

# BRP Electrical Trading Terms

BRP Electrical Ltd (NZBN 9429046250322) and each related company from time to time (as defined in the Companies Act 1993) (individually and together called "BRP Electrical")

## 1. Application of terms

1.1 The terms of this Agreement apply in every case where BRP Electrical provides goods or services of any kind ("Goods") to the customer (as referred to in the Application for Trading Account or if there is no application, the customer placing the order, or on whose behalf the order is placed) ("Customer") on the Customer's trading account ("Trading Account"), unless otherwise agreed in writing between BRP Electrical and the Customer. Acceptance of Goods by the Customer is conclusive evidence before any court that this Agreement (and any variation) applies and is binding on it and the guarantors (as referred to in the Application for Trading Account) ("Guarantors").

1.2 In the event of, and to the extent of, any inconsistency between this Agreement and the terms of any purchase order for the provision of Goods, this Agreement prevails.

1.3 This Agreement comprises the Application for Trading Account, the Acknowledgement and Authority pursuant to the Privacy Act 1993 and these Trading Terms, as amended from time to time.

## 2. Credit

2.1 BRP Electrical may, in its absolute discretion:

- (a) grant, sell or supply any Goods to the Customer, as requested by the Customer from time to time, on credit;
- (b) provide, in association with any other credit provider(s) from time to time, credit card access or facilities to the Customer for a range of Goods, on and subject to the terms and conditions of this Agreement and debit to the Customer's Trading Account the relevant price stated or the amount charged in respect of the Goods, together with a service fee for each transaction in an amount or at a rate as notified by BRP Electrical to the Customer from time to time;
- (c) debit the Trading Account with the price stated or the amount charged or the Amount(s) Payable (as defined in **clause 3**) in any invoice or statement in respect of the Goods, and if no price is stated, then BRP Electrical's normal selling price for the Goods as notified by BRP Electrical to the Customer from time to time;
- (d) issue a statement at any time showing the debit or credit balance of the Trading Account at the date shown on the statement ("**Statement**"); and
- (e) terminate the Trading Account by notice in writing to the Customer accompanied by a Statement showing the final balance of the Trading Account ("**Final Statement**").

2.2 BRP Electrical's agreement to open the Trading Account does not entitle the Customer, at any time, to credit or any particular amount of credit.

## 3. Payment of Accounts

3.1 The Customer must, without demand from BRP Electrical, pay the whole amount of any debit balance

shown on a Statement ("**Amount(s) Payable**") on or before the due date shown on the Statement (which unless otherwise stated is seven (7) days from the date of the Statement) ("**Due Date**"); and where the Statement is a "Final Statement", on or before the due date shown on the Final Statement ("**Final Due Date**"). This clause does not affect the obligation of the Customer to pay the entire Amount Payable prior to a Due Date or the Final Due Date where required under any other provision of the Agreement.

3.2 By setting the Due Date on a particular Statement:

- (a) BRP Electrical does not represent that the Due Date will be the same number of days from the date of the Statement in future Statements; and
- (b) BRP Electrical does not limit its right to vary the number of days between the date of a Statement and the Due Date from one Statement to another.

3.3 In this Agreement, "**Amount(s) Payable**" includes:

- (a) all amounts debited to the Trading Account for Goods supplied pursuant to this Agreement, now and in the future;
- (b) all money now and in the future owing or payable to BRP Electrical by the Customer, either alone or jointly with another person, whether directly or indirectly or contingently under this Agreement or on any other account whatsoever, and including all such money arising from:
  - (1) any guarantee, deed, indemnity, account, document or other agreement in writing between BRP Electrical and the Customer and/or any Guarantor (as referred to in the Application for Trading Account);
  - (2) any service fee or accounting administration fee or any other charge, cost or expense payable by the Customer to BRP Electrical under this Agreement;
  - (3) all costs (including legal costs on a full indemnity basis and expenses), expenses or losses incurred or sustained by BRP Electrical in relation to any failure by the Customer and/or Guarantor to comply with the terms and conditions of this Agreement;
  - (4) interest on any judgment entered by BRP Electrical against the Customer in respect of the Amount(s) Payable; and
  - (5) all advances, further advances, loans, credits or financial accommodation (whether given on, before or after the date of this Agreement) by BRP Electrical, to, for or on account of or at the request of the Customer and/or any Guarantor;
- (c) any tax, duty, charge or other impost or levy made at any time by government in connection with the Goods or this Agreement; and
- (d) all amounts owing in accordance with **clause 10.1** (if applicable).

