

TERMS AND CONDITIONS OF SALE

1. APPLICABILITY. These terms and conditions of sale (these “**Terms**”) are the only terms which govern the sale of the products (“**Products**”) by Bray Pacific Pty. Ltd., a subsidiary of Bray International Inc., and its subsidiaries, branches and divisions (as applicable, “**Bray**” or “**Seller**”) to a purchaser of Products (“**Buyer**”) from Bray. Notwithstanding anything herein to the contrary, if a written contract signed by Bray and a Buyer covers the sale of Products covered hereby, the terms and conditions of such contract shall prevail to the extent they are inconsistent with these Terms.

References to (i) “Bray factory” are to the applicable Bray national or regional headquarters of Seller in the country where the order is received and (ii) “dollars” or “\$” are to United States dollars unless specified otherwise on the quotation.

2. ENTIRE AGREEMENT. These Terms and the quotation (the “**Quotation**”) which they accompany (collectively, the “**Agreement**”) comprise the entire agreement between Bray and Buyer relating to the Products that are the subject of such Quotation, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties and communications, both written and oral. These Terms prevail over any of Buyer’s general terms and conditions of purchase regardless of whether or when Buyer submitted its purchase order or such terms. Buyer’s acceptance of the Quotation is expressly limited to these Terms, and Bray objects to, and is not bound by, any terms or conditions that differ from, add to, or modify these Terms. Fulfillment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms. Notwithstanding anything to the contrary in these Terms or any Agreement, Bray shall not be obligated to make, or otherwise fulfill the terms of, any sale of Products to Buyer in an order amount less than Two Hundred and Fifty Dollars (\$250).

3. QUOTATIONS. Unless stated otherwise in writing by Seller, all Quotations made by Seller are for immediate acceptance. Seller reserves the right to withdraw and/or revise any Quotation at any time prior to final acceptance by Buyer. Orders are not considered accepted, and thus a contract, until received and acknowledgment in writing by Bray’s Manufacturing Plant in Australia.

4. PRICE. Buyer shall purchase the Products from Seller at the prices (the “**Prices**”) set forth in Seller’s published price list in force as of the date Buyer’s order is received by Bray. All Prices (and any applicable discounts) for Products are subject to change without notice. Any order that is delayed for delivery at Buyer’s request or is otherwise scheduled to be made in excess of one hundred twenty (120) days from the order date will be invoiced at published list prices and discounts effective at the time of shipment unless otherwise specifically agreed at the time of Seller’s order acceptance. Any extra expenses incurred by Seller, such as engineering, tagging, taxes, service calls, export crating or other expenses, will be added to the invoice after notification to Buyer of the extra costs.

5. TAXES. Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties, fees and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes, and if payable or paid by Seller, then added to the Price.

6. PAYMENT TERMS.

A. All invoices for domestic (including New Zealand) Buyers will be due net thirty (30) days from date of invoice unless otherwise stated by Seller. All invoices for international (non-U.S.) Buyers will require confirmed, irrevocable Letters of Credit due upon delivery to freight forwarder at its Australian port for shipment, unless otherwise agreed by Seller.

B. Buyer shall pay interest on all late payments at the lesser of: (i) the rate of one and three quarter percent (1.75%) per month service charge and (ii) the highest rate permissible under applicable law. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorney fees and court costs. In addition to all other remedies available under these Terms or at law (which are not waived by Seller's exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Products if Buyer fails to pay any amounts when due hereunder.

C. Buyer shall not withhold or delay payment of any amounts due and payable by reason of any set-off of any claim, counterclaim, abatement, delay of customer payment or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

7. CREDIT. Shipments and deliveries of Products to Buyer shall remain at all times subject to the approval of Seller's credit department. Seller, in addition to any other rights and remedies, may, at its option, decline to make shipments or deliveries hereunder except upon receipt of payment or satisfactory security or otherwise upon terms and conditions satisfactory to Seller. Should Seller elect to extend credit to Buyer, Seller may limit or deny further extensions of credit in Seller's sole discretion. Any extension of open payment terms by Seller is dependent on Buyer's ongoing ability to support its working capital requirements for its business.

8. DELIVERY.

A. Unless otherwise agreed in writing by the parties, Seller shall make the Products available at the Bray factory (the "**Delivery Point**"). The title to and risk of loss for Products passes to Buyer upon signing of the bill of lading by the transportation company (which signifies the delivery of the Products to the transportation company for shipment to Buyer). Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Products at the Delivery Point.

