

# Application for Commercial Credit

This Account Application shall be in respect of **AUSREO PTY. LTD. (ACN 094 555 192 ABN 11 094 555 192)** and its associated and related companies and trading divisions including but not limited to Sydney Mesh and Steel (all of which are referred to hereafter as "Ausreo")

## Business details

Partnership  Sole trader  Trust

Company

Public

Private

Australian Company Number (ACN)

If your business is a Trust you must provide a copy of your Trust Deed and a list of beneficiaries

Registered name of incorporated body \_\_\_\_\_ ("the Applicant")

Trading name/business name (if any) \_\_\_\_\_

Business name registration number (if any) \_\_\_\_\_

Previous trading name (if applicable) \_\_\_\_\_

Date business commenced / / Australian Business Number (ABN)

Nature of business/main business activity \_\_\_\_\_ Number of employees

Postal address \_\_\_\_\_  
\_\_\_\_\_ Postcode

Business address \_\_\_\_\_  Owned  Renting  
\_\_\_\_\_ Postcode

Telephone number \_\_\_\_\_ After hours number

Business facsimile \_\_\_\_\_ Mobile phone number

Landlord/agent's telephone number

If your business name is less than twelve months old

Previous address \_\_\_\_\_  
\_\_\_\_\_ Postcode

Web address: www. \_\_\_\_\_ Email address \_\_\_\_\_

Contacts - Authorised Officer \_\_\_\_\_ Accounts Payable Officer \_\_\_\_\_

Has the Applicant or any associated company or person traded with our companies or businesses in the past?  Yes  No

If yes, under what name? \_\_\_\_\_

## Details of directors

1. Name in full \_\_\_\_\_ Date of birth / /

Position / occupation \_\_\_\_\_ Drivers licence number

Residential address \_\_\_\_\_  Owned  Renting

Postcode

Spouse's full name \_\_\_\_\_

2. Name in full \_\_\_\_\_ Date of birth / /

Position / occupation \_\_\_\_\_ Drivers licence number

## AUSREO Pty Limited

133-139 Newton Road Wetherill Park NSW 2164  
PO Box 2201 Smithfield NSW 2164 | ABN 11 094 555 192  
P 02 9765 2100 | F 02 9765 2177 | [www.ausreo.com.au](http://www.ausreo.com.au)



# Terms and Conditions of Supply

Residential address \_\_\_\_\_  Owned  Renting

Postcode \_\_\_\_\_

Spouse's full name \_\_\_\_\_

3. Name in full \_\_\_\_\_ Date of birth \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Position / occupation \_\_\_\_\_ Drivers licence number \_\_\_\_\_

Residential address \_\_\_\_\_  Owned  Renting

Postcode \_\_\_\_\_

Spouse's full name \_\_\_\_\_

## Bank details

Bank \_\_\_\_\_ Branch \_\_\_\_\_

Name / title of account \_\_\_\_\_ BSB \_\_\_\_\_ Account \_\_\_\_\_

Contact name \_\_\_\_\_ Telephone number \_\_\_\_\_

Overdraft facility details \_\_\_\_\_

Accountant / auditor \_\_\_\_\_ Telephone number \_\_\_\_\_

## Trade references (major suppliers)

1. \_\_\_\_\_ Account number \_\_\_\_\_ Telephone number \_\_\_\_\_

2. \_\_\_\_\_ Account number \_\_\_\_\_ Telephone number \_\_\_\_\_

3. \_\_\_\_\_ Account number \_\_\_\_\_ Telephone number \_\_\_\_\_

4. \_\_\_\_\_ Account number \_\_\_\_\_ Telephone number \_\_\_\_\_

Anticipated monthly purchases \$ \_\_\_\_\_ (this field must be completed)

At any time has any Proprietor, Director, or Manager of the Applicant Customer been the subject of Bankruptcy proceedings or been associated as a Manager, Member, Director or Partner of a business which has failed or was the subject of a Scheme of Arrangement, Receivership, Voluntary Administration, Liquidation or to which an Administrator or Controller has been appointed?  Yes  No

If yes, please give details \_\_\_\_\_

## PRIVACY STATEMENT

- This privacy statement encompasses consents, notifications and disclosures under or in relation to the Privacy Act 1988 (as amended by the Privacy Amendment (Enhancing Privacy Protection) Act 2012) (Act).
- The terms of this statement operate concurrently with any pre-existing privacy statement, authorisation or notification, whether contained in our credit application, terms and conditions of trade or otherwise, save to the extent of any inconsistency in which case the terms of this privacy statement shall prevail.
- For the purpose of this statement, the terms "personal information", "sensitive information", "credit eligibility information", "credit information", "commercial credit purpose", "credit guarantee purpose", "consumer credit purpose", "credit reporting body", "credit provider", "credit reporting information", "credit reporting code" carry the same meaning as under the Act and the term "Information" means personal information, sensitive information, credit eligibility information, credit reporting information and credit information, both severally and collectively.
- The Supplier may collect personal information about the Applicant and/or Guarantor(s) for the Supplier's primary purposes which include the assessment of a credit application, reviewing existing credit terms, assessing credit worthiness, collecting overdue payments, assessing credit guarantees (current and prospective), internal management purposes, marketing, sales and business development purposes and direct marketing.
- The Applicant and/or Guarantor(s) consent to the Supplier collecting, using and disclosing personal information (including sensitive information) for both their primary purposes specified herein and purposes other than the primary purposes, including the purpose of direct marketing.
- The Supplier may collect, and may already have collected, Information from the Applicant and/or Guarantor(s), other credit providers, credit reporting bodies and other third parties for the purposes of its functions and activities including, but not limited to, credit, sales, marketing and administration. If the Information was not collected by the Supplier it may restrict or impede upon the Supplier trading with, extending credit to, continuing to extend credit to or extending further credit to the Applicant and/or Guarantor(s) or their related bodies corporate.

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# Terms and Conditions of Supply

7. The Applicant and/or Guarantor(s) consent to the Supplier obtaining and making disclosure of information about the Applicant and/or Guarantor(s) from and to a credit reporting body and/or another credit provider for a commercial credit related purpose and/or a credit guarantee purpose and/or a consumer credit purpose and/or another related purpose. The Supplier notifies the Applicant and/or Guarantor(s) that it may use and/or disclose credit eligibility information under section 21G of the Act.
8. The Supplier may provide personal information about the Applicant and/or Guarantor(s) to any or all of the credit reporting bodies nominated below. The Supplier intends to disclose default information to any or all of the credit reporting bodies listed below. The Applicant and/or Guarantor(s) consent to such disclosure. The Supplier's credit reporting policy contains a statement of notifiable matters in accordance with s21C of the Act and items 4.1 and 4.2 of the Credit Reporting Code in respect of disclosure to credit reporting bodies including what the information may be used for, what the Supplier may disclose and the Applicant's and/or Guarantor(s)' right to request limitations to the use of their information.
 

