

## STANDARD TERMS AND CONDITIONS

### FOR THE SUPPLY OF THE BLH STOP DROP BARRICADING SYSTEM AND BLH GUARDING SYSTEM

#### 1. Definitions

- 1.1 “**Application for Credit**” means the application by the Customer to BLH Safety Solutions for commercial credit terms for payment of Goods and/or Services.
- 1.2 “**Australian Dollar**” means the currency of Australia referred to as AUD.
- 1.3 “**BLH Barrier Guarding System**” means a guard that does not completely surround a danger zone but is designed to restrict or prevent access to a danger zone.
- 1.4 “**BLH Systems**” means the BLH Stop Drop Barricading System and BLH Guarding System including all the BLH Components thereof and modification and improvements thereof made from time to time, which includes the BLH Barrier Guarding System.
- 1.5 “**BLH Components**” means the component parts which form part of BLH Systems which correspond to the BLH Specifications issued or published by BLH Safety Solutions from time to time.
- 1.6 “**BLH Installation Manual**” means the BLH Stop Drop Barricading and Guarding Installation Manual(s) and other documentation issued by BLH Safety Solutions from time to time.
- 1.7 “**BLH Safety Solutions**” means BLH Safety Solutions Pty Ltd (ABN 59 152 274 792) 200 Flinders Street, Beauty Point, Tasmania, 7270 Australia and any company being a subsidiary of it or forming part of the BLH Group of Companies and which issues a Purchase Order Acceptance.
- 1.8 “**BLH Safety Solutions Accredited Installer**” means an installer whom has attended BLH training courses and service (including train the trainer) in respect of the installation of the BLH system and has been certified by BLH upon the completion of the BLH training course.
- 1.9 “**BLH Safety Solutions Standard Packaged Parts**” means the standard packaged BLH component parts which form part of the BLH Systems which correspond to the BLH specifications issued or published by BLH Safety Solutions from time to time.
- 1.10 “**BLH Specifications**” means specifications for the BLH Systems issued or published by BLH Safety Solutions from time to time.
- 1.11 “**Certificate of Currency**” means a certificate issued by an ASIC approved Australian insurer and if outside Australia, an industry and Government approved insurer of that country providing the following policy details:
- Policy number;
  - Insurer;
  - Period of insurance;

- Product insured; and
- Interested parties.

- 1.12 **“Contract”** means the contract formed between BLH Safety Solutions and the Customer by the Customer issuing BLH Safety Solutions a Purchase Order which is accepted by BLH Safety Solutions issuing a Purchase Order Acceptance and incorporates these Standard Terms and Conditions subject to variations and amendments and specific terms agreed to by the parties in writing.
- 1.13 **“Customer”** means the company placing the Purchase Order with BLH Safety Solutions for the supply of Goods and/or Services.
- 1.14 **“Qualified Installer”** means a person who has been trained and assessed as a competent installer by a BLH authorised Trainer.
- 1.15 **“Delivery Address”** means the place or site for delivery of the Goods as specified on the Purchase Order or other written notification issued by the Customer.
- 1.16 **“Goods”** means any goods, products, or materials to be supplied by BLH Safety Solutions and includes the BLH Systems.
- 1.17 **“Price”** means the total price specified in the Purchase Order Acceptance or Invoice, subject to variations and adjustments made in accordance with these Standard Terms and Conditions.
- 1.18 **“Price Lists”** means the price lists issued by BLH Safety Solutions for the Goods and/or Services from time to time which set out BLH Safety Solutions pricing for the Goods and charge out rates for Services, applicable as at the date or during the period specified on the Price Lists, subject to variations as at the date of the current BLH pricing schedule.
- 1.19 **“Purchase Order”** is an order or offer to purchase Goods and/or Services by the Customer made in accordance with these Standard Terms and Conditions.
- 1.20 **“Purchase Order Acceptance”** means an acceptance in writing by BLH Safety Solutions of a Purchase Order.
- 1.21 **“Services”** means the services to be supplied or supplied by BLH Safety Solutions or its authorised representatives or agents and includes training and installation services in respect of the BLH Safety Systems.
- 1.22 **“Scheduled Delivery Date”** means the date specified on the Purchase Order Acceptance for delivery of the Goods and/or Services subject to variation and confirmation by BLH Safety Solutions.
- 1.23 **“Transaction Tax”** includes any and all taxes imposed by Australian and/or foreign government upon the supply of goods and/or services including customs or importation duties or taxes. It includes any new Transaction Tax that comes into existence after the effective date of these Standard Terms and Conditions. In Australia, the Transaction Tax includes GST (Goods and Services Tax).
- 1.24 **“GST”** refers to the Goods and Services Tax under *A New Tax System (Goods and Services Tax) Act 1999* and all related laws and all taxes and assessment of the

nature of a consumption, value added or goods and services tax.

- 1.25 **“Material Breach”** means any breach of these Standard Terms and Conditions which results or could result in BLH Safety Solutions:
- (a) Not being paid within the payment terms; and
  - (b) The Customer infringing upon BLH Safety Solutions’ intellectual property rights in respect of the Goods supplied; and
  - (c) The Customer utilising the Goods in a manner that is contrary to their design and specifications.
- 1.26 **“Mesh Panel”** means the mesh panel which is a BLH Component of the BLH Stop Drop Barricading System.
- 1.27 **“Standard Linear Metre”** means standard 1 metre assembly of Mesh Panel measuring 995mm x 845mm (part number BLH-SDB-001-002) which is a BLH Component of the BLH Stop Drop Barricading System and the relevant components required for installation.
- 1.28 **“Personal Property Securities Act”** means the *Personal Property Securities Act 2009 (Cth)* and regulations thereto, as amended from time to time.
- 1.29 **“Personal Property Securities Register”** means the Register set up and maintained in Australia pursuant to the Personal Property Securities Act.
- 1.30 **“Receipt of Goods Acknowledgment”** means written notification in the form specified by BLH Safety Solutions given by the Customer to BLH Safety Solutions that Goods the subject of the Contract have been delivered to the Customer.

