

TERMS AND CONDITIONS OF TRADE

Following are the Terms and Conditions of Trade (“**Trading Terms**”) for Bemcove Pty Ltd, Bogside Mining Industries Pty Ltd, Nudgee Road Resource Recovery Pty Ltd, Silveressence Pty Ltd, Stapylton Green Energy Pty Ltd, Pine Mountain Road Pty Ltd, Lawnton Rehabilitation Pty Ltd, Austin BMI Pty Ltd, Stapylton Resource Recovery (QLD) Pty Ltd and BCC Crushing Pty Ltd, being **BMI RESOURCE RECOVERY** including, but not limited to any related body corporate, any subsidiary or associated entity and as trustee of any trust from time to time (individually and together called “**BMI Group**”).

1. **Payment:** The Customer must pay for all purchases within 30 days from the end of the month in which the invoice is generated, or within any alternative credit period granted in writing by BMI Group. Amounts payable by the Customer under these Trading Terms must be paid in full without deduction, retention or set-off of any kind and for any reason.
2. **Interest and Administration fee:** BMI Group is entitled to charge the Customer:
 - (a) interest on amounts not paid within the credit period specified by BMI Group at a rate equivalent to 3% p.a. above the annual business overdraft interest rate of its principal banker, as determined and calculated by BMI Group, in its discretion; and
 - (b) if any account remains unpaid at the end of the second month after the invoice is generated, an immediate amount the greater of \$20.00 or 10.0% of the amount overdue for administration fees, which sum shall become immediately due and payable. The Customer acknowledges that this fee is a genuine pre-estimate by BMI Group of the loss, costs and expenses which shall be incurred by reason of the Customer’s default in payment and the recovery thereof.
3. **GST:** Each amount payable by the Customer under these Trading Terms in respect of a Taxable Supply by BMI Group is a GST exclusive amount and on receipt of a tax invoice the Customer must, in addition to that amount and at the same time, pay the GST payable in respect of that supply. “Taxable Supply” and “GST” have the meanings set out in the A New Tax System (Goods and Products and services) Act 1999 (Cth).
4. **Withdrawal or Variation of Credit:** BMI Group may at any time, without the need to provide a reason, vary or withdraw any credit granted to the Customer. Where the Customer completes a further Application for a Commercial Trading Account, that Application will not be in derogation of but in addition to any previous general credit terms existing except as notified by BMI Group (or any of its related entities, subsidiaries and assigns and as Trustee of any Trust) in writing.
5. **Charge over Property:** As security for payment to BMI Group of all moneys payable by the Customer and for the Customer’s obligations generally under these Trading Terms, and the Guarantor’s obligations under the Guarantee and Indemnity, the Customer and Guarantor/s charge in favour of BMI Group the whole of the Customer’s and/or the Guarantor’s undertaking, property and assets (including without limitation all of the Customer’s and/or the Guarantor’s interests, both legal and beneficial, in freehold and leasehold land) both current and later acquired. The Customer and/or Guarantor/s irrevocably appoint each Officer as the Customer’s and/or Guarantor’s attorney to do all things necessary to create and register each such charge. Upon demand by BMI Group, the Customer and/or Guarantor/s agree to immediately execute a mortgage or other instrument in terms satisfactory to BMI Group to further secure payment of the money payable by the Customer and/or the Guarantor/s. If the Customer and/or Guarantor/s fail within a reasonable time of such demand to execute such mortgage or other instrument, then the Customer and/or Guarantor/s acknowledge that BMI Group may execute such mortgage or other instrument as the Customer’s and/or Guarantor’s attorney pursuant to the appointment of BMI Group as the Customer’s and/or Guarantor’s attorney set out in these Trading Terms.
6. **Suspension or Ceasing of Supply:**
 - (a) BMI Group may in BMI Group’s complete discretion and without incurring any liability to the Customer, cease or suspend supply of Products and Services to the Customer or amend these Trading Terms.
 - (b) Without limiting clause 6(a), if an Event of Default occurs, BMI Group may, without prejudice to BMI Group’s other rights, call up moneys owed to BMI Group by the Customer, retain all moneys paid on account, or cease further deliveries and recover from the Customer all loss of profits and other costs arising from the Event of Default and/or take immediate possession of any Products and Services for which payment remains outstanding.
7. **Liability of BMI Group:** BMI Group will not be liable for any loss or damage whatsoever suffered by the Customer as a result of any act, omission or statement made by BMI Group, its employees, contractors or agents.