#### 4. Changes to Trading Account

BRP Electrical may at any time, in its absolute discretion, without notice and without assigning any reason:

- 4.1 set, change or limit credit in relation to the Trading Account;
- 4.2 refuse to open a Trading Account, close the Trading Account and/or refuse to extend credit to the Customer on any account;
- 4.3 refuse or limit credit or suspend or terminate the supply of Goods or the granting of any rights under this Agreement. All subsequent trading between BRP Electrical and the Customer will revert to a cash purchase or a cleared funds basis until BRP Electrical, in its absolute discretion, reinstates the provision of credit to the Customer; and
- 4.4 set, change, vary or discontinue any credit card access or facilities as described in **clause 2.1(b)**.

#### 5. Payments by the Customer

- 5.1 BRP Electrical may appropriate any moneys paid to it by the Customer in such manner and at such times as BRP Electrical, in its absolute discretion, determines.
- 5.2 The amount stated in a certificate signed by BRP Electrical's duly authorised representative or solicitor as being due and payable by the Customer to BRP Electrical under this Agreement is prima facie evidence that such amount is owing.
- 5.3 Amounts payable by the Customer under this Agreement must be paid without deduction, retention or set-off of any kind and for any reason.
- 5.4 If an event listed in **clauses 6.4(a) – 6.4(h)** (inclusive) occurs, BRP Electrical may, at its discretion, apply a credit balance in any of the Customer's Trading Accounts towards satisfaction of a debit balance in any of the Customer's other Trading Accounts.
- 5.5 Payment by cheque or other negotiable instrument is not deemed to be payment of any moneys payable until the cheque or other negotiable instrument is met on first presentation for payment.

#### 6. Retention of Title

- 6.1 Title to all Goods purchased by the Customer whilst the Trading Account has a debit balance ("**Bailed Goods**") remains with BRP Electrical.
- 6.2 The Customer must hold all Bailed Goods in the possession of the Customer as fiduciary and bailee for BRP Electrical.
- 6.3 The Customer is authorised to sell the Bailed Goods in the ordinary course of its ordinary business, but only until:
  - (a) notified in writing to the contrary by BRP Electrical; or
  - (b) the occurrence of an event listed in **clauses 6.4(a) – 6.4(h)** (inclusive).
- 6.4 If the Customer or any person who has guaranteed the debts of the Customer to BRP Electrical:
  - (a) has any step taken to appoint, or with a view to appointing, a receiver, statutory manager, administrator or other similar officer over its assets, or it or any associated person (within the meaning of the Companies Act 1993) is declared at risk

under that Act or it requests the appointment of, or an application is made for the appointment of, any such official;

- (b) has any step taken for its winding up or dissolution;
- (c) suspends or threatens to suspend payment of its debts, is, or states it is, or is presumed by law to be, insolvent or unable to pay its debts, or takes a step for the purpose of entering into a compromise or arrangement with any of its creditors for their benefit or with any of its members, other than a compromise or arrangement that is part of a solvent reconstruction;
- (d) commits an '*act of bankruptcy*' within the meaning of Part 2 of the Insolvency Act 2006 or any amendment or replacement thereof;
- (e) has distress, attachment or other execution levied or enforced over any of its property;
- (f) fails to pay the entire Amount Payable in accordance with this Agreement;
- (g) breaches any other provision of this Agreement or any other agreement with any BRP Electrical Entity (as defined in **clause 18.1**); or
- (h) without BRP Electrical's prior written consent, and in BRP Electrical's opinion, makes a material change in its effective control or that of any of its subsidiaries,

the Customer must immediately notify BRP Electrical and BRP Electrical may, at its election and without prejudice to other rights which BRP Electrical may have:

- (i) declare the Amount Payable immediately due for payment; and
- (j) enter the premises at which the Bailed Goods are kept ("**Premises**") and remove the Bailed Goods from the Premises.

**6.5** BRP Electrical may sell or otherwise dispose of any Bailed Goods recovered by BRP Electrical pursuant to this **clause 6** in its absolute discretion and on its own account, without limitation to any other rights which BRP Electrical may have.

