods delivered.
- 12.2 If any amount of BayWa's invoice remains unpaid after the date on which it should have been paid, interest at 8% per annum, compounded monthly, is payable on the money from the day after it should have been paid up to and including the date on which the money is paid. All payments made by the Customer will be first applied to the accrued interest.
- 13. PPSA**
- 13.1 If the Customer takes possession of any Goods prior to legal and beneficial ownership in those Goods passing to the Customer in accordance with clause 7.3, the Customer holds those Goods as a bailee of BayWa.
- 13.2 As security for the punctual payment of all amounts owed by the Customer to BayWa in connection with the Agreement, the Customer grants to BayWa:
- 13.2.1 a security interest in the Goods;
- 13.2.2 a security interest over all of the present and future real property of the Customer in respect of which the Customer can be a grantor of a security interest under the PPSA, whether or not the Customer has title to the property, including PPSA retention of title property; and
- 13.2.3 a fixed charge over all of the present and future real property of the Customer in respect of which
- the Customer cannot be a grantor of a security interest under the PPSA.
- 13.3 BayWa may, at any time in its sole discretion and at the Customer's expense, take all steps to:
- 13.3.1 perfect, protect, record, register, amend or remove the registration of, BayWa's security interests;
- 13.3.2 better secure BayWa's position in respect of the relevant personal property under the PPSA; and
- 13.3.3 lodge caveats over the Customer's property or take any other action to secure and enforce its security interests,
- and the Customer must do all things necessary to assist BayWa to take those actions.
- 13.4 The Customer irrevocably and unconditionally waives its right to receive notice of any verification statement in respect of any financing statement or financing change statement relating to any security interests of BayWa.
- 13.5 In the event of any default by the Customer of any obligation owed to BayWa under these Conditions or any other agreement for the supply of the Goods, BayWa is at liberty to enforce its security interests by exercising all or any of its rights pursuant to these Standard Terms and/or the PPSA.
- 13.6 The parties agree to the maximum extent permitted by law that sections 96, 125, 131 and 140 of the PPSA do not apply to the enforcement by BayWa of its security interest in the Goods and do not apply to the security agreement created by these Standard Terms.
- 13.7 The Customer waives its rights to receive notices under sections 95, 118, 121(4), 123, 130, 132(3)(d), 132(4), 135 and 157 of PPSA.
- 13.8 For the purposes of section 115(7) of the PPSA, BayWa need not comply with sections 132 and 137(3) of the PPSA.
- 13.9 If the PPSA is amended after the date of this Agreement to permit the Customer and BayWa to agree to not comply with or to exclude other provisions of the PPSA, BayWa may notify the Customer that any of these provisions is excluded, or that BayWa need not comply with any of these provisions, as notified to the Customer by BayWa.

