

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 (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

Application for Commercial Credit

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 (Act).
- For the purpose of this statement, the terms "personal information", "credit eligibility information", "credit information", "commercial credit related purpose", "credit guarantee purpose", "consumer credit related 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, credit eligibility information, credit reporting information and credit information, both severally and collectively.
- The Supplier may collect Information about the Applicant, [its owners, directors, managers, and partners (in the case of a partnership)] and/or other potential Guarantor(s) (collectively "You") for the Supplier's primary purposes of 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, administration of your Commercial Credit Account, marketing, sales and business development purposes and direct marketing of services/products we or our related bodies corporate provide.
- You consent to the Supplier collecting, using and disclosing personal information (including sensitive information) for both their primary purposes specified herein and for the purpose of direct marketing of



Application for Commercial Credit

products and services. If a person completing this Account Application provides information about another person, they must only do so if they have provided this privacy statement to that person and obtained his or her consent to provide the information to the Supplier and for the Supplier's collection, use and disclosure in accordance with this Privacy Statement.

Equifax Australia GPO Box 964 NORTH SYDNEY NSW 2059 Tel: 13 83 32 https://www.equifax.com.au/privacy	Illion Australia Pty Ltd PO Box 7405 St Kilda Road, Melbourne, VIC, 3004 Tel: 13 23 33 https://illion.com.au/privacy
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- The Supplier may collect, and may already have collected, information from you, 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 is 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.
- You consent to the Supplier obtaining and making disclosure of information about you 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 you that it may use and/or disclose credit eligibility information for a permitted purpose under the Act.
- The Supplier may provide information about you directly or indirectly through our credit insurers 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, where permitted under the Act. You consent to such disclosure. The Supplier's website at www.ausreo.com.au contains a statement of notifiable matters in respect of disclosure to credit reporting bodies, including what the information may be used for, what the Supplier may disclose and the your right to request credit reporting bodies not to use your information and your rights to access, request correction or your information and make a complaint.

- The Supplier may disclose information about you to the Supplier's employees, subsidiaries, employees, agents and related bodies corporate, trade insurers, contractors and third party service providers, past, present or prospective credit providers 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 you consent to such disclosure.
- Further information about how we collect, use and disclose your information is set out in the Supplier's privacy policy and the Supplier's statement of notifiable matters for credit reporting. They can be found on the Supplier's website (www.ausreo.com.au) or you can also request a hard copy or other electronic form by contacting the Supplier's privacy officer who can be contacted by email, at [], by telephone (02) 9765 2100 or by post at [133 - 139 Newton Road, Wetherill Park, NSW 2104][PO Box 2201 Smithfield NSW 2164]. The Supplier's privacy policy contains information about how to access and seek correction of information, or how to complain about a breach of the Act, APPs, Credit Reporting Code and how the Supplier will deal with any such complaint.
- You will be deemed to have acknowledged and accepted the terms of this privacy statement by signing and returning this statement.

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

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

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

- He / She / They have authority to sign on behalf of and to bind the Applicant;
- The information provided is true and correct in every detail;
- He / She / They agree(s) to provide such updated and regular financial and trading information as Ausreo may reasonably require from time to time;
- 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* contained in this document including their consent to information being disclosed to the Credit Reporting Bodies specified in this Privacy Statement for assessing the Applicant's application for Commercial Credit.

Signature _____
Date / /

Print name and title _____

Signature _____
Date / /

Print name and title _____

Signature _____
Date / /

Print name and title _____

Signature _____
Date / /

Print name and title _____

Office use only

Business manager's comments _____

Business manager's signature _____

Date / /

Credit manager's signature _____

Date / /

Account recommended Yes No Credit limit \$ _____

Terms _____

Customer Initials.....

Last updated date: 21 March 2024

AUSREO Pty Limited



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) 'Australian Consumer Law' means Schedule 2 of the Competition and Consumer Act 2010 (Cth) and any equivalent state or territory legislation;
- (b) '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;
- (c) 'Claim' means any claim, demand, legal proceeding or cause of action, however arising, including one that is based in contract or tort (including negligence), under common law, equity or statute and whether involving a third party or a party to the Contract or otherwise;
- (d) '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 (as to credit) agreed between the Purchaser and Supplier;
- (e) 'Confidential Information' has the meaning provided in clause 17.1;
- (f) 'Consequential Loss' means any one or more of the following:
 - (i) any loss which is not direct or indirect loss, loss of bargain;
 - (ii) loss of revenues; loss of reputation; indirect loss;
 - (iii) loss of profits;
 - (iv) loss of actual or anticipated savings; lost opportunities, including opportunities to enter into arrangements with third parties; and
 - (v) loss or damage in connection with claims against the Purchaser by third parties;
- (g) 'Consumer Guarantees' means any right or statutory guarantee under Division 1 of Part 3 2 of the Australian Consumer Law;
- (h) 'Contract' means the contract created in accordance with clause 2.5;
- (i) 'Contract Sum' means for Goods where the Contract provides:
 - (i) a lump sum, the lump sum; and
 - (ii) agreed rates, the sum of the Goods 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 the Contract.