**6.6** The Customer indemnifies BRP Electrical and every person acting on its behalf against any loss, damage, liability or expense incurred or sustained as a result of the reasonable exercise by BRP Electrical of its rights under this **clause 6**.

**6.7** This **clause 6** is for the benefit of BRP Electrical, and BRP Electrical may waive the benefit of this clause by giving notice in writing to the Customer at any time.

**6.8** Notwithstanding the other provisions of this **clause 6** and without derogating from the rights of BRP Electrical, BRP Electrical may take any action it deems necessary, including legal proceedings, to recover as a liquidated debt an Amount Payable.

**6.9** The Customer grants to BRP Electrical (under **clause 6.1**) a purchase money security interest, as defined in the Personal Properties Securities Act 1999 ("**PPSA**") in the Bailed Goods and any proceeds of sale of the Bailed Goods ("**PMSI**") to secure the purchase price of the Bailed Goods.

**6.10** The costs of registering a financing statement will be paid by the Customer and may be debited against the Customer's Trading Account.

**6.11** The Customer agrees not to do or permit anything to be done that may result in the PMSI granted to BRP Electrical ranking in priority behind any other security interest (as defined in the PPSA).

**6.12** The Customer will take such further steps (including obtaining consents, supplying information, signing forms or executing documents) which may be required by BRP Electrical to take further or better security under the PPSA in respect of the Bailed Goods and proceeds of sale of the Bailed Goods or to maintain the effectiveness or priority of any security interest under the PPSA.

## **7. Risk in Goods and Customer Obligations**

**7.1** All Goods purchased by the Customer are at the risk of the Customer from the time the Goods are delivered to the Customer or its nominated agent. Delivery is deemed to occur when the Goods are delivered to the carrier, whether BRP Electrical arranges, procures or effects the transport of the Goods at the request of the Customer or otherwise. The Customer must insure the Goods (with BRP Electrical's interest noted on the policy) from the date of delivery until title passes to the Customer or the Goods are sold in accordance with **clause 6**.

**7.2** The Customer must inspect all Goods delivered to the Customer or its nominated agent within 24 hours (or such other time period for perishable, dry, security or other Goods as notified by BRP Electrical from time to time) of delivery to the relevant Premises ("**Inspection Period**") in order to ensure that Goods delivered are as ordered by the Customer and are not delivered in a damaged state. The Customer must notify BRP Electrical within the Inspection Period if Goods are found to be other than as ordered by the Customer or have been delivered in a damaged state.

**7.3** Subject to **clause 9.1(e)**, if the Customer has not notified BRP Electrical within the Inspection Period that Goods delivered were not as ordered by the Customer, or that Goods were delivered in a damaged state, then the Goods will be deemed to have been delivered in good condition and as ordered by the Customer.

**7.4** Goods supplied by BRP Electrical are resold by the Customer in the same consequential order as the Goods have been supplied by BRP Electrical. All Goods of the same type as the Bailed Goods will be deemed to have been supplied by BRP Electrical unless the Customer proves to the contrary at the time BRP Electrical claims to be entitled to possession of such Goods.

**7.5** The Customer must sell the Goods in the original packaging supplied by BRP Electrical. The Customer must not alter or interfere in any way with the Goods or remove any labelling or instructions provided with the Goods.

**7.6** The Customer must not make any representation or give any warranty in relation to the Goods not expressly authorised by BRP Electrical in writing.

**7.7** To the extent permitted by law, if the Customer is in breach of this Agreement, BRP Electrical may (without prejudice to any other rights) repossess the Bailed Goods and the Customer licences BRP Electrical and its employees and agents to enter its premises at any time

without notice for such purpose, with all related costs of BRP Electrical to be paid by the Customer on demand.

## **8. Data and Information**

**8.1** BRP Electrical may provide data to the Customer's retail outlet(s). This data can take many forms including:

- (a) Full initial load data;
- (b) Weekly data updates;
- (c) Weekly promotional data files; and
- (d) Monthly or bi-monthly promotional files.

The data includes but is not limited to: Product codes; Global trade identification number (GTIN – previously referred to as APN); Descriptions; Size; Pack quantity; Cost price; Retail price; Promotional start and end dates; tax rates and numerous other flags.

