

## TERMS AND CONDITIONS FOR SUPPLYING GOODS AND SERVICES

### Application of General Terms and Conditions

- 1.1 These General Terms and Conditions will apply to the sale or supply of any Goods and the provision of any Services by the Company to the Customer and will form part of any Contract resulting from the Company's acceptance of an Order.
- 1.2 In the event of any inconsistency between the terms of the Contract and the terms of a document issued by the Customer, the Customer agrees the terms of the Contract will prevail.
- 1.3 If the Customer provides the Company with a Purchase Order or otherwise requests the supply of Goods, Parts A, B, C and D of these General Terms and Conditions will apply and form part of the Purchase Contract.
- 1.4 If the Customer provides the Company with a Purchase Order for Services, Parts A, B and D of these General Terms and Conditions will apply and form part of the Contract.
- 1.5 The customer acknowledges that FRC Hires terms and conditions forms the basis of all quotations and therefore will take precedence of any other agreement, contract or customers terms and conditions of any kind.

### Part A – General Terms

#### **2. Quotations**

- 2.1 Any quotation issued by the Company is not an offer to sell or supply any Goods or Services and may be withdrawn or varied at any time prior to a related Order being accepted by the Company in accordance with clause 3. A quotation will only be valid for 30 days from its date of issue unless extended in writing by the Company. All prices quoted by the Company are subject to variation in accordance with clause 28.2 and relate to the sale or supply of Goods, or Services, under these General Terms and Conditions.

#### **3. Acceptance of Orders**

- 3.1 The Customer may request the Company to sell or supply Goods or Services to the Customer in accordance with these General Terms and Conditions by providing an Order to the Company. All Orders received by the Company are subject to acceptance by the Company in writing. The Company may accept or reject an Order in whole or in part in its absolute discretion. The issue by the Company of a written acceptance of an Order will not be or imply acceptance of any terms or conditions in the Order which are inconsistent with these General Terms and Conditions or, if the Customer has a Credit Account with the Company, which are inconsistent with the terms of the Credit Agreement.
- 3.2 Notwithstanding Clause 3.1, any instructions received by the Company from the Customer whether, verbal or written shall constitute an acceptance by the Customer of these General Terms and Conditions.

#### **4. Late payments and interest**

- 4.1 Interest must be paid on any unpaid or outstanding amount payable to the Company, calculated from the due date for payment until final payment has been received by the Company, charged at the rate of 2.5% per calendar month (and at the Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgement.
- 4.2 Any and all expenses, costs and disbursements incurred by the Company in recovering or seeking to recover any outstanding monies due from the Customer including (without limitation) debt collection, agency fees and solicitors costs, shall be payable by the Customer to the Company on demand.
- 4.3 All sums payable by the Customer to the Company, whether or not such amounts are due for payment, will immediately become due and payable if:
  - (a) Any payment by the Customer to the Company is overdue, in whole or in part;

- (b) The Customer is otherwise in default under any Contract or Credit Agreement or any Contract or Credit Agreement is terminated; or
- (c) The Customer or any Guarantor shall become bankrupt or commit any act of bankruptcy or enter into an arrangement with its creditors or have judgment entered against it in any court or, being a company, have a provisional liquidator, voluntary administrator, receiver or manager appointed or otherwise suffer some form of insolvency administration.

## **5. Taxes and duties**

- 5.1 Unless stated otherwise, prices quoted to the Customer or set out in the Contract do not include the taxes, imposts and duties described in clause 5.2.
- 5.2 The Company may recover from the Customer, and the Customer must pay, the amount of any sales tax, customs duty, use tax, consumption tax, goods and services tax, value-added tax or any similar tax, impost or duty levied on any supplies made by the Company to the Customer under or in connection with these General Terms and Conditions (excluding any income tax imposed on the Company), whether that tax, impost or duty is currently in force or comes into force after the date of any Contract. Any such tax, impost or duty must be paid by the Customer at the same time as when payment for the supplies in respect of which the tax, impost, or duty is levied is due.
- 5.3 The acceptance by the Company of the Customer's sales tax certificate or other documents claiming exemption from any taxes, imposts or duties is at the Company's absolute discretion and any such acceptance does not exempt the Customer from paying any taxes, imposts or duties (including any interest and penalties) subsequently imposed.

