

BRAVADA GROUP PTY LTD (ACN: 167 664 815) TRADING TERMS & CONDITIONS

(01.08.2019)

1 DICTIONARY

In these Trading Terms & Conditions, the following terms have the following meanings (except to the extent that the context requires otherwise):

ACL means the Australian Consumer Law as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth);

Bravada Group means Bravada Group Pty Ltd ACN 167 664 815;

Building Code of Australia means volumes one and two of the National Construction Code of Australia published by the Australian Building Codes Board;

Change of Control means, in relation to a body corporate, the occurrence of an event or circumstance where a person who is not presently able to do any of the following things becomes able to do one of the following things (whether directly or indirectly or through one or more intervening persons, companies or trusts):

- control the composition of more than one half of the body's board of directors;
- be in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the members of the body; or
- hold or have a beneficial interest in more than one half of the issued share capital of the body;

Consumer has the meaning given in the ACL;

Consumer Contract has the meaning given in section 23 of the ACL;

Contract means an agreement or arrangement (whether or not in writing) between or involving the Customer and the Installer, for the provision of Waterproofing Works and/or Other Works and/or Products, including any invoice, Schedule of Rates and/or Installation Certificate;

Covering Surface means any covering surface applied on or over completed Waterproofing Works, such as ceramic, vinyl or other types of tiles, carpet or other covering types;

Customer means the individual(s) or organisation(s), as specified in the Contract and/or that has/have requested the Waterproofing Works and/or Other Works and/or the Products;

Defective Area means the area of the Premises in respect of which any of the Waterproofing Works and/or Other Works that are alleged or found to be defective (as the context requires), were applied;

Force Majeure Event means any act or circumstance beyond a party's reasonable control, including subsidence or other structural building movements, earth tremors, fire, flood or other weather damage, acts of God, vandalism, industrial disputes, national or local emergency, acts of government, acts of war or civil disorder and the failure or inability of any suppliers of the Installer to supply or provide any goods or services required by the Installer to supply or provide any Products and/or the Waterproofing Works and/or Other Works to the Customer;

Installation Certificate means a certificate identified as being an "Installation Certificate" which may be issued by the Installer to the Customer in respect of Waterproofing Works (including the annexure to that certificate);

Installer means the entity or person specified in the Contract as being the provider of the relevant Products and/or Waterproofing Works and/or Other Works, being Bravada Group or any contractor appointed by Bravada Group to perform Waterproofing Works and/or Other Works on its behalf.

Leak Detection Fee means the standard fee specified from time to time by the Installer for attending premises at the request of the Customer to investigate and identify the probable cause of any defects in waterproofing works;

Other Works means those works including but not limited to floor & wall tiling, plumbing, roof repairs & remediation, floor coatings and concrete repairs & remediation that are separate to any Waterproofing Works that may apply and which are provided by the Installer to the Customer (as specified in the Contract) and/or ordered or requisitioned by the Customer for the Installer (as applicable) and in each case including any products provided or to be provided as part of those other works.

PPSA means the *Personal Property Securities Act 2009* (Cth);

Premises means the location at which the Waterproofing Works and/or Other Works have been or are to be completed (as the context requires);

Prices has the meaning set out in clause 6.1;

Products means any products that are supplied to (or ordered by) the Customer from the Installer, including those products that are necessary to complete the

Waterproofing Works and/or Other Works and those products specified in the Contract;

Published Price Lists means any price list relating to Products and/or Waterproofing Works and/or Other Works which are published by the Installer from time to time or which may appear on the Bravada website at www.bravada.com.au as amended from time to time;

Purchase Order means any purchase order, instruction or requisition issued by the Customer to the Installer relating to Products and/or Waterproofing Works and/or Other Works;

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth);

Related Entity has the meaning given in the *Corporations Act 2001* (Cth);

Relevant Bravada Entity means either:

- where the Installer is not Bravada Group, a contractor formally appointed by Bravada Group; or
- otherwise, Bravada Group;

Retentions means any moneys payable by the Customer to the Installer in consideration for Waterproofing Works and/or Other Works provided by the Installer (but only to the extent that those moneys are not paid by that Customer for a certain period (or are not invoiced by the Installer to that Customer for a certain period) as security for any defects or other issues that may arise in relation to those Waterproofing Works and/or Other Works);

Schedule of Rates means details of prices for certain Waterproofing Works and/or Other Works issued to Customers;

