



## TRADING TERMS AND CONDITIONS

### 1. Definitions

In this document the following definitions apply unless the context otherwise requires.

- 1.1. **"Approved Credit Customer"** means a customer to whom the Supplier has agreed to grant credit facilities.
- 1.2. **"Business Day"** means any day on which banks are open for business in Brisbane.
- 1.3. **"Cash Customer"** means a customer who makes payment for Goods and/or Services at the time of the purchase of the Goods and/or Services.
- 1.4. **"Collateral"** means all the Customer's present and after-acquired property. It includes: (a) Anything in respect of which the Customer has at any time a sufficient right, interest or power to grant a security interest; and (b) (if applicable) the Trust Property.
- 1.5. **"Conditions"** means these trading terms and conditions together with the annexed Schedule or Schedules and in the case where more than one Schedule is annexed to the trading terms and conditions, the Schedule which shall be applicable to a contract between the Supplier and the Customer shall be that Schedule that is relevant to the goods to be supplied or the services to be supplied.
- 1.6. **"COD Customer"** means a customer who makes payment for Goods and/or Services on delivery of them.
- 1.7. **"Control Event"** means - (a) in respect of any Collateral that is, or would have been, a Revolving Asset: (i) the Customer breaches, or attempts to breach clause 8.3 in respect of the Collateral or takes any step which would result in it doing so; or (ii) a person takes a step (including signing a notice or direction) which may result in Taxes, or an amount owing to an authority, ranking ahead of the security interest in the Collateral under this document; or (iii) distress is levied or a judgment, order or Security is enforced or a creditor takes any step to levy distress or enforce a judgment, order or Security, over the Collateral; or (iv) the Supplier gives a notice to the Customer that the Collateral is not a Revolving Asset. (However, the Supplier may only give a notice if the Supplier reasonably considers that it is necessary to do so to protect its rights under this document); or - (b) in respect of all Collateral that is or would have been Revolving Assets: (i) a voluntary administrator, liquidator or provisional liquidator is appointed in respect of the Customer or the winding up of the Customer begins; or (ii) a receiver, receiver and manager or controller is appointed to any of the Customer's property; or (iii) something having a substantially similar effect to paragraph (i) or (ii) happens under any law.
- 1.8. **"Consequential Loss"** means any indirect or consequential loss; loss of use; loss of product or production; delayed, postponed, interrupted or deferred production; inability to produce, deliver or process; loss of profit, revenue or anticipated revenue; loss of bargain, contract, expectation or opportunity; punitive or exemplary damages; in each case arising from or in connection with the performance of these Conditions and whether or not foreseeable at the time of entering into these Conditions.
- 1.9. **"Customer"** means the person who has requested the Supplier to provide Goods and/or Services.
- 1.10. **"Force Majeure Event"** means an act, event or cause that is beyond the reasonable control including acts of God, lightning, earthquakes, floods, storms, other natural disasters, explosions, fires, acts of war, acts of public enemies, terrorism, public disorder, riots, civil commotion, revolution, sabotage, malicious damage, any order or temporary or permanent injunction of any court or acts of a government or government instrumentality, strikes, lockouts, labor disputes (to the extent they exceed seven days), road closure, traffic congestion, quarantine or customs restriction, embargo, interruption of power supply, scarcity of fuel, accident, collision or breakdown of vehicle, machinery or equipment.
- 1.11. **"Goods"** means any goods which are requested by the Customer and agreed to be supplied by the Supplier.
- 1.12. **"GST"** has the same definition as that term has in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- 1.13. **"Loss"** includes any loss, damage or compensation (including Consequential Loss), liquidated sum or liquidated damages, charge, payment, costs or expenses.
- 1.14. **"Neil Mansell Group Company"** means any one of the following: Neil Mansell Transport Pty Ltd (ACN 009 927 646), Parklands Blue Metal Pty Ltd (ACN 010 471 548), Suncoast Holdings Pty Ltd (ACN 010 296 401), Mansell Bulk Haulage Pty Ltd (ACN 102 867 676), Transport Welding Engineering Pty Ltd (ACN 010 251 091), Mansell Premix Pty Ltd (ACN 124 779 148), Bain Transport Services Pty Ltd (ACN 609 066 088), or a Related Party of any of them, trading under its own name or any other business name.
- 1.15. **"Order"** means an order for Goods and/or Services placed by the Customer.
- 1.16. **"Products"** means the property from time to time accepted by the Supplier from the Customer for the provision of services by the Supplier of loading, unloading, packing, handling, transport or storage.
- 1.17. **"Personnel"** means, in relation to a party, the party's officers, office-holders, employees, agents and Subcontractors.