- 13.10 The Customer agrees not to exercise its rights to make any request of BayWa under section 275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.
- 13.11 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA and agrees that these sections do not apply to the enforcement by BayWa of its security interests and do not apply to the security agreement created by these Standard Terms.
- 13.12 Subject to section 275(7) of the PPSA, the Customer must not disclose the contents of this Agreement, the amount or performance obligation secured by BayWa's security interests and the other information mentioned in section 275(1) of the PPSA pursuant to section 275(4) of the PPSA.
- 13.13 The Customer must immediately notify BayWa if the Customer becomes aware of any person other than BayWa taking steps to register, or registering, a financing statement in relation to relevant personal property.
- 13.14 The Customer must arrange for the removal or cessation of any registration of any security interest that affects the priority of BayWa's interest in relevant personal property.
- 13.15 The Customer consents to BayWa recording the details of the Agreement on the PPSA Register.
- 13.16 Nothing in this clause 13 is limited by any provision of these Standard Terms or any other agreement between the Parties.
- 13.17 If a term used in this clause 13 has a particular meaning in the PPSA, it has the same meaning as in this clause, including "registration", "security interest", "secured party", "personal property", "verification statement", "financing statement", and "financing change statement".
- 14. WARRANTY**
- 14.1 If the Goods are covered by a third-party manufacturer warranty, BayWa will, on request, provide a copy of that warranty to the Customer. If such warranty does not pass-through to the Customer in accordance with its terms, BayWa will (at the Customer's cost) use reasonable endeavours to enforce the warranty for the benefit of the Customer or assign the benefit of the warranty to the Customer, at BayWa's option.
- 14.2 Sub-clauses 14.3 and 14.4 only apply if the Customer is a 'consumer' within the meaning of the Australian Consumer Law.
- 14.3 The Goods and Services come with guarantees that cannot be excluded under the Australian Consumer Law. These Standard Terms do not exclude or purport to exclude any such guarantees. For major failures with the Services, the Customer is entitled:
- 14.3.1 to cancel its service contract with BayWa; and
- 14.3.2 to a refund for the unused portion, or to compensation for its reduced value.
- The Customer is also entitled to choose a refund or replacement for major failures with Goods. If a failure with the Goods or a Service does not amount to a major failure, the Customer is entitled to have the failure rectified in a reasonable time. If this is not done, the Customer is entitled to a refund for the Goods and to cancel the contract for the Service and obtain a refund of any unused portion. The Customer also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the Goods or Service.
- 14.4 If any provision of these Standard Terms is inconsistent with a guarantee that cannot be excluded under the Australian Consumer Law, clause 28.4 will apply.
- 15. DAMAGE, DEFECTS, AND INCORRECT ITEMS**
- 15.1 If the Customer is a 'consumer' within the meaning of the Australian Consumer Law, this clause 15 applies to the extent it is not inconsistent with sub-clause 14.3.
- 15.2 The Customer must immediately inspect the Goods upon delivery or collection and must identify any damage, defects, shortfall, or incorrect items on the delivery receipt (for deliveries) or the packing slip (for collections). The Customer must provide photographs of any damage within 24 hours after delivery or collection, including serial numbers.
- 15.3 To the extent not prohibited by law (including the Australian Consumer Law), the Customer releases and discharges BayWa from any loss, damage or claim arising from any actual or alleged damage to the Goods, defect in the Goods, shortfall of Goods, or incorrectly delivered Goods, except to the extent noted in the delivery receipt or packing slip.
- 15.4 If BayWa is satisfied that:

15.4.1 an applicable guarantee under the Australian Consumer Law has not been met; or

15.4.2 subject to clause 15.3, the Goods were damaged or lost prior to the risk in the Goods transferring to the Customer,

BayWa will collect and repair, replace, or refund the defective, lost, incorrect, or damaged Goods at its cost. The Customer must make the relevant Goods available for collection at the delivery address at a reasonable time nominated by BayWa.

15.5 The Customer acknowledges and agrees that BayWa may supply refurbished Goods rather than repair defective Goods or may use refurbished parts in the repair of defective Goods.

15.6 BayWa will not refund, exchange, or repair Goods which are damaged through neglect, misuse, normal wear and tear, or abnormal use.

16. CHANGE OF MIND RETURNS

16.1 The Customer may, at its cost, return unwanted Goods to BayWa for a refund (less the cost of delivery or collection) within 5 Business Days after the date of delivery or collection provided that such Goods are:

16.1.1 unused, undamaged, in their original packaging, and are in re-saleable condition as determined by BayWa; and

16.1.2 not non-stock items which were specially ordered by BayWa for the Customer.

16.2 Prior to returning the Goods, the Customer must notify BayWa in writing and request that BayWa issue a written return authorisation (“**Return Authorisation**”). Returns made without a Return Authorisation will not be accepted by BayWa and may be returned to the Customer at the Customer’s cost.

16.3 If returned Goods are found to not comply with clause 16.1.1, BayWa may return the Goods to the Customer at the Customer’s cost.

17. RESTOCKING FEE

If:

17.1.1 Goods are returned in accordance with clause 16; or

17.1.2 the Agreement is terminated for the Customer’s convenience in accordance with clause 22.2,

the Customer will be liable to pay reasonable re-stocking or other fees to BayWa. The fees will be as stated in the form of Return Authorisation set out in the Annexure to these Standard Terms.

18. LIMITATION OF LIABILITY

18.1 BayWa’s maximum liability arising out of, or in connection with, the Agreement will in no event exceed 50% of the aggregate price of the Goods and Services that BayWa has agreed to supply under the Agreement.

18.2 BayWa will in no event be liable to the Customer for any indirect or consequential loss, including loss of revenue or anticipated revenue, loss of profit or anticipated profit, loss of opportunity, loss of production, loss of business opportunity or contract, loss of or damage to goodwill or reputation or loss of use, or losses or damages (including liquidated damages for delay) incurred under other agreements, deeds or contracts, regardless of whether such loss arises in contract, in tort, under statute, in equity or otherwise, arising out of, or in connection with, the Agreement.