Standards means the standards and other requirements with which all waterproofing installation services completed in Australia must comply, as specified under Australian Standards AS3740 (waterproofing of domestic wet areas), AS4654 (waterproofing membranes for external above – ground use – materials) and AS4858 (wet area membranes) and the Building Code of Australia (BCA), in each case as amended from time to time;

Supporting Surface means the surface on which any of the Waterproofing Works that are alleged or found to be defective (as the context requires), were applied;

Trading Terms & Conditions means this document;

Warranty Claim means a claim by the Customer against the Installer in relation to completed Waterproofing Works by exercising the Customer's rights under clause 14 (or any Installation Certificate provided to the Customer) and/or any applicable law;

Warranty Inspection means a requirement, at the request of the Customer, for the Installer to access the Premises to inspect the Waterproofing Works and/or any Products, in response to a Warranty Claim;

Warranty Period has the meaning given in the Installation Certificate to be provided in relation to the Waterproofing Works (or if no period is specified or no Installation Certificate is provided, then a period of 1 year commencing on the date that the relevant Waterproofing Works were completed or such other longer period as may be required by any applicable law);

Waterproofing Works means those waterproofing works that are separate to any Other Works that may apply and which are provided by the Installer to the Customer (as specified in the Contract) and/or waterproofing works ordered or requisitioned by the Customer from the Installer (as applicable), and in each case including any Products provided or to be provided as part of those waterproofing works.

2 APPLICATION OF THESE CONDITIONS

- Unless otherwise agreed in writing, these Trading Terms & Conditions apply to all products and Waterproofing Works and/or Other Works provided or supplied, or to be provided or supplied, by the Installer to the Customer, and are taken to be incorporated in and form part of each Contract (as well as any quotation or tender issued by the Installer in respect of any Products and/or Waterproofing Works and/or Other Works).
- Each Contract constitutes the whole agreement and understanding between the Installer and the Customer in relation to the relevant Products and/or Waterproofing Works and/or Other Works.
- The Relevant Bravada Entity may from time to time vary these Trading Terms & Conditions (other than in relation to the Prices, which may be varied in accordance with clause 6) by giving at least 30 days' notice in writing to the Customer. If the relevant Contract is a Consumer Contract (and the variation does not relate to the Prices), then the Customer may refuse to accept such a variation by giving written notice to the Relevant Bravada Entity within that 30 day notice period, in which case the variation will not apply to that Contract unless otherwise

agreed in writing by the Installer and the Customer. If the Customer does not make such an election within the relevant 30 day notice period or the Contract is not a Consumer Contract, then the Customer agrees that all Products and/or Waterproofing Works and/or Other Works ordered or requisitioned after notification of the variation will be subject to the variation and the placing of such order or requisition will be taken to be an acceptance of the variation by the Customer.

- If there is any inconsistency between these Trading Terms & Conditions and any Purchase Order, Installation Certificate, quotation, tender, Published Price List or Schedule of Rates, then these Trading Terms & Conditions will prevail to the extent of the inconsistency (unless expressly agreed otherwise by the parties in writing).

3 ACCEPTANCE AND CANCELLATION

- The Customer is deemed to have acknowledged and accepted these Trading Terms & Conditions by ordering Products and/or Waterproofing Works and/or Other Works from the Installer, permitting the provision of the Waterproofing Works and/or Other Works by the Installer, making and/or facilitating payment in full to the Relevant Bravada Entity in respect of ordered Products and/or completed Waterproofing Works and/or completed Other Works or by agreeing to any other document provided by the Installer that incorporates these Trading Terms & Conditions by reference.
- If more than one Customer (or a Customer and a Related Entity of that Customer) have entered into the Contract, then those Customers (or the Customer and the relevant Related Entity, as applicable) will be jointly and severally liable for all obligations of the "Customer" under the Contract.
- Upon acceptance of these Trading Terms & Conditions by the Customer under clause 3.1, the Trading Terms & Conditions are binding and can only be amended in accordance with clause 2.3.
- The Installer reserves the right to refuse to accept any Purchase Order at its sole discretion. No Purchase Order will be taken to have been accepted by the Installer unless that acceptance has been communicated by the Installer to the Customer in writing.
- Once a Purchase Order has been issued by the Customer to the Installer, it may only be cancelled by the Customer before the supply of the relevant Products (or completion of the relevant Waterproofing Works and/or Other Works) with the written consent of the Installer. If such consent is given, then the Customer must reimburse the Installer on demand for all losses, damages and expenses directly or indirectly incurred by the Installer in the preparation and provision of the relevant Products and/or Waterproofing Works and/or Other Works to fulfil the relevant Purchase Order.