- 1.18. **"PPSA"** means *Personal Properties Security Act 2009* which is legislation that deals with security interests in personal property.
- 1.19. **"PPSR"** means the Personal Property Securities Register which is an online register in which any holder of a security interest in personal property must register to ensure they have a priority claim to that property.
- 1.20. **"Related Party"** means any "related entity" of a party within the meaning of that term as defined in section 9 of the *Corporations Act 2001* (Cth).
- 1.21. **"Revolving Asset"** means any Collateral - (a) which is: (i) inventory; (ii) a negotiable instrument; (iii) machinery, plant, or equipment which is not inventory and has a value of less than AUD\$1,000 or its equivalent; (iv) money (including money withdrawn or transferred to a third party from an account of the Customer with a bank or other financial institution); and - (b) in relation to which no Control Event has occurred, subject to clause 8.6.
- 1.22. **"Schedule"** means the schedule or schedules which are annexed to the Conditions.
- 1.23. **"Services"** means any services which are requested by the Customer and agreed to be supplied by the Supplier.
- 1.24. **"Subcontractor"** includes any person who, pursuant to a contract or arrangement with any other person (whether or not the Supplier), supplies or agrees to supply the Goods and/or Services.
- 1.25. **"Supplier"** means the relevant Neil Mansell Group Company with whom an Order is placed for the supply of Goods and/or Services.
- 1.26. **"Tax Invoice"** means any tax invoice in respect of the supply of Goods and/or Services provided to the Customer by the Supplier.
- 1.27. **"Trust Property"** means all the Customer's present or after-acquired property which is the subject of any trust of which the Customer is the trustee. It includes anything in respect of which the Customer as trustee of any trust has at any time a sufficient right, interest or power to grant a security interest.
- 1.28. **"Competition and Consumer Act 2010"** includes the *Competition and Consumer Act 2010* and any equivalent State or Territory fair trading legislation.

## 2. General

- 2.1. The placing of any Order by the Customer will constitute an agreement upon these Conditions which will supersede any terms or conditions embodied in the Customer's order form or otherwise sought to be imposed by the Customer, whether orally or in writing.
- 2.2. Words importing the singular include the plural and vice versa and words importing a gender include other genders.
- 2.3. A reference in these Conditions to:
  - (a) a person is to be construed as a reference to an individual, body corporate, unincorporated association, partnership, joint venture or government body;
  - (b) a statute includes a reference to all enactments amending or consolidating the statute and to an enactment substituted for the statute and any subordinate legislation, including regulations.
- 2.4. Should any of the terms and conditions of these Conditions be held to be unenforceable, such terms and conditions will be severable from the remaining terms and conditions which will continue to be enforceable.
- 2.5. Where a party is required to make payment or do any other thing on a day which is not a Business Day, the party must make such payment or do such other thing on the next Business Day.
- 2.6. Time is of the essence of these Conditions in relation to the obligations of the Customer.

## 3. Orders

- 3.1. The Supplier may decline (without giving any reason) to accept any Customer's Order. The Supplier reserves the right to withdraw any Goods and/or Services from sale from time to time despite that they may still be listed in the Supplier's catalogue or on display at the Supplier's premises.
- 3.2. Notwithstanding anything contained in these Conditions, the Supplier will continue to be subject to any implied terms, conditions, guarantees or warranties imposed by the *Competition and Consumer Act 2010* (Cth) in so far as such may be applicable and prevents the exclusion or modification of any such term, condition, guarantee or warranty. All other implied conditions, warranties and rights are excluded unless expressly stated in these Conditions or otherwise agreed in writing by the Supplier and the Customer.

## 4. Price

- 4.1. The price of the Goods and/or Services will be as stated in the Tax Invoice and unless otherwise stated, all prices shall be exclusive of GST.



- 4.2. The Supplier may, unless expressly agreed in writing by the Supplier and the Customer:
  - (a) deliver and supply the Goods and/or Services in one or more instalments; and
  - (b) invoice the Customer on a pro-rata basis for the Goods and/or Services then supplied.
- 4.3. The Customer accepts the Tax Invoice as being a good and sufficient claim for the Goods and/or Services supplied as described in that Tax Invoice.

## 5. Payments

- 5.1. The Customer shall make payment:
  - (a) in the case of a Cash Customer when purchasing the Goods and/or Services; and after receipt of a valid Tax Invoice from the Supplier;
  - (b) in the case of a COD Customer on receiving the delivery docket from the Supplier;
  - (c) in the case of an Approved Credit Customer within 30 days from Invoice date.
- 5.2. The Supplier may vary or withdraw any credit facility or credit limit at any time in its complete discretion and without any liability to the Approved Credit Customer or any party claiming through the Approved Credit Customer and without affecting or derogating from these Conditions or any obligation of the Customer.
- 5.3. A certificate signed by an officer of the Supplier identifying any Goods and/or Services not yet paid for or the amount outstanding, or the amount of interest on the amount outstanding shall be conclusive evidence of the matters stated in that certificate unless proved to the contrary.
- 5.4. An Approved Credit Customer must make all payments due without deduction or set off and if the Approved Credit Customer has a number of invoices outstanding and disputes the amount charged in respect of one or more of the invoices, the Approved Credit Customer may not refuse to pay any charges due in respect of any undisputed invoice but must pay the undisputed invoices by due date.