<b>Veda Advantage</b> Level 15, 100 Arthur Street NORTH SYDNEY NSW 2060 Tel: 1300 921 621	<b>Creditor Watch</b> Level 13, 109 Pitt Street SYDNEY NSW 2000 Tel: 1300 501 312	<b>NCI</b> Level 2, 165 Grenfell St ADELAIDE SA 5000 Tel: 1800 882 820
<b>Dun &amp; Bradstreet</b> Level 2, 143 Coronation Drive MILTON QLD 4064 Tel: 07 3360 0600	<b>Experian</b> Level 6, 549 St Kilda Road MELBOURNE VIC 3004 Tel: 03 9699 0100	
9. The Supplier may disclose information to, and about them and the Applicant and/or Guarantor(s) hereby acknowledge that they consent to the disclosure of such information to the Supplier's employees, subsidiaries, employees, agents and related bodies corporate, past, present or prospective credit providers of the Applicant and/or Guarantor(s) or their related bodies corporate, including for the purpose of that person considering whether to offer to act as guarantor or offer security for that credit, and/or overseas recipients and recipients who do not have an Australian link.
10. By reason of the Applicant's and/or Guarantor(s)' consent to the disclosure to overseas recipients hereunder, APP 8.1 will not apply to the Supplier's dealing with the Applicant's and/or Guarantor(s)' information.
11. A full copy of the Supplier's privacy policy and credit reporting policy can be obtained from the Supplier's website (details above) or by making a request in writing directed to the Supplier's privacy officer. The Supplier's privacy policy and credit reporting policy contain information about how to access and seek correction of information, or how to complain about a breach of the Act, APP, code(s) and how the Supplier will deal with any such complaint.
12. The Applicant and/or Guarantor(s) will be deemed to have acknowledged and accepted the terms of this privacy statement by either signing and returning this statement, failing to provide written notification to the Supplier within 14 days of receipt of this statement that its terms are not accepted, continuing to trade with the Supplier after receipt of this Statement or, if the Applicant and/or Guarantor(s) are directors or guarantors of a customer, by not taking steps to prevent the customer from continuing to trade with the Supplier after receipt of this statement.

Goods are supplied on the following Terms and Conditions, unless varied and authorised in writing by the Supplier. These Terms and Conditions replace and supersede all previous agreements between the Purchaser and the Supplier entered prior to the date of issue.

**The Applicant acknowledges that he/she has received a copy of the Ausreo Terms and Conditions prior to his/her signing this application.**

The person(s) signing this Application hereby warrants that he/she has read and fully understands the nature and effect of the Ausreo The Terms and Conditions and:-

- a) He / She / They have authority to sign on behalf of and to bind the Applicant;
- b) The information provided is true and correct in every detail;
- c) He / She / They agree(s) to provide such updated and regular financial and trading information as Ausreo may reasonably require from time to time;
- d) The Applicant, and signatories on behalf of the Applicant in their personal capacity, agree to the terms of the Privacy Statement pursuant to the *Privacy Act 1988* (as amended by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012*) contained in this document.

Signature	Print name and title
Date / /	
Signature	Print name and title
Date / /	
Signature	Print name and title
Date / /	
Signature	Print name and title
Date / /	

## Office use only

Business manager's comments \_\_\_\_\_

Business manager's signature \_\_\_\_\_ Date / /

Credit manager's signature \_\_\_\_\_ Date / /

Account recommended  Yes  No Credit limit \$ \_\_\_\_\_ Terms \_\_\_\_\_

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Goods are supplied on the following Terms and Conditions, unless varied and authorised in writing by the Supplier. These Terms and Conditions replace and supersede all previous agreements between the Purchaser and the Supplier entered prior to the date of issue.

## 1. Definitions

### 1.1 In these Terms and Conditions:

- (a) 'Commercial Credit Account': means an trading account granted in writing by the Supplier to the Purchaser prior to entering this Contract on such terms and conditions agreed between the Purchaser and Supplier;
  - (b) 'Consequential loss' includes any indirect loss, any loss of profit, loss of use, loss of business, loss of opportunity or special damages, regardless of whether a party foresaw or could foresee the other party suffering a loss of that kind;
  - (c) 'Contract' means the contract created in accordance with Clause 2.3;
  - (d) 'Contract Sum' means for Goods where the Contract provides:
    - (i) a lump sum, the lump sum; and
    - (ii) agreed rates, the sum of the products ascertained by multiplying the measured quantity of each section or item of Goods actually carried out in the Contract by the rate accepted by the Purchaser in the Quotation for that section or item;
    - (iii) a lump sum and rates, the aggregate of the sums referred to in paragraphs (i) and (ii),
  - (e) adjusted by any additions or deductions made pursuant to this Contract. If the Contract is silent, (ii) shall apply;
  - (f) 'Delivered': means when the Goods are delivered to the Purchaser in accordance with clause 11.1(b) or 11.2(c);
  - (g) 'Excluded Items' means (unless expressly stated in the Quotation to be provided):
    - (i) tire wire, bar chairs, threading and/or screwing, saw cutting, mechanical splices, welding of any nature, blacksmithing, press work, butt welding, assembly of Goods, supply and location of lifting hooks, slings and cradles; supply of bars exceeding lengths of 12 metres or exceeding diameter of 36mm; delivery of oversized loads or provision of vehicle escorts; brickwork reinforcing and holding down bolts; galvanizing; on-site scheduling; product containers; steel fixing; on-site accommodation; provision of traffic control; or such other items specified in the Quotation as being excluded;
    - (ii) where the Quotation states that prefabricated elements, such as reinforcing elements or cages, engineered manufactured items and steel fixing are included, the Quotation includes the cost of welding of those items unless otherwise stated in the Quotation. The Quotation does not include the cost of or associated with lifting or lowering to position on site; site scaffolding; supply and welding of lifting points; or site welding.
  - (h) 'Force Majeure' means if the Supplier is prevented (directly or indirectly) from supplying the Goods or any party thereof by reason of acts of God, strikes, lockouts, trade disputes, fire, floods, breakdowns, delay in the manufacture of Goods for any reason whatsoever, interruption of transport, government action, no-delivery of raw material or products, refusal or failure of the Suppliers own suppliers to deliver to the Supplier;
  - (i) 'Goods' means goods, products and materials supplied by the Supplier under the Contract;
  - (j) 'Invoice' means an invoice for payment of Goods supplied or to be supplied by the Supplier to the Purchaser;
  - (k) 'Order' means a request for a delivery of Goods issued by the Purchaser to the Supplier and accepted by the Supplier in accordance with clause 4.1;
  - (l) 'PPS Act' means the *Personal Property Securities Act 2009* (Cth);
  - (m) 'Purchaser' means the entity described as the 'Purchaser' in the Quotation;
  - (n) 'Quotation' means an offer in writing by the Supplier to supply the Goods set out in that document called a "Quote" (which may or may not be attached to these Terms and Conditions);
  - (o) 'Quote Acceptance' means communication by the Purchaser of acceptance of the terms of a Quotation (including these terms and conditions) by either:
    - (i) the Purchaser signing and returning to the Supplier these Terms and Conditions;
    - (ii) the Purchaser communicating that it accepts the terms of the Quotation, either in writing, orally or by conduct;
    - (iii) the Purchaser directing the Supplier to deliver the Goods after it receives the Quotation;
  - (p) 'Supplier' means Ausreo Pty Ltd, its associated companies, successors and assigns;
  - (q) 'Variation' means a change to the Goods arising from:
    - (i) an increase, decrease, addition or omission of the Goods or Works from the Contract;
    - (ii) a change in method or process for, or the sequence of, the carrying out of the Goods including Delivery of the Goods;
    - (iii) an alteration to the specification for the Goods;
    - (iv) changes in levels, dimensions, or set out for Goods;
    - (v) the Supplier performing any of the services identified at clause 11.3;
    - (vi) printing in accordance with clause 18.4.
  - (r) 'Working Documents' architectural drawings, structural drawings, construction drawings, specifications and reinforcement schedules or other documents together with any variation or site instruction;
  - (s) 'Writing' includes an electronic transmission;
- 2.2 A reference to an Act includes regulations and other instruments made under it, and consolidations, amendments, re enactments or replacements of any of them.