## **6. Amendment and Cancellation**

- 6.1 The Customer will not, after a Contract is formed, cancel or amend the Order on which the Contract is based in any way without the prior written approval of the Company. The Company may, on consenting to an amendment, revise its price and other terms of supply and amend the Contract to reflect such change(s). In the event of an amendment or cancellation, the Customer must reimburse the Company for all costs and expenses already incurred by the Company and any additional costs and expenses resulting from the amendment or cancellation.

## **7. Termination and Suspension**

- 7.1 The Company may (at its sole discretion), without notice, suspend the provision of Goods or Services or terminate a Contract without liability if:
  - (a) The Customer breaches any term of the Contract (including, without limitation, failing to pay an amount payable by the due date or failing to insure the Goods as required under the Contract);
  - (b) the Customer becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business; or
  - (c) The Customer's conduct indicates that it no longer intends to be bound by the Contract.
- 7.2 In addition the Company's rights of termination under clause 7.1 the Company may cancel a Contract or cancel delivery of Goods or Services at any time before they are delivered by giving written notice to the Customer. On giving such notice the Company shall refund any amounts pre-paid in respect of such Contract, Goods or Services.

## **8. PPS Laws**

- 8.1 To the extent that a Security Interest arises under any Credit Agreement or Contract or any transaction contemplated by them in favour of the Company as the secured party:
  - (a) The Customer acknowledges that the Security Interest will attach to any proceeds or any accession;
  - (b) the Customer agrees to the Company effecting a registration on the PPS Register (in any manner the Company considers appropriate) in relation to any Security Interest and the Customer agrees to provide all assistance reasonably required to facilitate this (including

- paying all costs in connection with effecting, maintaining, amending or discharging that registration);
- (c) the Customer waives the right to receive any verification statement (or notice of any verification statement) in respect of a registration made on the PPS Register; and
  - (d) the Customer must not, without first giving the Company 14 days' prior written notice, change its name, ABN or any other identifiers which are required to be recorded on the PPS Register in connection with any Security Interest.
- 8.2 The Customer and the Company agree that to the extent section 115(1) of the PPS Act allows them to be excluded, sections 95 (to the extent that it requires the Company to give notice to the Customer), 96, 121(4), 125, 130 (to the extent that it requires the Company to give notice to the Customer), 132(3)(d), 132(4), 142 and 143 do not apply to the enforcement by the Company of any Security Interest arising under any Credit Agreement or Contract or the transactions contemplated by them.
- 9. Application of payments**
- 9.1 All payments to the Company must be made in the way reasonably required by the Company (which may include electronic funds transfer).
- 9.2 If the Customer makes a payment to the Company at any time, whether in connection with a Contract or otherwise, the Company may apply the payment to any part of the amounts owed by it to the Company as the Company sees fit.
- 9.3 The Company may, in its absolute discretion, offset any amount due from the Company to the Customer against any amount due from the Customer to the Company, or which will in the future be due from the Customer to the Company, whether in connection with a Contract or otherwise.
- 10. Confidentiality and Privacy Act**
- 10.1 The Company and the Customer acknowledge and agree that, subject to clause 10.2, neither party may disclose any information or documents supplied by another party that is not publically available, including information of a kind referred to in section 275(1) of the PPSA.
- 10.2 A party may disclose information or documents as follows:
- (a) The Company may disclose information:
    - (i) in accordance with clause 10;
    - (ii) in assigning or enforcing or seeking to assign or enforce any Contract, supply arrangement or Credit Agreement or arrangement;
    - (iii) in a proceeding arising out of or in connection with any Contract, supply arrangement or Credit Agreement or arrangement;
    - (iv) to a ratings agency;
    - (v) to any person with whom the Company may enter into a transaction; or
    - (vi) to the extent that disclosure is regarded by the Company as necessary to protect its interests,
  - (b) If required under a binding order of a Government Agency or in any procedure for discovery in any legal proceedings;
  - (c) If required under any law, or any administrative guideline, directive, request or policy whether or not having the force of law and, if not having the force of law, the observance of which is in accordance with the reasonable industry practice;
  - (d) To legal advisers or other professional advisers; or
  - (e) With the prior consent of the other party, which must not be unreasonably withheld.
- 10.3 For the avoidance of doubt, clause 10.2 does not require the Company to disclose any information of the kind referred to in section 275(1) of the PPSA.
- 10.4 Despite anything to the contrary contained herein or any other rights which the Company may have howsoever:
- (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Company or the Company's nominee to secure all amounts and

other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Company (or the Company's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.