## **2. Quotations and Minimum Order Requirements**

### **Quotations**

- 2.1 Quotations issued by BLH Safety Solutions for the supply of Goods and/or Services, shall be valid for a period of 30 days from the date of the quotation or such other period specified on the quotation. If the quotation is not accepted within the said period by the Customer or prospective Customer by issuing a Purchase Order as provided in these Standard Terms and Conditions the quotation will lapse.
- 2.2 Where a quotation has lapsed, the Customer or prospective customer may request BLH Safety Solutions to re-issue a new quotation for the supply of Goods and/or Services requested by the Customer or prospective customer.

### **Minimum Order Requirements**

- 2.3 BLH Safety Solutions may from time to time specify the minimum order quantities of Goods that it will accept from Customers.
- 2.4 Minimum purchase order requirements may be published in BLH Safety Solutions’ Standard Terms and Conditions or in its Price Lists and are subject to negotiation and the availability of the Goods at the time of requesting the quotation for supply of the Goods.
- 2.5 Unless otherwise stated in the Price Lists or agreed to in writing, in the case of Mesh Panels for the BLH Stop Drop Barricading System, the minimum ordering quantity of Mesh Panel (Standard Meterage) is 20 metres (1 box) for safety yellow and the minimum ordering quantity for Mesh Panel (Standard Meterage) in a range of colours is 5000 metres.

### **Purchase Orders, Purchase Order Acceptance and Contract**

- 2.6 An order or an offer to purchase Goods and/or Services is to be made by the Customer or prospective Customer in writing by issuing a Purchase Order to BLH Safety Solutions. When BLH Safety Solutions receives a Purchase Order it will check that it corresponds with the quotation issued by BLH Safety Solutions to the Customer or prospective Customer. BLH Safety Solutions will acknowledge receipt of the Purchase Order and notify the Customer or prospective Customer of any changes required to the Purchase Order in order for BLH Safety Solutions to issue a Purchase Order Acceptance.
- 2.7 Purchase Orders must:
- (a) Comply with the quotation issued by BLH Safety Solutions for the supply of Goods and/or Services;
  - (b) Be addressed to BLH Safety Solutions;
  - (c) Specify the Goods and/or Services ordered;
  - (d) Specify the quoted Price and other costs and fees to be paid by the Customer;
  - (e) Specify the name and address of the Customer and the address for delivery;
- 2.8 BLH Safety Solutions may refuse to issue a Purchase Order Acceptance where the Purchase Order does not comply with BLH Safety Solutions requirements as set out clause 2.7 above.
- 2.9 A Purchase Order is accepted when the Customer receives from BLH Safety Solutions a Purchase Order Acceptance.
- 2.10 When a Purchase Order is accepted by BLH Safety Solutions issuing a Purchase Order Acceptance, the Contract will be wholly documented by (in descending order of precedence) any specific term(s) agreed in writing, the Purchase Order Acceptance and these Standard Terms and Conditions subject to amendments and variations agreed to in writing.
- 2.11 Customs and practices arising from previous dealings between BLH Safety Solutions and the Customer will not be implied or incorporated into the Contract.
- 2.12 General trade custom and/or trade usage is superseded by the Contract and shall not be applicable in the interpretation of the Contract.
- 2.13 A Contract as defined in these Standard Terms and Conditions constitutes the entire agreement between BLH Safety Solutions and the Customer with respect to the supply of Goods and/or Services under the Contract and all parties acknowledge that no reliance is to be placed on any prior negotiations, proposals and/or representations either orally or by way of correspondence prior to BLH Safety Solutions issuing the Purchase Order Acceptance.
- 2.14 Subject to clause 24.2, if at any time in relation to the supply of the Goods and/or Services, the Customer provides, refers to, submits or otherwise uses terms and conditions other than these Standard Term and Conditions such terms and conditions will not form part of, or be incorporated into, the Contract.

### **3. Price Lists, Prices, Costs and Currency**

#### **Price Lists**

- 3.1 BLH Safety Solution's issues Price Lists for Goods and/or Services from time to time. The Price Lists set out BLH Safety Solutions pricing for Goods and charge out rates for the supply

of Services by BLH Safety Solutions which are applicable as at the date or during the period specified on the Price Lists. BLH Safety Solutions Price Lists are subject to variations as determined by BLH Safety Solutions.

### Prices and Costs

- 3.2 Unless otherwise agreed in writing, the prices quoted and charged for the Goods and/or Services shall be:
- (a) For all Goods and/or Services delivered within Australia in Australian dollars (\$AUD);
  - (b) For all Goods and/or Services delivered into a foreign country in United States dollars (\$US);
  - (c) Exclusive of any Transaction Tax;
  - (d) Adjusted for any increases in costs in the manufacture of Goods or the supply of Services between the date of the Purchase Order Acceptance and the date of delivery of the Goods and/or Services as determined and advised by BLH Safety Solutions;
  - (e) Adjusted in accordance with these Standard Terms and Conditions for any currency fluctuations between the Australian dollar (\$AUD) and the United States dollar (\$US) occurring between the date of the quotation and Purchase Order Acceptance;
  - (f) Adjusted in accordance with these Standard Terms and Conditions for any currency fluctuations between the Australian dollar (\$AUD) and the United States dollar (\$US) occurring between the date of Purchase Order Acceptance and the date of payment for the Goods and/or Services;
  - (g) Exclusive of freight costs and insurance for loss or damage in storage or transit;
  - (h) Exclusive of any import permits or licences required to import the Goods to the nominated country.
  - (i) Exclusive of the costs of installation of the Goods.
- 3.3 Unless otherwise agreed in writing in addition to the agreed Price for the Goods and/or Services, the Customer shall pay:
- (a) Freight Costs;
  - (b) Insurance for loss or damage in storage or transit;
  - (c) For import permits or licenses required to import the Goods to the nominated company;
  - (d) Other costs and fees as advised by BLH Safety Solutions in the quotation or in writing;