18.3 Clauses 18.1 and 18.2 do not apply to the extent that BayWa’s liability cannot be limited or excluded at law (including under the Australian Consumer Law).

19. INDEMNITY

The Customer releases, indemnifies, and holds harmless, BayWa against any damage, liability, expense (including legal fees and expenses), loss or claim arising out of, or in connection with:

19.1.1 loss of or damage to any property of the Customer, BayWa or any third party, real or personal (including the Goods);

19.1.2 personal injury (including illness) or death of any person, including BayWa’s personnel;

19.1.3 damage to the environment;

19.1.4 a breach of the Agreement by the Customer;

19.1.5 BayWa engaging a debt collection agency in relation to the recovery of monies owing by the Customer to BayWa; or

19.1.6 BayWa retaking possession of the Goods or otherwise exercising its rights under clauses 13 or 23.

The Customer's liability under this clause 19 will be reduced to the extent such liability is caused or contributed to by any breach of this Agreement, gross negligence, fraud, or wilful misconduct by BayWa.

20. FORCE MAJEURE

BayWa is not required to perform its obligations under this Agreement to the extent that performance is not reasonably possible due to an event, matter, or circumstance beyond BayWa's reasonable control (**Force Majeure Event**). BayWa must promptly notify the Customer of the Force Majeure Event and must re-commence performance as soon as reasonably practicable after the Force Majeure Event ceases.

21. TERMINATION FOR DEFAULT AND RE-POSSESSION

21.1 If:

21.1.1 BayWa has not received payment from the Customer by the due date for payment under this Agreement;

21.1.2 the Customer breaches the Agreement;

21.1.3 BayWa reasonably believes that any representation or warranty given by the Customer under clause 27 may be, or may have become, incorrect or misleading;

21.1.4 the Customer suffers an Insolvency Event; or

21.1.5 the Customer abandons the Agreement or ceases to carry on business,

BayWa may:

21.1.6 terminate the Agreement with immediate effect; and/or

21.1.7 rescind any Credit Terms granted to the Customer and/or re-take possession of the Goods (except to the extent that legal and beneficial title in the Goods has passed to the Customer in accordance with clause 7.3),

by written notice to the Customer.

22. TERMINATION FOR CONVENIENCE

22.1 BayWa may terminate this Agreement for its own convenience by giving written notice to the Customer and the Customer will have no claim arising from such termination.

22.2 If BayWa (in its sole discretion) agrees to terminate this Agreement for the Customer's convenience a re-stocking fee will be payable by the Customer in accordance with clause 17.

23. REPOSSESSION OF GOODS

If BayWa:

23.1.1 exercises its right under clause 21.1.7; or

23.1.2 terminates under clause 22.1,

BayWa may, without further notice, do all things necessary to recover and retake possession of the Goods (except to the extent that legal and beneficial title in the Goods has passed to the Customer in accordance with clause 7.3). The Customer must (at its cost) do all things necessary to facilitate the exercise of BayWa's rights under this clause, including by giving access and assisting BayWa to retake possession of the Goods. The Customer hereby grants full leave and irrevocable license to BayWa and any person authorised by BayWa to enter upon the premises where the Goods are stored or installed for the purpose of repossessing the Goods.

24. EFFECT OF TERMINATION

Termination under clauses 21 or 22 is without prejudice to any accrued rights as at the date of termination. Any Credit Terms will be deemed to be automatically rescinded upon the termination under clauses 21 or 22 .

25. NOTICE OF CLAIMS

25.1 BayWa is not liable for any Claim by the Customer unless within 10 Business Days after the first day on which the Customer was aware, or should reasonably have been aware, of the matters giving rise to the Claim, the Customer notifies BayWa in writing, setting out reasonable particulars of the Claim.

25.2 To the extent not prohibited by law (including the Australian Consumer Law), if the Customer fails to issue a notice in strict compliance with this clause 25, the Customer will not be entitled to make the relevant Claim

and irrevocably releases and discharges BayWa in respect of that Claim.