- (b) should the Company elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Company or the Company's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 10.1.

## 11. Dispute Resolution

11.1 If at any time any question, dispute or difference whatsoever shall arise between the Customer and the Company upon, in relation to, or in connection with a sale, hire or supply of Goods or Services ("Dispute") such Dispute must be dealt with by the parties following this procedure before either party may take legal actions against the other:

- (a) The disputing party shall provide a written notice to the other party outlining the Dispute ("Dispute Notice").
- (b) After receipt of the Dispute Notice the parties shall, within 7 days, arrange for a meeting of senior representatives to attempt to resolve the Dispute.
- (c) If the Dispute cannot be resolved by the senior representatives then either party may initiate legal proceedings.

## 12. Trust

12.1 If the Customer is a trustee of any trust or settlement including, but not limited to, any trust specified in an Application for Credit, the Customer:

- (a) Enters into any Credit Agreement or Contract in its personal capacity and in its capacity as trustee, and is liable in both of those capacities;
- (b) Represents and warrants that:
  - (i) any Credit Agreement or Contract is for the benefit of the trust;
  - (ii) it is the sole trustee of the trust;
  - (iii) it is not in breach of the trust;
  - (iv) it has authority to enter into any Credit Agreement or Contract; and
  - (v) it has the right to be fully indemnified out of the trust assets for obligations incurred under any Credit Agreement or Contract; and
- (c) Agrees to ensure that nothing happens that would prevent it from repeating the representations and warranties in clause 21.

12.2 If the Customer is a trustee of any trust or settlement including but not limited to any trust specified in Application for Credit, the Customer must not without the prior written consent of the Company permit:

- (a) Any resettlement or distribution of capital of the trust;
- (b) Any retirement or replacement of the trustee or any appointment of a new trustee of the trust deed establishing the trust;
- (c) Any amendment to the trust deed establishing the trust;
- (d) Any further encumbrance (including a Security Interest) or charging of any nature of any of the assets of the trust; or
- (e) Any breach of the provisions of the trust.

12.3 If any of the events listed in clause 12.2 occur (with or without the Company's prior consent), the Customer must immediately notify the Company in writing.

**13. No Assignment**

- 13.1 The Customer must not, without the Company's prior written consent, transfer, assign, encumber or otherwise dispose of any of the Customer's rights or obligations under any Contract, Credit Agreement or these General Terms and Conditions. The Company may assign or novate any rights or obligations under any Contract, Credit Agreement or these General Terms and Conditions without notice to the Customer.
- 13.2 For the purposes of clause 13.1, if the Customer is a corporation, the Customer will be deemed to have assigned its rights and obligations if there is a change of effective control of the corporation or its ultimate holding company.

**14. Waiver and Relationship of the Parties**

- 14.1 No waiver of any term of any Contract, Credit Agreement or these General Terms and Conditions will be valid unless such waiver is in writing and signed by the Company. If the Company does not enforce any right or delays in enforcing any right under any Contract, Credit Agreement or these General Terms and Conditions, this must not be construed as a waiver of such right.
- 14.2 The Company is an independent contractor and nothing in this Agreement is intended to create a partnership or employee relationship between the Parties.

**15. Other services**

- 15.1 If the Company agrees to provide any other services to the Customer other than the sale or supply of the Goods and the provision of the Services, including but not limited to the assembly, disassembly or installation of the Goods, instructing the Customer, its personnel or any other person in the use or operation of the Goods or operating or supplying an operator for the Goods (Other Services):
- (a) The Company will provide the Other Services on the terms nominated by the Company in its absolute discretion;
  - (b) all costs, expenses and liabilities incurred or to be incurred by the Company or associated with providing the Other Services must be paid by the Customer to the Company on demand; and
  - (c) The Company will not be liable for any delay or failure to supply the Other Services within any time period nominated or requested by the Customer.
- 15.2 Without limiting clause 22:
- (a) Releases and discharges the Company from all claims and demands on the Company and any loss or damage whatsoever and whenever caused to the Customer of any other person of any nature or kind; and
  - (b) indemnifies and holds the Company harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by the Company and from and against all actions, proceedings, claims or demands made against the Company, arising from the provision of the Other Services.
- 15.3 Without limiting any provision in this clause 15, any employee, agent or contractor of the Company supplying or providing Other Services for or on behalf of the Company to the Customer will be deemed to be an employee of the Customer for the period in which the person is providing the Other Services.