**8.2** Subject only to **clause 8.3** BRP Electrical has no liability for data provided by it to the Customer.

**8.3** Where BRP Electrical has charged an incorrect price for Goods, BRP Electrical will correct the data as soon as it becomes aware of the error and will credit or debit (as applicable) to the Customer, the difference between the invoice price and the correct price. The Customer must, in addition to its other obligations under this Agreement, take steps to mitigate any loss it may suffer as a result of BRP Electrical's error.

**8.4** The Customer bears responsibility for the normal retail price and promotional pricing generated by their POS system and the overall running of that system. The Company warrants and represents that it is relying upon its own skill and judgment in relation to the actioning of the data in its retail store.

**8.5** The Customer acknowledges and agrees that all trading information as between the Customer and BRP Electrical belongs to BRP Electrical at all times and that the Application for Trading Account and Trading Terms are confidential information and may not be disclosed to any third party without the prior written consent of BRP Electrical.

**8.6** BRP Electrical agrees to take reasonable steps to prevent the disclosure of a Customer's trading information to a competitor of the Customer.

## **9. Liability**

**9.1** The Goods are deemed to be defective if any Goods:

- (a) are not of merchantable quality;
- (b) are not fit for any purpose for which they are acquired by Customer;
- (c) do not conform to any sample, specification or other description given to BRP Electrical by the Customer in relation to the Goods;
- (d) being in the nature of services, are not of a reasonable standard, quality, value or grade; or
- (e) do not comply with any consumer guarantee or implied warranty applicable to the supply of the Goods which cannot be excluded (including pursuant to the Consumer Guarantees Act 1993 ("**CGA**") or Fair Trading Act 1986 ("**FTA**)).

**9.2** Where Goods are defective (as defined in **clause 9.1**) BRP Electrical may, at its option, elect to:

- (a) replace the Goods; or

- (b) repair the Goods or reimburse the Customer for the cost of repairing the Goods; or
- (c) in the case of Goods being in the nature of services, re-supply the services; or
- (d) if payment of the purchase price for the Goods has not been made by the Customer - release the Customer from any obligation to pay the purchase price; or
- (e) if payment of the purchase price for the Goods has been made by the Customer - refund the purchase price to the Customer, subject to the Customer, where applicable, first restoring the unencumbered ownership of the Goods to BRP Electrical; and
- (f) in any case, reimburse to the Customer any cost incurred by the Customer in transporting the Goods to the Customer from BRP Electrical.

**9.3** To the extent permitted by law, BRP Electrical will not accept the return of Goods unless:

- (a) prior authorisation has been given (which will not be unreasonably withheld);
- (b) the claim is supported by the relevant invoice;
- (c) the Goods are in the same condition as at the date of supply;
- (d) the Goods are returned via BRP Electrical's nominated carrier and at BRP Electrical's designated rates; and
- (e) in the case of Goods delivered in a damaged state or Goods delivered other than in accordance with the Customer's order, BRP Electrical was given notice in accordance with **clause 7.2**.

**9.4** Other than any remedies the Customer may have under the CGA and FTA, the sole remedies of the Customer under or in relation to this Agreement whether in contract, in tort, under statute or otherwise are only as specified in this Agreement and are subject to the limitations set out in **clause 9.6** and the following limitations:

- (a) BRP Electrical, and BRP Electrical's officers, employees and agents, will not have any liability or other obligation to any person or other entity, including the Customer, arising out of, or in any way directly or indirectly connected with, the matters referred to in **clauses 9.1(a) – 9.1(e)** except to comply with its obligations (subject to the other provisions and limitations in this **clause 9**) under **clause 9.2**;
- (b) all conditions, warranties and other terms pertaining to the condition or quality of Goods are excluded to the extent permitted by law (including the CGA and FTA);
- (c) the Customer warrants and represents that it is relying upon its own skill and judgment in relation to the quality of Goods, and their fitness for any purpose that may be required, and not upon any conduct or representation of BRP Electrical, or any of BRP Electrical's officers, employees or agents; and
- (d) the Customer must not make any claim or demand, or take any action or other proceeding against BRP Electrical, or any of BRP Electrical's officers, employees or agents, for any loss of

profits, loss of revenue, loss of anticipated savings, loss or corruption of data, loss of contract or opportunity, loss of goodwill OR any indirect, special or consequential loss of whatever nature including of any loss of a type described in this sub-clause, whether or not reasonably foreseeable, reasonably contemplatable or actually contemplated by the parties at the time of execution of this Agreement, arising out of, or in any way directly or indirectly relating to this Agreement including in relation to any of the matters referred to in **clauses 9.1(a) – 9.1(e)**.