B. Seller shall retain a security interest in the goods and their proceeds until paid in full. Buyer acknowledges this Contract constitutes a security agreement for the purposes of the Personal Properties Security Act 2009 (PPSA) and must whenever requested by Seller sign all documents and do all acts and things requested by Seller to register Seller's interest on the Personal Property Securities Register and such other register as Seller requires under the PPSA and shall not create of cause to be created a security interest over or in respect of its rights in the Goods, other than the security interest arising under this Contract. Buyer agrees to irrevocably waive any rights it may have to receive a verification statement as defined in the PPS

C. The Products will be delivered within a reasonable time after the receipt of Buyer's order. Delivery dates are approximate and are dependent upon prompt receipt of all necessary Buyer-furnished information and materials (if applicable).

D. All Prices are quoted ExWorks (EXW) Bray factory or such other place that Seller shall designate on the Quotation. Seller does not insure shipments beyond the Delivery Point and, therefore, all claims of lost or damaged Products in transit must be filed directly with the transportation company by Buyer. Seller shall select the method of shipment and the carrier for the Products. Seller may ship via the Buyer's choice if routing is satisfactory and rates equal to or less than Seller's normal choice. In the case of higher than normal special shipping requirements, Seller will ship the Products at Buyer's expense (including a handling fee or collect basis) and Buyer will not receive any credit for freight charges that under normal circumstances would be incurred by Seller. There may be only one destination per order.

E. If for any reason Buyer fails to accept delivery of Products on the date fixed pursuant to Seller's notice to Buyer that the Products are being made available for delivery at the Delivery Point: (i) risk of loss to the Products shall pass to Buyer, (ii) the Products shall be deemed to have been delivered and accepted by Buyer and (iii) Seller, at its option, may store the Products until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance). Any failure of Buyer to provide appropriate instructions, documents, licenses or authorizations in connection with delivery of Products shall be deemed to be a failure of Buyer to accept delivery of Products at such time as such Products are otherwise available for delivery. Any orders held by Seller more than sixty (60) days may be treated as a cancelled and the Products deemed returned.

9. INSPECTION AND REJECTION OF NONCONFORMING PRODUCTS.

A. Buyer shall inspect the Products within ten (10) days of receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Products unless it notifies Seller in writing of any Nonconforming Products during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. "**Nonconforming Products**" means that the Products shipped are different than those identified in Buyer's purchase order.

B. If Buyer timely notifies Seller of any Nonconforming Products during the Inspection Period, Seller shall, in its sole discretion, (i) replace such Nonconforming Products with conforming Products, or (ii) credit or refund the Price for such Nonconforming Products, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Products to the Bray factory or such other place that Seller shall designate on the Quotation. Upon Seller's confirmation of the nonconforming nature of the Nonconforming Products, Seller shall credit the Buyer's expense for such shipment against the Buyer's payment obligations to Seller. If Seller exercises its option to replace such Nonconforming Products, Seller shall, after receiving Buyer's shipment of returned Nonconforming Products, ship to Buyer the replaced Products and the terms of **Section 8(B)** shall apply for such replaced Products, except that Seller shall be responsible for the costs and expenses for such shipment.

C. Buyer acknowledges and agrees that the remedies set forth in **Section 9(B)** (exercised in accordance with these Terms) are Buyer's exclusive remedies for the delivery of Nonconforming Products.

10. CHANGE ORDER / CANCELLATIONS. Orders received and accepted by Seller may not be changed or cancelled except on terms satisfactory to Seller and which prevent Seller

from incurring any loss. Seller will not accept changes or cancellations of Products, whether standard, non-standard or special, without full reimbursement of all related expenses incurred to date. Buyer must request all cancellations and change orders in writing, and must be signed by an authorized representative of Seller to be effective. Any changes or cancellations of Projects will be subject to appropriate changes in discounts, freight costs and other charges to Buyer.

11. LIMITED WARRANTY.

A. In addition to any warranties or guarantees implied by law that cannot be excluded, Seller warrants to Buyer that for a period ending as of the earlier of twelve (12) months from the installation date and eighteen (18) months from the shipment date (as applicable, the “**Warranty Period**”), Products manufactured by Seller will be free from defects in materials and workmanship when used for the purposes for which they were designed and manufactured. Seller does not warrant the Products against chemical or stress corrosion or against any other failure other than from defects in materials or workmanship.

B. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE EXPRESS WARRANTY SET FORTH IN SECTION 1.11(A) IS EXCLUSIVE AND IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. OTHER THAN AS SPECIFICALLY REQUIRED BY LAW, NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IS INTENDED OR GIVEN. WHERE A WARRANTY OR GUARANTEE IMPLIED BY LAW CANNOT BE EXCLUDED, THE LIABILITY OF THE SELLER IS LIMITED TO THE REPLACEMENT OR REPAIR OF THE PRODUCT OR PAYMENT OF THE COST TO REPLACE OR REPAIR THE PRODUCT.