4 QUOTATIONS AND TENDERS

Any quotations and/or tenders provided by the Installer to the Customer, prior to the Contract being entered into, are subject to change or withdrawal at any time by the Installer in writing, and (unless the Installer states otherwise in the relevant quotation or tender) will be taken to have been rejected by the Customer if not accepted by the Customer in writing before the date that is 30 days from the date of the relevant quotation or tender (as applicable).

5 CONSENTS AND PRIVACY

- The Customer and any other person that may be jointly and severally liable for the obligations of the Customer under the Contract (each a **Relevant Party**) consent to the Installer collecting and using personal information of or relating to any Relevant Party for the purpose of:
 - assessing a Purchase Order and/or credit worthiness of any Relevant Party;
 - to the maximum extent permitted by law, assisting the Installer in the exercise of any of their respective rights against any Relevant Party, including the right to enforce payment of any amount payable by any Relevant Party to the Installer whether under these Trading Terms & Conditions or otherwise; and
 - any other lawful purpose required by the Installer,and the Installer may disclose that personal information to any person considered reasonably

- appropriate by the Installer to achieve any such purpose.
- 5.2. To the extent that the Installer considers it relevant to assessing a Purchase Order and/or credit worthiness of any Relevant Party, that Relevant Party agrees to the Installer obtaining a credit report containing personal information of or relating to that Relevant Party from a credit reporting.
- 5.3. Without limiting clauses 5.1 and 5.2, each Relevant Party agrees that personal information of and relating to that Relevant Party may be collected and used for the purposes of providing the Customer with the Products and/or Waterproofing Works and/or Other Works, to administer and manage the supply of Products and/or Waterproofing Works and/or Other Works (including collecting and processing payments), and to market to any Relevant Party any products or services that the Installer believes may be of interest to that Relevant Party.
- 5.4. This clause 5 should be read in conjunction with any privacy policy published from time to time on the Bravada website at www.bravada.com.au
- ## 6 PRICES
- 6.1. Subject to the other provisions of this clause 6, all prices (**Prices**) payable by the Customer to the Installer for Products and/or Waterproofing Works and/or Other Works provided (or to be provided), are as set out in the Contract, Published Price Lists, Schedules of Rates or any quotations and/or tenders sent by the Installer to the Customer from time to time.
- 6.2. Subject to clause 6.3 and unless otherwise specified by the Installer, all Prices are subject to change by the Installer giving the Customer prior written notice of any such change including where there is a variation of any Purchase Order or the scope of works required by the Customer in relation to the Waterproofing Works and/or Other Works or where additional works are required at the Premises or where delays are incurred by the Installer as a consequence of; the presence of excessive moisture or water on the areas where membranes are to be installed, the substrate being unsuitable for the application of membranes, the Installer not having sufficient access to areas where membranes are to be installed as is necessary to install membranes to the manufacturers specifications, the Premises being unsafe in not complying with all laws relating to occupational health & safety and any other limitations and difficulties encountered at the Premises that result in an increase in the Installer's cost of Products and labour necessary to complete the Waterproofing Works and/or Other Works specified in the Contract.
- 6.3. If the Contract is a Consumer Contract, then the Customer may refuse to accept any Price change referred to in clause 6.2 for the relevant Products or Waterproofing Works and/or Other Works by giving written notice cancelling or amending the relevant Purchase Order to exclude the Products and/or Waterproofing Works and/or Other Works to which the variation in Price relates (but only before the relevant Products or Waterproofing Works and/or Other Works have been provided to the Customer). If the Customer does not make such an election before the relevant Products or Waterproofing Works and/or Other Works have been provided to the Customer (or the Contract is not a Consumer Contract), then the Customer agrees that all Products and Waterproofing Works and/or Other Works ordered, supplied or provided after notification of the Price change will be subject to the Price change and the placing of such orders and acceptance of the Products and/or Waterproofing Works and/or Other Works provided will be taken to be an acceptance of the Price change by the Customer.
- 6.4. The Prices do not include:
- GST (as that term is defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**)), or any other levies, taxes, duties or other government charges applicable from time to time; or
 - any delivery, courier or insurance costs, expenses or surcharges relating to any Products (**Delivery Charges**).
- 6.5. Unless otherwise stated in the Contract, the amount of any applicable GST will be added to and paid in the same way and at the same time as the relevant amount payable under or in connection with the Contract, subject to the Customer receiving a valid tax invoice in accordance with the GST Act.
- 6.6. All Delivery Charges will be added to and paid in the same way and at the same time as the relevant amount payable under or in connection with the Contract.
- ## 7 TERMS OF PAYMENT
- 7.1. Each payment must be made in full to the Installer within 7 days (unless otherwise varied by the Installer in writing) after the date of the relevant invoice issued by the Installer notwithstanding the fact that the relevant Products and/or Waterproofing Works and/or Other Works may not have been delivered, supplied or installed by that date.
- 7.2. Invoices may be issued progressively as Products and/or Waterproofing Works and/or Other Works are provided to the Customer.
- 7.3. The Installer may require a deposit or advanced payment to be made before any Products and/or Waterproofing Works and/or Other Works are provided by the Installer. The Customer authorises the Installer to deduct and offset from any deposit moneys held by the Installer (or the advance payments made by the Customer) the amount of any invoice issued by the Installer for Products and/or Waterproofing Works and/or Other Works provided to the Customer.
- 7.4. Each payment must be made by the Customer by cash, bank cheque, electronic funds transfer, credit card or by any other method as may be agreed by the Installer and the Customer. The Customer must bear the cost of any merchant fees or other similar amounts incurred by the Installer on any credit card payments.