**9.5** Subject to the remainder of this **clause 9**, the Customer:

- (a) releases and forever discharges BRP Electrical, and each of BRP Electrical's officers, employees and agents, from all claims under or in relation to this Agreement; and
- (b) indemnifies BRP Electrical and each of BRP Electrical's officers, employees and agents in respect of all loss, damages and expenses relating to, or arising out of, any claim.

**9.6** To the extent permitted by law, BRP Electrical's total liability for any claim under or in relation to this Agreement is limited to the price paid by the Customer for the Goods or services the subject of the claim.

## **10. Administration Fee and Enforcement Costs**

**10.1** The Customer agrees that if any Amount Payable is not paid by the Due Date or by the Final Due Date in accordance with this Agreement, BRP Electrical shall be entitled to charge and recover:

- (a) interest on the outstanding amount at a rate equivalent to 3% p.a. above the annual business overdraft interest rate of its principal banker, as determined and calculated by BRP Electrical, in its discretion; and/or
- (b) an additional amount representing an accounting administration fee and loss of use of moneys not exceeding 3.5% per month or part thereof on the Amount Payable overdue for the period between the Due Date or the Final Due Date until payment is made in full. The Customer acknowledges that this fee is a genuine pre-estimate by BRP Electrical of the loss, costs and expenses of BRP Electrical which shall be incurred by reason of the Customer's default in payment of the Amount Payable and the recovery of same.

**10.2** If the Customer breaches its obligations under this Agreement, the Customer shall immediately pay to BRP Electrical on demand, all costs and expenses whatsoever incurred by BRP Electrical in the enforcement or attempted enforcement of this Agreement including, but without limiting the generality of the foregoing costs and expenses including legal costs (on a full indemnity basis) freight costs, storage costs, electricity and telephone charges (except to the extent such costs and expenses directly result from BRP Electrical's breach of this Agreement) and the Customer authorises BRP Electrical to debit any Trading Account with such costs and expenses.

## 11. Security Interest

### 11.1 The Customer:

- (a) grants a security interest in all of its present and after-acquired property and in all of its present and future rights in relation to any personal property (as defined in the PPSA) ("**Personal Property**") to BRP Electrical;
- (b) charges all of its rights, property and undertaking of whatever kind and wherever situated, whether present or future including, without limitation, its capital and any interest in real property (both legal and beneficial, in freehold and leasehold land) (other than any Personal Property to which the PPSA applies) to BRP Electrical; and
- (c) agrees to mortgage all of its present and future interests in any real property to BRP Electrical,

as security for the performance of its obligations under this Agreement including payment of the Amount(s) Payable.

**11.2** The Customer must, within 10 days of request from BRP Electrical, execute such documents as BRP Electrical requires to perfect the security interest, charge and mortgage. The Customer must pay on demand any costs (including any fines and penalties) assessed in connection with the security interest, charge and mortgage. The costs of registering a financing statement will be paid by the Customer and may be debited against the Customer's Trading Account.

**11.3** The Customer acknowledges that BRP Electrical, by virtue of the charge and mortgage, has a caveatable interest in any real property of the Customer which is or becomes subject to the charge and/or mortgage and may lodge a caveat over that property.

## 12. Change in Customer Details

**12.1** The Customer must notify BRP Electrical, in writing, within seven (7) days, of any proposed or actual change in:

- (a) the address of the business and the address at which the Goods will be located (if it differs to the Premises);
- (b) the trading name of the business;
- (c) the person(s), director(s) or trustee(s) conducting the business of the Customer;
- (d) the ownership or proprietorship of the Customer in the event that the Customer converts to a trust, sole trader or company;
- (e) control of the Customer;
- (f) the Company Number of the Customer; or
- (g) the address of any Guarantor.

**12.2** The Customer indemnifies BRP Electrical against any damage or loss incurred by it as a result of the Customer's failure to provide notice in accordance with **clause 12.1**.

## 13. Attorney

**13.1** The Customer and each Guarantor irrevocably appoints BRP Electrical and each of its authorised officers, jointly and severally, to be its attorney to do any act or thing which it is required to do under this Agreement.