If the Contract is silent, (ii) will apply;

- (j) 'Control' means, in relation to a party that is not a natural person, the occurrence of an event or series of events that result in a person or persons:
 - (i) that did not have Control of that party prior to the event or series of events, having Control of that party following that event or series of events; or
 - (ii) that had Control of that party prior to the event or series of events ceasing to have Control of that party;
- (k) 'Delivered' means when the Goods are delivered to the Purchaser by any of the methods set out in clause (b) or (c) and 'Delivery' has a corresponding meaning;
- (l) '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;
- (m) '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, interruption of transport, government action disease and/or virus of epidemic or pandemic proportions or

Terms and Conditions of Supply

- other causes whether the kind enumerated above or otherwise which are beyond the reasonable control of the Supplier;
- (n) 'Goods' means goods, products and materials supplied by the Supplier under the Contract;
- (o) 'Governmental Agency' means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world and includes any self-regulatory organisation established under statute or any stock exchange;
- (p) 'Insolvency Event' means the occurrence of any of the following events:
- (i) where a party is a natural person, the person becomes bankrupt, files or is served with a petition in bankruptcy or is served with a bankruptcy notice, the person is unable to pay his/her debts as and when they become due and payable or a creditor's meeting in relation to the person is called;
 - (ii) an application is made to a court for an order or an order is made that a body corporate be wound up, and the application is not withdrawn, stayed or dismissed within 21 days of being made;
 - (iii) appointment of a liquidator, provisional liquidator, administrator, receiver, receiver and manager or controller in respect of a body corporate or its assets;
 - (iv) except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
 - (v) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved;
 - (vi) a body corporate is or states that it is insolvent as that term is defined in section 95A of the Corporations Act;
 - (vii) as a result of the operation of section 459F(1) of the Corporations Act, a body corporate is taken to have failed to comply with a statutory demand;
 - (viii) a body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act;
- (ix) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable law;
- (x) a body corporate ceases to carry on business; or
- (xi) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction;
- (q) 'Invoice' means an invoice for payment of Goods supplied or to be supplied by the Supplier to the Purchaser;
- (r) 'Law' means:
- (i) legislation, ordinances, regulations, by-laws, orders, awards, proclamations, directions and practice notes of the Commonwealth, a State or Territory or any Government Agency;
 - (ii) certificates, licences, consents, permits, approvals, qualifications, registrations, standards and requirements of organisations having jurisdiction in connection with the supply of the Goods under the Contract; and
 - (iii) all other laws from which legal rights and obligations may arise;
- (s) 'Loss' means any losses, liabilities, damages, costs, charges or expenses (including lawyer's fees and expenses on a full indemnity basis) whether direct or indirect, fines and penalties;
- (t) 'New Contract Sum' has the meaning provided in clause 3.2;
- (u) 'PPS Act' means the Personal Property Securities Act 2009 (Cth);
- (v) 'Purchaser' means the person or entity described as the 'Purchaser' in the Quotation;
- (w) '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);
- (x) '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; or
 - (iii) the Purchaser directing the Supplier to deliver the Goods after it receives the Quotation;