- ## 8 DELIVERY OF PRODUCTS AND INSPECTION
- 8.1. Products will be delivered or taken to be delivered, when they are delivered to the delivery place nominated by the Customer in a Purchase Order. If no such address is nominated in the relevant Purchase Order or the Customer nominates an unmanned location for delivery, then delivery will be taken to occur at the time when the Products are ready for collection at the Installer's premises or at the time the Products are left at the unmanned location, respectively.
- 8.2. Delivery of Products may be by separate instalments. Each separate instalment must be accepted and paid for in accordance with these Trading Terms & Conditions, notwithstanding any late delivery or non-delivery of any other instalment.
- 8.3. Any times quoted for the delivery of Products are estimates only. The Installer will use reasonable endeavours to meet any quoted delivery times, but will not be liable to the Customer for any failure to deliver or for delay in the delivery of the Products. Any failure to deliver or delay in the delivery of any Products does not entitle the Customer to terminate any Contract.
- 8.4. The Customer must promptly inspect the Products when they are delivered or taken to be delivered in accordance with clause 8.1, and within 2 days after delivery to the Customer occurs (or is taken to have occurred), the Customer must notify the Installer of any alleged defects, shortage, damage or failure to comply with the related Purchase Order, quotation or tender (**Alleged Defects**).
- 8.5. The Customer must give the Installer the opportunity to verify the Alleged Defects by allowing the Installer access to the relevant Products within a reasonable time following the date of notification under clause 8.4.
- 8.6. If the Customer does not fully comply with clauses 8.4 and 8.5, then to the maximum extent permitted by law, the Products will be taken to be free of defects and otherwise compliant with the related Purchase Order, quotation or tender.
- 8.7. Clauses 8.4, 8.5 and 8.6 do not apply in relation to any Products that form part of Waterproofing Works and/or Other Works (given that defects relating to Waterproofing Works and/or Other Works are dealt with under clause 14).
- ## 9 RISK
- Risk in each Product will pass to the Customer at the time delivery to the Customer occurs (or is taken to have occurred) under clause 8.1, notwithstanding that the Installer may be required to install or set up those Products (or perform any Waterproofing Works and/or Other Works) after that time.
- ## 10 TITLE
- 10.1. Capitalised terms used in this clause 10 that are not otherwise defined in these Trading Terms & Conditions have the meaning given in the PPSA.
- 10.2. The Customer acknowledges and agrees that each Contract constitutes a Security Agreement under the PPSA and secures the Installer's right to receive the Price of all Products sold (and Waterproofing Works and/or Other Works provided) under the relevant Contract and all other amounts from time to time owing to the Installer under the Contract or any other contract.
- 10.3. The Customer agrees that legal title and property in any Products is retained by the Installer (and that the Installer retains a Security Interest in all Proceeds relating to the Products) until:
- payment is received in cleared funds from the Customer of all sums owing to the Installer (and all Retentions have been paid in full), whether under the Contract or otherwise; and
 - the Customer has met all other obligations due by that Customer to the Installer under the Contract and under all other contracts between or involving the Customer and those other parties.
- 10.4. The Customer must promptly do anything required by the Installer to ensure that the Installer's Security Interest is a perfected Security Interest and has priority over all other Security Interests in the Products and any Proceeds relating to those Products.
- 10.5. Until legal title and property in any Product has passed to the Customer, the Customer must keep that Product separate from other products and must store the Products so that they are readily identifiable as being supplied by the Installer.
- 10.6. If the Customer fails to pay by the due date any amount owing to the Installer, then the Installer may (without prejudice to any other rights and remedies) recover and resell those Products, any Proceeds relating to those Products and any other Products in which property has not passed to the Customer. In addition to any rights the Installer may have under Chapter 4 of the PPSA, the Installer may, without notice, enter any premises where they suspect the Products and/or those Proceeds may be located and remove them without committing a trespass, and the Customer authorises the Installer to enter on to the premises where those Products and those Proceeds are located to take possession of those Products and those Proceeds for that purpose at any time.
- 10.7. To the extent permitted under the PPSA, the Customer acknowledges and agrees that sections 142 and 143 of the PPSA will not apply to any Contract or any Security Interests granted under that Contract, and agrees to waive any right to receive any notice or statement from the Installer, except to the extent that the giving of that notice or statement is required by the PPSA and cannot be excluded by agreement.
- 10.8. The Security Interest arising under this clause 10 attaches to the Products when the Customer obtains possession of the Products and the parties confirm that they have not agreed that any Security Interest arising under this clause 10 attaches at any later time.
- ## 11 PROVISION OF SERVICES
- 11.1. In respect of any installation or other services that form part of the Waterproofing Works and/or Other Works, the date(s) on which those services will be provided by the Installer will be the date(s) determined by the Contract or as otherwise agreed by the Installer and the Customer. If for any reason, other than the negligence or wilful default of the Installer, the Installer is unable to proceed with the relevant work on the required date, then the Installer may delay the provision of those services until the Installer and the Customer have agreed on any necessary variations to the Prices resulting from that delay.
- 11.2. Unless otherwise specified in the Contract, all Prices associated with the installation or other services that form part of the Waterproofing Works and/or Other Works have been quoted based on the assumption that:
- those services will be provided during the hours of 7.30am to 5pm on normal business days (in the place where those services are to be provided);
 - those services will be provided at the Premises agreed in the Contract; and
 - the Customer will provide the Installer and its employees, director, agents and contractors with ready access to the Premises to carry out those services.