## 6. No withholding or offset

The Customer must not withhold from any payment or offset against any payment due to the Supplier in respect of any amount owed by or claimed against the Supplier.

## 7. Lien

- 7.1. The Customer irrevocably grants to the Supplier a general lien on any Products or goods belonging to the Customer in the Supplier's possession for all charges now due or that may become due to the Supplier by the Customer on any account whatsoever, whether in respect of those Products or goods or in respect of any other Products or goods in respect of which the Supplier provides or has provided services.
- 7.2. Without prejudice to any other rights the Supplier may have under legislation, if charges are not paid when due, or the Products are not collected when so required or designated, the Supplier may, without notice, and immediately:
  - (a) remove all or any of the Products or goods and store them as the Supplier thinks fit at the Customer's risk and expense; and
  - (b) open and sell all or any of the Products or goods as the Supplier thinks fit (whether by private treaty or public auction) and apply the proceeds to discharge the lien and costs of sale without being liable to any person for any loss or damage caused.
- 7.3. The parties agree that the lien attaches to Products or goods when the Products or goods are accepted by the Supplier for the provision of services.
- 7.4. The Customer agrees that the lien arising under these Conditions is a security interest.

## 8. Charge and General Security Agreement

- 8.1. The Customer hereby charges in favour of the Supplier all real property in which the Customer may now or in the future have any title or interest in (as beneficial owner and as trustee of every trust in respect of which it is a trustee) as security for any monies owing to the Supplier and the Customer hereby consents to the Supplier lodging a caveat noting the Supplier's interest in that real property.
- 8.2. The Customer grants a security interest in the Collateral to the Supplier to secure the payment of the Secured Money. This security interest is a charge. If for any reason it is necessary to determine the nature of this charge, it is a floating charge over the Revolving Assets and a fixed charged over all other Collateral.
- 8.3. *Restricted dealings*



The Customer must not do, or agree to do, any of the following unless it is permitted to do so by clause 8.6 or another provision in a Transaction Document:

- (a) create or allow another interest in any Collateral; or
- (b) dispose, or part with possession, of any Collateral.

Transaction Document means any related contractual documentation between the parties.

**8.4. Permitted dealings**

The Customer may do any of the following in the ordinary course of the Customer's ordinary business unless it is prohibited from doing so by another provision in a Transaction Document:

- (a) create or allow another interest in, or dispose or part with possession of, any Collateral which is a Revolving Asset; or
- (b) withdraw or transfer money from an account with a bank or other financial institution.

**8.5. Revolving Assets**

If a Control Event occurs in respect of any Collateral then automatically:

- (a) that Collateral is not (and immediately ceases to be) a Revolving Asset;
- (b) any floating charge over that Collateral immediately operates as a fixed charge; and
- (c) the Customer may no longer deal with the Collateral under clause 8.4.

**8.6. Conversion to Revolving Assets**

If any Collateral is not, or ceases to be, a Revolving Asset, and becomes subject to a fixed charge or transfer under this clause 8, the Supplier may give the Customer a notice stating that, from a date specified in the notice, the Collateral specified in the notice is a Revolving Asset, or becomes subject to a floating charge or is transferred back to the Customer. This may occur any number of times.

**8.7. Inventory**

Any inventory which is not, or ceases to be, a Revolving Asset is specifically appropriated to a security interest under this document. The Customer may not remove it without obtaining the specific and express authority of the Supplier to do so.

- 8.8. The Customer shall, upon request by the Supplier, sign all documents and do all things that the Supplier may reasonably require to be signed or done by the Customer to secure to the Supplier any monies owing to the Supplier by the Customer from time to time.

**9. Interest**

The Customer shall pay interest on any overdue amounts with effect from the due date of payment until payment in full at the Queensland Law Society Inc Standard Contract Default Interest Rate plus 2% per annum from time to time.