## 2. Quotation and pricing

### 2.1 A Quotation remains open for acceptance by the Purchaser until the earlier of:

- (a) 30 days from the date of the Quotation;
- (b) the expiry date of the Quotation stated in the Quotation; or
- (c) a notification by the Supplier to the Purchaser that the Quotation has been withdrawn.

### 2.2 The Purchaser may accept a Quotation by providing the Supplier with a Quotation Acceptance, either orally, in writing, or by conduct.

### 2.3 When the Quote Acceptance is provided, the Contract will be formed and comprised of (in descending order of precedence):

- (a) any special terms agreed in writing;
- (b) the terms of the Quotation;
- (c) these Terms and Conditions;
- (d) the Commercial Credit Account (if applicable); and

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- (e) the Working Documents.
- 2.4 The Contract constitutes an entire agreement between the Purchaser and the Supplier with respect to the Goods supplied under the Contract. All prior negotiations, proposals, representations and correspondence are superseded by this Contract which will in all circumstances prevail over the Purchaser's terms (if any).
- 2.5 Notwithstanding clause 2.3 above, after the Contract is formed the Supplier is entitled, at its sole discretion, to:
- (a) terminate this Contract; or
  - (b) amend the terms of the Quotation (including the Contract Sum), which the Purchaser may accept, failing which the Supplier may exercise the option at subclause (a);
  - (c) if:
    - (i) supply of the Goods the subject of a Quotation does not commence within 30 days of a Quote Acceptance; or
    - (ii) supply under the Contract is stopped or suspended for more than 30 days; or
    - (iii) supply under the Contract has not been completed within twelve months of the date of the Quotation; or
    - (iv) if, where the Contract Sum is not for a lump sum, the Purchaser requests Deliveries which are 20% more or less (in value or quantity) than the total estimated quantities of Goods provided by the Quotation.
- 2.6 In the event this Contract is terminated in accordance with clause 2.5(a) above:
- (a) the Supplier shall issue the Purchaser with an Invoice for:
    - (i) the amount of all unpaid Invoices;
    - (ii) all amounts due in accordance with the terms of this Contract which would have been due but for the termination of this Contract, had an Invoice been issued on the day of the termination;
    - (iii) the cost of Goods manufactured, or in the course of being manufactured by the Supplier for the Contract; and
    - (iv) 5% of the unclaimed portion of the Contract Sum.
  - (b) the Purchaser shall pay the amount of the Invoice at subclause (a) without and free from any setoff, deduction, withholding, counterclaim, defence or any other right or claim against any person (except where such setoff, deduction, withholding, counterclaim, defence or right or claim cannot be excluded by law) within 7 days.
- 2.7 If a Force Majeure event arises the Supplier may, at its absolute discretion:
- (a) terminate the Contract by written notice to the Purchaser and be entitled to the amounts provided at clause 2.5(A)(i) to (iii) above; or
  - (b) suspend the Supplier's obligations under this Contract, including to Deliver the Goods, without penalty.
- 3. Escalation and price variation**
- 3.1 The Contract Sum (including the agreed rates) shall remain fixed for the period (if any) stated in the Quotation. After that period, or if the Quotation provides for no fixed period, the Supplier may increase the Contract Sum for any remaining Deliveries by the greater of:
- (a) the Supplier's reasonable estimation of its additional costs incurred in supplying the Goods since the Contract was entered (including without limitation taxes, labour and the cost of carbon emissions); or
  - (b) the increase in the Consumer Price Index as published by the Australian Bureau of Statistics between the date the Contract was entered and the date the Goods are Delivered.
- 3.2 The Supplier shall advise the Purchaser of the increase or decrease to the Contract Sum arising from clause 3.1 within a reasonable time of the facts giving rise to the increase or decrease becoming apparent.
- 3.3 The Purchaser shall pay the Contract Sum as it is adjusted by this clause 3.
- 4. Supply**
- 4.1 The Supplier will supply the Goods the subject of the Contract :
- (a) if all the Goods are to be delivered in one delivery, on the date stated in the Quotation; or
  - (b) if the Goods are to be delivered over a number of deliveries, with a reasonable time of the date requested (either in writing or orally) by a Purchaser, provided:
    - (i) the Supplier receives the request (which shall include all necessary documentation such as plans, specifications and other information necessary to schedule and detail reinforcing schedules) no less than 10 business days prior to the requested date for delivery; and
    - (ii) the Supplier does not object in writing or verbally to delivering the Goods by the date requested by the Purchaser.
- 4.2 The Purchaser is not entitled to cancel or modify part or all of an Order once it is accepted by the Supplier in accordance with clause 4.1, unless the Supplier consents in writing or verbally.
- 5. Quantities**
- 5.1 The mass of steel reinforcing comprised within the Goods supplied will be within the tolerances permitted by Australian Standards AS/NZS4671, AS3600, AS5100, AS2870, AS2327 and AS/NZS1100.
- 5.2 When calculating the mass of the steel reinforcing comprised within the Goods, the Supplier will make calculations on a per metre basis in accordance with AS/NZS4671 plus an allowance for manufacturing tolerances as detailed in paragraph 7.3 of AS4671.
- 5.3 Calculations with respect to the length of steel reinforcing will be made in accordance with AS/NZS1100 Part 501.
- 6. Variations**
- 6.1 The Supplier will provide the Goods in accordance with the Contract.
- 6.2 The Goods do not include the Excluded Items.
- 6.3 The Purchaser may request the Supplier to carry out a Variation, including to provide any of the Excluded Items.
- 6.4 The Supplier may, at its sole election, may agree to perform the Variation.
- 6.5 If the Supplier elects to carry out a Variation it shall be entitled to:
- (a) an extension of time to Deliver the Goods; and
  - (b) the Purchaser shall pay to the Supplier, the cost of the Variation which shall be priced using the following order of precedence:
    - (i) prior agreement;
    - (ii) applicable rates or prices in the Contract; and
    - (iii) reasonable rates and prices together with the Supplier's overhead and profit in the fixed amount of 5% on that additional amount.
- 6.6 The Supplier may (in its sole and absolute discretion), upon a request by the Purchaser, agree to accept Goods incorrectly ordered by the Purchaser or Goods which are no longer required by the Purchaser. If the Supplier agrees to accepting the return of those Goods, the Supplier will pay the Purchaser, or deduct from any amount payable by the Purchaser to the Supplier, the price of those Goods accepted for return using the rates provided by the Contract less:
- (a) All freight and labour charges for delivering/collecting the Goods;