**13.2** BRP Electrical may only exercise the power set out in **clause 13.1** where the Customer or Guarantor (as applicable) is in breach of this Agreement and it may exercise its powers even if this involves a conflict of duty and even if it has a personal interest in doing so.

**13.3** A third party may rely on a copy of this Agreement certified by a solicitor as evidence of the appointment of BRP Electrical as the attorney of the Customer or Guarantor.

**13.4** The Customer and each Guarantor must ratify all acts and things done by BRP Electrical and its authorised officers in the exercise of the power of attorney granted in accordance with this clause.

## 14. Customer Warranties and Covenants

**14.1** The Customer warrants that the facts and representations contained in the Application for Trading Account are true and correct and the Customer is aware and acknowledges that BRP Electrical has relied upon the correctness of such facts and representations in providing the Trading Account to the Customer.

**14.2** The Customer covenants that all Goods will be purchased for the purpose of re-supply or in connection with a business carried on by the Customer or by the Customer and another person or persons and not for personal, domestic or household use.

**14.3** The Customer acknowledges and agrees that:

- (a) all transactions and dealings between the Customer and BRP Electrical in connection with the supply of Goods on the Trading Account will be made strictly in accordance with this Agreement (unless otherwise agreed by BRP Electrical in writing);
- (b) the Customer will pay the Amount(s) Payable punctually and strictly in accordance with this Agreement;
- (c) no director or principal of the Customer is or has been bankrupt;
- (d) the Customer is solvent and able to pay its debts as and when they fall due and has not made any compromise or arrangements with its creditors and no application has been made and no application is contemplated for the appointment of an administrator or controller of the Customer or any meeting of the Customer's creditors or any class of them;
- (e) the Customer has, prior to signing or execution of this Agreement **obtained independent legal and financial advice** and/or had the opportunity to obtain such advice as to the Customer's obligations and the true meaning, nature and effect of this Agreement; and
- (f) the Customer acknowledges receipt of a copy of this Agreement.

## 15. Guarantee & Indemnity and Security Interest

In consideration of BRP Electrical at the request of the Guarantor entering into this Agreement with the Customer, the Guarantor covenants and agrees with BRP Electrical that:

**15.1** The Guarantor irrevocably guarantees to BRP Electrical due performance by the Customer of its obligations under this Agreement including payment of the Amount(s) Payable.

**15.2** The Guarantor separately and independently indemnifies BRP Electrical and will at all times keep BRP Electrical indemnified from and against all losses and expenses which BRP Electrical may suffer or incur in consequence of any breach or non-observance by the Customer or any Guarantor of any of the terms of this Agreement (including a failure to pay the Amounts Payable and all enforcement expenses and legal costs on a full indemnity basis) or any part of this Agreement being void or unenforceable.

**15.3** The Guarantor:

- (a) grants a security interest in all of its present and after-acquired property and in all of its present and future rights in relation to any personal property (as defined in the PPSA) ("**Guarantor Personal Property**") to BRP Electrical;
- (b) charges all of its rights, property and undertaking of whatever kind and wherever situated, whether present or future including, without limitation, its capital and any interest in real property (other than any Guarantor Personal Property to which the PPSA applies) to BRP Electrical; and
- (c) agrees to mortgage all of its present and future interests in any real property to BRP Electrical,

as security for the performance of its obligations under this Agreement including its guarantee of the Customer's obligation to pay the Amount(s) Payable.

**15.4** The Guarantor must, within 10 days of request from BRP Electrical, execute such documents as BRP Electrical requires to perfect the security interest, charge and mortgage. The Guarantor must pay on demand any costs (including any fines and penalties) assessed in connection with the security interest, charge and mortgage. The costs of registering a financing statement will be paid by the Customer and may be debited against the Customer's Trading Account.

**15.5** The Guarantor acknowledges that BRP Electrical, by virtue of the charge and mortgage, has a caveatable interest in any real and leasehold property of the Guarantor which is or becomes subject to the charge and mortgage and may lodge a caveat over that property.

**15.6** The Guarantor remains liable to BRP Electrical under **clauses 15.1, 15.2, 15.3 and 15.4** notwithstanding that:

- (a) BRP Electrical has exercised any of its rights under this Agreement;
- (b) the Customer (being a company) may be wound up or dissolved or (being a natural person) may be declared bankrupt; and
- (c) the guarantee given by the Guarantor may be for any reason unenforceable, either in whole or in part.