### Transaction Tax

- 3.4 Where a Transaction Tax applies to any supply made or to be made under these Standard Terms and Conditions, the price of the Goods and/or Services the subject of the supply will be increased by the amount of such tax and BLH Safety Solutions will provide an invoice to the Customer which includes such Transaction Tax.
- 3.5 Where BLH Safety Solutions has made a supply of Goods and/or Services and invoiced the Customer and it becomes apparent that a Transaction Tax applies, BLH Safety Solutions will issue the Customer with an amended invoice or additional invoice which includes the Transaction Tax and the Customer shall pay the applicable Transaction Tax.
- 3.6 Where the Goods and/or Services are supplied or to be supplied in Australia, BLH Safety Solutions shall issue a Tax Invoice to the Customer which includes the GST payable in respect of the supply of Goods and/or Services pursuant to the Contract.
- 3.7 Unless otherwise agreed in writing by the parties BLH Safety Solutions may increase the

price of Goods and/or Services after issuing a Purchase Order Acceptance and prior to delivery of the Goods or supply of Services, if the price increase results from any increases in costs in the manufacture of Goods or the supply of Services between the date of the Purchase Order Acceptance and the date of delivery of the Goods and/or Services as determined and advised by BLH Safety Solutions.

#### **Currency and Currency Fluctuations**

- 3.8 Where the Goods and/or Services are to be delivered into a country other than Australia, BLH Safety Solutions, shall quote and charge the price in US dollars (US\$). At the date of issuing the quotation and Purchase Order Acceptance, BLH Safety Solutions shall specify on the quotation and Purchase Order Acceptance the prevailing exchange rates between the Australian dollar (AUD \$) and the US dollar at that date and the currency exchange rate fluctuation range which shall apply before any price adjustment by BLH Safety Solutions.
- 3.9 Unless agreed otherwise by the parties, BLH Safety Solutions shall have a right to adjust the price for Goods and/or Services quoted or charged where currency exchange rate between the Australian dollar (AUD\$) and the US dollar (US\$) moves outside the currency exchange rate fluctuation range specified by BLH Safety Solutions on its:
- (a) Quotation during the period between issuing the quotation and the Purchase Order Acceptance;
  - (b) Purchase Order during the period between issuing the Purchase Order Acceptance and the payment date.

#### **4. Invoicing, Payment Terms and Interest**

- 4.1 BLH Safety Solutions will issue the Customer with an invoice for the supply of Goods and/or Services the subject of the Contract.
- 4.2 In the case of supply of Goods, unless otherwise agreed in writing, the invoiced amount (without any set off including any Transaction Tax) must be paid by the Customer to BLH Safety Solutions, as follows:
- (a) 50% of the invoiced amount within **thirty (30) days** of the date of invoice being a non-refundable deposit;
  - (b) The balance of the invoiced amount, **fourteen (14) days** before the scheduled date for shipment of the Goods;
- 4.3 BLH Safety Solutions will not commence manufacture of Goods the subject of the Contract until BLH Safety Solutions has received payment from the Customer of 50% of the invoiced amount.
- 4.4 Unless otherwise agreed in writing payment for Services and any additional costs and expenses must be paid by the Customer in full (without any set off including any Transaction Tax) and received by BLH Safety Solutions within 30 days of the invoice date.
- 4.5 Payment is only made by the Customer and received by BLH Safety Solutions when BLH Safety Solutions receives cash or when the proceeds of other methods of payment are credited and cleared to BLH Safety Solutions' bank account.
- 4.6 If the Customer fails to pay the full Contract/Invoiced price within the payment terms specified in the Contract, the Customer shall pay interest to BLH Safety Solutions on all outstanding amounts due and payable to BLH Safety Solutions at a rate of eighteen percent (18%) per annum from the date that payment is due until the date that payment is made.

## 5. Credit Terms and Security

- 5.1 BLH Safety Solutions may in its absolute discretion grant the Customer credit subject to these Standard Terms and Conditions, the terms and conditions set out in an Application for Credit, and such other documents and information as may be required by BLH Safety Solutions.
- 5.2 Until BLH Safety Solutions grants the Customer credit by notice in writing, BLH Safety Solutions will only supply Goods and/or Services to the Customer on the payment terms set out in clause 4 of these Standard Terms and Conditions
- 5.3 The granting of credit does not oblige BLH Safety Solutions to extend any particular amount of credit to the Customer or to continue to provide credit for any period of time. BLH Safety Solutions may in its absolute discretion refuse credit or terminate any credit facilities granted.
- 5.4 The Customer shall provide BLH Safety Solutions information in respect of the Customer's financial position and shareholding or ownership as requested by BLH Safety Solutions from time to time. The Customer must notify BLH Safety Solutions in writing if there is any change in the shareholding or ownership of the Customer or any material change in the Customer's financial position
- 5.5 The Customer agrees that if requested by BLH Safety Solutions in writing, the Customer will provide BLH Safety Solutions security in the form requested in consideration of BLH Safety Solutions agreeing to provide the credit to the Customer in respect of the supply of any Goods and/or Services. The security requested by BLH Safety Solutions may include any or a combination of the following:
- (a) An irrevocable letter of credit from a bank approved by BLH Safety Solutions in the sum specified by BLH Safety Solutions in writing;
  - (b) A bank guarantee in the sum and form approved by BLH Safety Solutions and from a bank approved by BLH Safety Solutions;
  - (c) Mortgage, charge or other form of security over real estate property or other property or assets owned by the Customer;
  - (d) A security interest which is registrable on the Personal Property Securities Register under the Personal Properties Securities Act;
- 5.6 The Customer agrees that at BLH Safety Solutions request in writing, to do all acts, matters and things including sign all documents including charges, mortgages and other security documents to ensure that:
- (a) The security requested by BLH Safety Solutions from the Customer is provided in the form acceptable to BLH Safety Solutions and is valid;
  - (b) BLH Safety Solutions holds a valid and perfected security interest under the Personal Property Securities Act which can be registered on the Personal Property Securities Register.
- 5.7 In the event that the Customer does not agree to provide or does not provide the security requested by BLH Safety Solutions to secure payment of the Goods and/or Services the subject of the Contract on credit, payment for the Goods and/or Services must be made to BLH Safety Solutions by the Customer prior to delivery in accordance with the payment terms set out in Clause 4.