Terms and Conditions of Supply

- (y) 'Request' means a request for a supply and Delivery of Goods which is issued by the Purchaser to the Supplier;
- (z) 'Supplier' means Ausreo Pty Ltd, its associated companies, successors and assigns;
- (aa) 'Terms and Conditions' means these terms and conditions, including all schedules, annexures and any amendments to them;
- (bb) '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;
- (cc) 'Working Documents' architectural drawings, structural drawings, construction drawings, specifications and reinforcement schedules or other documents together with any variation or site instruction prepared or provided by the Purchaser or a third party; and
- (dd) '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 the Contract 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.
- 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:
- (a) 30 days from the date of the Quotation; or
 - (b) the expiry date of the Quotation stated in the Quotation.
- 2.4 The Purchaser may accept a Quotation by providing the Supplier with a Quote Acceptance.
- 2.5 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 by the parties;
 - (b) the terms of the Quotation;
 - (c) these Terms and Conditions;
 - (d) the Commercial Credit Account (if applicable); and
 - (e) the Working Documents.
- 2.6 Notwithstanding clause 2.5, after the Contract is formed the Supplier is entitled, at its sole discretion, to amend the terms of the Quotation or any part of the Contract (including the Contract Sum) if:
- (a) supply of the Goods the subject of a Quotation does not commence within 30 days of a Quote Acceptance; or
 - (b) supply under the Contract is stopped or suspended for more than 30 days; or
 - (c) supply under the Contract has not been completed within twelve months of the date of the Quotation; or
 - (d) 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.
- 2.7 If the Supplier exercises its discretion in accordance clause 2.6 and the Purchaser is materially impacted by an amendment to the Contract Sum, the Purchaser may terminate the Contract (or part thereof) within 7 days of the Supplier providing notice of the amendment to the Purchaser.
- 2.8 In the event the Contract is terminated by the Supplier in accordance with clause 2.7:
- (a) the Supplier will issue the Purchaser with an Invoice for:
 - (i) the amount of all unpaid Invoices properly issued under the Contract;

Terms and Conditions of Supply

- (ii) all amounts due in accordance with the terms of the Contract which would have been due but for the termination of the Contract, had an Invoice been issued on the day of the termination; and
 - (iii) the cost of Goods manufactured, or in the course of being manufactured by the Supplier under the Contract.
- (b) the Purchaser must pay the amount of the Invoice in clause (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:
- (a) 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 clauses (i) to (iii); and
 - (b) the Supplier may suspend the Supplier's obligations under the Contract, including to Deliver the Goods, without penalty.
- 3. Escalation and price variation**
- 3.1 The Contract Sum (including the agreed rates) will 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 or decrease the Contract Sum for any 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, raw materials costs, 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 will advise the Purchaser in writing 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 (**New Contract Sum**).
- 3.3 The New Contract Sum applies in respect of any Requests made by the Purchaser after the Supplier has given written notice of the New Contract Sum under clause 3.2.
- 3.4 For the avoidance of doubt all other variations will be dealt with in accordance with clause 6.
- 4. Supply**
- 4.1 The Supplier will supply the Goods as follows:
- (a) if all the Goods are to be delivered in one Delivery, within a reasonable time of the date stated in the Purchaser's Order; or
 - (b) 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:
 - (i) the Supplier receives the request (which will 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 having regard to the Supplier's business requirements.
- 4.2 Subject to clause 2.7, the Purchaser is not entitled to cancel or modify part or all of the Contract once a Quote Acceptance has occurred without the prior written approval of the Supplier. If the Supplier accepts a cancellation or modification request, the Purchaser will be liable for any reasonable Loss incurred by the Supplier in respect of that cancelled or modified Quote Acceptance (including, without limitation, payment for any Goods ordered by the Supplier from its suppliers relating to that Quote Acceptance).
- 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.