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- (b) A collection fee of \$200.00 per returned delivery; and
- (c) An administration and restocking fee of \$180.00 per returned delivery.

## 7. Warranties and limitation of liability

- 7.1 Neither party excludes or limits the application of any statute (including the *Competition and Consumer Act 2010* (Cth) ("the Act")), where to do so would contravene that statute or cause any provision of this Contract to be void. Nothing in this Contract modifies or excludes the conditions, warranties, and undertakings and other legal rights under the Act and other laws to the extent they cannot be excluded or modified.
- 7.2 Except as expressly set out in this Contract, and the Act, the Supplier makes no warranties or other representations in respect of the Goods or the Contract, and the Supplier's liability in respect thereof, is limited to the fullest extent permitted by law.
- 7.3 To the extent permitted by law, all implied conditions and warranties are excluded. To the extent that any implied conditions and warranties cannot be excluded, the Purchaser's sole and exclusive remedy for any loss or damage, (whether direct, indirect, liquidated, special or consequential and including loss or damage arising as a result of death or personal injury to the Purchaser or any other person), however arising (including by reason of any breach of contract, condition or warranty in the Contract is, where permitted at law, limited to anyone of the following, as determined by the Supplier:
- (a) the replacement of the relevant Goods or supply of equivalent Goods;
  - (b) the repair of the Goods;
  - (c) after prior agreement between the Supplier and the Purchaser, payment of the cost of replacing or having the Goods replaced or repaired; or
  - (d) reimbursement of some or all amounts paid by the Purchaser in respect of the Goods.
- 7.4 Goods which are not manufactured by the Supplier are subject solely to the warranties (if any) specified by their manufacturers or the third party suppliers to the Supplier, and the Purchaser acknowledges that, to the extent permitted by law, the Supplier gives no warranties beyond such manufacturers' or suppliers' warranties.
- 7.5 The Purchaser acknowledges that the Supplier makes no representations or warranties as to the fitness or suitability for any purpose of any of the Goods described in the Quotation or Contract. The Purchaser warrants that it has undertaken its own investigations (including obtaining specialist advice) in respect of the design, specification and selection of the Goods.
- 7.6 The Purchaser is solely responsible for the design of the Goods. The Supplier is not liable for the design, lifting or positioning of any pre-fabricated elements at the Purchaser's site, including but not limited to manually tied or welded components.
- 7.7 Subject to the Act and any other legislation, the Supplier is not liable to the Purchaser for any loss or damage whether direct or Consequential Loss, including for death or personal injury, however caused (including negligent or reckless conduct or omission) which the Purchaser or any other person may suffer or incur which may arise directly or indirectly in connection with the Goods, any defects in the Goods and by the acts or negligence of the Supplier, its officers, agents, employees.
- 7.8 Notwithstanding clauses 7.1, 7.2 and 7.3, if the Purchaser is a "Consumer" as defined by the *Competition and Consumer Act 2010* (Cth), the Goods come with guarantees that cannot be excluded under the Australian Consumer Law. A Consumer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. A Consumer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

## 8. Invoicing and payment

- 8.1 The Purchaser shall pay the Supplier the Contract Sum together with all other amounts which become due and payable pursuant to this Contract.

- 8.2 Where the Supplier has granted the Purchaser an Commercial Credit Account, the Purchaser must comply with the terms and conditions of that Commercial Credit Account.
- 8.3 If the Purchaser has a Commercial Credit Account with the Supplier then, unless otherwise agreed in writing:
- (a) the Supplier may issue Invoices for Goods either:
    - (i) on dispatch of such Goods; or
    - (ii) when Goods (including parts of the Goods) are Delivered; or
    - (iii) when the Purchaser becomes obligated to pay an amount pursuant to clause 11.3; or
    - (iv) in respect of prefabrication of cages and reinforcing members, once fabrication is completed.
  - (b) the Purchaser must pay all Invoices in full, without and free from set-off, withholding, counterclaim, defence or any other right or claim (except where such set-off, withholding, counterclaim, defence or any other right or claim cannot be excluded by law), by 30 days from the last day of the month date in which the Invoice was issued.
- 8.4 If the Purchaser does not have a Commercial Credit Account with the Supplier, the Purchaser must pay the Supplier for the Goods in full at the time it issues an Order for Goods. The Supplier shall not be obliged to Deliver or manufacture the Goods until payment is received in full.
- 8.5 The Purchaser must pay all Invoices and all amounts under this Contract in full, without and free from setoff, deduction, withholding, counterclaim, defence or any other right or claim (except where such setoff, deduction, withholding, counterclaim, defence or right or claim cannot be excluded by law) and the Purchaser is not entitled to hold amounts otherwise due to the Supplier on account of retention. For the avoidance of any doubt, nothing in clause 16 prevents the Supplier from taking any action it considers appropriate to recover any amount owing under an Invoice and this Contract.
- 8.6 The date the Supplier may issue an Invoice pursuant to either clause 8.3 or 8.4 is the 'reference date' as that term is defined by the *Building and Construction Industry Security of Payment Act 1999* (NSW), *Building and Construction Industry Payments Act 2004* (QLD), *Building and Construction Industry Security of Payment Act 2002* (VIC), *Building and Construction Industry Security of Payment Act 2009* (SA), *Building and Construction Industry Security of Payment Act 2009* (TAS), and the *Building and Construction Industry (Security of Payment) Act 2009* (ACT).
- 8.7 Interest in the amount of 15% per annum, compounding monthly, shall be payable on all amounts not paid by the due date for payment.
- ## 9. Default and termination
- 9.1 If the Purchaser:
- (a) refuses or fails to pay any amounts when due under the Contract;
  - (b) defaults in performing any of its obligations under the Contract;
  - (c) informs the Supplier or creditors generally that it is insolvent or is financially unable to proceed with the Contract;
  - (d) has execution levied against it by a creditor;
  - (e) is an individual and:
    - (i) commits an act of bankruptcy, is made bankrupt, makes a proposal for a scheme of arrangement or composition;
    - (ii) has a bankruptcy petition levied against him or her or presents his or her own petition;
    - (iii) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made; or
  - (f) is a corporation and:

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- (i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
- (ii) it enters a deed of company arrangement with creditors;
- (iii) a controller, receiver or administrator is appointed;
- (iv) an application is made to a court for its winding up and not stayed within 14 days;
- (v) a winding up order is made in respect of it;
- (vi) it resolves by special resolution to be wound up voluntarily;
- (vii) a mortgagee of any of its property takes possession of that property;
- (viii) the Purchaser has a change of its directors, ownership or change of more than 10% of its shareholding and the Supplier does not consent to this change at least five days before the change occurs,

the Purchaser is in breach of the Contract and in addition to and without prejudice to any other rights it has by law, the Supplier may at its sole election:

- (g) treat the Contract as repudiated;
- (h) may refuse to supply the Goods to the Purchaser;
- (i) is entitled to claim return of any Goods in the possession of the Purchaser where title has not passed to the Purchaser; and
- (j) demand immediate payment of all amounts owing by the Purchaser to the Supplier and the Purchaser must make immediate payment of those amounts.

9.2 The Purchaser is not entitled to terminate, suspend or cancel part or all of the Contract for any reason (including for convenience) except if the Supplier has failed to remedy its breach of the Contract within a reasonable period (being not less than 7 business days) after the Purchaser gives it written notice of such breach. If the Purchaser purports to wrongly terminate or rescind part or all of the Contract or refuses to take delivery of any Goods delivered in accordance with the Contract, the Supplier may recover from the Purchaser the total amount of the order placed on the Supplier, less any amounts already paid by the Purchaser.

9.3 Upon termination of the Contract with the Supplier, the Purchaser agrees that the Supplier, its employees, or agents are entitled to enter the Purchaser's premises at any time upon 24 hours written notice and may do all things necessary in order to take possession of any Goods where title has not passed. The Purchaser agrees to do all things necessary to obtain the consent of all relevant persons having an interest in the premises where the Goods are situated to facilitate the Supplier recovering the possession of the Goods, and the Purchaser indemnifies the Supplier against any expense, liability, claim or loss that may be incurred as a result of entry to the Purchaser's premises by the Supplier its employees or agents.

9.4 Upon termination of the Contract, the Purchaser shall deliver to the Supplier any Goods where title has not yet passed to the Purchaser and shall pay to the Supplier:

- (a) all moneys due to the Supplier which remain unpaid at the date of termination; and
- (b) all costs and expenses incurred by the Supplier in relation to the enforcement of its rights and powers contained in this agreement (including legal costs as between solicitor and client).

## 10. Tax

10.1 Unless otherwise expressly stated in writing, all amounts stated in a Quotation or payable under the Contract are exclusive of GST. If GST is payable, the amount of GST will be specified separately in the relevant documentation.

10.2 If GST is or becomes payable by a supplier in relation to a supply under the Contract, the recipient of that supply must pay to the Supplier an amount equal to the GST. An amount payable under this Clause 10 must be paid:

- (a) at the same time as the payment of the amount in respect of that supply is due; and
- (b) in addition to the amount payable under the Contract.

10.3 The Purchaser is not obliged to pay any GST unless a valid tax invoice has been issued.

10.4 If the Purchaser fails to pay such GST when due, the Supplier may recover it from the Purchaser as a debt under the Contract.

10.5 Any party that becomes aware of the occurrence of any adjustment event in connection with the Contract must notify the other party as soon as possible. The parties must then take whatever steps are necessary and make whatever adjustments are required to ensure that any additional GST, or refund of GST, on that supply is paid no later than 20 business days after the parties first become aware of the adjustment event.

10.6 For the purposes of this Clause 10, terms used in this Clause 10 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the meaning given to them in that Act.

## 11. Delivery

11.1 If the Quotation provides that the Goods are to be provided on an 'ex works' basis:

- (a) the Purchaser must collect the goods from the Supplier's nominated premises at the time nominated by the Supplier to the Purchaser; and
- (b) the Goods are deemed Delivered at the premises of the Supplier when the Supplier notifies the Purchaser that the goods are ready for collection.

11.2 If the Quotation provides that the Goods are to be provided on a 'delivered' basis:

- (a) the Supplier will deliver the Goods to the address nominated in the Quotation;
- (b) the Purchaser shall:
  - (i) nominate the precise location on the site for delivery in writing to the Supplier prior to the delivery;
  - (ii) ensure that an area is available which is suitable for heavy vehicles (including vehicles fitted with cranes or lifting equipment), complies with all applicable workplace health and safety legislation, requirements and best practice; and
  - (iii) ensure that its representative is available at the time of delivery and acknowledge delivery by signing a delivery receipt.

(c) the Good will be deemed Delivered when:

- (i) the Supplier issues the Purchaser with a notification in accordance with clause 11.1(b); or
- (ii) if the Quotation provides the Purchaser is responsible for unloading (or the Quotation is silent as to which party is responsible for unloading), when the Supplier delivers the Goods on a truck to the nominated site or a site adjacent to the Purchaser's nominated site; or
- (iii) if the Quotation provides the Supplier is responsible for unloading, when the Supplier has unloaded the Goods at or adjacent to the Purchaser's site to ground level, being a flat and clear area nominated by the Purchaser; or
- (iv) if the Goods are unloaded in accordance with clause 11.2(d)(i) below, at the time the Goods are unloaded from the Supplier's truck.

Customer Initials.....