## 6. Delivery and Scheduled Delivery Date

- 6.1 Unless otherwise agreed in writing, where Goods are supplied for use in Australia:
- (a) The Goods shall be delivered to the Customer by BLH Safety Solutions FIS or FOB, carrier and place of designation to be nominated by the Customer in writing;
  - (b) The INCOTERMS as published by the International Chamber of Commerce from time to time shall apply, subject to these Standard Terms and Conditions and variations agreed to writing.
- 6.2 Unless otherwise agreed in writing, where Goods are supplied for use in countries other than Australia;
- (a) The Goods shall be delivered to the Customer by BLH Safety Solutions Ex Works or Ex Factory as nominated by BLH Safety Solutions in writing;
  - (b) The INCOTERMS as published by the International Chamber of Commerce from time to time shall apply; subject these Standard Terms and Conditions and variations agreed in writing.
- 6.3 BLH Safety Solutions upon receiving a Purchase Order and issuing a Purchase Order Acceptance will provide the Customer with a Scheduled Delivery Date for the delivery of the Goods and/ or Services the subject of the Contract.
- 6.4 BLH Safety Solutions will make all reasonable efforts to have the Goods delivered to the Customer or its designated agent by Scheduled Delivery Date as agreed between the parties in writing.
- 6.5 BLH Safety Solutions will deliver the Goods in Standard Packaged Parts.
- 6.6 BLH Safety Solutions will keep the Customer informed of any delays in the delivery of the Goods and/or Services and will issue the Customer with a revised Scheduled Delivery Date. BLH Safety Solutions will confirm with the Customer's nominated personnel the Scheduled Delivery Date, **seven (7)** days before actual delivery of the Goods and/or Services is to take place.
- 6.7 BLH Safety Solutions shall not be liable to the Customer for:
- (a) Any failure to deliver or delay in delivery of the Goods and/or Services for any reason; or
  - (b) Any damage or loss including loss of sales or prospective sales or profits due to delay in delivery of the Goods and/or Services
- Except to the extent that such failure to deliver or delay in delivery was caused by the negligent act or omission of BLH Safety Solutions.
- 6.8 The Customer will fully indemnify BLH Safety Solutions for all costs and expenses incurred by BLH Safety Solutions due to any failure or delay by the Customer to take delivery or accept delivery of the Goods and/or Services on the Scheduled Delivery Date which has been confirmed by BLH Safety Solutions in writing.
- 6.9 The Customer must notify BLH Safety Solutions in writing of the date and time that it has taken delivery of the Goods, by issuing a Receipt of Goods Acknowledgement, within **five (5)** working days after taking delivery of the Goods.

## 7. Title and Risk



- 7.1 The legal and equitable title to the Goods will only be transferred from BLH Safety Solutions to the Customer when the Customer has paid all that is owed to BLH Safety Solutions in respect of the Goods the subject of that Contract;
- 7.2 The Customer acknowledges that until the Customer has paid all that is owed to BLH Safety Solutions in respect of that Contract, the Customer holds the Goods as bailee for BLH Safety Solutions and BLH Safety Solutions has the right to register its security interest on the 'Personal Property Securities Register' in accordance with the Personal Property Securities Act.
- 7.3 Unless otherwise agreed in writing, where the Goods are supplied for use in Australia, risk of loss and damage to the Goods passes from BLH Safety Solutions to the Customer:
- (a) Upon delivery of the Goods to the Customer's nominated carrier or destination, including all risks of loss and damage associated with loading and unloading and unpacking the Goods onto and from the carrier and container;
  - (b) Upon title in the Goods passing to the Customer;
- Which ever is the earlier?
- 7.4 Unless otherwise agreed in writing, where Goods are supplied for use in countries other than Australia, risk of loss or damage to the Goods passes from BLH Safety Solutions to the Customer, in accordance with the INCOTERMS international rules for delivery EX Works or Ex Factory nominated by BLH Safety Solutions or as agreed by the parties in writing.

## **8. Measures, Standards and Quality**

- 8.1 Any and all statements made by BLH Safety Solutions as to weight, length, quantity or other characteristics of Goods are approximate and BLH Safety Solutions may supply Goods on an actual or calculated basis.
- 8.2 A calculated basis will be in accordance with the applicable Australian Standards, unless Goods are intended for use in a country other than Australia and the Customer has requested in writing that the Goods to be supplied comply with the standard of another country and BLH Safety Solutions has agreed in writing to supply the Goods in accordance with the standards specified by the Customer.
- 8.3 The Customer will pay to BLH Safety Solutions all costs and expenses associated with the Goods being manufactured according to the specifications, measures and standards requested by the Customer in writing and agreed to by BLH Safety Solutions in writing.
- 8.4 The Customer must provide BLH Safety Solutions:
- (a) Written notification of any Goods delivered that do not correspond with BLH Specifications, weight, length, quality, standards or other characteristics of the Goods specified in statements issued by BLH Safety Solutions and complete a BLH Warranty Claim Request Form, within **fourteen (14) days** of delivery of the Goods to the Customer; or
  - (b) Written notification of any Goods delivered that do not correspond with the specifications, measures and standards requested by the Customer in writing and agreed to by BLH Safety Solutions in writing and complete a BLH Claim Request Form, within **fourteen (14) days** of delivery; and
  - (c) A reasonable opportunity to examine and re-test the Goods before they are used or dealt with.

- 8.5 In event that BLH Safety Solutions examination and testing confirms that the Goods in part or whole:
- (a) Do not correspond with BLH Specifications, weight, length, quality, standards or other characteristics of the Goods specified in statements issued by BLH Safety Solutions, or
  - (b) Do not correspond with the specifications, measures, standards requested by the Customer in writing and agreed to by BLH Safety Solutions in writing,
- BLH Safety Solution shall at its sole discretion shall replace the non conforming Goods or provide the Customer with a credit note or refund.

- 8.6 Where the Goods are required by the Customer for use outside of Australia the Customer must provide to BLH Safety Solutions with a copy of the current regulatory standards that apply to the Goods within the country where the Customer proposes to use the Goods.