26. GOODS AND SERVICES TAX

26.1 Unless expressly stated otherwise, all amounts payable or the value of other consideration provided in respect of supplies made in relation to the Agreement are exclusive of GST (if any). If GST is levied or imposed on any supply made (or deemed to have been made) under or in accordance with this Agreement, the amounts payable or the value of the consideration provided for that supply (or deemed supply) ("**Payment**") will be increased by an amount equal to the GST payable on that supply.

26.2 Where any amount is payable as a reimbursement, indemnification or similar payment calculated by reference to a loss or other amount incurred, then that amount must be reduced by any input tax credit available to that party or the representative member of any GST group of which that party is a member and, if a taxable supply, must be increased by the GST payable in relation to the supply and a tax invoice will be provided by the party being reimbursed or indemnified.

26.3 Any amount payable under clause 26.1 will be payable at the time the payment to which it relates is payable. Where any GST payable is not referable to an actual payment then it will be payable within 10 Business Days of a tax invoice being issued by the party making the supply.

26.4 Where in relation to this Agreement a party makes a taxable supply, that party must provide a tax invoice in respect of that supply before the GST payable in respect of that supply becomes due.

26.5 If an adjustment event occurs in relation to a supply made under or in connection with this Agreement, the amount payable will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.

26.6 Terms defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning when used in this clause 26.

27. WARRANTIES

The Customer warrants and represents:

27.1.1 if it is a corporation, it is a corporation properly incorporated and validly existing under the laws of the country or jurisdiction of its incorporation;

27.1.2 it has the legal right and full power and capacity, and if the Customer is a corporation, full corporate power and capacity to:

- (a) enter into this Agreement; and
- (b) perform its obligations under this Agreement,

and has obtained all necessary authorisations and consents and taken all other actions necessary to enable it to do so;

27.1.3 that this Agreement constitutes valid legal and binding obligations of the Customer and is enforceable against the Customer;

27.1.4 that the execution, delivery, and performance of this Agreement does not and will not result in a breach of or constitute a default under;

- (a) any agreement to which the Customer is party;
- (b) any provision of the constitution of the Customer; or
- (c) any law or regulation or any order, judgment or determination of any court or regulatory authority by which it is bound; and

27.1.5 that it is solvent, that no Insolvency Event has occurred in relation to it, and that it has no reason to believe or suspect that it will be subject to an Insolvency Event during the term of the Agreement.

28. GENERAL

28.1 **Governing Law:** The Agreement is governed by the laws of Western Australia and the parties irrevocably submit to the exclusive jurisdiction of the courts of Western Australia and the Commonwealth of Australia.

28.2 **Joint and Several Liability:** If the Customer is more than one person, the Agreement binds all of those persons jointly and each of them severally.

28.3 **Further Assurance:** Each party must do all things and execute all further documents necessary to give full effect to the Agreement.