Any variation to these assumptions may result in additional costs being incurred by the Installer, and the Installer may delay the provision of the relevant services until the Installer and the Customer have agreed on any necessary variations to the Prices as a result of those additional costs.

12 HEALTH AND SAFETY

- 12.1. The Customer represents and warrants to the Installer and that the Premises complies in all respects with the standards set out in or required under any laws relating to occupational health and safety.
- 12.2. Before the Installer will be required to comply with any obligation requiring any employees, directors, agents or contractors of the Installer to enter the Premises, the Customer must carry out an induction for those individuals and provide written notification to the Installer of any hazards located at the Premises, including the location of electrical wiring, gas services, water services, sewage services, pumping services, telephone/network cables and fibre optic cables.

13 DEFAULT AND CANCELLATION

- 13.1. If the Customer fails to pay any amount when due under the Contract to the Installer, then the Installer may (respectively, at their sole discretion and without limiting their other rights and remedies) charge interest on the amount outstanding at a rate of 2.5% per calendar month (compounding monthly), calculated from and including the date on which the relevant payment became due until but excluding the date on which the relevant payment is made, which interest is payable by the Customer to the Installer on demand.
- 13.2. If any amounts owing by the Customer to the Installer under the Contract remain overdue for 30 days or more (**the Overdue Debt**), then the Installer may appoint a solicitor or mercantile agent to attempt recovery of the Overdue Debt from the Customer, in which case the Customer shall be liable for all related costs, charges, levies and expenses incurred by the Installer (including all mercantile agent's fees and legal costs calculated on an indemnity basis) in connection with any recovery or attempted recovery of any Overdue Debt payable by the Customer to the Installer.
- 13.3. Without limiting their other rights and remedies, the Installer may suspend performance of any of their respective obligations under the Contract (or give written notice terminating the Contract with immediate effect), if the Customer:
- breaches any obligation of the Customer under the Contract (including the obligation of the Customer to pay any amounts when due under the Contract) and if the breach is capable of remedy, the Customer does not remedy the breach within 7 days after being notified in writing by the Installer);
 - has a receiver, receiver and manager, liquidator, provisional liquidator, trustee, mortgagee in possession, administrator, controller or inspector appointed under any law (or any similar official is appointed in respect of the Customer or any of its assets) or the Customer is unable to pay its debts when due or otherwise is, becomes or is deemed to be insolvent or bankrupt; or
 - is the subject of a Change of Control that has not been consented to by the Installer.
- 13.4. On termination under clause 13.3, the Installer may at its option exercise any or all of the following rights (in addition to any other rights and remedies they may have):
- suspend the delivery or provision of further Products and/or Waterproofing Works and/or Other Works to the Customer;
 - terminate any other contract in relation to Products and/or Waterproofing Works and/or Other Works that have not been delivered or supplied to the Customer;
 - withdraw any credit facilities which may have been extended to the Customer and require immediate repayment of all moneys owed to the Installer;
 - issue an invoice for, and demand immediate payment for, any Products and/or Waterproofing Works and/or Other Works ordered by the Customer, but which have not yet been delivered and/or supplied;
 - in respect of Products already delivered to the Customer, enter onto the Customer's premises to recover those Products; and
 - exercise any rights that the Installer has under the PPSA or any other applicable law.