8. Certification: A statement signed by an Officer certifying the amount of any moneys payable by the Customer, or identifying any products and services, as being “unpaid for” is, in the absence of manifest error, conclusive and binding on the Customer.

9. Notification of Change of Details: The Customer will provide written notice to BMI Group of any change in the Customer’s structure or management, including any change of director, shareholder, partnership, trusteeship or address within 7 days of the change.

10. Continuing Guarantee: All guarantees under or related to these Trading Terms will be continuing guarantees and will terminate only with BMI Group’s written agreement.

11. Set-Off: BMI Group may at any time set-off amounts owed by BMI Group to the Customer against amounts owed by the Customer to BMI Group.

12. Property:

(a) Where Products are to be supplied by way of sale, property in the Products shall not pass until the Customer has paid all money owing to BMI Group in full. Risk in the Products passes to the Customer at the time of delivery.

(b) The Customer holds the Products as fiduciary bailee and agent for BMI Group and must keep the Products physically separate from all other goods of the Customer, and clearly identified as owned by BMI Group until payment of all moneys owed by the Customer to BMI Group. If an Event of Default occurs, then without prejudice to BMI Group’s other rights, BMI Group may, without notice to the Customer enter any premises occupied by the Customer or any other place where the Products may be and recover possession of the Products.

(c) If the Customer sells any of the Products supplied while money is owed to BMI Group, the Customer must keep the proceeds of the sale in a separate account and not mix them with any other funds.

(d) If the Products are resold, or goods and/or services using the Products are manufactured and resold by the Customer, the Customer holds all of the book debts owed in respect of such sales and proceeds of such sales in trust for BMI Group. Such part of the book debts and proceeds will be deemed to equal in dollar terms the amount owed by the Customer to BMI Group at the time of the receipt of such book debts. The Customer must not assign or grant a security interest in respect of such book debts without BMI Group’s prior written consent.

(e) If the Customer uses the Products in some manufacturing process of its own or of some third party, then the Customer shall hold such part of the proceeds of such manufacturing process as relates to such Products in trust for BMI Group. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to BMI Group and at the time of payment of such proceeds the Customer’s obligation to pay the amount owed for such Products will be discharged.

13. Personal Property Securities Act (Cth) 2009 (“PPSA”):

The Customer grants to BMI Group (under **clause 6.1**) a “**Financing statement**”, “**financing change**

statement”, “**security interest**”, “**purchase money security interest**”, “**attached**”, “**attachment**”, “**perfected**”, “**accession**”, “**commingled**” and all related terms have the meaning given to them by the PPSA.

(a) In consideration of BMI Group supplying the Products to the Customer at the request of the Customer, the Customer by accepting these Trading Terms:

(i) grants to BMI Group a “Purchase Money Security Interest” (“**PMSI**”) in all Products supplied by BMI Group to the Customer from time to time as security for payment of the purchase price of the Products;

(ii) grants to BMI Group a “Security Interest” (“**SI**”) 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) from time to time as security for payment of any amount owed by the Customer to BMI Group and as security for the performance by the Customer of the obligations set out in these Trading Terms;

(iii) agrees that any Products or proceeds of sale of the Products coming into existence after the date of these Trading Terms will come into existence subject to the PMSI and SI granted herein and these Trading Terms without the need for any further action or agreement by any party;

(iv) acknowledges that the Customer has received valuable consideration from BMI Group and agrees that it is sufficient;

(v) agrees that the PMSI and SI has attached to all Products supplied now or in the future by BMI Group to the Customer and that the attachment of the PMSI has in no way been deferred or postponed.

(b) BMI Group reserves the right to register a financing statement in the Personal Properties Securities Register to perfect the PMSI and/or SI created under these Trading Terms.

(c) The costs of registering a financing statement or a financing change statement can be charged to the Customer by BMI Group at BMI Group’s complete discretion, and may, where applicable, be charged to the customer’s credit account with BMI Group.

(d) The Customer must promptly, on request by BMI Group, execute all documents and do anything else reasonably required by BMI Group to ensure that the PMSI and SI created under these Trading Terms constitutes a perfected security interest.