**10. Retention of Title**

- 10.1. The Supplier retains legal and equitable title in any Goods supplied to the Customer until payment in full for or in connection with the supply of the relevant Goods has been received by the Supplier.
- 10.2. As between the Customer and the purchaser of any item of the Goods, the Customer sells as principal and not as agent of the Supplier. The proceeds of sale of each item of Goods must be held by the Customer in a separate fund on trust for the Supplier and the Customer is under a duty to account to the Supplier for such proceeds. The creation of, or any failure of, any such trust shall not in any way limit the obligation of the Customer to pay an amount to the Supplier for Goods supplied.
- 10.3. The Customer holds all unpaid Goods as fiduciary for the Supplier until payment in full has been received by the Supplier and the Customer must, until payment in full has been received by the Supplier, store the Goods in such manner as to show it is the property of the Supplier and must ensure that such Goods are properly stored, protected and insured. The Supplier is irrevocably entitled, at any time and from time to time before sale of any item of Goods by the Customer, to inspect or to recover and retake possession of such Goods and otherwise exercise in relation to the Goods any of its rights whether those rights are as owner and/or unpaid Seller or otherwise and whether those rights are conferred by common law, contract, statute or in any other way. In order to exercise such entitlement, the Supplier and its agents are irrevocably authorised by the Customer to enter any of the Customer's premises or vehicles or those of any third party. The Customer agrees to obtain the consent of any such third party to such entry by the Supplier and to indemnify the Supplier and its agents for any liability arising from any entry upon such third parties' premises or vehicles. The Supplier and its agents agree to take all reasonable care in removing the Goods from such premises or vehicles but, to the extent this liability may be disclaimed by law, are not liable for any damage or injury to such premises or vehicles caused by the removal of the Goods.
- 10.4. If the Customer:
  - (a) fails to pay any amount due to the Supplier by its due date;



- (b) breaches any other term or condition;
  - (c) being a corporation, passes a resolution to wind up the Customer voluntarily, or the Customer has any winding up petition presented against it, or is placed under official management, administration or provisional liquidation, or a receiver, receiver and manager or controller is appointed over part of all of its undertaking or property;
  - (d) the Customer being a natural person becomes insolvent or bankrupt, or commits any act of bankruptcy, or enters into any arrangement or assignment for the benefit of creditors, or if a mortgagee of any part of the Customer's property takes possession of any part of that property,
- the Supplier may without prejudice to any other rights it may have and without notice to the Customer, take such steps as may be necessary to remove any unpaid Goods from the Customer's premises or otherwise in accordance with clause 10.3;
- 10.5. If the Customer receives any payment from an insurer in respect of the Goods, those proceeds must be held by the Customer in the separate fund referred to in clause 10.2 on trust for the Supplier and the Customer is under a duty to account to the Supplier for such proceeds. The creation of, or any failure of, or any such trust shall not in any way limit the obligation of the Customer to pay an amount to the Supplier for Goods supplied.
- 10.6. This reservation of title and ownership is effective whether or not the Goods have been altered from their supplied form, or commingled with other goods.

## 11. Security Interest

- 11.1. The Customer acknowledges and agrees that:
- (a) any lien arising under clause 7;
  - (b) the grant of security (by way of charge) pursuant to clause 8; and
  - (c) the retention of ownership as provided by clause 10,
- each constitutes a security interest for the purposes of the PPSA.
- 11.2. The Customer acknowledges and agrees that the Supplier shall be entitled to register any security interest created by this document on the relevant register kept under the PPSA. The Customer agrees to, in a timely manner, sign such further documents or otherwise do such acts as may be necessary to allow the Supplier to register the security interest, including registration as a Purchase Money Security Interest under the PPSA, if applicable, and for the Supplier to obtain the benefit of any priority to which the Supplier is entitled under the PPSA over previously registered interests:
- 11.3. The Customer must:
- (a) indemnify and upon demand, reimburse, the Supplier for all expenses incurred in registering the Supplier's interest on the register kept under the PPSA or releasing any property so registered;
  - (b) not register any change statement to the details of the Supplier's security interest without the Supplier's prior written consent;
  - (c) not register or permit to be registered a security interest in relation to the goods in favour of a third party without the prior written consent of the Supplier.
- 11.4. Exclusion of PPSA provisions  
To the extent the law permits:
- (a) for the purposes of sections 115(1) and 115(7) of the PPSA:
    - (i) the Supplier need not comply with sections 95, 118, 121(4), 123, 125, 130, 132(3)(d) or 132(4); and
    - (ii) sections 142 and 143 are excluded;
  - (b) for the purposes of section 115(7) of the PPSA, the Supplier need not comply with sections 132 and 137(3);
  - (c) any right to receive a notice or statement arising by virtue of sections 129, 130, 132, 134 and 135 of the PPSA is waived;
  - (d) any right to receive a copy or any notice of any verification statement confirming registration of a financing statement or a financing change statement relating to any security interest under or provided for by these Conditions is waived;
  - (e) if the PPSA is amended after the date of this document to permit the Customer and the Supplier to agree to not comply with or to exclude other provisions of the PPSA, the Supplier may notify the Customer that any of these provisions is excluded, or that the Supplier need not comply with any of these provisions, as notified to the Customer by the Supplier; and
  - (f) the Customer agrees not to exercise its rights to make any request of the Supplier under section 275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.
- 11.5. Exercise of rights by Supplier



If the Supplier exercises a right, power or remedy in connection with this document, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless the Supplier states otherwise at the time of exercise. However, this clause does not apply to a right, power or remedy which can only be exercised under the PPSA.