14 WARRANTIES AGAINST DEFECTS

- 14.1. The Waterproofing Works and/or Other Works come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a *major failure* and for compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the Waterproofing Works repaired or replaced if the Waterproofing Works fail to be of *acceptable quality* and the failure does not amount to a *major failure*. These benefits are in addition to any other rights and remedies available to the Customer under applicable law in relation to the Waterproofing Works, subject to clause 15. This clause 14.1 only applies where the Customer is a Consumer in connection with the supply of the Waterproofing Works and is taken to be a statement made by, and obligation of, the Installer in favour of the Customer. In this clause 14, terms that are in italics have the meaning given to them in the ACL.
- 14.2. The Products purchased by the Customer from the Installer (or used in any Waterproofing Works and/or Other Works) may come with limited warranties from the manufacturers of those Products and, to the maximum extent permitted by law, those warranties are the only warranties given to the Customer in respect of those Products. The Installer has no authority to make any representations or warranties in relation to the Products and it can only pass on information in relation to the Products which is published in materials or other data provided by the manufacturer of the Products and which is in the public domain.
- 14.3. Subject to these Trading Terms & Conditions and without limiting clause 14.1 (if applicable), if all or any part of the Waterproofing Works are defective in materials or workmanship (or otherwise do not comply with the Standards) and the Customer makes a claim under clause 14.4 in relation to those Waterproofing Works, and the Installer accepts that the relevant Waterproofing Works are defective, then the Installer will at its cost and at its option (and as the Customer's sole remedy):
- remedy the defect by:
 - removing that part of the Covering Surface as is necessary to facilitate repairs to the Defective Area;
 - repairing any damage to the Supporting Surface;
 - reapplying the relevant Waterproofing Works to the Supporting Surface;
 - repairing any damage to the Covering Surface caused by the defective Waterproofing Works or removal under clause 14.3(a)(i); and
 - repairing any other damage to the Premises resulting directly from the defective Waterproofing Works or the Installer remedying the defective Waterproofing Works; or
 - paying for the cost of having another qualified installer complete the works and repairs set out in clause 14.3(a).
- 14.4. If the Customer wishes to make a Warranty Claim, then the following provisions apply to the maximum extent permitted by law:
- To make a Warranty Claim, the Customer must as soon as is reasonably possible (and in any event before the expiry of the relevant Warranty Period), notify the Installer by phone (1300 272 823), fax ((03) 98723334), email (enquiries@bravada.com.au) or post (P.O Box 377, Vermont, VIC, 3133) and provide to the Installer the following:
 - the date on which the alleged defect in the Waterproofing Works was first detected;
 - details of the alleged defect, including details of the Defective Area;
 - details of any damage caused by the alleged defect, including any damage to the Supporting Surface and Covering Surface;
 - the Customer's full name and telephone number;
 - a copy of the Contract; and any other information required by the Installer.
 - The Installer will subsequently make arrangements with the Customer for a Warranty Inspection to occur, and if the Warranty Inspection does not reveal any defect

in the Waterproofing Works that would entitle the Customer to a remedy under clauses 14.1 and/or 14.3 (to the extent applicable), then the Customer will be liable to pay to the Installer the Leak Detection Fee on demand.