**16. Governing law**

- 16.1 These General Terms and Conditions and any Contract will be governed by and determined in accordance with the laws of Western Australia.

**17. Attorney**

- 17.1 The Customer irrevocably appoints the Company its attorney with the rights at any time to:
- (a) comply with the obligations of the Customer under a Contract;



- (b) Do everything that in the Attorney's reasonable opinion is necessary or expedient to enable the exercise of any right of the Company in relation to a Contract.

## **Part B – General terms of supply of Goods and Services**

### **18. Point of Delivery of Goods**

- 18.1 Delivery of the Goods is deemed to have taken place when the Goods are delivered to the location agreed by the Parties ("Delivery Point") in accordance with these General Terms and Conditions.
- 18.2 All delivery fees are the responsibility of the Customer.

### **19. Time for Delivery and Access**

- 19.1 The time within which the Company may advise the Customer that it will make Delivery of Goods will be regarded as a best estimate, but will not be guaranteed and may be subject to extension to cover delays caused by or contributed to by Government priorities, manufacturers or suppliers, strikes, lockouts, breakdowns, delays in transport, fire, late delivery of raw material or components, or any other cause beyond the control of the Company and no responsibility will be accepted by the Company for the consequences of any such delays.
- 19.2 If, as a result of cause beyond the Company's reasonable control, the Company determines that it will not be able to deliver all or part of the Goods the subject of a Contract within a reasonable timeframe, the Company may terminate the Contract. On such termination, both parties release each other from any Claims in relation to the Contract and in respect of the termination.
- 19.3 The Company may effect Delivery of the Goods the subject of a Contract as a whole or in separate parts.
- 19.4 The Customer acknowledges and agrees that the Company will not be liable for and the Customer releases the Company from any liability in respect of any loss, damage or expense that the Customer may suffer or incur arising out of or contributed to by any delays in obtaining the Goods.
- 19.5 The Customer shall ensure that the Company has clear and free access to the work site at all times to enable them to undertake the works and to properly perform the works free from interruptions, interferences, delays or interactions of any kind. The Company shall not be liable for any loss or damage to the site (including, without limitation damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Company.

### **20. Insurance and Risk**

- 20.1 All Goods (and any part of the Goods) will be at the Customer's risk from the Delivery Date. The Company will not be responsible for any loss or damage to the Goods occurring after such time and no such loss or damage will affect the obligation of the Customer to pay any amount relating to the supply of the Goods in accordance with these General Terms and Conditions.
- 20.2 The Customer must take out and maintain insurance policies, which terms satisfy the Company's insurer, to cover the following:
- (a) Any insurable loss in respect of the Goods howsoever caused between the Delivery Date and the earlier of:
- (i) the Company receiving full payment of the Invoice relating to the Goods; and
  - (ii) the Customer returning the Goods to the Company and the Company accepting the return of the Goods in accordance with these General Terms and Conditions.
- (b) General Third Party Public and Products Liability with a limit of liability of not less than \$20,000,000.
- (c) Worker's Compensation and Occupational/Industrial Disease and any other insurance required at law relating to the Customer's Worker's Compensation liability to any person for the amount of \$50,000,000.
- 20.3 The insurance policy must:
- (a) note the Company's interest in the Goods;

- (b) be on terms and for an amount satisfactory to the Company;
  - (c) be with an insurer approved by the Company; and
  - (d) extend to indemnify the Company as principal and provide a waiver by the insurer of all rights of subrogation action or relief against the Company.
- 20.4 The Customer must provide written evidence of such insurance policy to the Company within 7 days of receiving a request to do so from the Company.
- 20.5 Unless the Company otherwise agrees in writing, the Company will not insure the Goods after the Delivery Date. If the Company does agree to insure the Goods after the Delivery Date, such insurance will be at the Customer's expense.
- 20.6 Notwithstanding the termination, completion or expiry of any Contract, the Customer must keep any Goods which are the property of the Company and are in its custody, possession or control, safe and secure.
- 20.7 Where the Customer expressly requests the Company to leave Goods outside the Company's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk and it shall be the Customer's responsibility to ensure the Goods are insured adequately or at all.