Terms and Conditions of Supply

- 6.4 The Supplier may, at its sole election, agree to perform the Variation.
- 6.5 If the Supplier elects to carry out a Variation:
- (a) it will be entitled to an extension of time to Deliver the Goods; and
 - (b) the Purchaser must pay to the Supplier, the cost of the Variation which will be priced using the following order of precedence:
 - (i) prior written 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 where the Supplier has offered pricing on a lump sum basis.
- 6.6 The Supplier may (in its sole and absolute discretion), upon a request by the Purchaser, agree to accept the return of 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;
 - (b) a collection fee of \$200.00 per returned delivery; and
 - (c) an administration and restocking fee of \$180.00 per returned delivery.
- Nothing in this clause limits the Purchaser's rights at law, under clause 7.1 or as otherwise set out in this document.
- 7. Warranties and limitation of liability**
- 7.1 Nothing in these Terms and Conditions is intended to have the effect of excluding:
- (a) any Consumer Guarantees; or
 - (b) any other applicable Law that cannot be excluded, restricted or modified by agreement of the parties, (collectively **Non-Excludable Rights**).
- 7.2 Subject to clause 7.1 and to the maximum extent permitted by Law, the Supplier excludes any term, condition, warranty, representation, guarantee or undertaking that may otherwise be implied into the Contract by legislation, common law, equity, trade, custom or usage.
- 7.3 Subject to clause 7.1 and to the maximum extent permitted by Law, the liability of the Supplier in respect of any damaged, defective or non-conforming Goods, breach of or failure to comply with any Non-Excludable Right (which cannot be excluded but which can be limited) or for any other Loss or Claim however arising, is limited to the following:
- (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;
 - (d) reimbursement of some or all amounts paid by the Purchaser in respect of the Goods specifically relevant to the breach; or
 - (e) where the Purchaser is not a 'Consumer' (as that term is defined under the Australian Consumer Law), provision of a credit note.
- 7.4 To the extent that the Supplier is not the manufacturer or deemed manufacturer of the Goods, the Goods may come with manufacturer's warranties where the Goods are supplied to the Supplier by third parties which the Supplier will use its reasonable endeavours to pass through to the Purchaser.
- 7.5 The Purchaser warrants that it has undertaken its own investigations (including obtaining specialist advice) in respect of the suitability of the Goods for its proposed use.
- 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 clause 7.1 and any other applicable Laws, 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 in connection with the Goods, except that the Supplier will be liable to the extent that it causes such loss including but not limited to a breach of these Terms and Conditions by the Supplier or by the fraud or negligence of the Supplier, its officers, agents, employees.
- 7.8 Subject to clause 7.1 and to the extent permitted by Law, neither party is liable to the other for any Consequential Loss or liquidated damages however caused, suffered or incurred by the other party in connection with the Contract or Goods.
- 8. Invoicing and payment**
- 8.1 The Purchaser must pay the Supplier the Contract Sum together with all other amounts which become due and payable pursuant to the 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:

Terms and Conditions of Supply

- (a) the Supplier may issue Invoices for Goods either:
- (i) on dispatch of such Goods; or
 - (ii) when Goods are Delivered; or
 - (iii) if the:
 - (A) Supplier is responsible for delivering Goods: when the Purchaser accepts Delivery on the date nominated; or
 - (B) Purchaser is responsible for collecting the Goods: when the Purchaser collects the Goods from the Supplier's nominated premises at the time nominated by the Supplier to the Purchaser; or
 - (iv) in respect of pre-fabrication of cages and reinforcing members, once fabrication is completed; and
- (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 of Quote Acceptance. The Supplier will 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 the 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 the Contract. If the Purchaser has outstanding Invoices which remain unpaid by their due date (and which remain unpaid despite the Supplier providing the Purchaser with a reasonable period of time to remedy the non-payment) the Supplier reserves the right to withhold further supply under the 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)*.
- 8.7 Interest in the amount of 2.5 % per annum above the average of the most recent prime rate, indicator rate, or reference rate (however described) for business overdrafts published by the Commonwealth Bank of Australia, compounding monthly, will 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 It is a termination event if:
- (a) in respect of the Purchaser, it refuses or fails to pay any Invoice by the due date of that Invoice and does not make payment following receipt of a letter of demand by the Supplier requiring the Purchaser to make payment within 48 hours following receipt of the letter of demand;
 - (b) a party (defaulting party) breaches a material term in the Contract and, in the reasonable opinion of the other party (non-defaulting party), the breach:
 - (i) cannot be remedied; or
 - (ii) can be remedied but is not remedied by the defaulting party within 7 Business Days after the non-defaulting party gives the defaulting party written notice of the breach;
 - (iii) an Insolvency Event occurs in respect of a party; or
 - (iv) a Change of Control occurs in respect of a party or if a party closes or disposes of all or a substantial part of its business,
- (Termination Event).**
- 9.2 If a Termination Event occurs, the non-defaulting party may:
- (a) terminate the Contract immediately by written notice to the defaulting party; and
 - (b) exercise its rights as if it had accepted a repudiation of the Contract by the defaulting party.
- 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 as a debt due 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 or expiration of the Contract for any reason:

Terms and Conditions of Supply

- (a) the Purchaser will deliver to the Supplier any Goods where title has not yet passed to the Purchaser unless otherwise agreed in writing;
 - (b) the Purchaser must pay the Supplier for:
 - (i) all amounts it owes the Supplier including for Goods ordered but not yet Delivered and Goods Delivered but not yet paid for, whether those amounts are due at that time or not, within 30 days from the last day of the month in which the Invoice was issued; and
 - (ii) all moneys due to the Supplier which remain unpaid at the date of termination; and
 - (c) any accrued rights and obligations of the parties as at the date of termination or expiration are unaffected.
- (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 will:
 - (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 Laws including but not limited to 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 Goods will be deemed Delivered when:
 - (i) the Supplier issues the Purchaser with a notification in accordance with clause (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
 - (iii) if the Quotation provides the Supplier is responsible for unloading, when the Supplier has unloaded the Goods (being a flat and clear area nominated by the Purchaser); or
 - (iv) if the Goods are unloaded in accordance with clause (i), at the time the Goods are unloaded from the Supplier's truck;
- (d) if the Purchaser is responsible for unloading in accordance with clause (ii), but fails to unload the Supplier's truck upon arrival the Supplier may at its election:
 - (i) if it is not possible to unload the Goods at the precise location for Delivery, unload the Goods at a location determined and controlled by the Supplier (acting reasonably) 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.