- The Customer acknowledges that in conducting the Warranty Inspection, it may be necessary to remove all or part of the Covering Surface to thoroughly investigate whether the Waterproofing Works may be defective or to otherwise identify the cause of any water leaks. The part of the Covering Surface that is to be removed during the Warranty Inspection will be determined at the sole discretion of the Relevant Bravada Entity and if the instructions of the Relevant Bravada Entity in relation to any such removal of the Covering Surface are not strictly complied with by the Customer, then the Installer will not be liable for any loss, damage or any other liabilities arising as a result of the non-compliant removal of any of the Covering Surface.
- If the Warranty Inspection reveals indisputable proof that the Waterproofing Works are defective, then subject to the Customer having complied with clause 14.4(a), the Installer will take the steps contemplated by clause 14.3.
- If the Warranty Inspection requires the removal of all or any part of the Covering Surface to identify the cause of any defect in the Waterproofing Works and the Warranty Inspection does not reveal any defect or failure in the Waterproofing Works, then the Installer will not be liable for any damage caused to the Covering Surface, the Supporting Surface or any other damage to the Premises caused (whether directly or indirectly) as a result of conducting the Warranty Inspection, and any such liability will be borne solely by the Customer.
- The Customer will not be entitled to claim any costs or expenses from the Installer (including any Leak Detection Fees paid by the Customer) in relation to making the Warranty Claim.

14.5. To the maximum extent permitted by law, the following additional terms and conditions will apply in respect of any Warranty Claim:

- To the extent that this clause 14 places a repair or replacement obligation on the Installer, Products used in the Waterproofing Works or any other consumables or other materials used in relation to that repair or replacement, may (where possible) instead be replaced by second hand or refurbished products, consumables or other materials (as the case may be) of the same or similar type.
- Without limiting the other provisions contained in these Trading Terms & Conditions, the Installer will not be liable under any Warranty Claim relating to the Waterproofing Works if:
 - any moneys are owing (or any Retentions have not been paid) by the Customer to the Installer in relation to any of the Waterproofing Works; or
 - the Customer is in breach of any terms of the Contract (including these Trading Terms & Conditions).

15 LIMITATION OF LIABILITY

15.1. To the maximum extent permitted by law:

- the Installer is not liable for, and a Warranty Claim cannot be made in respect of, any loss, damage, failure or defect relating to or arising from any one or more of the following:
 - any of the Products utilised in the Waterproofing Works:
 - not being allowed sufficient time to cure within the recommended period specified by the manufacturer of the Products or the Installer;
 - being exposed to chemical or corrosive agents, fumes, liquids or solids;
 - being subjected to indentations or other impact from loads in excess of those specified by the manufacturer of the Products or the Installer; or
 - being exposed to ultraviolet light for extended periods;
 - any defects in the Products which were correctly installed or applied by the Installer;