**11.6. No notice required unless mandatory**

To the extent the law permits, the Customer waives:

- (a) its rights to receive any notice that is required by:
  - (i) any provision of the PPSA (including a notice of a verification statement); or
  - (ii) any other law before a Supplier or Receiver exercises a right, power or remedy; and
- (b) any time period that must otherwise lapse under any law before a Supplier or Receiver exercises a right, power or remedy.

If the law which requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).

However, nothing in this clause prohibits the Supplier or any Receiver from giving a notice under the PPSA or any other law.

**11.7. Appointment of nominee for registration**

For the purposes of section 153 of the PPSA, the Supplier appoints the Customer as its nominee, and authorises the Customer to act on its behalf, in connection with a registration under the PPSA of any security interest in favour of the Customer which is:

- (a) perfected by registration under the PPSA; and
- (b) transferred to the Supplier under this document.

This authority ceases when the registration is transferred to the Supplier.

**12. Purchase Money Security Interest**

- 12.1. The Supplier claims a PMSI, as defined in the PPSA in the Goods so as to secure payment of the full purchase price of such items as are delivered from time to time.
- 12.2. The Customer grants to the Supplier a PMSI in the Goods and any proceeds of their sale to secure payment of the purchase price of the Goods delivered from time to time.
- 12.3. The Customer agrees not to do or permit anything to be done that may result in the PMSI granted to the Supplier to rank or to be subjected to priority to any other Security Interest in favour of any other party.
- 12.4. The Customer agrees to take such further steps which may be required by the Supplier to take additional or better security under the PPSA over the Goods and the proceeds of their sale, or to maintain the ability to claim and realise the Security Interest, including its priority, pursuant to the PPSA or by reason of the financing statement (in order to avoid any doubt, this obligation on the part of the Customer includes obtaining written consents, supplying information, signing forms, executing documents, whether on the part of the customer, any financier to the Customer, a lessor or landlord of the Customer or any third party having a claim or interest over land or a building in respect of which the Goods are located at present or at any time in the future).
- 12.5. The Customer agrees to provide to the Supplier when requested all details of the location of the Goods.
- 12.6. In consideration of the agreement on the part of the Supplier to supply and to continue to supply Goods to the Customer in accordance with these Conditions the Customer agrees and acknowledges the consignment Goods delivered into its possession and the proceeds of the sale constitute collateral in respect of which the Supplier is entitled to a Security Interest until such time as the Supplier receives payment in full on account of each such supply of collateral or the proceeds of its sale.

**13. Default**

- (a) If the Customer does not pay any monies by due date, or otherwise breaches these Conditions, the Supplier may in its absolute discretion do any one or more of the following without prejudice to any other rights of the Supplier under any law, and without the Supplier being liable in any way to any party.
- (b) The Supplier may:
  - (i) cancel any credit facility made available to the Customer; and/or
  - (ii) call up any monies owed by the Customer on any Tax Invoice whether or not the period of 30 days has expired; and/or
  - (iii) retain all monies paid on account; and/or
  - (iv) recover from the Customer all loss of profits arising from any breach; and/or
  - (v) take immediate possession of any Goods and/or Services not paid for and resell them.



- (c) The Customer shall indemnify the Supplier against all costs, including full indemnity legal costs, commercial agent fees, commissions, freight, storage charges, surcharges, fees, insurance, accounting costs, loss of profit in all interests incurred by the Supplier as a result of the Customer's default.

#### 14. Limitation of Liability

- 14.1. If any Order is subject to the compulsory application of the *Competition and Consumer Act 2010* the Supplier's liability to the Customer for breach of a condition, guarantee or warranty implied by the *Competition and Consumer Act 2010* is limited to the extent permitted by that Act to the following options:
  - (a) either the replacement of the Goods and/or Services or the supply of equivalent Goods and/or Services; or
  - (b) the payment of the cost of replacing the Goods and/or Services or acquiring equivalent Goods and/or Services; or
  - (c) the payment of the cost of repairing the Goods and/or Services or the repair of the Goods and/or Services; or
  - (d) in the case of services, to the supplying of services again or the payment of the cost of having the services supplied again.
- 14.2. Any claim for damages arising out of an Order which is subject to the compulsory application of the *Competition and Consumer Act 2010* shall be limited to such damages as may be permitted under the relevant Act.
- 14.3. Where any Order is not subject to the compulsory application of the *Competition and Consumer Act 2010*, the Supplier shall not be responsible to the Customer for:
  - (a) any Loss in connection with the supply of the Goods and/or Services, whether arising from the negligent, wilful or reckless act or omission of the Supplier, its employees or agents, whether or not the Supplier has been advised, or is aware of the possibility of such Loss, and whether arising in agreement, tort or otherwise, except to the extent of warranties, undertakings and promises expressly made by the Supplier in writing and forming part of the contract;
  - (b) any Loss arising out of any fault or defect in the Goods and/or Services;
  - (c) any representations made by or on the Supplier's behalf which are not in writing;
  - (d) any statement or recommendation made, or advice, supervision or assistance given by the Supplier, its employees and agents whether oral or written;
  - (e) any delay or failure in delivery of Goods and/or Services, or default, or failure in performance of the Goods and/or Services because of circumstances beyond the Supplier's control including, without limitation, a Force Majeure Event;
  - (f) any Loss suffered or incurred by the Customer arising out of a breach by the Supplier of an Order or a negligent act or omission of the Supplier or a breach of a statutory duty or obligation by the Supplier;
  - (g) any Loss suffered in the course of delivering or installing the Goods and/or Services.
- 14.4. Notwithstanding any other provision of these Conditions, the Supplier will under no circumstances be liable for any claim for Consequential Loss.

