

Goods are supplied on the following Terms and Conditions, unless varied and authorised in writing by the Supplier.

1. Definitions

1.1 In these Terms and Conditions:

- (a) 'Business Day' means a day on which banks are open for business in the city in which the Goods are to be Delivered excluding a Saturday, Sunday or public holiday in that city.
- (b) 'Commercial Credit Account' means a trading account granted in writing by the Supplier to the Purchaser prior to entering into a Contract on such terms and conditions agreed between the Purchaser and Supplier;
- (c) 'Consequential Loss' means any one or more of the following: any loss which is not direct or indirect loss, loss of bargain; loss of revenues; loss of reputation; indirect loss; loss of profits; consequential loss; loss of actual or anticipated savings; lost opportunities, including opportunities to enter into arrangements with third parties; and loss or damage in connection with claims against the Purchaser by third parties;
- (d) 'Contract' means the contract created in accordance with Clause 2.5;
- (e) '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),
- 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, acts of war, acts of terrorism, riots, civil commotion, explosion, malicious damage, strikes, lockouts, trade disputes, fire, floods, storm and tempest, earthquake, breakdowns, delay in the manufacture of Goods for any reason whatsoever, interruption of transport, government action, no-delivery or unavailability of raw material or products, refusal or failure of the Suppliers own suppliers to deliver to the Supplier, disease and/or virus of epidemic or pandemic proportions or other causes whether the kind enumerated above or otherwise which are beyond the control of 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) 'PPS Act' means the *Personal Property Securities Act 2009* (Cth);
- (l) 'Purchaser' means the entity described as the 'Purchaser' in the Quotation;
- (m) '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);
- (n) '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 the Quotation;
 - (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;
- (o) 'Request' means a request for a delivery of Goods which is issued by the Purchaser to the Supplier;
- (p) 'Supplier' means Ausreo Pty Ltd, its associated companies, successors and assigns;
- (q) 'Terms and Conditions' means these terms and conditions, including all schedules, annexures and any amendments to them;
- (r) 'Variation' means a change to the Goods arising from:
- (i) an increase, decrease, addition or omission of the Goods 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; or
 - (vi) printing in accordance with clause 18.4.
- (s) 'Working Documents' architectural drawings, structural drawings, construction drawings, specifications and reinforcement schedules or other documents together with any variation or site instruction;
- (t) 'Writing' includes an electronic transmission;
- 1.2 A reference to an Act includes regulations and other instruments made under it, and consolidations, amendments, re-enactments or replacements of any of them.
- 1.3 If anything under this agreement is required to be done by or on a day that is not a Business Day that thing must be done by or on the next Business Day.
- 1.4 The meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as' or 'for example' (or similar phrases) do not limit what else might be included.
- 1.5 The Contract is not to be interpreted against the interests of a party merely because that party proposed the Contract or some provision in it or because that party relies on a provision of the Contract to protect itself.
- 1.6 A reference to a document or agreement (including a reference to these terms and conditions) is to that document or agreement as amended, novated, supplemented, varied or replaced.
- 1.7 A reference to a party is a reference to the Supplier or the Purchaser, and a reference to the parties is a reference to both the Supplier and the Purchaser.

Terms and Conditions of Supply

2. Request, Quotation and pricing

- 2.1 The Purchaser may, from time to time, issue the Supplier with a Request.
- 2.2 Following receipt of a Request, the Supplier may provide the Purchaser with a Quotation. The Purchaser acknowledges that the Supplier is under no obligation to provide a Quotation following receipt of a Request.
- 2.3 A Quotation remains open for acceptance by the Purchaser until the earlier of:
- 30 days from the date of the Quotation;
 - the expiry date of the Quotation stated in the Quotation; or
 - a notification by the Supplier to the Purchaser that the Quotation has been withdrawn.
- 2.4 The Purchaser may accept a Quotation by providing the Supplier with a Quotation Acceptance.
- 2.5 When the Quote Acceptance is provided, the Contract will be formed and comprised of (in descending order of precedence):
- any special terms agreed in writing;
 - the terms of the Quotation;
 - these Terms and Conditions;
 - the Commercial Credit Account (if applicable); and
 - the Working Documents.
- 2.6 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 any prior terms.
- 2.7 Notwithstanding clause 2.5 above, after the Contract is formed the Supplier is entitled, at its sole discretion, to terminate this Contract or amend the terms of the Quotation (including the Contract Sum), which the Purchaser may accept, failing which the Supplier may terminate this Contract if:
- supply of the Goods the subject of a Quotation does not commence within 30 days of a Quote Acceptance; or
 - supply under the Contract is stopped or suspended for more than 30 days; or
 - supply under the Contract has not been completed within twelve months of the date of the Quotation; or
 - 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.
- 2.8 In the event this Contract is terminated in accordance with clause 2.7 above:
- the Supplier shall issue the Purchaser with an Invoice for:
 - the amount of all unpaid Invoices;
 - 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;
 - the cost of Goods manufactured, or in the course of being manufactured by the Supplier for the Contract; and
 - 5% of the unclaimed portion of the Contract Sum,
 - 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.
- 2.9 If a Force Majeure event arises:

- either party may at its absolute discretion terminate the Contract by written notice to the other party and if terminated, the Supplier will be entitled to the amounts provided at clause 2.6(a)(i) to (iii) above; and
- the Supplier may 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:
- 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
 - 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 as follows:
- if all the Goods are to be delivered in one delivery, on the date stated in the Quotation; or
 - if the Goods are to be delivered over a number of deliveries, within a reasonable time of the date requested (either in writing or orally) by a Purchaser, provided:
 - 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
 - the Supplier does not object in writing or verbally to delivering the Goods by the date requested by the Purchaser having regard to the Supplier's business requirements.
- 4.2 The Purchaser is not entitled to cancel or modify part or all of the Contract once a Quotation Acceptance has occurred.
- 4.3 The Purchaser acknowledges that the Supplier may supply similar goods, products and materials as the Goods to any third party, and that the Purchaser is not the exclusive customer of the Supplier.

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:
- an extension of time to Deliver the Goods; and
 - the Purchaser shall pay to the Supplier, the cost of the Variation which shall be priced using the following order of precedence:
 - prior agreement;
 - applicable rates or prices in the Contract; and
 - 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:
- All freight and labour charges for delivering/collecting the Goods;
 - A collection fee of \$200.00 per returned delivery; and
 - 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 Subject to clause 7.1, 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:
- the replacement of the relevant Goods or supply of equivalent Goods;
 - the repair of the Goods;
 - after prior agreement between the Supplier and the Purchaser, payment of the cost of replacing or having the Goods replaced or repaired; or
 - reimbursement of some or all amounts paid by the Purchaser in respect of the Goods specifically relevant to the breach.
- 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 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, including for death or personal injury, which the Purchaser or any other person may suffer or incur which may arise directly or indirectly in connection with the Goods, except that the Supplier will be liable to the extent that it contributes to such loss including a breach of this Contract by the Supplier or by the fraud or negligence of the Supplier, its officers, agents, employees.
- 7.8 The Supplier is not liable for any Consequential Loss or liquidated damages however caused (including by the negligence of the Supplier), suffered or incurred by the Purchaser in connection with the Contract or Goods.
- 7.9 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 a 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:
- the Supplier may issue Invoices for Goods either:
 - on dispatch of such Goods; or
 - when Goods (including parts of the Goods) are Delivered; or
 - when the Purchaser becomes obligated to pay an amount pursuant to clause 11.3; or
 - in respect of prefabrication of cages and reinforcing members, once fabrication is completed.
 - 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 of Quotation Acceptance. 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 Industry Fairness (Security of Payment) Act 2017* (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).

Terms and Conditions of Supply

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, including those amounts claimed under clause 9.3.

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:
 - (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:

- (a) treat the Contract as repudiated;
- (b) terminate the Contract;
- (c) may refuse to supply the Goods to the Purchaser;
- (d) is entitled to claim return of any Goods in the possession of the Purchaser where title has not passed to the Purchaser; and
- (e) 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.

9.3 If the Purchaser purports to wrongly terminate or rescind part or all of the Contract, breaches a term of the Contract, or refuses to take delivery of any Goods in accordance with the Contract, the Supplier may claim from the Purchaser:

- (a) the total outstanding amount of the Contract; plus

(b) all internal and external costs and expenses (including legal, collection agencies and administration costs) that the Supplier incurs in enforcing its rights under the Contract.

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 reasonable 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 Contract 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 Contract 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 Contract provides the Purchaser is responsible for unloading (or the Contract 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 Contract 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.
- (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 Contract 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 and administration fees at a reasonable rate nominated by the Supplier;
- (ii) rehandling, redelivery, loading and unloading fees at a reasonable 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 Contract. 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 to 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 any salvage or repair required to the vehicle.
- 12.2** 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 any expense, liability, claim or loss that may be incurred by the Supplier as a result of exercising its rights under this clause 13.5(e);
- (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. The Purchaser agrees to the extent permitted under the PPS Act, that the Purchaser has no right:
- (i) under Chapter 4 of the PPS Act; or
- (ii) under the PPS Act to receive a copy of any verification statement or financing change statement under the PPS Act; and
- (g) the security interest arising under this clause 13.5(f) 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

Terms and Conditions of Supply

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 anything (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;
- (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 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 not within the Supplier's reasonable control.

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 option:

- (a) to supply the Purchaser similar goods which in the reasonable opinion of the Supplier are an appropriate substitute for the Good without prior reference to the Purchaser (in which the case the Purchaser may decline acceptance of the similar goods without incurring any penalty or cost); 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 arisen.

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.

18.3 Unless otherwise agreed, the Purchaser must deliver all Working Documents without charge to the Supplier prior to commencement of the work under the Contract, including preparation of the Goods.

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 A copy of all Working Documents will remain in the custody and control of the Supplier.