- (d) if the Purchaser is responsible for unloading in accordance with clause 11.2(c)(ii) above, but fails to unload the Supplier's truck upon arrival the Supplier may at its election:
- (i) unload the Goods at a location determined by the Supplier and charge the Purchaser for the unloading; or
  - (ii) return the Goods to the Supplier's premises and charge the Purchaser for the return trip together with any subsequent attempts at delivery.
- 11.3 If the Purchaser fails to:
- (a) where the Supplier is responsible for delivery of the Goods in accordance with clause 11.2 above, accept delivery on the date nominated in the Purchaser Order and unload the delivery vehicle within 60 minutes of arrival; or
  - (b) where the Purchaser is responsible for collection of the Goods in accordance with clause 11.1 above, collect the Goods at the time nominated at clause 11.1(a) above,
  - (c) the Supplier may charge the Purchaser for, and the Purchaser must pay:
    - (i) The Supplier's storage fees at the rate nominated by the Supplier;
    - (ii) Rehandling, redelivery, loading and unloading fees at a rate nominated by the Supplier; and
    - (iii) The fee for waiting time for any time the delivery vehicle is not unloaded within 60 minutes of arrival.
- 11.4 The Supplier may, at its sole discretion, require the amounts due under this clause 11.3 and clause 11.2(d) to be paid prior to the Goods being Delivered.
- 11.5 The Supplier will use reasonable endeavours to deliver the Goods to the Purchaser or make the Goods available for collection by the Purchaser (as the case may be) at the time nominated in the Purchaser. Without limiting clause 7 above, the Supplier will not be liable to the Purchaser for:
- (a) any failure or delay in delivery of part or all of the Goods in accordance with the Contract; or
  - (b) any damage or loss to the Goods due to unloading or packaging; or damage to property caused by entering premises to deliver Goods.
- 11.6 The Purchaser is responsible for the design and location of any required lifting and/or support items at the Purchaser's site.
- 12. Risk**
- 12.1 If a vehicle engaged in the delivery of Goods the Purchaser's property is disabled or damaged due to the condition of the Purchaser's property, the Purchaser is liable for the cost of salvage or repair to the vehicle. The Purchaser indemnifies the Supplier and keeps the Supplier indemnified against any loss or damage suffered by the Supplier or as a consequence of the Supplier becoming liable to any third party directly or indirectly as a result of the Supplier's officers, agents or employees entering any property at the request of the Purchaser or unloading the Goods.
- 13. Legal title and related matters**
- 13.1 Unless a contrary intention appears, words or expressions used in this clause 13 that are defined in the PPS Act have the same meaning as given to them in the PPS Act.
- 13.2 The risk in the Goods passes to the Purchaser when the Goods are Delivered.
- 13.3 The Supplier's rights under this clause 13 secure:
- (a) the Supplier's right to receive the Contract Sum (plus any other amounts pursuant to this Contract) of all the Goods sold under this Contract; and
  - (b) all other amounts owing to the Supplier under this Contract or any other contract between the Purchaser and the Supplier.
- 13.4 All payments received from the Supplier may be applied by the Supplier in the manner the Supplier, in its absolute discretion, determines.
- 13.5 Until full payment in cleared funds is received by the Supplier for all Goods supplied by it to the Purchaser, as well as all other amounts owing to the Supplier by the Purchaser under this or any other contract:
- (a) legal title and property in all Goods supplied under this Contract remains vested in the Supplier and does not pass to the Purchaser;
  - (b) the Purchaser must store the Goods separately and in such a manner and maintain any labelling and packaging of the Supplier, so that the Goods are clearly and readily identifiable as the property of the Supplier;
  - (c) the Purchaser must not sell the Goods except in the ordinary course of the Purchaser business;
  - (d) the Purchaser holds and agrees to hold the proceeds of any sale, lease or other dealing with the Goods on trust for the Seller in a separate bank account with a bank which does not (and will not in the future) provide finance to the Purchaser;
  - (e) in addition to any rights the Supplier may have under Chapter 4 of the PPS Act, the Supplier may, at any time, demand the return of the Goods and shall be entitled without notice to the Purchaser and without liability to the Purchaser, to enter any premises where it suspects the Goods may be located in order to search for and remove the Goods without committing a trespass, even though they may be attached or annexed to other goods or land not the property of the Purchaser, and for this purpose the Purchaser irrevocably licenses the Supplier to enter such premises, undertakes that it will procure any necessary authority to enter from any relevant person and also indemnifies the Supplier from and against all loss suffered or incurred by the Supplier as a result of exercising its rights under this clause 13.5(e). If there is any inconsistency between the Seller's rights under this clause 13.5(e) and its rights under Chapter 4 of the PPS Act, this clause 13.5(e) prevails.
  - (f) the Purchaser acknowledges and warrants that the Supplier has a security interest (for the purposes of the PPS Act) in the Goods and any proceeds described in clause 13.5(d) and the Purchaser must do anything reasonably required by the Supplier to ensure that such security interest is enforceable, perfected and otherwise effective and has the priority required by the Supplier which, unless the Supplier agrees in writing otherwise, is first priority; and
  - (g) the security interest arising under this clause 13.5(g) attaches to the Goods when the Purchaser obtains possession of the Goods and the parties confirm that they have not agreed that such security interest attaches at any later time.
- 13.6 The Purchaser warrants that it does not intend to use the Goods predominantly for personal, domestic or household purposes.
- 13.7 The Purchaser must, at its own cost, insure and keep insured the Goods against such risks as a prudent owner of the Goods would insure at their full cost price, with a reputable insurance company.
- 13.8 If at any time the Supplier determines that this Contract (or any of the transactions contemplated by or under it) creates a security interest in its favour over any personal property, the Supplier may apply for any registration, or give any notification, in connection with that security interest and the Purchaser must promptly, upon the Supplier's request, do any thing (including, without limitation, signing and producing documents, getting documents completed or signed, obtaining consents and supplying information) to:
- (a) provide more effective security over the relevant personal property;
  - (b) ensure that any such security interest in favour of the Supplier:
    - (i) is at all times enforceable, perfected (including, where applicable, by control as well as by registration) and otherwise effective; and
    - (ii) ranks as a first priority security interest;

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# Terms and Conditions of Supply