## **21. Warranties**

- 21.1 The Company's Goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 21.2 Subject to any warranties which are implied by law and cannot otherwise be excluded, the Company excludes all other warranties, conditions or liability in relation to the manufacture, sale, hire, use or supply of the Goods and the supply of the Services and the Company will not be liable for any claim for direct, indirect or consequential loss or damage arising out of or contributed to by the manufacture, sale, hire, use or supply of the Goods or the supply of the Services.
- 21.3 Subject to clause 21.2, to the extent that the Company's liability cannot be excluded, the Company's liability shall be limited to, in its sole discretion, either in respect of Goods, repairing the defective Goods or part of the Goods or replacing it with the same Goods (or part of the Goods) or a comparable product and in respect of Services either repairing the defective Service or resupplying the Service or covering the cost of resupply of the Service.
- 21.4 The Company makes no representation or warranty in relation to the supply of spare parts or the availability of facilities for the repair of the Goods (or any part of the Goods).
- 21.5 The Customer acknowledges and agrees that it has made its own enquires as to the suitability of the Goods (or any part of the Goods) for the Customer's intended use and the Customer does not rely on any statement, representation or information provided by or on behalf of the Company in relation to the Goods (including the use of the Goods) other than the statements, representations and information set out in writing in the Contract for the Goods.
- 21.6 The following terms relate to Concrete Services:
- (a) Where the Customer has supplied materials for the Company to complete the Services, the Customer acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. The Company shall not be responsible for any defects in the services, any loss or damage to the materials (or any part thereof), howsoever arising from the use of materials supplied by the Customer.
  - (b) The Customer acknowledges that variations of colour and texture are inherent in concrete. The Company shall not be liable for any loss, damages or costs howsoever arising resulting from any variation of the colour or texture between the different batches of product.
  - (c) Detailed drawings of any services that will be embedded in the concrete are to be provided to the Company prior to commencement of any services. Whilst all due care will be taken

no liability will be accepted by the Company for damage to the services or any other element embedded in the concrete.

- (d) the Customer acknowledges that the curing time for concrete can be affected by elements such as temperature or the weather, as such the Company offers no guarantee as to the length of time the curing process will take.
- (e) The Company offers no guarantee against cracking of concrete.
- (f) Where the Company gives advice or recommendations to the Customer, or the Customer's agent, regarding the suitability of the worksite for the laying of concrete slabs, foundations or similar works and such advice or recommendations are not acted upon then the Company shall require the Customer or their agent to authorise commencement of the Services in writing. The Company shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.

## **22. Release and Indemnity and Underground Locations**

22.1 The Customer releases and discharges the Company from all claims and demands on the Company and any loss or damage whatsoever and whenever caused to the Customer of any other person of any nature or kind and indemnifies and holds the Company harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by the Company and from and against all actions, proceedings, claims or demands made against the Company, arising in either case as a result of, or which has been contributed to by:

- (a) The Customer's failure to comply with any laws, rules, standards, or regulations applicable to the Goods or use of the Goods;
- (b) The Customer's failure to keep any Goods which are the property of the Company safe and secure;
- (c) Any use of the Goods contrary to any instructions or warnings given by the Company or the manufacturer of the Goods;
- (d) Any other negligence or any breach of duty by the Customer;
- (e) Any compliance or adherence by the Company with any instruction by the Customer; or
- (f) Any reliance by the Company on any representation by the Customer.

22.2 The parties agree and acknowledge that, for the purposes of clause 22.1, a reference to the Customer includes the Customer's agents, employees, directors, representatives and contractors and any person or party who uses the Goods or claims an interest in the Goods as a result of a transaction with, or otherwise with the permission of, the Customer.

22.3 Prior to the Company commencing any work the Customer must advise the Company of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.

22.4 Whilst the Company will take all care to avoid damage to any underground services the Customer agrees to indemnify the Company in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 22.3.

22.5 Neither Party shall be liable for any consequential loss or any loss or damage caused by the negligence of the other Party.

## **23. Intellectual Property**

23.1 Title, right and interest in the Intellectual Property is and will remain the property of the Company.

23.2 In dealing with the Intellectual Property, the Customer must not:

- (a) Disclose or furnish the Intellectual Property to any other person and all reasonable precautions must be taken to protect such confidentiality;
  - (b) copy, distribute, transmit, display, perform, reproduce, publish, licence, modify, rewrite, allow or permit derivative works to be created from, transfer or sell the Intellectual Property;
- or



- (c) Allow copies of the Intellectual Property to be printed published, made, reproduced or otherwise communicated without acknowledging the Company's right, title and interest in the Intellectual Property.