C. Products manufactured by a third party (“**Third Party Product**”) may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Products. Third Party Products are not covered by the warranty in **Section 11(A)**. For the avoidance of doubt, to the maximum extent allowed under applicable law, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT.**

D. The Seller shall not be liable for a breach of the warranty set forth in **Section 11(A)** unless: (i) Buyer gives written notice to Seller of the defect during the Warranty Period and, in any event, within fourteen (14) days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Products and Buyer (if requested to do so by Seller) returns such Products to Bray’s factory or such other place that Seller shall designate on the Quotation for the examination to take place there; and (iii) Seller reasonably verifies Buyer’s claim that the Products are defective. Buyer shall return (freight prepaid) the defective Product to Bray at Bray’s factory or such other place that Seller shall designate on the Quotation no later than ninety (90) days of Buyer’s initial written notice to Seller of the defect. Upon Seller’s confirmation of Products in breach of the warranty provided under **Section 11(A)**, Seller shall credit the Buyer’s expense for shipment against the Buyer’s payment obligations to Seller and, if Seller exercises its option to replace such defective Products, Seller shall ship to Buyer the replaced Products and the terms of **Section 8(B)** shall apply for such replaced Products, except that Seller shall be responsible for the costs and expenses for such shipment.

E. The Seller shall not be liable for a breach of the warranty set forth in **Section 11(A)** if: (i) Buyer makes any further use of such Products after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products; or (iii) Buyer alters or repairs such Products without the prior written consent of Seller.

F. Subject to **Section 11(D)** and **Section 11(E)** above, with respect to any such Products during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Products (or the defective part) or (ii) credit or refund the price of such Products at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Products to Seller. **TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE REMEDIES SET FORTH IN THIS SECTION 11(F) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S SOLE AND ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 11(A).**

12. LIMITATION OF LIABILITY.

A. To the maximum extent allowed under applicable law, Seller shall not be liable for costs of procurement of substitute goods, consequential, indirect, incidental, special or exemplary damages, lost profits or revenues arising out of a breach of these Terms, whether or not Seller could have reasonably foreseen the possibility of such damages and irrespective of whether such losses are considered to be indirect or direct losses and includes indirect or consequential (as that concept is known in the second limb of the decision in *Hadley v. Baxendale*) loss and regardless of the legal or equitable theory (Contract, tort or otherwise) upon which the claim is based.

B. Moreover, to the maximum extent allowed under applicable law, on no event shall Seller's aggregate liability under these Terms exceed the total of the amounts paid under the applicable purchase order.

13. AUTHORIZED RETURNS. All sales of Products to Buyer are made on a one-way basis and no Products may be returned without prior written approval from Seller. Generally, in addition to the requirement for prior written approval, Buyer will accept returns from a Buyer only if the return request is timely made following shipment of the applicable Product(s) to Buyer and the Product(s) are in good, reusable condition and remain standard Bray products (*i.e.*, not custom-made, obsolete or buyout products). In regards to any returns, Seller generally issues credit (from which Seller may deduct shipping, restocking and reconditioning expenses).

14. INTELLECTUAL PROPERTY RIGHTS. All copyrights, patents, trademarks, trade secrets, know-how and other intellectual property or proprietary rights pursuant to the laws of any jurisdiction worldwide ("**IP Rights**") associated with or relating to the Products shall belong solely and exclusively to Seller. Seller will retain all IP Rights used to create, embodied in, used in and otherwise relating to the Products and any of their component parts, and Buyer shall not acquire any ownership interest in any of Seller's IP Rights. Buyer shall use Seller's IP Rights only in accordance with these Terms and any instructions of Seller. No license, either express or implied, is granted in any IP Rights of Seller. If Buyer acquires any IP Rights in or relating to any Product by operation of law or otherwise, such rights are deemed and are hereby irrevocably assigned to Seller without further action. Buyer shall, at Seller's expense, execute such documents and do such things as are necessary to enable Seller to protect its IP Rights.

15. DESIGN CHANGES. Seller reserves the right to change, discontinue or alter the design and construction of Products without prior notice and without further obligation.

16. COMPLIANCE WITH LAW. Buyer shall comply with all applicable laws, regulations and ordinances, and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Agreement. In furtherance of the foregoing (and without limitation thereto), please note the following in regards to compliance:

A. Trade Compliance. Buyer must comply with all laws governing export/import control and regulation, including, without limitation, laws governing re exporting. If Buyer is obtaining Product(s) for resale, such compliance requires that Buyer know of the end- use, end-user, ultimate destination or other facts relating to such sale of Product(s), and be alerted to “*red flags*” in the circumstances related to such sale. Buyer is obligated to comply with Bray’s trade compliance program in regards to any sale and purchase of Product(s). Buyer should contact Bray to confirm compliance with the requirements of this program.