- 8.7 The Customer agrees that in the event that the Customer fails comply with Clause 8.6 above and the Customer and/or BLH Safety Solutions suffers any loss or damage as a consequence of the Goods failing to meet the regulatory standards applicable in the country of use or intended use of the Goods then:
- (a) BLH Safety Solutions will not be liable to the Customer for any such loss or damage; and
  - (b) The Customer shall indemnify BLH Safety Solutions for all such loss or damage suffered by BLH Safety Solutions, including loss of profits, costs of product recalls and damage to reputation.

## **9. Short fall in Delivery**

- 9.1 The Customer must within **five (5) working days** after delivery of the Goods to the Delivery Address:
- (a) Inspect and check all Goods received to ensure that the quantity delivered corresponds with the quantities specified on the Purchase Order Acceptance or notified by BLH Safety Solutions in writing; and
  - (b) Provide BLH Safety Solutions a completed Receipt of Goods Acknowledgment; and
  - (c) Notify BLH Safety Solutions of any short falls in Goods delivered and completes a **BLH Short Delivery Claim Form**.

- 9.2 BLH Safety Solutions will endeavour to rectify any shortages as soon as practicable after receiving from the Customer a written notification and a completed Short Delivery Claim Form in respect of the short fall of Goods provided that BLH Safety Solutions has not disputed such claim by providing written notification of the dispute.

- 9.3 Where BLH Safety Solutions has given written notification of the dispute to the Customer, the parties shall refer the matter to dispute resolution in accordance with clause 21 of these Standard Terms and Conditions.

## **10. Installation of BLH System**

- 10.1 Unless otherwise agreed in writing, the Customer will be responsible for installation (including all costs associated with installation) of the Goods in accordance with BLH Installation Manual which is supplied with each purchase of the Goods and must have a qualified BLH installer

supervise the installation and sign off on the completed installation of the BLH Systems.

- 10.2 The Customer in installing the Goods must comply with installation instructions provided in the BLH Installation Manual at all times. BLH Safety Solution's warranty for the BLH Systems shall not apply where Goods have not been installed by the Customer in accordance with the BLH Installation Manual.

## **11. Training and Installation Services**

### **Training Services**

- 11.1 BLH Safety Solutions offers training courses and services (including train the trainer) in respect of the installation of the BLH System. BLH Safety Solutions can design and tailor training courses and services to meet the requirements of the Customer. BLH Safety Solutions' fees and hourly rates for training courses and services for installation of the BLH Systems are set out in its Price Lists. Upon request, BLH Safety Solutions can provide a quotation for training courses and services to meet the specific Customer's requirements. Qualified installers will be certified upon completion of the BLH training course.

### **Installation Services**

- 11.2 BLH Safety Solutions offers installation services for the installation of the BLH Systems in accordance with the BLH Installation Manual. BLH Safety Solutions pricing per linear metre of Mesh Panel installed and/or hourly rates for installation services are set out its Price Lists.
- 11.3 Should the Customer, as part of the Contract, require BLH Safety Solutions to install the Goods in compliance with BLH Installation Manual, BLH Safety Solutions will provide the Customer with a quotation for the installation services based on a per linear metre of Mesh Panel to be installed and BLH Safety Solution's current Price List.

### **Additional Costs**

- 11.4 Unless otherwise specifically agreed to in writing, the Customer will also pay BLH Safety Solutions the following additional fees, costs and expenses in respect of the supply of any Services:
- (a) Reasonable expenses (including out of pocket expenses) incurred by BLH Safety Solutions in providing the Services including:
    - (i) Domestic and/or international travel
    - (ii) Transport/car hire
    - (iii) Accommodation
    - (iv) MealsThis shall be charged at cost plus 10% per cent.
  - (b) The cost of freighting of the Goods to site including transit insurance.
  - (c) Site Agreements includes the costs of transportation of the Goods to the site and the onsite use of cranes and elevated work platforms and site inductions at the installation site and downtime will be costed in the BLH quotations, and which will include the rates as set out in the Site Agreement for each site location which will include the site allowances as set out in the Enterprise Bargaining Agreement, offshore allowances and any other site allowances stipulated in the Site Agreement.
  - (d) Mobilisation/demobilisation of the technical staff required to complete the installation of the Goods on site will be charged at an hourly rate set out in the BLH quotation.

- (e) Any increase from the agreed the standard linear metres of Mesh Panel to be installed. This will be charged at rates according to secondary quote upon request.
  - (f) Time or additional time spent in inducting and training the Customers employees, agents or representatives, which time has not been included or allowed for in the Contract price for the Services. This will be charged at BLH Safety Solutions current charges and hourly rates as set out its Price Lists.
  - (g) Site delays or disruptions beyond BLH Safety Solutions' control which result in delays or disruptions in BLH Safety Solutions, employees, agents or authorised representatives providing the Services in accordance with the Contract and BLH Safety Solutions incurring additional costs and expenses in supply of the Services. These Site delays or disruptions include weather conditions, including cyclones, sandstorms; inclement weather which will cause flight delays to the site, excessive site shut downs, site permit issues, onsite industrial action and claims by the indigenous people. These costs will be charged at BLH Safety Solutions' current charges and hourly rates as set out its Price Lists and with a minimum payment of 10 hours per person for each day that the person(s) are not able to provide the Services.
- 11.5 BLH Safety Solutions will, upon request, provide to the Customer a copy of the BLH Safety Solutions Price Lists which contains its standard rates and charges for supply of Services.
- 11.6 BLH Safety Solutions shall issue the Customer with an invoice for the any additional costs and expenses referred to above and provide the Customer with copies of invoices, receipts or other supporting documentation in respect of expenses (including out pocket expenses) incurred. Unless otherwise agreed in writing payment of the invoice must be made by the Customer within the payment terms set out in these Standard Terms and Conditions.