**24. Inspection and Testing**

- 24.1 The Customer must inspect all Goods immediately upon the Goods being Delivered and notice of any Claim by the Customer in relation to the Goods (including but not limited to any Claim that the Goods were damaged prior to Delivery or do not accord with the relevant Order) must be made by the Customer in writing and received by the Company within 24 hours of the Delivery Date and, subject to clauses 21 and 22, any Claims not made within that period will be deemed to be waived.
- 24.2 Where the Delivery Point is the Company's premises, the Customer's inspectors will be given full access to all relevant areas of the Company's premises on the Delivery Date for the purpose of inspection and testing of the Goods. Inspectors are required to seek appointments for those inspections through the Company's appointed representative by giving at least 2 days' prior notice. The Customer's inspectors must be accompanied at all times by the Company representative while inspecting and testing the Goods. Where the Delivery Point is located on a site or on premises other than the Company's premises, the Company will take all reasonable steps to organise and facilitate the inspection of the Goods by the Customer's inspectors. The costs of the inspection and testing, and travel and related expenses for the inspection and testing of the Goods is at the Customer's expense.

**25. Compliance with Laws**

- 25.1 The Customer and the Company shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods and Services.
- 25.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the provision of the Goods and Service.
- 25.3 The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

**26. Customer's Property**

- 26.1 No responsibility is accepted by the Company for any loss or damage to the Customer's equipment or other goods left in the Company's possession or at the Company's premises.

**Part C – Special Conditions of Sale****27. Retention of Title**

- 27.1 The Goods will remain the sole and absolute property of the Company as legal and equitable owner, and property in and title to the Goods will not pass from the Company to the Customer, until the Customer has paid the Company for the Goods in full.
- 27.2 Where the Company is acting as an agent for the owner of the Goods, the Goods will remain the sole and absolute property of the owner and property in and title to the Goods will not pass from the owner to the Customer until the Customer has paid the Company for the Goods in full.
- 27.3 Any payment made by or on behalf of the Customer which is later avoided or reduced by the application of any law will be deemed not to discharge the Company's title in the Goods or the Customer's indebtedness to the Company.
- 27.4 The Customer must not sell, transfer, hire, lease, dispose of or part with possession of the Goods to any person without the Company's prior written consent until all amounts owed to the Company are paid in full. If the Customer does anything which breaches this clause 27.4, the proceeds must be held by the Customer on trust for the Company irrespective of whether the proceeds are held in a separate account by the Customer or otherwise.
- 27.5 Until title in the Goods has passed pursuant to clause 27.1, the Customer holds the Goods as bailee in the capacity of a fiduciary for the Company. The Customer will keep the Goods supplied

to it by the Company in its possession and take good care of them and store them and mark them in a manner that identifies the Goods supplied and clearly shows that they belong to the Company.

- 27.6 If the Contract relating to the Goods is terminated before title in the Goods has passed to the Customer, the Company may retake possession of the Goods and the Customer must do everything in the Customer's power and at the Customer's own expense to ensure the Company can lawfully enter any premises where the Goods are located and remove the Goods.

## **28. Terms of Payment**

- 28.1 The Company will invoice the Customer for:
- (a) The price of the Goods being the price set out in the Purchase Contract, as varied in accordance with clause 25.2;
  - (b) any applicable GST or other tax, stamp duty or statutory charges or levies payable in relation to or in connection with the supply of the Goods in accordance with clause 5.
- 28.2 Any change, after the earlier of the date of the Company's quotation (if applicable), the Order or the Contract and before the date of the Invoice, in the cost of labour, materials, transport, essential services, tariffs, duties, exchange, or any other costs or expenses incurred by the Company must be paid for by the Customer.
- 28.3 Time for payment of the Invoice will be stated on the Invoice and, if no time is stated, then payment will be due within 7 days of the date of the Invoice. If the Customer has provided the Company with a Purchase Order, the Company will not be required to Deliver the Goods to the Customer until payment has been received in accordance with this clause 28.
- 28.4 Notwithstanding clause 28.3, if the Customer possesses a current Credit Account with the Company then payment of the Invoice will be due within the period required under the Credit Agreement or, if no period is stated in the Credit Agreement, within 30 days of the Delivery Date.
- 28.5 The Customer must pay the amount stated in the Invoice in full and in cleared funds on or before the Payment Date, without demand, deduction or set-off. If payment is made by way of cheque or electronic funds transfer, the Company will be deemed to receive payment of the funds on the date the Company receives cleared funds in its bank account.
- 28.6 The Company reserves the right to issue an Invoice for partial Deliveries and Deliveries delayed at the request of the Customer.