- (c) enable the Supplier to prepare and register a financing statement or a financing change statement or give any notification in connection with that security interest; and
- (d) enable the Supplier to exercise any of its rights or perform any of its obligations in connection with any such security interest or under the PPS Act.
- 13.9 All costs and expenses arising as a result of actions taken by either party pursuant to this clause 13 will be for the account of the Purchaser. Within 7 days of a written request, the Purchaser must pay to the Supplier any costs or expenses incurred or to be incurred in connection with this clause 13.
- 13.10 If Chapter 4 of the PPS Act would otherwise apply to the enforcement of the security interest created under this Contract, the Purchaser agrees that the following provisions of the PPS Act will not apply:
- (a) section 95 (notice of removal of accession), to the extent that it requires the Supplier to give a notice to Purchaser;
- (b) section 121(4) (enforcement of security interests in liquid assets - notice to grantor);
- (c) section 125 (obligation to dispose of or retain collateral);
- (d) section 130 (notice of disposal), to the extent that it requires the Supplier to give a notice to the Purchaser;
- (e) paragraph 132(3)(d) (contents of statement of account after disposal);
- (f) subsection 132(4) (statement of account if no disposal);
- (g) section 142 (redemption of collateral); and
- (h) section 143 (reinstatement of security agreement).
- 13.11 Pursuant to section 125(3) of the PPS Act, the Supplier may delay disposing of, or taking action to retain, the whole or part of the collateral that it seizes under section 123 of the PPS Act, for as long as it sees fit in its absolute discretion.
- 13.12 The Supplier does not need to give the Purchaser any notice required under the PPS Act (including, without limitation, a notice of a verification statement under section 157 of the PPS Act) unless the requirement for the notice cannot be excluded.
- 13.13 Notwithstanding what is provided for in clause 17, neither party will disclose to a person or entity that is not a party to the Contract information of the kind mentioned in section 275(1) of the PPS Act unless section 275(7) of the PPS Act applies or that information is publicly available.
- 14. Resale**
- 14.1 The Purchaser agrees that it will not re-supply the Goods supplied to it by the Supplier without the Supplier's prior written consent, which the Supplier may withhold at its absolute discretion.
- 15. Shortages, defects and inaccuracies, failure of, or delay in supply**
- 15.1 The Purchaser must check and closely examine all Goods within 24 hours of Delivering and in any event before the Purchaser (or its employees or agents) use the Goods.
- 15.2 The Purchaser must notify the Supplier of any defect, damage or non-conformance of the Goods within the earlier of:
- (a) 48 hours the time they are Delivered; or
- (b) the Purchaser dealing with the Goods.
- 15.3 The Supplier will endeavour to rectify inaccuracies or short supply within 48 hours of notification, but will not be responsible for any loss or damage (including Consequential Loss) however caused arising out of or resulting from such inaccuracies, short supply or non-conformances.
- 15.4 If, due to any cause whatsoever, the Supplier is unable to supply any part of the Contract by the nominated delivery date or at all, it is entitled, at its opinion:
- (a) to supply the Purchaser similar Goods which in the opinion of the Supplier are an appropriate substitute without prior reference to the Purchaser; or
- (b) not to supply part or all of the Goods; or
- (c) delay supply of part or all the Goods.
- 16. Dispute resolution**
- 16.1 If a dispute or difference between the parties arises in connection with the subject matter of this Contract, then either party shall by post or by hand provide written notice of the nature and details of the dispute.
- 16.2 Within 14 days of receipt of a notice in accordance with clause 16.1 above, senior management representatives of each of the parties, with full authority to agree such resolution or resolution methods, shall confer to resolve the dispute or agree methods for resolving the dispute. All aspects of the conference, except for the fact of its occurrence, shall be privileged.
- 16.3 Nothing in this Clause 16 prevents a party seeking urgent interlocutory relief from a Court or requires that party to participate in informal resolution processes for longer than 30 days after a dispute has risen.
- 17. Confidentiality**
- 17.1 The Supplier and the Purchaser agree that a Contract and any other information furnished by one party to the other pursuant to the Contract is and remains confidential between the parties and the parties must not disclose the same, or permit or cause the same to be disclosed, either directly or indirectly, to any third party unless:
- (a) prior approval in writing has been obtained from the other party;
- (b) disclosure is required by law; or
- (c) the information is in the public domain prior to the disclosure by the party.
- 17.2 The expression "any third party" does not include the financial or legal advisors of a party or a related body corporate of a party.
- 18. Working Documents**
- 18.1 The Supplier accepts no responsibility for the accuracy or correctness of Working Documents prepared by the Purchaser or a third party. The supplier is not liable for any comment or silence in respect of a review of Working Documents.
- 18.2 The Supplier is under no obligation to review or consider the Working Documents and is entitled to rely on the Working Documents, regardless if any errors in the Working Documents are subsequently identified by the Supplier. The supplier is not liable for any comment or silence in respect of a review of Working Documents.
- 18.3 Unless otherwise agreed, the Purchaser must deliver all Working Documents without charge to the Supplier prior to commencement of the Works.
- 18.4 Where the Purchaser submits electronic copies of Working Documents to the Supplier, then the Supplier reserves the right to charge the cost of printing those Working Documents.
- 18.5 All Working Documents will remain in the custody and control of the Supplier.
- 18.6 A Quotation does not include any fee for design, re-design, detailing, re-detailing, scheduling, re-scheduling of Working Documents to be prepared by the Supplier unless stated in the Quotation. The Purchaser must pay the Supplier's fees for services, if applicable, when such Documents are prepared.
- 18.7 The Supplier will provide only two copies of material processing supply schedules and associated installation location plans.
- 18.8 The Supplier reserves the right to schedule distribution of steel as detailed in the Working Documents or as otherwise agreed in writing.

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## Terms and Conditions of Supply

- 18.9 Unless authorised in writing, neither the Purchaser nor any third party is authorised to reproduce, adapt or use in any manner whether part or whole any Working Documents prepared by the Supplier (whether prepared on a fee paying basis or not). Any unauthorised reproduction, adaption or use may be, among other things, a breach of copyright and actionable by the Supplier.
- 18.10 The Purchaser indemnifies the Supplier against all claims and costs, liabilities and expenses incurred by the Supplier as a result of or related to:
- (a) any inaccuracy, omission or error in the Working Documents prepared by the Purchaser or third party; or
  - (b) working Documents, or any other documents provided by the Purchaser to the Supplier for the purposes of or in the course of supply of Goods, breaching a third party's intellectual property rights. This Clause survives termination or expiry of the Contract.
- 19. Notices**
- 19.1 Documents under this Contract (including Quotations and Invoices) may be transmitted by facsimile, hand, post and email to the numbers and addresses identified in the Quotation. However any notice required to be given by the Purchaser to the Supplier pursuant to clause 9 must be delivered personally or sent by post to the National Credit Manager of the Supplier, at 133-139 Newton Road, Wetherill Park 2164 NSW.
- 20. Miscellaneous**
- 20.1 The law of the jurisdiction where Delivery is to occur shall apply to this Contract. The parties submit to the exclusive jurisdiction of the courts in the jurisdiction in which the Supply is to occur pursuant to this Contract.
- 20.2 The Purchaser must not assign its benefits or obligations under the Contract without prior consent in writing of the Supplier and the Supplier must not unreasonably withhold its consent to an assignment. The Supplier may assign the benefits and obligations under the Contract .
- 20.3 A party waives a right under the Contract only by written notice that it waives the right.
- 20.4 No amendment of the Contract is effective unless it is agreed by both parties in writing. This clause does not apply to any change in Quotation or the Contract Sum permitted by this Contract.
- 20.5 If a provision of the Contract would, but for this Clause 20.5, be unenforceable:
- (a) the provision must be read down to the extent necessary to avoid that result; and
  - (b) if the provision cannot be read down to that extent, it must be severed without affecting the validity and enforceability of the remainder of the Contract.

Customer Initials.....

# Deed of Guarantee, Indemnity and Charge

To **AUSREO (AUST) PTY. LTD. (ACN 094 555 192) (ABN 11 094 555 192)** and its subsidiary companies.