## **12. BLH Safety Solutions Warranty, Exclusions and Warranty Claims**

### **Goods Defects Warranty**

- 12.1 Subject to clauses 12.3 and 12.4, BLH warrants to the Customer that the Goods will be free from defects in material and workmanship for the warranty period of **twenty- four (24) months** from the date that BLH Safety Solutions receives from the Customer a Receipt of Goods Acknowledgement ("Goods Defects Warranty").
- 12.2 The Customer must provide BLH Safety Solutions with a Receipt of Goods Acknowledgement within **five (5)** working days after receipt of Goods at the Delivery Address, to take the benefit of Goods Defects Warranty.

### **Exclusions**

- 12.3 The Goods Defect Warranty does not apply where the Customer has not provided BLH Safety Solutions, with the Receipt of Goods Acknowledgement within the time specified in clause 12.2.
- 12.4 The Goods Defects Warranty does not cover:
- (a) Goods requiring replacement or repair due to normal wear and tear;
  - (b) Damage or loss of Goods due to improper storage conditions;
  - (c) Damage or loss of Goods due to improper installation of the Goods, not in accordance with the BLH Installation Manual;
  - (d) Damage or loss of Goods where the installation of the Goods is undertaken by persons who have not been trained to install the Goods by BLH Safety Solutions or a trained Qualified Installer accredited by BLH Safety Solutions;
  - (e) Damage or loss of Goods required due to the Goods not being maintained or serviced in accordance with BLH Installation Manual and/or instructions issued by BLH Safety

Solutions;

- (f) Damage or loss of Goods due to accidents, misuse, unauthorised modifications, fire, storms, cyclones and other natural disasters;

12.5 If during the Goods Defects Warranty period, the Customer detects any defective Goods covered by the Goods Defects Warranty and the Customer makes a warranty claim by completing and sending to BLH Safety Solutions Warranty Claim Request Form (which is accepted):

- (a) BLH Safety Solutions shall at its sole option and costs either repair the defective Goods or components thereof using new or refurbished parts or replace the defective Goods; and
- (b) The Customer shall pay freight costs associated with returning the defective Goods to BLH Safety Solutions and/or transporting the repaired, replacement or new Goods to the Customer unless otherwise agreed in writing by the parties.

12.6 Goods Defects Warranty claims accepted by BLH Safety Solutions will be processed and actioned in accordance with BLH Safety Solutions normal work flow and subject to the availability of BLH replacement Goods, components or parts. Delivery times for these replacement items will be notified in writing to the Customer once the Goods Defects Warranty claims have been assessed and accepted.

### Installation Services Warranty

12.7 Subject to clause 12.8 where BLH Safety Solutions has supplied Installation Services in respect of the Goods, BLH Safety Solutions warrants that for a period of twenty-four (24) months after installation of the Goods.

12.8 The Installation Services Warranty does not cover Goods requiring re-installation, installation servicing or adjustments in the case of:

- (a) Normal wear and tear to Goods or Goods requiring replacement or repair due to normal wear and tear;
- (b) Goods not being maintained or serviced in accordance with BLH Installation Manual and/or instructions issued by BLH Safety Solutions;
- (c) Damage or loss of Goods due to accidents, misuse, unauthorised modifications, fire, storms, cyclones and other natural disasters;

12.9 If during the Installation Services Warranty period, the Customer makes a warranty claim by completing and sending to BLH Safety Solutions Warranty Claim Request Form (which is accepted) BLH Safety Solutions shall at its sole option and costs either reinstall the Goods or component parts or provide installation servicing or adjustments in respect of the Goods or component parts.

12.10 The benefits under the abovementioned warranties are in addition to any other rights and remedies under law in relation to the Goods and/or Services, which cannot be lawfully excluded.

12.11 Australia

For the supply of Goods and Services in Australia to Customers whom are consumers in accordance with Section 3, Schedule 2 of the Australian *Competition and Consumer Act 2010*<sup>1</sup>.

<sup>1</sup> Consumer is defined in Section 3, Schedule 2 of the Australian *Competition and Consumer Act 2010*.

Our goods (BLH Safety Solutions) come with guarantees that cannot be excluded under the Australian Consumer Law. You (the Customer) are entitled to a replacement or refund for a major failure and compensation for any other reasonable foreseeable loss or damage. You (the Customer) are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and failure does not amount to a major failure.

### **Making Warranty Claims**

- 12.12 Warranty Claim Request Forms can be downloaded from the BLH Safety Solutions website located at <http://blhsafetysolutions.com/> or obtained by sending an email to [info@blhsafetysolutions.com](mailto:info@blhsafetysolutions.com).
- 12.13 All completed Warranty Claim Request Forms and supporting documentation is to be sent to:  
BLH Safety Solutions Pty Ltd,  
PO Box 141  
Beaconsfield  
Tasmania 7270  
Telephone: [+61 \(03\) 6383 4333](tel:+61(03)63834333)  
Email: [info@blhsafetysolutions.com](mailto:info@blhsafetysolutions.com)
- 12.14 The Customer shall pay all the costs associated with making a warranty claim including staff costs and postage costs in completing and sending the Warranty Claim Request Form and any supporting documentation to BLH Safety Solutions and responding to any requests made by BLH Safety Solutions.
- 12.15 BLH Safety Solutions will process the warranty claims received by the Customer and notify the Customer in writing as to whether it accepts or rejects the claims.
- 12.16 Any disputes between the parties in respect of warranty claims shall be referred to dispute resolution as provided in these Standard Terms and Conditions and the Contract.

### **13. Representations and Fitness for Purpose**

- 13.1 The Customer agrees that if it is aware (or should be aware) that the Goods, the subject of a Purchase Order, are for a particular purpose (including, but not limited to, use as a component part of another product) or are required to possess special or uniform characteristics, the Customer will clearly specify that purpose of those characteristics in any such Purchase Order. The Customer agrees that, unless expressly agreed by BLH Safety Solutions in writing, the Customer has made its own enquiries in relation to the suitability of the Goods and does not rely on representations by BLH Safety Solutions in relation to their suitability for a particular purpose or any steps which may need to be taken in relation to their use;
- 13.2 The Customer agrees and warrants that it will not use the Goods for any other purpose other than the particular purpose that it has advised BLH Safety Solutions or for purposes consistent with the design and BLH Specifications of the Goods as disclosed to the Customer by BLH Safety Solutions.