#### 15. Notices

- 15.1. Any notice to be given under these Conditions must be in writing and may be given:
  - (a) by delivering it to the address of the recipient on a Business Day during normal business hours; or
  - (b) by sending it to the address of the recipient by pre-paid post; or
  - (c) by sending it by facsimile transmission to the facsimile number of the recipient.
- 15.2. Notice shall be deemed to be given and received:
  - (a) if delivered, on the day of delivery;
  - (b) if posted, three clear Business Days after the day of posting; or
  - (c) if sent by facsimile, on the date of successful transmission provided that if the facsimile is sent after 5.00 pm notice shall be deemed to be given on the next Business Day.
- 15.3. The address of the Supplier shall be that stated in Tax Invoices provided to the Customer and the address of the Customer shall in the absence of notice to the contrary be as set out in the Application for Credit, or in the case of Cash Customers or COD Customers as set out in the relevant Tax Invoice.



## 16. Goods and Services Tax

- 16.1. In these Conditions, in addition to other defined terms, all amounts are exclusive of GST and:
- (a) GST has the same definition as that term has in the A New Tax System (Goods and/or Services Tax) Act 1999 (Cth);
  - (b) 'GST Adjustment Rate' means, in respect of each GST Review Date, the difference in the rate of GST in relation to the rate:
    - (i) on the GST Date; or
    - (ii) if there has been a previous GST Review Date, on the immediately preceding GST Review Date;
    - (iii) 'GST Date' means the date on which the Grantors liability for GST on any supply under these Conditions first arises;
    - (iv) 'GST Rate' means the rate of GST on the GST Date; and
    - (v) 'GST Review Date' means any date that the rate of GST is changed so that the new rate of GST becomes the effective rate at which supplies made by the Supplier under these Conditions are taxed.
- 16.2. Despite any other provisions of this Deed, if the GST Rate increases or decreases, as the case may be, on and from:
- (a) the GST Date by the GST Rate; and
  - (b) a GST Review Date by the GST Adjustment Rate,
- the Customer must pay, or the Supplier must credit, any decrease or increase on the date the next payment under these Conditions is payable to the Supplier (on a pro rata daily basis).
- 16.3. The Supplier must give the Customer a Tax Invoice for the cost of Goods and/or Services supplied stating the amount of GST paid or payable by the Customer on that payment.
- 16.4. The Supplier warrants that the amounts referred to in any Tax Invoices the Supplier gives to the Customer are correct and will ensure that the Tax Invoices detail the amount of GST paid or payable in respect of the supply to which the invoice relates.

## 17. Force Majeure Event

- 17.1. Non-performance by either party (other than the failure to make payment of charges) caused by a Force Majeure Event will be excused as long as the Force Majeure Event exists.
- 17.2. If either party is affected by a Force Majeure Event, it will promptly notify the other and the parties will enter into good faith discussions to agree to alternative arrangements that are fair and reasonable.

## 18. Entire Agreement

These Conditions embody all of the terms binding on the parties and there have been no representations, agreements or proposal, save for those specifically recorded in them.

## 19. Waiver

Any waiver or forbearance in regard to the performance of these Conditions shall operate only if in writing and shall apply only to the specified instance, and shall not affect the existence and continued applicability of the terms of these Conditions thereafter.

## 20. Severability

If any provision of these Conditions is held by a Court to be unlawful, invalid, unenforceable or in conflict with any rule of law, statute, ordinance or regulation, the validity and enforceability of the remaining provisions shall not be thereby affected.

## 21. Signatory

The Customer and any person signing an Order on behalf of a Customer acknowledge and agree that the signatory is jointly and severally with the Customer liable for payment of the Supplier's account.

## 22. Subcontracting



- 22.1. The Supplier may in its discretion sub-contract all or part of the supply of the Goods and/or Services on such terms and conditions as it sees fit.
- 22.2. Every exemption, limitation, condition and liberty contained in these Conditions and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Supplier or to which the Supplier is entitled under these Conditions will also be available to and will extend to protect:
- (a) all Personnel of the Supplier;
  - (b) every other person (other than the Supplier) who supplies Goods and/or Services or any part of the Goods and/or Services; and
- all persons who are or might be vicariously liable for the acts or omissions of any person falling within clauses 22.2(a) or 22.2(b).
- 22.3. For the purposes of clause 22.2, the Supplier is or will be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them. All such persons and each of them will to this extent be or be deemed to be parties to these Conditions.