In consideration of the Company providing or continuing to provide Goods or supplying credit accommodation to the Customer or not commencing or continuing legal action against the Customer at the request of the Guarantor and for the business purposes of the Customer, the Guarantor enters this Deed and agrees with the Company as follows:

## 1. Guarantee

- 1.1 To guarantee and be responsible for the payment of the Money Secured to the Company by the Customer.
- 1.2 This guarantee and indemnity is given for valuable consideration and is a continuing guarantee to the Company for the whole of the Money Secured.
- 1.3 The Company may at any time or times at its discretion and without giving any notice whatsoever to the Guarantors refuse to provide further Goods to the Customer.
- 1.4 Where the Guarantor consists of more than one person, this Deed is enforceable against all persons signing as Guarantor and each Guarantor will be jointly and severally liable immediately on signing this Deed.
- 1.5 If it is intended that more than one person be a Guarantor, this Deed will remain enforceable against each person signing as Guarantor even if any person proposed or contemplated to sign this Deed does not in fact do so.
- 1.6 The Company may at any time release or discharge the Guarantor or any of the persons included as Guarantor from the obligations of this Deed or grant time to pay, accept a composition from or enter other arrangements with the Customer or any Guarantor without affecting the liability of any other Guarantor under this Deed except that any payment received by the Company under such composition or arrangement will operate as a discharge of liability to the extent of the payment.
- 1.7 Any payment made by or on behalf of the Customer which is later avoided by the application of any statutory provision shall be deemed not to discharge the Customer's indebtedness and in such any event the parties are to be restored to rights which each respectively would have had if the payments had not been made.
- 1.8 Where the Guarantor has the right to prove in any insolvency administration of the Customer, the Guarantor must do so and hold any dividends received on trust for the Company.

## 2. Indemnity

- 2.1 The Guarantor indemnifies the Company against any and all losses and expenses of any nature including the costs of preparation of this Deed, stamp duty (if any) and legal costs on a solicitor/client basis arising in any way out of its dealings with the Customer, the intent being that the Guarantor is primarily liable for payment to the Company of such losses and expenses and of the Money Secured.

## 3. Charge

- 3.1 For the purpose of securing payment to the Company of the Money Secured, the Guarantor:
  - (a) Hereby charges all of its, his or her beneficial interest in real property (including all property acquired after the date of this Deed) in favour of the Company whether or not a demand has been made on the Customer or the Guarantor;
  - (b) Agrees to deliver to the Company within seven (7) days of written demand a Memorandum of Mortgage in registrable form and that the Money Secured is payable on demand incorporating the covenants contained in Memorandum No. Q860000 registered at the Land Titles Office of New South Wales as amended to comply with and reflect any appropriate laws in the jurisdiction(s) where the Guarantor has any beneficial interest in real property and as amended appropriately to comply with any formal requirements of registration.
  - (c) Authorises and consents to the Company taking all actions necessary to give effect to this security including the lodgment of a Caveat upon Title of the Guarantor's Real Property. The Guarantor hereby irrevocably appoints the Company and any person nominated by the Company severally the attorney of the Guarantor with power to execute, sign, seal and deliver (which delivery may be subject to such terms and conditions as the attorney thinks fit) such mortgage or other document to give effect to this security.

- (d) If the charged created by Clause 10.1 is or becomes void or unenforceable, it may be severed from this Deed without any effect on its validity and the Guarantor shall not be exonerated in whole or in part, nor shall the Company's right, remedies or recourse against the Guarantor be in any way prejudiced or adversely affected by such severance. A Certificate signed by a Director, Secretary, Financial Controller or Credit Manager of the Company shall be prima facie evidence of the amount of the Money Secured owed by the Customer or Guarantor at that time. The Guarantor acknowledges that the Company has afforded him, her or it full and unrestricted opportunity of seeking independent legal advice on the Guarantor's obligations under the Deed prior to the signing of this Deed of Guarantee and Indemnity. The Guarantor acknowledges that the Guarantor has made his, her or its own enquiries of the Customer regarding the Customer's past and prospective dealings with the Company and is satisfied as to the extent of his, her or it's obligations arising from this Deed and that the Company is under no obligation to notify the Guarantor of any changes to its trading terms or dealings with the Customer even if these changes increase the Guarantor's liability under the Deed. This Deed will be construed according to the laws of the State or Territory as the Company in its sole discretion determines. Proceedings may be instituted in such State or Territory as the Company may in its sole discretion determine. Failing such determination the Guarantor consents to any proceedings being instituted and heard by any appropriate Court sitting in the State of New South Wales applying the laws of the State of New South Wales. The Guarantor hereby grants permission in accordance with the Privacy Act to the Company to carry out such credit enquiries as the Company may in its sole discretion determine and to provide such information concerning the applicant to any other parties as the Company may in its sole discretion determine and the Guarantor further hereby indemnifies the Company in respect of any claims or actions arising out of the obtaining or providing of information concerning the Guarantor in exercise of its discretion as outlined herein.

## 4. Privacy Act

- 4.1 The Guarantor(s) agree to the terms of the Privacy Statement pursuant to the *Privacy Act 1988* (as amended by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012*) contained in this document.

## 5. Definitions and interpretation

**"Company"** means AUSREO (AUST) PTY. LTD. (ACN 094 555 192) (ABN 11 094 555 192) and its subsidiary companies (within the meaning of Section 50 of the Corporations Law) and successors or assigns.

**"Customer"** means the person or company set out in Item 1 of the Schedule.

**"Guarantor"** means the person or company set out in Item 2 of the Schedule or any other person or persons signing or purporting to sign this Deed as Guarantor and that person's personal representative.

**"Goods"** means all goods, merchandise and services supplied or which may be supplied in the future at the Customer's request or credit extended by the Company to the Customer.

**"Money Secured"** means all monies now payable or which may become payable in the future or contingently by the Customer to the Company for any reason whether alone or jointly with another person including without limitation; money owed by the Customer for the supply of Goods; all money the Company pays or becomes liable to pay at the request of the Customer; all losses and expenses including legal costs on a solicitor/client basis however directly or indirectly arising from any dealing or default by the Customer under its contract with the Company or by the Guarantor under this Deed; all the costs incurred by the Company for recovering monies under any related security.

**"Deed"** means this Deed of Guarantee, Indemnity and Charge. In interpreting this Deed words incorporating the singular number denotes the plural and vice versa; any gender denotes the relevant gender; and a person denotes an individual, a body corporate, a partnership or any unincorporated association.

# Deed of Guarantee, Indemnity and Charge

## Schedule

Item 1

\_\_\_\_\_  
Name of Customer

\_\_\_\_\_  
Australian Company Number (ACN)

Item 2

\_\_\_\_\_  
Name of Guarantor

\_\_\_\_\_  
Address of Guarantor

\_\_\_\_\_  
Name of Guarantor

\_\_\_\_\_  
Address of Guarantor

## Executed as a Deed

In witness I set my hand and seal at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20

SIGNED by

BEFORE

\_\_\_\_\_  
Signature of Guarantor

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Guarantor

\_\_\_\_\_  
Name of Witness

of \_\_\_\_\_  
Address of Guarantor

of \_\_\_\_\_  
Address of Witness

In witness I set my hand and seal at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20

SIGNED by

BEFORE

\_\_\_\_\_  
Signature of Guarantor

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Guarantor

\_\_\_\_\_  
Name of Witness

of \_\_\_\_\_  
Address of Guarantor

of \_\_\_\_\_  
Address of Witness

**THIS IS A LEGAL DOCUMENT. IF YOU ARE UNSURE OF ITS MEANING AND EFFECT YOU SHOULD SEEK LEGAL ADVICE**