### **14. Intellectual Property**

- 14.1 BLH Safety Solutions warrants that it has the rights to supply the BLH Systems and commercially exploit the intellectual property rights therein.
- 14.2 BLH Safety Solutions warrants that the use of the BLH Safety Systems for the intended purpose specified by BLH Safety System in documentation issued by BLH Safety Solutions does not infringe the intellectual property rights of any third party.
- 14.3 The Customer warrants to BLH Safety Solutions that all documents provided by the Customer are accurate and that BLH Safety Solutions is entitled to use all such documents for the purposes of the Contract and that such use does not infringe any third party's intellectual property rights.
- 14.4 The Customer indemnifies BLH Safety Solutions against all claims and all losses and damages incurred by BLH Safety Solutions as a result of documents provided by the Customer to BLH Safety Solutions for the purposes of or in the course of the supply of the Goods infringing a third party's intellectual property rights.

## **15. Confidential Information**

- 15.1 If the Customer receives any confidential information from BLH Safety Solutions the Customer may not use or disclose such information unless it receives the prior written consent of BLH Safety Solutions.
- 15.2 Unless otherwise agreed in writing all quotations or proposals issued by BLH Safety Solutions for the supply of Goods and/or Services, Purchase Orders and Purchase Order Acceptances are confidential and are not to be disclosed to any third party, other than for the purpose of seeking legal and accounting advice.
- 15.3 The Customer immediately upon receiving a written request from BLH Safety Solutions shall return to or handle as instructed all BLH Safety Solutions' confidential information.
- 15.4 If requested by BLH Safety Solutions, the Customer, its officers and employees who shall have access to BLH Safety Solutions Confidential information shall sign a separate confidential information (non-disclosure) agreement with BLH Safety Solutions.

## **16. Non Excludable Statutory Guarantees and Remedies**

- 16.1 Nothing in these Standard Terms and Conditions and the Contract is intended or shall be construed as excluding, restricting or modifying any guarantees or any rights or remedies conferred on the Customer or any liability imposed on BLH Safety Solutions by the Competition and Consumer Act 2010 (Cth) and similar laws of the States and Territories of the Commonwealth of Australia ("Consumer Laws") and/or any other applicable laws, if the laws in question may not lawfully be excluded, restricted or modified.

## **Exclusions and Limitation of Liability**

- 16.2 To the full extent permitted by law, BLH Safety Solutions excludes all representations, guarantees, warranties, terms or conditions (whether express or implied or conferred) other than those expressly set out in these Standard Terms and Conditions and the Contract.

## **Non Excludable Statutory Guarantees**

- 16.3 Where the Goods or any other goods supplied by BLH Safety Solutions to the Customer fails to comply with any statutory guarantee conferred by the Competition and Consumer Act 2010 (Cth), Consumer Laws and any other applicable laws that cannot be lawfully excluded, restricted or modified, BLH Safety Solutions liability for failure to comply with any such guarantee (other than a guarantee under section 51, 52 or 53 of Schedule 2 to the Competition and Consumer Act 2010

(Cth) and other Consumer Laws) shall be limited at the option of BLH Safety Solutions to one or more of the following:

- (i) The replacement of the goods or supply of equivalent goods;
- (ii) The repair of the goods;
- (iii) The payment of the cost of replacing the goods or of acquiring equivalent goods;
- (iv) The payment of the costs of having the goods repaired.

16.4 Where the Services or any other services supplied by BLH Safety Solutions to the Customer fails to comply with any statutory guarantee conferred by the *Competition and Consumer Act 2010 (Cth)*, Consumer Laws and any other applicable laws that cannot be lawfully excluded, restricted or modified, BLH Safety Solutions' liability for failure to comply with any such guarantee shall be limited at the option of BLH Safety Solutions to one or more of the following:

- (i) The supplying of the services again; or
- (ii) The payment of the costs of having the services supplied again.

## 17. Limitation of Liability

17.1 To the extent permitted by applicable law, BLH Safety Solutions' liability to the Customer (and any party claiming through the Customer against BLH Safety Solutions) for any claim for loss or damages (including legal costs and expenses) made in connection with the Contract whether in contract, tort (including negligence), under any applicable law, in equity or otherwise in Australia or any other country shall be limited to and shall not exceed the amount of AUD \$20,000,000.00 or any limitation of liability cap specified in the Quotation provided by BLH Safety Solutions to the Customer or other limitation of liability cap agreed to by the parties in writing, whichever is the lesser amount (except to the extent that the law prohibits such a limitation).

17.2 To the extent permitted by applicable law, BLH Safety Solutions shall not be liable to the Customer for any indirect or special or consequential loss or damage of any nature whatsoever which may be suffered or incurred or which may arise directly or indirectly in respect of the supply of the Goods or Services or in respect of any failure or omission on the part of BLH Safety Solutions to comply with its obligations under the Contract or under law or resulting from or caused in any way by the use of the Goods and/or Services it supplies. For the purpose of this clause "indirect, special or consequential loss or damage" includes:

- (a) Any economic loss, loss of income, profit, production, contract, customers, business opportunity or business;
- (b) Any loss of goodwill or reputation;
- (c) Any loss of value of intellectual property;
- (d) Any loss or damage resulting from the loss or damage to goods other than the Goods.

17.3 The limitation of liability contained in clauses 16.3, 16.4, 17.1 and 17.2 does not exclude or limit any of BLH Safety Solutions' liability under Part 3-5 of Schedule 2 to the *Competition and Consumer Act 2010 (Cth)* or liability for personal injury or death or illness.

## 18. Termination of Contract

18.1 The Contract may be terminated by either party by giving the other party at least **thirty (30) days** notice if:

- (a) The other party has committed a Material Breach of the Contract;
- (b) The other party is in breach of the terms of the Contract and is unable to or fails to



remedy the breach within reasonable time of receiving written notification from the other party identifying the breach and the steps and actions that the party receiving the notifications must do in order to remedy the breach.