## 23. Assignment

The Customer may not assign or purport to novate an Order whether voluntarily or otherwise without the Supplier's prior written consent. No assignment however occurring, and whether consented to by the Supplier or not will relieve the Customer of its obligations to the Supplier.

## 24. Variation

This Agreement may be waived, varied or added to from time to time:

- (a) By written agreement between the Supplier and the Customer; or unilaterally by the Supplier, subject to clause 24(b).
- (b) The Supplier may alter these Conditions at any time and any change will take effect 28 days from the date on which the Supplier notifies the Customer of the change. The altered Conditions shall be deemed to be accepted by the Customer and will apply to any order which the Customer places after the altered Conditions take effect.

## 25. Jurisdiction

The contract constituted by an Order is deemed to be made in the State of Queensland. The parties submit to the non-exclusive jurisdiction of the courts of that State.

## 26. Headings

Headings are included for convenience only and do not affect interpretation of these Conditions.

## 27. Joint and several

Where the Customer comprises two or more persons, an agreement or obligation to be performed or observed by the Customer binds those persons jointly and severally.

## 28. Survival

The indemnities and exclusions and limitations of liability in these Conditions survive the termination or expiration of any Order subject to these Conditions.

## 29. E-mail transmissions



The Supplier may correspond with the Customer by e-mail, where appropriate, unless the Customer specifically instructs the Supplier to the contrary. The Customer agrees to assume the risks associated with transmission and to release the Supplier from any claim it may have arising from transmission defects.

30. **Costs**

The Customer will bear its own costs in reviewing and executing these Conditions.



## SCHEDULE - SUPPLY AND DELIVERY OF CONCRETE

### 1. Supply of concrete

Concrete will be supplied by the Supplier in accordance with the relevant S.A.A. Concrete Codes. Unless otherwise stated on the quotation or the delivery docket, the S.A.A. Concrete Code Australian Standard 1379 Specification and Supply of Concrete (as amended from time to time) will apply. B)

### 2. Orders

- a) When ordering concrete the Customer must order concrete as normal class or special class and must specify the following parameters.
  - i) The quantity of concrete to be supplied.
  - ii) The standard compressive strength rate.
  - iii) The slump at the point of acceptance.
  - iv) The maximum nominal size of aggregate.
  - v) The intended method of placement, including relevant details of equipment.
  - vi) If the Supplier is required to carry out project assessment.
  - vii) If required, a level of air entrainment up to a maximum of 5.0%.
  - viii) In the case of special class concrete where a strength-grade is applicable the Customer must also comply with the relevant provisions of AS1379 when placing the order.
- b) The Supplier reserves the right to use raw materials of its choice. Full details of the concrete supplied will be set out in the identification certificate referred to in clause C.
- c) Where the Customer wishes to add ingredients to the concrete the basis of supply and any performance requirements shall be agreed by the parties in advance but the Supplier shall have no liability in respect of, or arising out of any ingredient added by the Customer whether or not agreement has been reached between the parties regarding such added ingredient.
- d) The Customer may not cancel any order
  - i) within one (1) business day prior to delivery for orders equal to and above 35m<sup>3</sup>; or
  - ii) two (2) hours prior to delivery for orders less than 35m<sup>3</sup>:
 If Clause i) or ii) does not occur the Customer must pay all costs incurred by the Supplier on cancellation by the Customer of any order.

### 3. Delivery

- a) The Supplier will provide to the Customer a delivery docket pertaining to the particular quantity of concrete supplied on which will be recorded:
  - i) Name of supplier and place of manufacture.
  - ii) Serial number of delivery docket.
  - iii) Date of supply.
  - iv) Name of customer.
  - v) Project name and location.
  - vi) Delivery vehicle identification, if applicable.
  - vii) Quantity of concrete covered by the delivery docket.
  - viii) Specified class and strength grade, or other mix identification.
  - ix) Specified slump, if applicable.
  - x) Maximum nominal size of aggregate.
  - xi) Time of commencement of mixing.
  - xii) For concrete specified by water-cement ratio, the estimate of the quantity of water, if any, added after completion of batching and whether the addition occurred before, or after, commencement of discharge; or for concrete specified by slump, the estimate of quantity of water added after commencement of discharge.
- b) Unless otherwise stated in the relevant Order, the Customer will be responsible for any delivery charges.
- c) The Customer must ensure that a representative is available at the delivery point to sign the delivery docket, and by signing, the Customer acknowledges that the quantity and other designated information on the docket complies with the Customer's order.
- d) A surcharge calculated in accordance with (if applicable) the Supplier's charges policy at the relevant time will be charged if the Customer does not accept delivery of the concrete ordered.
- e) The Supplier will deliver and the Customer will accept delivery of the concrete at the kerb alignment. If the Supplier's driver is requested by or on behalf of the Customer to enter the job area and in his/her discretion agrees to do so, the Customer will indemnify and hold indemnified the Supplier, its employees and agents against all liability and against all actions, suits, proceedings, claims, demands, costs and expenses incurred by the Supplier, or its employees or its agents arising from, or in any way relating to the presence of the delivery vehicle in the job area