- (iii) any design defect, structural failure or structural movement of any Supporting Surface, framework or material in or on which the Waterproofing Works have been installed or applied;
- (iv) any Force Majeure Event;
- (v) any failure by the Customer to allow the Installer reasonable and timely access to the Premises in order to conduct a Warranty Inspection; or
- (vi) any damage arising from the Waterproofing Works caused by third parties (including other contractors and tradespeople) as a consequence of the Customer not using all reasonable measures to prevent such damage, including failure to:
- allow sufficient time for the Products to cure within the recommended period specified by the manufacturer of the Products or the Installer prior to enabling foot traffic or the application of any Covering Surface;
 - cordon off the area of the Waterproofing Works until the Covering Surface (where applicable) is ready to be applied to the Waterproofing Works; and
 - place a protective cover over the Waterproofing Works to prevent damage being caused by other contractors or tradespeople in completing their allocated works in the vicinity of the Waterproofing Works;
- (b) the Installer has no liability to the Customer or to any other person or entity for:
- (i) the acts or omissions of any other entity or third party;
- (ii) faults or defects of the Products and/or Waterproofing Works and/or Other Works caused by the Customer or any third party; or
- (iii) any indirect, incidental or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of business opportunity, loss of data or information, wasted management time, damage to reputation or penalty damages, irrespective of whether the loss or damage is caused by or relates to breach of contract, statute, tort (including negligence) or otherwise and irrespective of whether the Installer or any other person or entity was previously notified of the possibility of the loss or damage; or
- (iv) any loss or damage arising as a result of any failure by the Customer or any employees, directors, agents or sub-contractors of the Customer to comply with any instructions, advice or directions of the Installer or any of their respective employees, directors, agents or sub-contractors;
- (c) any warranty, guarantee, condition, representation, undertaking or other right that would be guaranteed or implied in these Trading Terms & Conditions or is otherwise imposed by statute, common law, equity, trade, custom or usage, and which is not expressly included in these Trading Terms & Conditions, is excluded; and
- (d) without limiting any other provision of these Trading Terms & Conditions, the maximum aggregate liability of the Installer for all proven losses, damages and claims arising out of the Contract, including liability for breach, in negligence or in tort or for any other common law or statutory action, is limited to the sum of the amounts paid by the Customer to the Installer and in relation to the Products and/or Waterproofing Works and/or Other Works that relate to the Contract.
- 16 INTELLECTUAL PROPERTY**
- 16.1. Any technical information, designs, drawings, plans, knowledge or installation methods at any time given or transmitted either orally or in writing by the Installer to the Customer (or otherwise obtained by the Customer directly or indirectly from the Installer) will remain the property of the Installer and must be treated by the Customer as confidential information of the Installer. Except to the extent expressly permitted by the Contract, the Customer must not use any such information, knowledge or installation methods for any purpose nor sell, transfer or divulge any of it in any manner to anyone without the prior written consent of the Relevant Bravada Entity and then only as directed by the Relevant Bravada Entity.
- 16.2. The Customer warrants and represents to the Installer that any instructions that the Customer requires the Installer to comply with in providing the Waterproofing Works and/or Other Works do not infringe and will not cause the Installer to infringe any patent, copyright, trade mark, design or other intellectual property of any third party.
- 16.3. After completion of any transaction contemplated by the Contract, the Customer consents to the Installer using the name of the Customer and any associated logo(s) in the Installer's websites, proposals and marketing materials.
- 17 FORCE MAJEURE**
- Where any failure or delay by the Installer in the performance of any of their respective obligations under the Contract is caused, directly or indirectly, by a Force Majeure Event, the Installer is not liable for that failure or delay and its respective obligations under the Contract are suspended, to the extent to which they are affected by the relevant Force Majeure Event, for the duration of the Force Majeure Event.
- 18 INDEMNITY**
- The Customer must indemnify the Installer and each of their respective Related Bodies Corporate (**Indemnified Parties**) on demand in respect of all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against any of the Indemnified Parties or which any of the Indemnified Parties may pay, sustain or incur as a direct or indirect result of any breach or non-performance of any Contract by the Customer, or as a result of any act or omission of the Customer or any employees, directors or agents of the Customer.
- 19 ENFORCEMENT BY THIRD PARTIES**
- To the extent that any provision in the Contract is expressed to be for the benefit of any 2 or more of Bravada Group, the Installer and one or more Related Bodies Corporate of Bravada Group or the Installer (and any of those entities are not parties to the Contract), each of those entities that are parties to the Contract (each an **Enforcing Party**) are taken to enter into the Contract in its own capacity and in its capacity as trustee and agent for each of those entities that are not parties to the Contract (**Other Parties**), and each Enforcing Party is entitled to enforce the Contract for the benefit of itself and each of the Other Parties.
- 20 GENERAL**
- 20.1. Headings are used for convenience only and do not affect the interpretation of the Contract.
- 20.2. Any notice to be given by the Installer to the Customer under the Contract may be given personally, by post, by fax or by email.
- 20.3. Words importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies.
- 20.4. A reference to either Bravada Group, the Installer or the Customer includes their respective executors, administrators, successors and permitted assigns.
- 20.5. Wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)".
- 20.6. If any provision of the Contract is or becomes invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions will not be affected.
- 20.7. A failure or delay by Bravada Group or the Installer in exercising any right conferred on that party under the Contract does not operate as a waiver of the right.
- 20.8. The Customer must not transfer, assign, create an interest in or deal in any other way with any of its rights under the Contract without the prior written consent of the Installer.
- 20.9. The Installer may license or sub-contract all or any part of its rights and obligations under the Contract without the consent of the other parties.
- 20.10. The Customer must not set off against or deduct from any Price or amounts owing to the Installer, any amounts owed or claimed to be owed to the Customer by the Installer nor withhold any payment of any amount due to the Installer because that amount or any part of it is in dispute.
- 20.11. Except to the extent the Contract provides otherwise, nothing in this Contract may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.
- 20.12. The Contract is governed by and must be construed in accordance with the laws in force in Victoria. The Customer submits to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to the Contract.