- 18.6 A Contract 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 Contract. The Purchaser must pay the Supplier's fees for services, if applicable, when such Working 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.
- 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, adaptation 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:
- any inaccuracy, omission or error in the Working Documents prepared by the Purchaser or third party; or
 - use of the 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. Indemnity**
- 20.1 The Purchaser indemnifies the Supplier against any and all losses and expenses of any nature in relation to a claim against the Purchaser in relation to this Contract, or a breach of this Contract by the Purchaser.
- 21. Charge**
- 21.1 For the purpose of securing payment to the Supplier of all amounts owing by the Purchaser in relation to the Contract, the Purchaser:
- hereby charges all of its, his or her beneficial interest in real property (including all property acquired after the date of the Contract) in favour of the Supplier whether or not a demand has been made on the Purchaser; and
 - agrees to deliver to the Supplier within seven (7) days of written demand all necessary documents required for the Supplier to register its beneficial interest in the Purchaser's real property.
- 21.2 Authorises and consents to the Supplier taking all actions necessary to give effect to this security including the lodgement of a Caveat upon Title of the Purchaser's real property. The Purchaser hereby irrevocably appoints the Supplier and any person nominated by the Supplier severally the attorney of the Purchaser 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.
- 21.3 If the charge created by clause 21 is or becomes void or unenforceable, it may be severed from this Deed without any effect on its validity and the Purchaser shall not be exonerated in whole or in part, nor shall the Supplier's right, remedies or recourse against the Purchaser 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 Supplier shall be prima facie evidence of the amount owed by the Purchaser at that time. The Purchaser acknowledges that the Purchaser has afforded it full and unrestricted opportunity of seeking independent legal advice on the Purchaser's obligations under the Contract prior to forming the Contract.
- 22. Trustee Capacity Warranties**
- 22.1 If the Purchaser enters into the Contract in the capacity as trustee, it warrants that:
- it is the sole trustee and no action has been taken to remove or replace it;
 - it has power to execute and perform its obligations under the Contract;
 - all necessary action has been taken to authorise the execution and performance of the Contract;
 - it is not in default;
 - it has complied with all fiduciary obligations directly or indirectly imposed on it;
 - it has a right to be indemnified in respect of all of its obligations and liabilities incurred by it under the Contract; and
 - each of the warranties contained in this clause will remain true as long as the Contract remains in force.
- 23. Company Capacity Warranties**
- 23.1 In addition to and despite all other warranties, express or implied, in the Contract, the Purchaser warrants and covenants that:
- it is empowered to enter into the Contract and to do all things that will be required by the Contract; and
 - all things have been done or will be done as may be necessary to render the Contract legally enforceable in accordance with its terms and fully valid and binding on it.
- 24. Purchaser Changes**
- 24.1 The Purchaser agrees to notify the Supplier in writing as soon as practicable and in any event within three days of the occurrence of:
- a change in the legal status, ownership or control of the Purchaser;
 - a change in its officers (if it is a company or other body corporate) or its partners (if it is a partnership) or the beneficiaries of a trust of which it is trustee;
 - the appointment of a liquidator, an administrator or a receiver and/or manager to the Purchaser or any of its property, or the bankruptcy of the Purchaser or the Purchaser's entry into an arrangement with its creditors; or
 - any step being taken to sell an asset or assets of the Purchaser with a value of 20% or more of the gross assets of the Purchaser, or to sell, transfer, encumber or otherwise dispose of 20% or more of the shares (if it is a company or other body corporate) of the Purchaser.
- 25. Miscellaneous**
- 25.1 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.
- 25.2 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.
- 25.3 A party waives a right under the Contract only by written notice that it waives the right.
- 25.4 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 the Contract Sum permitted by this Contract.
- 25.5 If a provision of the Contract would, but for this Clause 25.5, be unenforceable:
- the provision must be read down to the extent necessary to avoid that result; and



Terms and Conditions of Supply

- (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.

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.
- 1.9 No amendment of this Deed or release of the Guarantor is effective unless it is agreed by both parties in writing.
- 1.10 The Guarantor agrees to notify the Company in writing as soon as practicable and in any event within three days of the occurrence of:
 - (a) a change in the legal status, ownership or control of the Guarantor;
 - (b) a change in its officers (if it is a company or other body corporate) or its partners (if it is a partnership) or the beneficiaries of a trust of which it is trustee;
 - (c) the appointment of a liquidator, an administrator or a receiver and/or manager to the Guarantor or any of its property, or the bankruptcy of the Guarantor or the Guarantor's entry into an arrangement with its creditors; or
 - (d) any step being taken to sell an asset or assets of the Guarantor with a value of 20% or more of the gross assets of the Guarantor, or to sell, transfer, encumber or otherwise dispose of 20% or more of the shares (if it is a company or other body corporate) of the Guarantor.

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 lodgement 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 charge 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.
- (e) 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.
- (f) 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 its 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.
- (g) 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.
- (h) 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.
- (i) 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.

Last modified date: 18 August 2020

Deed of Guarantee, Indemnity and Charge

"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.

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

Last modified date: 18 August 2020