**15.7** It is not necessary that BRP Electrical provide notice to the Customer to rectify any breach of this Agreement prior to the Guarantor being required to fulfil its obligations under this **clause 15**.

**15.8** A demand on the Guarantor is deemed to have been duly made if it is in writing and signed on behalf of BRP Electrical by its authorised representative or solicitor and has been given to the Guarantor or left at or posted to the address of the Guarantor or Customer as shown in the Application for Trading Account or such last known address as notified to BRP Electrical in writing by the Guarantor.

**15.9** The terms of this **clause 15** are not affected by any action taken or notice issued in relation to any other securities. BRP Electrical is under no obligation to marshal in favour of the Guarantor any security whatsoever held by BRP Electrical.

**15.10** This is a continuing guarantee and the liability of the Guarantor under this **clause 15** is not affected by:

- (a) any other person giving or not giving a guarantee or indemnity to BRP Electrical;
- (b) the winding up, deregistration, administration, liquidation or insolvency of the Customer;
- (c) the granting of time or concession (including a release, waiver, variation, assignment, novation, compounding or relinquishment of rights) to the Customer by BRP Electrical;
- (d) any delay or laches on the part of BRP Electrical;
- (e) any variation of this Agreement between BRP Electrical and the Customer (whether or not the Guarantor is party to that variation and whether or not such variation increases the Guarantor's liability under the Guarantee) or any assignment or novation of this Agreement;
- (f) BRP Electrical taking, varying, wholly or partially discharging or otherwise dealing with or losing or impairing any security for the Customer's obligations under this Agreement or a security of that kind being or becoming void, voidable or unenforceable; or
- (g) anything that BRP Electrical may do or omit to do which, but for this provision, might otherwise affect the liability of the Guarantor.

**15.11** As between the Guarantor and BRP Electrical the Guarantor is to be deemed to be a primary debtor to BRP Electrical independent of the Customer.

**15.12** To the fullest extent permitted by law the Guarantor waives such of the Guarantor's rights as surety or indemnifier (legal equitable statutory or otherwise) which may at any time be inconsistent with any of the provisions of this **clause 15**.

**15.13** The covenants and agreements made or given by the Guarantor are not conditional in any way and remain binding notwithstanding that any other person has not executed or duly executed this Agreement.

**15.14** The obligations of the Guarantor under this **clause 15** continue in force until BRP Electrical confirms in writing that it has been released.

**15.15** The Guarantor acknowledges that:

- (a) it has, prior to signing or execution of this Agreement **obtained independent legal and financial advice** and/or had the opportunity to obtain such advice as to its obligations and the true meaning, nature and effect of this Agreement; and
- (b) BRP Electrical is under no obligation to notify the Guarantor of any changes to this Agreement or any dealings with the Customer (and the Guarantor appoints the Customer as its agent for the receipt of notices in connection with this Agreement).

**15.16** In the event of liquidation or bankruptcy of the Customer, the Guarantor will not prove in such liquidation or bankruptcy in competition with BRP Electrical.

**15.17** The Customer and Guarantor agree that:

- (a) if any payment to BRP Electrical must be refunded under any statutory provision or otherwise, the liability of the Customer and Guarantor continues, and BRP Electrical will immediately be restored to the rights that BRP Electrical would have had against each party if the payment had not been made; and
- (b) the Guarantor will immediately pay to BRP Electrical the amount refunded by BRP Electrical so that all amounts payable to BRP Electrical under this Agreement have been paid.

**15.18** If the obligation of the Guarantor in respect of any part of the debt is unenforceable, the Guarantor's obligation in respect of the other part of the debt will not be affected by such unenforceability.

**15.19** BRP Electrical may apply any amounts received under this Guarantee towards satisfaction of any parts of the Amounts Payable or any other amounts under this Agreement in whatever manner it sees fit.

## **16. General**

**16.1** Time is to be of the essence so far as it relates to the Customer's obligations to BRP Electrical under this agreement

**16.2** BRP Electrical does not waive any breach by the Customer or the Guarantor of this Agreement unless the waiver is in writing signed by BRP Electrical. No waiver is to be construed as a general waiver unless it is expressly stated to be a general waiver.