(e) The Customer must not agree to allow any person to register a financing statement over any of the Products in which BMI Group has any PMSI and/or SI without the prior written consent of BMI Group and will immediately notify BMI Group if the Customer becomes aware of any person or entity taking steps to register a financing statement in relation to any such Products.

(f) The Customer must not allow the Products to become accessions or commingled with other goods unless BMI Group has first perfected any

PMSI or SI that BMI Group has in relation to the Products.

- (g) If BMI Group perfects any PMSI and/or SI that BMI Group has in relation to the Products, the Customer must not do anything that results in BMI Group having less than the security or priority granted by the PPSA that BMI Group assumed at the time of perfection, subject only to the rights of a mortgagee pursuant to a registered mortgage.
- (h) The Customer irrevocably grants to BMI Group the right to enter upon the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, if BMI Group has cause to exercise any of BMI Group's rights under Chapter 4 of the PPSA, and the Customer will indemnify BMI Group for any claims made by any third party as a result of such exercise.
- (i) The Customer acknowledges and agrees that: -
 - (i) Nothing in sections 125, 132(3)(d), 142 and 143 of the PPSA will apply to these Trading Terms;
 - (ii) The Security Agreement created by these Terms of Sale may only be reinstated on the terms considered appropriate by BMI Group at its complete discretion.
- (j) The Customer acknowledges and agrees that to the full extent permitted by law and mentioned below, the following provisions of the PPSA will not apply to the enforcement of any PMSI and SI created under these Trading Terms, and the Customer waives its right to: -
 - (i) not have goods damaged or be inconvenienced any more than necessarily incidental if BMI Group removes an accession under s.92 PPSA;
 - (ii) to receive notice of any intention to remove an accession under s.95(1)(a);
 - (iii) to apply to the Court for an order postponing the removal of the "accession" or to determine the amount payable to BMI Group for the retention of the accession under s.97 PPSA
 - (iv) to receive notice of a decision to enforce the security interest in personal property in the same way as an interest in land which secures the same obligation under s.118(1)(b)(i) PPSA;
 - (v) to receive notice of the enforcement of liquid assets under s.121(4) PPSA
 - (vi) to receive notice of any proposal to dispose of collateral under s.130(1)(a) PPSA;
 - (vii) to receive a Statement of Account if no disposal under s.132(4) PPSA; and
 - (viii) to receive notice of any proposal to retain collateral under s.135(1)(a) PPSA; and
 - (ix) to receive notice of a verification statement in relation to any registration event (including registration of a financing statement or a financing change statement) relating to the PMSI and SI created under these Trading Terms under s.157 PPSA.

14. Effect of Other Terms: These Trading Terms are supplemented by the Trading Terms on BMI Group's website at www.bmigroup.com.au and are in no way affected or amended by any other express or implied

terms. No terms of the Customer apply to any agreement between the Customer and BMI Group.

- 15. Expenses:** The Customer must pay to BMI Group any costs, charges and expenses (including all stamp duty and legal fees and costs and debt recovery expenses on a full indemnity basis as a liquidated debt) incurred by BMI Group in connection with the entry into these Trading Terms, the exercise or attempted exercise of any power, right or remedy under these Trading Terms and/or the failure of the Customer to comply with these Trading Terms.
- 16. Service of Notices and Documents:** All notices or documents required to be given to BMI Group for the purposes of the PPSA must be given in accordance with the PPSA. Any notices or documents required to be given by BMI Group to the Customer for the purposes of the PPSA or for any other purposes will be effectively 'given', 'served' and 'delivered' if sent by BMI Group to the Customer by pre-paid ordinary post to any one of the following addresses: -
 - (a) the last address for the Customer known to BMI Group;
 - (b) if the Customer is a Company, the registered office or principal place of business; or
 - (c) if the Customer trades under a registered business name, any address contained on a current business extract for that business name.
- 17. Transactions:** The Customer will be liable for all transactions and expenses involving the Customer's credit account including any fraudulent use of the account by the Customer or any person authorised by the Customer to use the account or the Customer's employees, agents or contractors. The Customer will also be liable for any fraudulent use of the Customer's credit account which is directly or indirectly caused or contributed to by the Customer's negligence.
- 18. Application of Moneys Received:** If BMI Group receives or recovers money in respect of a debt of the Customer, BMI Group may use the money to pay off whichever debt or part of a debt BMI Group chooses and is not compelled to apply the money as directed by the Customer or any other person.
- 19. Indemnity:** The Customer will indemnify BMI Group in relation to any direct or indirect loss, liability or damage suffered by BMI Group or any other person as a result of the Customer's negligence or breach of these Trading Terms.
- 20. Trusts:** These Trading Terms bind the Customer both personally and as trustee of any trusts of which the Customer is trustee.
- 21. Joint and Several:** If the Customer consists of more than one person, the obligations of each person are joint and several.
- 22. Severance:** Each clause, subclause and part of these Trading Terms is separate and independent. If any clause or subclause or part is found to be invalid or ineffective, the other clauses or subclauses or parts will not be adversely affected.
- 23. Waiver:** Any waiver by BMI Group must be in writing signed by BMI Group. In the event that BMI Group elects not to exercise any of BMI Group's rights arising in connection with these Trading Terms, BMI Group's election will not constitute a waiver of any