- 28.4 **Severability:** Any provision of, or the application of any provision of, the Agreement which is void, illegal or unenforceable (including due to being an “unfair contract term” under the Australian Consumer Law) is to be read down so as to be valid and enforceable, and if incapable of being read down, severed and the remaining provisions of the Agreement will continue in full force and effect.
- 28.5 **Successors, Assigns:** This Agreement binds and benefits the parties and their respective successors and permitted assigns.
- 28.6 **Variation, Waiver:** The Agreement cannot be varied except by the written agreement of the parties and a waiver of any right, power, authority, discretion, or remedy arising under the Agreement must be in writing and signed by the party granting the waiver.
- 28.7 **Entire Agreement:** The Agreement supersedes all previous agreements in respect of its subject matter and embodies the entire agreement between the parties in respect of its subject matter.
- 28.8 **Indemnities:** The indemnities in the Agreement are continuing, separate and independent obligations and survive termination of the Agreement. BayWa may recover a payment under an indemnity before it makes the payment in respect of which the indemnity is given.
- 28.9 **Confidentiality:** The Customer must keep all documents, data and information provided by, or on behalf of, BayWa (including the terms of the Agreement and any pricing information) (**Confidential Information**) strictly confidential and must not disclose the Confidential Information to any third party without BayWa's prior written consent. The Customer indemnifies BayWa against any breach of this clause 28.9.
- 28.10 **Intellectual Property:** BayWa retains all intellectual property rights used or created by BayWa in connection with the Agreement, including all intellectual property rights in the Goods and Services and any intellectual property rights created in the performance of its obligations under this Agreement. BayWa grants to the Customer a revocable, non-exclusive, royalty free licence to use BayWa's intellectual property to the extent necessary for the installation, operation, maintenance, and repair of the Goods only. If the Goods are acquired by the Customer in its capacity as a contractor or subcontractor to a third party ("**Principal**") the licence may be sub-licensed to that Principal but is otherwise non-transferable and non-sub licensable.
- 28.11 **Assignment:** The Customer may not assign or novate the Agreement without BayWa's prior written consent.
- 28.12 **Proportionate Liability:** The parties agree that Part 1F of the *Civil Liability Act 2002* (WA) is excluded from operation with respect to any dispute, claim, action, or other matter whatsoever brought by any party against the other arising out of or in connection with this Agreement.
- 28.13 **No Relationship:** The Agreement does not create a relationship of partnership, joint venture, employment, agency, or representation between BayWa and the Customer.
- 28.14 **No Adverse Construction:** This Agreement is not to be construed to the disadvantage of a party because that party was responsible for its preparation.
- 28.15 **Non-Merger:** A term or condition of, or act done in connection with, this Agreement does not operate as a merger of any of the rights or remedies of the parties under this Agreement and those rights and remedies continue unchanged.
- 29. DEFINITIONS**
- In this Agreement, unless otherwise expressly stated:
- 29.1.1 "**Agreement**" means the binding contract formed between BayWa and the Customer in accordance with clauses 2 or 3 (as relevant);
- 29.1.2 "**Australian Consumer Law**" means the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth);
- 29.1.3 "**BayWa**" means BayWa r.e. Solar Systems Pty Ltd (ACN 614 035 620);
- 29.1.4 "**Business Day**" means a day other than a Saturday, Sunday, or public holiday in Western Australia;
- 29.1.5 "**Claim**" includes all claims, actions, suits, causes of action, debts, costs, expenses, damages, liabilities, losses, demands, directions, orders, and judgments either at law, contract, tort, equity, or statute;
- 29.1.6 "**Confidential Information**" has the meaning given in clause 28.9;

- 29.1.7 "**Credit Terms**" has the meaning provided in clause 10;
- 29.1.8 "**Customer**" means the person identified in the Quotation, Purchase Order or Order Confirmation (as relevant) as the person to whom BayWa will supply the Goods and Services;
- 29.1.9 "**Goods**" means the goods, items, plant, materials, equipment, and anything else (excluding the Services) to be supplied by BayWa in accordance with the Agreement;
- 29.1.10 "**Insolvency Event**" means in relation to the Customer or any person forming part of the Customer:
- (a) BayWa reasonably suspects that the person is bankrupt, insolvent, or unable to pay its debts as they fall due;
- (b) the person is declared bankrupt or takes any steps, or has any steps taken against it, to be declared bankrupt;
- (c) the person enters into a composition or arrangement with its creditors or calls a meeting of creditors to enter into a composition or arrangement;
- (d) a mortgagee seeks to exercise a right of possession or control over the whole or part of the person's property;
- (e) the person takes or has instituted against it an action or proceedings whether voluntary or compulsory with the object of, or which may result in, the winding-up of the person;
- (f) the person has a winding-up order made against it or passes a resolution for winding-up;
- (g) the person enters administration, receivership, or liquidation;
- (h) any writ of execution, garnishee order, *mareva* injunction or similar order, attachment, distress, or other process is made, levied, or issued against or in relation to any asset of the person; or
- (i) an act is done, or an event occurs which, under the laws from time to time of a country having jurisdiction in relation to the person, has an analogous or similar effect to any of the events in paragraphs (a) to (h) of this definition;
- 29.1.11 "**Order Confirmation**" has the meaning provided in clause 3.6;
- 29.1.12 "**Payment**" has the meaning provided in clause 26.1
- 29.1.13 "**PPSA**" means the *Personal Property Securities Act 2009* (Cth);
- 29.1.14 "**Principal**" has the meaning given in clause 28.10;
- 29.1.15 "**Purchase Order**" has the meaning given in clause 3;
- 29.1.16 "**Quotation**" means an offer to supply Goods issued by BayWa in accordance with clause 2;
- 29.1.17 "**Return Authorisation**" has the meaning provided in clause 16.2;
- 29.1.18 "**Services**" means any works or services to be supplied by BayWa in connection with the Goods, excluding the supply of the Goods;
- 29.1.19 "**Site**" has the meaning provided in clause 8.3; and
- 29.1.20 "**Standard Terms**" means these Standard Terms and Conditions of Sale.
- 30. INTERPRETATION**
- In the Agreement, unless expressly stated otherwise:
- 30.1.1 words importing the singular include the plural and vice versa;
- 30.1.2 words importing a gender include any gender;