## **29. Return of Goods**

- 29.1 The Customer may not return Goods or otherwise fail to take delivery of the Goods without the Company's prior written consent. The Company may, in its absolute discretion, agree to accept the return of any Goods and credit the Customer with the invoiced value of the Goods, provided the Goods are returned in the same condition and the Company has given its written approval for the return of the Goods. The Company reserves the right to charge an administrative fee for the return of any such Goods by the Customer.

## **30. Latent Conditions**

- 30.1 Latent conditions are physical or artificial conditions restricting FRC Hire to perform its works and services in a timely manner. These conditions can differ materially from which FRC has anticipated at the time of tender. FRC Hire will be entitled to an extension of time and reasonable direct costs as a result of latent conditions.

## **31. Hazardous Material and Asbestos**

- 31.1 The main contractor or client is responsible for ensuring all work areas including areas for excavations are free of hazardous materials and asbestos. The main contractor or client is responsible for all costs associated or arising out of any hazardous materials identified.

**Part D – Definitions and Interpretation****32. Definitions and Interpretation**

In these General Terms and Conditions:

**“Application for Credit”** means an application for credit form completed by the Customer and submitted to the Company;

**“Chattel Paper”** has the same meaning as in the PPS Law;

**“Claim”** includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, order, settlement sum, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving the Company, the Customer, any Guarantors or a third party;

**“Commencement Date”** means the earlier of the date on which the Customer delivers any part of the Customer’s Property or causes any part of the Customer’s Property to be delivered to the Land; and

**“Contract”** means a Purchase Contract;

**“Credit Account”** means the Customer’s credit account with the Company established on the terms set out in the Credit Agreement;

**“Credit Agreement”** means the agreement between the Company and the Customer for the supply of Goods on credit, formed by written acceptance by the Company of the Credit Application;

**“Delivery”** means the Company making the Goods available to the Customer in the manner set out in clause 18;

**“Delivery Date”** means the date on which the Goods are deemed to be Delivered to the Customer as determined in accordance with clause 19;

**“Delivery Point”** means the location at which the Goods will be Delivered to the Customer as determined in accordance with clause 18;

**“Goods”** means all goods or services supplied by the Company to or at the direction of the Customer from time to time (and, in relation to any security interest in the Goods, includes any proceeds). The Goods may be “other goods” (such as spare parts) or “motor vehicles” or both as classified under the PPS Law;

**“Guarantor”** means a person that guarantees to the Company the performance of the Customer;

**“Intellectual Property”** means all rights in any knowledge of secret processes, technical know-how, techniques, discoveries, inventions, ideas, research, engineering and manufacturing methods, practices, systems, formulae, drawings, designs, specifications, manuals, trade secrets and special purpose computer programmes, financial, marketing and other confidential information and data subsisting in or relating to the Goods, the supply or sale of the Goods or the Company’s business;

**“Invoice”** means an invoice issued by the Company to the Customer in accordance with clause 28.1;

**“Order”** means a Purchaser Order;

**“Other Services”** means any services provided by the Company to the Customer other than the sale, hire or supply of the Goods or the provision of the Services;

**“Party”** means a party to a Contract and “Parties” means all;

**“Payment Date”** means the latest date on which the Customer must pay an Invoice as determined in accordance with clause 28;

**“PPS Law”** means the PPSA together with any subsidiary legislation or regulations made under the PPSA and any amendment to a PPS Law from time to time;

**“PPS Register”** means the register established under the PPS Law;

**“PPSA”** means the *Personal Properties Securities Act (2009) (Cth)* as amended from time to time;

**“Privacy Act”** means the *Privacy Act 1988 (Cth)* as amended from time to time;

**“Purchase Contract”** means a contract for the sale of Goods or Services by the Company to the Customer formed on the acceptance by the Company of the Customer’s Purchase Order;



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**“Purchase Order”** means a written offer by the Customer to purchase Goods or Services from the Company;

**“Security Interest”** has the same meaning as under the PPS Law;

**“Services”** means the services requested by the Customer to be provided by the Company as described in a Purchase Order or otherwise agreed in writing by the Parties.