rights relating to any other breach of these Trading Terms.

24. Amendments: These Trading Terms may only be amended with BMI Group's express written agreement.

25. Assignment: The Customer may not assign any agreement under these Trading Terms without BMI Group's prior written consent.

26. Application of Laws: These Trading Terms are governed by the laws of the state as determined by BMI Group in its sole discretion. The Customer submits to and consents to the laws of the state (as determined by BMI Group in its sole discretion) having jurisdiction over these Trading Terms.

27. Acceptance:

(a) Any instructions received by BMI Group from the Customer for the supply of Products and/or Services and/or the Customer's acceptance of Products and/or Services supplied by BMI Group shall constitute acceptance of the terms and conditions contained herein.

(b) Where more than one Customer has entered into this agreement, the Customer's shall be jointly and severally liable for all payments of the Price.

(c) Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of BMI Group.

(d) None of BMI Group's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of BMI Group in writing nor is BMI Group bound by any such unauthorised statements.

(e) The Customer undertakes to give BMI Group not less than seven (7) days prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice).

28. Price: At BMI Group's sole discretion the Price shall be either as indicated on invoices provided by BMI Group to the Customer in respect of Products and/or Services supplied; or the Price shall be BMI Group's quoted Price which shall be binding upon BMI Group provided that the Customer shall accept in writing BMI Group's quotation within thirty (30) days. In either case:

(a) Time for payment for the Products and/or Services shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on delivery of the Products and/or Services.

(b) Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Customer and BMI Group.

(c) The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such

taxes are expressly included in any quotation given by BMI Group.

29. Delivery Of Products and/or Services:

(a) Delivery of the Products and/or Services shall be made to the Customer's address. The Customer shall make all arrangements necessary to take delivery of the Products and/or Services whenever they are tendered for delivery, or delivery of the Products and/or Services shall be made to the Customer at BMI Group's address.

(b) Delivery of the Products and/or Services to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.

(c) The failure of BMI Group to deliver shall not entitle either party to treat this contract as repudiated.

(d) BMI Group shall not be liable for any loss or damage whatever due to failure by BMI Group to deliver the Products and/or Services (or any of them) promptly or at all.

30. Errors and Omissions:

(a) The Customer shall inspect the Products and/or Services on delivery and shall within twenty-four (24) hours of delivery notify BMI Group of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Customer shall afford BMI Group an opportunity to inspect the Products and/or Services within a reasonable time following delivery if the Customer believes the Products and/or Services are defective in any way. If the Customer shall fail to comply with these provisions, the Products and/or Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.

(b) For defective Products and/or Services, which BMI Group has agreed in writing that the Customer is entitled to reject, BMI Group's liability is limited to either (at BMI Group's discretion) replacing the Products and/or Services or repairing the Products and/or Services provided that the Customer has complied with the provisions of these Trading Terms.

31. Customer's Disclaimer: The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to it by any servant or agent of BMI Group and the Customer acknowledges that it buys the Products and/or Services relying solely upon its own skill and judgement.

32. Cancellation: BMI Group may cancel these terms and conditions or cancel delivery of Products and/or Services at any time before the Products and/or Services are delivered by giving written notice. BMI Group shall not be liable for any loss or damage whatsoever arising from such cancellation.

33. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts: Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of

the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

34. Lien & Stoppage in Transit: Where BMI Group has not received or been tendered the whole of the price, or the payment has been dishonoured, BMI Group shall have:

- (a) a lien on the Products and/or Services;
 - (b) the right to retain them for the price while BMI Group is in possession of them;
 - (c) a right of stopping the Products and/or Services in transit whether or not delivery has been made or ownership has passed; and
 - (d) a right of resale,
 - (e) the foregoing right of disposal,
- provided that the lien of BMI Group shall continue despite the commencement of proceedings or judgement for the price having been obtained.