10. Tax

- 10.1 Unless otherwise expressly stated in writing, all amounts stated in the 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 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

Terms and Conditions of Supply

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 (a) above,

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 (including re-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 clause 11.3 and clause (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 by the Purchaser. Subject to clause 7 and to the extent permitted by Law, 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
- (c) damage to property caused by entering the 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 unless the damage was caused or contributed to by the Supplier, its officers, agents or employees, in which case, the Purchaser's liability will be reduced proportionately.

12.2 The Purchaser indemnifies the Supplier and keeps the Supplier indemnified against any Loss suffered by the Supplier, its officers, agents or employees 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, unless such Loss was caused or contributed by a negligent act or omission of the Supplier, its officers, agents or employees.

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 the Contract) in respect of all the Goods supplied under the Contract; and
- (b) all other amounts owing to the Supplier under the Contract or any other contract between the Purchaser and the Supplier,

(the **Secured Amounts**).

13.4 All payments received from the Supplier may be applied by the Supplier against the Secured Amounts in the manner and order the Supplier, in its absolute discretion, determines.

13.5 Until full payment in cleared funds in respect of the Secured Amounts is received by the Supplier:

- (a) legal title and property in all Goods supplied under the 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's 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:
 - (i) demand the return of the Goods and will be entitled on reasonable notice (or, if the Purchaser is in default under the terms and conditions, without notice) to the Purchaser and without liability to the Purchaser;
 - (ii) enter any premises where it reasonably suspects the Goods may be located in order to search for and

Terms and Conditions of Supply

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;

- (iii) 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 (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 (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 (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 the 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 anything (including, without limitation, signing and producing documents, getting documents completed or signed, obtaining consents and supplying information) necessary 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 reasonable 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 the 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.

Terms and Conditions of Supply

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 the Goods being Delivered and in any event before the Purchaser (or its employees or agents) uses the Goods.

15.2 The Purchaser must notify the Supplier of any shortage, defect, damage or nonconformance of the Goods within the earlier of:

- (a) 48 hours of the time they are Delivered; or
- (b) the Purchaser dealing with the Goods.

15.3 The Goods will be considered to have been Delivered in good condition and accepted by the Purchaser unless the Purchaser gives the Supplier notice of the shortage, defect, damage or nonconformance in accordance with clause 15.2.

15.4 If the Purchaser gives the Supplier notice under clause 15.2, it must:

- (a) preserve the Goods in the state in which they were Delivered; and
- (b) allow the Supplier access to the Purchaser's premises to inspect the Goods; or
- (c) at the Supplier's request return the Goods in the condition in which they were Delivered.

15.5 Subject to clause 7, the Supplier will use best endeavours to rectify inaccuracies or short supply within 48 hours of notification but will not be responsible for any Loss (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.

15.6 If, due to any cause whatsoever (other than a Force Majeure Event), 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 in which case the Purchaser can elect to terminate the Contract without penalty or cost; or
- (c) delay supply of part or all the Goods provided such delay is no longer than is reasonably necessary in the circumstances.

16. Dispute resolution

16.1 If a dispute or difference between the parties arises in connection with the subject matter of the Contract, then either party will by email, 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, senior management representatives of each of the parties, with full authority to agree such resolution or resolution methods, will confer to resolve the dispute or agree methods for resolving the dispute. All aspects of the conference, except for the fact of its occurrence, will be privileged.

16.3 Nothing in this clause 16 prevents a party seeking urgent interlocutory relief from a Court or requires a 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 (including Working Documents) furnished by one party to the other pursuant to the Contract (**Confidential Information**) 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 engaged by the Purchaser. The Supplier is not liable for a failure to make comment 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 prepared by the Purchaser or a third party engaged by the Purchaser.

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, the Supplier reserves the right to

Terms and Conditions of Supply

charge the reasonable costs of printing those Working Documents.