#### 4. Price

- a) The price charged is calculated on the following criteria. Any changes to the criteria will result in increased charges calculated in accordance with the Supplier's usual rates and charges at the relevant time.
  - i) Supply of a minimum of 3 cubic metres of concrete together with any cost incurred by the Supplier in arranging such delivery. A surcharge will apply for the supply of a lesser quantity.
  - ii) The concrete being batched and/or delivered during the hours 6.00am to 4.00pm on weekdays excluding public holidays and 6.00am to 12.00pm on Saturdays.
  - iii) Discharge of concrete to be completed within the time specified in the quotation or the delivery docket. Any delay caused or contributed to by the Customer will incur a surcharge.
  - iv) Unless otherwise specified in the quotation or the delivery docket, on slump not exceeding 80mm in respect of non-domestic projects and 100mm in respect of domestic projects, both measured using 20mm maximum size dense aggregate.
  - v) Delivery being made by the shortest access route available. If any roads are closed preventing delivery by the shortest route the Supplier may charge for additional costs incurred in making delivery.
- b) The price may, at the discretion of the Supplier, be increased if the cost to the Supplier of supplying the concrete is increased. An increase in cost shall include, without limitation, an increase in the cost of raw materials or labor or fuel.

#### 5. Testing

- a) The Supplier shall test the concrete in accordance with Section 5 or 6 of AS1379 as the case may be.
- b) In addition to the testing referred to in clause 5a) either party may request a further test to be carried out at the requesting party's expense on terms agreed by the Customer and the Supplier (acting reasonably).
- c) Test samples will be taken only at the agitator discharge chute and the test results will only be recognised by the Supplier if they are carried out in accordance with the standards nominated by a N.A.T.A. registered testing authority.
- d) If, after testing in accordance with clause 5a) and 5b) (if applicable), the concrete is not generally in compliance with AS1379 or the specifications otherwise agreed in writing by the Customer and the Supplier, the Customer may reject the concrete tendered for delivery by the Supplier.

#### 6. Risk

- a) The Customer shall be deemed to accept the concrete supplied at the point of discharge after 0.2m<sup>3</sup> of concrete has been discharged and the concrete has been tested as provided in clause 5a) and 5b) (if applicable) and, if such testing is required by the Customer, as provided in terms of clause 5c) and the concrete complies generally with the relevant specifications.
- b) Risk in the concrete shall pass to the Customer on acceptance as provided in Clause 6a), notwithstanding that the Supplier retains legal and equitable title in the concrete supplied to the Customer until payment in full for or in connection with the supply of the concrete has been received by the Supplier.

#### 7. Limitation of liability

- a) Without limiting the exclusions contained in these Conditions, the Supplier will not be liable to the Customer or any other person for any loss, damage or injury arising in connection with the supply of the concrete or in any manner in respect to strength or any other defect which may develop in any concrete supplied if:
  - i) water is added to concrete before or after discharge from the delivering agitator without the prior approval of the Supplier;
  - ii) an admixture is used at the Customer's request;
  - iii) discharge from the agitator occurs more than ninety (90) minutes after the delivery vehicle leaves the mixing plant, unless concrete temperature is within AS1379 guidelines;
  - iv) if there are delays in delivery or non-delivery arising from any cause beyond the control of the Supplier including but not limited to unforeseen traffic conditions, plant breakdown, truck agitator breakdown, industrial stoppages, bans or shortage of materials;
  - v) due to mishandling, placement curing or improper job practices by the Customer.
- b) If despite the provisions of these Conditions and clause 7a), any court or other arbitral authority should find that the Supplier is liable to any person, or if any concrete supplied by the Supplier fails to meet the agreed standards, the liability of the Supplier shall be limited, subject to the compulsory application of the ACL, to the price of the concrete supplied in respect of the order in question.

#### 8. Building Industry Fairness (Security of Payment) Act

- a) The Customer agrees that:
  - i) for the avoidance of doubt, the Supplier may issue a Tax Invoice for concrete supplied (or any part of it) from the day of delivery of the concrete and this shall constitute the 'reference date' for the purposes of the *Building Industry Fairness (Security of Payment) Act 2017* (Qld); and
  - ii) the Supplier's Tax Invoice shall be deemed to constitute a payment claim under the *Building Industry Fairness (Security of Payment) Act 2017* (Qld).