**16.3** Should any provision of this Agreement be illegal, void or unenforceable, that provision will be ineffective and is to be severed from this Agreement to the extent only of that illegality, voidability or unenforceability. All remaining provisions are to be enforceable between BRP Electrical, the Customer and the Guarantor.

**16.4** This Agreement is enforceable against each of the Customer and Guarantor (if more than one person) jointly and each of them severally

**16.5** BRP Electrical may at any time assign its rights and interests or novate its rights and obligations (in whole or in part) under this Agreement. The Customer must not assign any of its rights or obligations under this Agreement without BRP Electrical's prior consent in writing, which consent may be refused or given subject to such terms and conditions as BRP Electrical may determine, at its absolute discretion.

**16.6** This Agreement binds each person who signs as Customer or Guarantor even if another person who was intended to sign does not sign it or is not bound by it.

**16.7** This Agreement binds the Customer and each Guarantor both personally and as trustee of any trusts for which it is trustee.

**16.8** This Agreement may consist of a number of copies, each signed by one or more parties to it. If so, the signed copies are treated as making up the one document. BRP Electrical's acceptance of this Agreement may be evidenced by establishing a Trading Account or supplying Goods to the Customer.

**16.9** Only a director or company secretary of BRP Electrical has the authority to (a) vary this Agreement in any way or (b) accept orders or supply Goods under the Trading Account on terms other than this Agreement. This Agreement may be varied from time to time at the discretion of BRP Electrical by giving seven (7) day's notice to the Customer and the Customer and Guarantors prospectively authorise and consent to any such variation.

**16.10** This Agreement is governed by and the Customer and Guarantor submit to the laws of New Zealand. The courts of New Zealand have non-exclusive jurisdiction in connection with this Agreement.

**16.11** In this Agreement, words or terms incorporating the singular or the plural shall include the plural and singular respectively and words importing the masculine gender shall include the feminine and neuter genders.

**16.12** In this Agreement, references to **include** and **including** are to be construed without limitation.

**16.13** Notices in connection with this Agreement may be provided to the Customer and Guarantors by mail,

## **17. Contracting out of the PPSA**

**17.1** To the extent permitted by the PPSA, the Customer and Guarantor agree to waive and contract out of its rights to receive any notice or statement under sections:

- (1) 114(1)(a) (notice of sale of collateral);
- (2) 116 (secured party to give statement of account to debtor);
- (3) 120(2) (notice of a secured party's proposal to retain collateral);
- (4) 121 (persons entitled to notice may object to proposal); and
- (5) 129 (secured party must give notice of removal of accession),

or otherwise. The parties also contract out of each other provision of Part 9 of the PPSA, under section 107, but only to the extent that the provision impose obligations on BRP Electrical

**17.2** The Customer, Guarantor or BRP Electrical will not disclose information of the kind mentioned in section 177(1) of the PPSA, unless required by law (other than section 177(1) of the PPSA).

## 18.Set-off

- 18.1** BRP Electrical may set off any amount owing by BRP Electrical or any related company (as defined in the Companies Act 1993) of BRP Electrical Trading Limited from time to time ("**BRP Electrical Entity**") to the Customer (whether or not due for payment) against any Amount Payable.
- 18.2** BRP Electrical may do anything necessary to effect any set-off under this **clause 18** (including varying the date for payment of any amount owing by a BRP Electrical Entity to the Customer). This **clause 18** applies despite any other agreement between the Customer and a BRP Electrical Entity.
- 18.3** If there are any amounts owing or due for payment by the Customer to a BRP Electrical Entity (other than BRP Electrical), the Customer authorises BRP Electrical to pay all or part of any such amount to the relevant BRP

## 18.

## Set-off

Electrical Entity in satisfaction of all or part of the Customer's obligations. Any amount paid by BRP Electrical will be automatically debited against the Customer's Trading Account and will constitute a debt from the Customer to BRP Electrical under this Agreement. If BRP Electrical makes a payment to another BRP Electrical Entity under this **clause 18.3**, it must provide written notice to the Customer within fourteen (14) days of any such payment.

- 18.4** The Customer acknowledges that the BRP Electrical Entities have entered into, or will enter into, arrangements to effect and authorise the set-off arrangements contemplated by this **clause 18**.
- 18.5** The Guarantor consents to the arrangements set out in this **clause 18** and acknowledges that the guarantee in **clause 15** extends to any amounts payable by the Customer under this clause.