35. Privacy Act 1988 and related legislation

The Customer and/or the Guarantor/s agree that they have read, understood and agreed to the credit documents, listed on BMI's website at (www.bmigroup.com.au), namely the Privacy Policy, Collection Notice, Statement of Notifiable Matters and the Credit Reporting Policy.

36. General:

- (a) All Products and/or Services supplied by BMI Group are subject to the laws of Queensland and BMI Group takes no responsibility for changes in the law which affect the Products and/or Services supplied.
- (b) BMI Group shall be under no liability whatsoever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by BMI Group of these terms and conditions.
- (c) In the event of any breach of this contract by BMI Group the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of BMI Group exceed the Price of the Products and/or Services.
- (d) The Customer shall not set off against the Price amounts due from BMI Group, unless agreed upon in writing by both BMI Group and the Customer.
- (e) BMI Group may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- (f) BMI Group reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which BMI Group notifies the Customer of such change.
- (g) Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

37. Definitions: In these Trading Terms unless the context requires otherwise:

- (a) **"BMI Group"** Means BMI Group and each related body corporate (as defined in the *Corporations Act 2001*), any subsidiary or associated entity and as trustee of any trust from time to time, including (but not limited to) Bemcove Pty Ltd,

Bogside Mining Industries Pty Ltd, Nudgee Road Resource Recovery Pty Ltd, Silveressence Pty Ltd, Lawnton Rehabilitation Pty Ltd, Stapylton Green Energy Pty Ltd, Pine Mountain Road Pty Ltd and each of their successors and assigns.

- (b) **"Credit-related information"** includes "credit information", "credit reporting information", "credit eligibility information" and/or "regulated information" (as the context permits) within the meaning of those terms in the Privacy Act.
- (c) **"Customer"** means the customer whose details appear in the Application for a Commercial Trading Account and the Customer's subsidiaries, holding companies and other related entities;
- (d) **"Event of Default"** means any of the following events:
 - (i) the Customer fails to pay for any Products and Services and/or the Customer breaches these Trading Terms;
 - (ii) the Customer ceases or threatens to cease carrying on business;
 - (iii) if the Customer is a company: an order is made or a resolution is effectively passed for winding up of the Customer, or the Customer resolves to appoint a receiver or provisional liquidator or an administrator, or a receiver or provisional liquidator or an administrator is appointed, or the Customer goes into liquidation or makes an assignment or an arrangement or composition with the Customer's creditor, or the Customer stops payment or is deemed unable to pay the Customer's debts within the meaning of the Corporations Act 2001 (Cth); if the Customer is a natural person: an order is made for the Customer's bankruptcy, or the Customer dies or becomes mentally or physically incapable of managing his or her affairs, or an order is applied for or made to place the assets and affairs of the Customer under administration;
- (e) **"Guarantor"** means that person (or persons), or entity who by signing a document headed "Personal/Directors Guarantee and Indemnity" and/or a document headed "Guarantee and Indemnity" agreed to be liable for the debts of the Customer on a principal debtor basis
- (f) **"Officer"** means each director, secretary, credit manager and authorised representative of BMI Group; and
- (g) **"Privacy Act"** means the *Privacy Act 1988 (Cth)* as amended from time to time.
- (h) **"Products and/or Services"** means all Products and/or Services supplied by BMI Group to the Customer and includes (but is not limited to) any advice or recommendations. The Products and/or Services are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided to, by, for and/or on behalf of BMI Group to the Customer.
- (i) **"Price"** means the cost of the Products and/or Services as agreed between BMI Group and the Customer subject these Trading Terms.

- (j) **“Trading Terms”** means all the provisions of the application for a commercial trading account (including the General Credit Terms) **plus** BMI Group’s Terms and Conditions of Trade (as they appear herein) and/or any other conditions or facility agreement or member agreement as may be amended by BMI Group from time to time.

38. Interpretation:

- (a) In these Trading Terms, unless the context requires otherwise, all references to a party include the party’s successors and permitted assigns.
- (b) No provision of these Trading Terms will be construed adversely against a party solely because the party was responsible for drafting the provision