- 30.1.3 other parts of speech and grammatical forms of a word or phrase defined in the Agreement have a corresponding meaning;
- 30.1.4 an expression importing a natural person includes any company, partnership, joint venture, association, corporation, or other body corporate and any government agency;
- 30.1.5 a reference to any thing (including any right) includes any part of that thing, but nothing in this sub-clause implies that performance of part of an obligation constitutes performance of the entire obligation;
- 30.1.6 a reference to a statute, regulation, proclamation, ordinance, or by-law includes all statutes, regulations, proclamations, ordinances, or by-laws amending, consolidating, or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances, and by-laws issued under that statute;
- 30.1.7 a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- 30.1.8 words such as "including", "for example" and similar are not words of limitation;
- 30.1.9 a reference to a party to a document includes that party's successors and permitted assigns and that party's employees, agents, consultants, and contractors;
- 30.1.10 a promise on the part of 2 or more persons binds them jointly and severally;
- 30.1.11 a reference to '\$', 'AUD' or dollars is to Australian dollars, unless stated otherwise;
- 30.1.12 a reference to an asset includes property of any nature, including a business right, revenue, and benefit;
- 30.1.13 a reference to liquidation includes official management, appointment of an administrator, compromise with creditors, winding-up, dissolution, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure, death, physical or mental incapacity;
- 30.1.14 headings and boldings are for convenience only and do not affect the interpretation of the Agreement; and
- 30.1.15 if the day on which any act, matter or thing is to be done under the Agreement is not a Business Day, that act, matter, or thing may be done on the next Business Day.

ANNEXURE: RETURN AUTHORISATION FORM

Reason for Return
GENERAL

| | | | | | |
|-------------------------|------|--|------|--------------------------------------|------|
| | Tick | | Tick | | Tick |
| Wrong delivery by BayWa | | Product failure (provide description below) | | Other (provide description below) | |

For **product failure** or **other**, please provide a brief description below:

QA BayWa

| | | | | | |
|-------------------------|------|---------------|------|-----------------|------|
| | Tick | | Tick | | Tick |
| Item damaged in transit | | Missing parts | | Damaged product | |

QA Vendor – Please complete “Manufacturer Communication” for below issues

| | | | | | |
|---------------------|------|----------------------------|------|---------------------------------|------|
| | Tick | | Tick | | Tick |
| DOA-Dead On Arrival | | Failure in warranty period | | Failure outside warranty period | |

Customer Details

| | |
|-------------------------|--|
| Date of Request for RA | |
| Company | |
| Customer representative | |

Product & Purchase Details

| | |
|-------------------------------------|--|
| Purchase Date | |
| BayWa reference (SO, IF, IN number) | |

| Product Description | Serial No | Qty returned |
|---------------------|-----------|--------------|
| | | |
| | | |
| | | |

Manufacturer Communication – Please complete this part for QA Vendor related matters

| | | |
|--|-----|----|
| | YES | NO |
| Has the installer spoken to the manufacturer about the problem | | |
| Has the installer/solar retailer received an approval to return the product? | | |

If installer/solar retailer has received a *CASE* number or a *RETURN AUTHORISATION* number please note down below:

| Case Number from Manufacturer | Return Authorisation Number from Manufacturer |
|-------------------------------|---|
| | |

Return of Goods

Please note that our detailed return policy can be found in our Standard Terms and Conditions of Sale document.

The fees are as follows:

| Product Group/Manufacturer | Fee | Product Group/Manufacturer | Fee |
|--|------------|-----------------------------------|------------|
| SMA/Fronius/Victron Inverters (per inverter) | \$60.00 | Solar Panels (fee per panel) | \$6.00 |
| Victron controllers | \$30.00 | Batteries (per battery) | \$120.00 |
| Inverter accessories | \$30.00 | Battery accessories (BMU, meters) | \$30.00 |
| Racking components | 20% | Electrical | \$30.00 |

| | | | |
|------------------------------|--|-----------|--|
| Name of Customer | | Signature | |
| Name of BayWa representative | | Signature | |