- 18.2 Unless otherwise agreed to by the parties in writing, “reasonable time” to remedy the breach in the case of a breach:
- (a) By the Customer shall be at least fourteen days (14) from receiving written notification referred to above;
  - (b) By BLH Safety Solutions arising out of the supply of defective Goods and/or Services shall be at least 120 days from receiving the written notification,
- 18.3 The Contract may be terminated BLH Safety Solutions by giving written notice to the Customer in the event that:
- (a) The Customer becomes an externally administered body corporate or has an application for winding up filed against it;
  - (b) The Customer becomes bankrupt or insolvent or commits an act of bankruptcy or insolvency;
  - (c) The Customer has not paid to BLH Safety Solutions money due and payable for the Goods and/or Services by the due date of payment;
  - (d) The Customer is fraudulent or dishonest in its dealings with BLH Safety Solutions;
  - (e) The Customer is charged or convicted of a serious offence;
  - (f) The Customer operates its business in a manner which endangers health and safety;
  - (g) The Customer agrees to the termination of the Contract.
- 18.4 The termination or expiry of the Contract shall be without prejudice to the rights and remedies which have accrued to the parties before termination or expiry of the Contract.

## **19. BLH Safety Solutions may Transfer**

BLH Safety Solutions may assign novate or transfer (Transfer) to any person and/or company any Contract, without the Customers prior consent. In the event of such Transfer the Customer shall execute all documents requested by BLH Safety Solutions to give effect to such Transfer, within fourteen days (14) of receiving of receiving such documents from BLH Safety Solutions.

## **20. Force Majeure**

- 20.1 BLH Safety Solutions is not liable for failure to perform the Contract to the extent and for so long as its performance is prevented or delayed without substantial fault or negligence by BLH Safety Solutions because of:
- (a) Circumstances outside BLH Safety Solutions control;
  - (b) Failure of BLH Safety Solutions machinery; or
  - (c) Failure of a supplier to BLH Safety Solutions provided that BLH Safety Solutions gives notice to the Customer of the delay and uses reasonable efforts to remedy the cause of the delay quickly.

## **21. Dispute Resolution**

- 21.1 Any dispute, difference, claims or disagreements whatsoever arising out of or in connection with these Standards Terms and Conditions or the Contract, the performance of the parties obligations, the enforceability or validity of these Standard Terms and Conditions or the Contract, or the termination thereof (“Dispute”), shall be resolved by negotiation in good faith

and/or mediation.

- 21.2 If any party wishes to resolve a Dispute, it must give the other party(s) written notice of that fact and specify:
- (a) The nature of the Dispute;
  - (b) The outcome the party wishes to achieve;
  - (c) What action the party believes will resolve the Dispute.

**("Dispute Notice")**

- 21.3 Within **seven (7) days** (or such other time as the parties agree) of receipt of such notice by other party, the Chief Executive Officer or Managing Director or other officer or representative of each party with authority to resolve the Dispute shall negotiate in good faith to resolve the Dispute.

- 21.4 If the parties are unable to resolve the Dispute within thirty (30) days of the Dispute Notice being given, either party may refer the Dispute to mediation by giving the other party a written mediation notice.

- 21.5 The parties shall agree to a mediator and a place and time for mediation within seven (7) days of the mediation notice being given. If the parties are unable to agree to a mediator or place or time for mediation, then either party can ask the Institute of Arbitrators and Mediators Australia ("IAMA") to appoint the mediator and to nominate the place and time for mediation.

- 21.6 The parties by their authorised representative who have authority to resolve the Dispute must attend the mediation and attempt to resolve the Dispute.

- 21.7 Unless, otherwise agreed in writing:

- (a) The parties must pay the cost of the mediator and mediation venue in equal shares.
- (b) Each party is to pay their own costs in attending the mediation including any legal representation.

- 21.8 If the Dispute cannot be resolved within at least **thirty (30) days** of the start of mediation, either party may request the mediator to terminate the mediation and commence legal proceedings or refer the matter to:

- (a) Arbitration in accordance with the *Commercial Arbitration Act 1986 (Tasmania)*, where all parties are located in Australia;
- (b) Arbitration in accordance with the UNCITRAL Arbitration Rules. The appointing and administering body shall be the Institute of Arbitrators and Mediators Australia ("IAMA"). There shall be one arbitrator and the arbitration shall be in English and take place in the English language.

Nothing in this clause prevents any party from commencing urgent injunctive or interlocutory proceedings in a competent court.

## **22. Waiver**

- 22.1 A party waives a right under a Contract only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.

## **23. Severance**

- 23.1 If any provision of these Standard Terms and Conditions or the Contract is invalid, void, ineffective or unenforceable:
- (a) The provision must be read down and amended to the extent necessary to avoid that result;
  - (b) If the provision cannot be read down and amended to that extent, it must be severed without altering the validity and enforceability of the remainder of these Standard Terms and Conditions and the Contract, and
  - (c) The parties shall agree in writing to amended or new provision to replace the invalid, void, ineffective or unenforceable.

#### **24. Variation and Waiver**

- 24.1 These Standard Terms and Conditions may be varied or replaced by BLH Safety Solutions at any time without written notice or agreement of the Customer except where there is an existing Contract with a Customer which has incorporated these Standard Terms and Conditions, in which case any variation must be by agreement signed by an authorised officer or representative of each party.
- 24.2 No variation of the Contract shall be effective unless signed by an authorised officer or representative of each party.

#### **25. Applicable Law**

- 25.1 These Standard Terms and Conditions and Contract shall be governed and construed according to the laws of the Commonwealth of Australia and the laws of the State of Tasmania, Australia.
- 25.2 Unless otherwise agreed in writing, United Nations Convention on Contracts for International Sale of Goods shall not apply.

#### **26. English controlling Language**

- 26.1 All Contracts and documents, reports, notices or correspondence passing between the parties shall be in the English language. In the event of any dispute between the parties as to the interpretation or application of the Contract or any documents, reports, notices or correspondence, the English language version shall be controlling.



I, ..... of .....

Hereby acknowledge that I have read and understood these Standard Terms and Conditions for supply the Goods and/or Services as defined herein

Signed: .....

Dated: .....

Witnessed by: .....

Signed: .....

Dated: .....