B. Anti-Corruption Laws. Buyer must comply with all anti-corruption and bribery laws and regulations, including, without limitation the United Kingdom’s Bribery Act 2010 and the United States’ Foreign Corrupt Practices Act. Buyer must not pay, offer or promise to pay, directly or indirectly, anything of value for purposes of influencing an official decision or seeking influence in regards to any such decision from a person or organization affiliated with any government body, organization or business entity owned in part or in whole by a government body. Buyer must contact Bray in regards to any transaction in respect of Product(s) provided under this Agreement that could implicate such laws. Bray may immediately terminate, without any liability, any sale, agreement or association with any person violating such laws.

17. TERMINATION. In addition to any remedies that may be provided under the Agreement, Seller may terminate the Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due; (ii) has not otherwise performed or complied with any of the terms of the Agreement, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

18. WAIVER. No waiver by Seller of any of the provisions of these Terms or the Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

19. CONFIDENTIAL INFORMATION. All Confidential Information (as defined below) of Seller disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential,” in connection with these Terms or the Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller’s request, Buyer shall promptly return all Confidential Information received from Seller. Seller shall be entitled to injunctive relief for any violation of this

Section. For purposes of this Agreement, “**Confidential Information**” means all non-public, confidential or proprietary information of Seller including, but not limited to, business affairs, business plans, trade secrets, intellectual property, specifications, samples, patterns, designs, client information, customer information, supplier information, technical data, developments, properties, systems, procedures, services, processes, methods, drawings, know-how, equipment, development plans, documents, manuals, strategies, training materials, costs, pricing, discounts or rebates, inventions, discoveries or any other confidential matters acquired in respect of the Seller or the Products.

20. FORCE MAJEURE. Neither Seller nor Buyer shall be in breach of contract nor liable to the other party for any delay or damages if prevented from performance of these Terms and the Agreement (other than the payment of money) by any condition of force majeure which is beyond the control and not caused by the negligence of the party so affected (“**Force Majeure**”). Force Majeure includes, but shall not be limited to, earthquakes, floods, hurricanes, named tropical storms, lightning strikes, ice storms, blizzards, icebergs, pack ice, air and sea disasters, explosions and fire, epidemics, acts of God, acts of public enemy, war, terrorism, national emergency, invasion, insurrection, riot, strike, lockout, blockade or other industrial disputes, any laws, rules, regulations, orders, directives or requirements of or interference by any government or government agency, inability or delay in obtaining supplies of adequate or suitable materials, power outage or other circumstances not within the control of the party and which, by the exercise of reasonable diligence, the party is unable to prevent or remedy, whether similar or dissimilar, foreseen or unforeseen. Seller shall have such additional time as may be reasonably necessary to perform its obligations upon the occurrence of any Force Majeure event.

21. ASSIGNMENT. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

22. AMENDMENT AND MODIFICATION. These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each of Seller and Buyer.

23. RELATIONSHIP OF THE PARTIES. The relationship between the parties is that of independent contractors. Nothing contained in these Terms or the Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between Seller and Buyer, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

24. NO THIRD-PARTY BENEFICIARIES. These Terms and the Agreement are for the sole benefit of the Seller and Buyer and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

25. GOVERNING LAW AND JURISDICTION. This Agreement is governed by the laws of Victoria and both parties submit to the exclusive jurisdiction of the courts of that state. Any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or invalidity of this Agreement shall be settled by arbitration in accordance with the UNCITRAL

Arbitration Rules currently in force. The appointing authority shall be the Australian Centre for International Commercial Arbitration. The number of arbitrators shall be one. The place of arbitration shall be Braeside, Victoria. The language to be used in the arbitral proceedings shall be English

26. NOTICES. All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a “**Notice**”) shall be in writing and addressed to the parties at the addresses set forth on the face of the Quotation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), email or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in the Agreement, a Notice is effective only (i) upon receipt of the receiving party (and confirmation of such receipt in respect of facsimile or email transmissions), and (ii) if the party giving the Notice has complied with the requirements of this Section.

27. SEVERABILITY. If any of these Terms or other terms or provision of the Agreement are determined to be invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision or invalidate or render unenforceable such term or provision in any other jurisdiction.

28. CLERICAL ERRORS. Seller reserves the right to correct all stenographic or clerical errors or omissions in any documents (whether Quotations, invoices or other documents).

29. SURVIVAL. Any provision of the Agreement that by its nature should apply after any termination or expiration of the Agreement, including (but not limited to) the following provisions: Compliance with Laws, Confidentiality, Governing Law / Jurisdiction and Survival, shall survive any such termination or expiration.

30. PUBLISHED DATA. All published dimensions, weights, temperatures, pressure ratings and other Product data are approximate.