18.5 A copy of all Working Documents will remain in the custody and control of the Supplier however will be treated as Confidential Information for the purposes of termination or expiration (as applicable).

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. If the Supplier is engaged by the Purchaser under this clause, the parties will enter into a separate consultancy agreement in respect of that work.

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:

- (a) any inaccuracy, omission or error in the Working Documents prepared by the Purchaser or third party; or
- (b) 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, which breaches a third party's intellectual property rights. This clause survives termination or expiry of the Contract.

19. Notices

19.1 Documents under the Contract (including Quotations and Invoices) may be delivered by hand, post and email to the numbers and addresses identified in the Quotation.

20. Charge

20.1 For the purpose of securing payment to the Supplier of all amounts due for payment to the Supplier of all moneys that are or may become payable to the Supplier in relation to the Contract, the Purchaser:

- (a) 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 for payment to the Supplier of all moneys that are or may become payable to the Supplier; and

- (b) 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.

20.2 The Purchaser 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 on the understanding that the Supplier may (but is not obliged to) lodge a caveat and/or register its mortgage over the Purchaser's interests in real property on the earlier of:

- (a) a failure of by the Purchaser to pay any outstanding amount to the Supplier within 15 days of the due date for payment; and
- (b) such time at which it is, in the Supplier's opinion:
 - (i) a reasonable step for the Supplier to take to protect its legitimate business interests to secure the payment of amounts due and owing to the Supplier by the Purchaser; and
 - (ii) not otherwise unreasonable or disproportionate in the circumstances.

20.3 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 if the Purchaser has failed to comply with its obligations under clause 20.1(b).

20.4 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.

21. Trustee Capacity Warranties

21.1 If the Purchaser enters into the Contract in the capacity as trustee, it warrants that:

- (a) it is the sole trustee and no action has been taken to remove or replace it;
- (b) it has power to execute and perform its obligations under the Contract;
- (c) all necessary action has been taken to authorise the execution and performance of the Contract;
- (d) it is not in default;
- (e) it has complied with all fiduciary obligations directly or indirectly imposed on it;
- (f) it has a right to be indemnified in respect of all of its obligations and liabilities incurred by it under the Contract; and

Terms and Conditions of Supply

- (g) each of the warranties contained in this clause will remain true as long as the Contract remains in force.

22. Company Capacity Warranties

22.1 In addition to and despite all other warranties, express or implied, in the Contract, the Purchaser warrants and covenants that:

- (a) it is empowered to enter into the Contract and to do all things that will be required by the Contract; and
- (b) 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.

23. Purchaser Changes

23.1 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) a change in Control of the Purchaser;
- (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 Purchaser or any of its property, or the bankruptcy of the Purchaser or the Purchaser's entry into an arrangement with its creditors; or
- (d) 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.

24. Miscellaneous

- 24.1 The law of the jurisdiction where Delivery is to occur will apply to the Contract. The parties submit to the exclusive jurisdiction of the courts in the jurisdiction in which the Supply is to occur pursuant to the Contract.
- 24.2 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.
- 24.3 A party waives a right under the Contract only by written notice that it waives the right.
- 24.4 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 the Contract pursuant to clause 3.

24.5 If a provision of the Contract would, but for this clause 24.5, 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.

24.6 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, and correspondence are superseded by the Contract which will in all circumstances prevail over any prior terms.

Deed of Guarantee, Indemnity and Charge

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 or any other person included as a 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 will 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 is effective unless it is agreed by all 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 or any person included as a 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 reasonable 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 providing that the Money Secured is payable on demand and 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 on the understanding that the Company may (but is not obliged to) lodge a caveat and/or register its mortgage over the Guarantor's interests in real property on the earlier of:

Deed of Guarantee, Indemnity and Charge

- i. a failure of by the Customer or the Guarantor to pay any outstanding amount to the Company within 15 days of the due date for payment; and
 - ii. such time at which it is, in the Company's opinion:
 - A. a reasonable step for the Company to take to protect its legitimate business interests to secure the payment of amounts due and owing to the Company by the Customer or the Guarantor; and
 - B. not otherwise unreasonable or disproportionate in the circumstances.
- 3.2 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 if the Purchaser has failed to comply with its obligations under clause 3.1(b).
- 3.3 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.
- 4. General Matters**
- 4.1 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.
- 4.2 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.
- 4.3 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.
- 5. Privacy Act**
- 5.1 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.

- 5.2 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.

6. 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.

'**Deed**' means this Deed of Guarantee, Indemnity and Charge.

'**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.

'**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.

'**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.

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

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

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