

## 1. Definitions and Interpretation

### 1.1 Definitions

The definitions and rules of interpretation in this condition apply in these conditions. **Buyer** means the person, firm or company who purchases the Goods from the Company.

**Company** means GM Poles Pty Ltd ACN 081 961 515.

**Contract** means any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions and formed pursuant to condition 2.3.

**Delivery Point** means the place where delivery of the Goods is to take place under condition 4.

**GST** means the same as in the GST Law, any other goods and services tax, or any tax applying to these Terms and Conditions of Supply in a similar way and any additional tax, penalty tax, fine, interest or other charge under a law of such a tax.

**GST Law** means *A New Tax System (Goods and Services Tax) Act 1999 (C' th)*.

**Goods** means any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

**Intellectual Property Rights** means all intellectual property rights and related rights in relation to the Goods including, but not limited to, copyright, trademarks, designs, patents, software, discs, semiconductors and circuit layout rights, trade secrets, inventions, discoveries, knowhow and confidential information, whether or not registrable and whether registered or unregistered, whether licensed to the Company or owned by it, and whether created before or after the delivery of the Goods to the Buyer.

### 1.2 Interpretation

Unless expressed to the contrary:

- (a) headings and boldings are for convenience only and do not affect the interpretation of this Deed;
- (b) this Deed is not to be interpreted against the interests of a party merely because that party proposed this Deed or some provision in it or because that party relies on a provision of this Deed to protect itself;
- (c) where an expression is defined anywhere in this Deed another part of speech or grammatical form of that expression has a corresponding meaning;
- (d) a reference to:
  - (i) an individual or person includes a firm, corporation, incorporated association, and government or statutory body or authority;
  - (ii) the word 'include' or 'including' is to be construed without limitation, whether or not "without limitation" is used;
  - (iii) any gender includes all genders;
  - (iv) the singular includes the plural and vice versa;
  - (v) recitals, conditions, schedules or annexures are to recitals, conditions, schedules or annexures of or to this Deed;
  - (vi) a statute, ordinance or other law includes regulations and other statutory instruments made under it and consolidations, amendments and re-enactments of it and includes any subordinate legislation for the time being in force made under it;
  - (vii) money is to Australian currency;
  - (viii) any party to this Deed, or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (e) Any obligation in the Contract on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.

## 2. Application of Terms

### 2.1 These terms and conditions apply exclusively

Subject to any variation under condition 2.5, these terms and conditions are the only terms and conditions upon which the Company is prepared to deal with the Buyer and they will govern each Contract to the entire exclusion of all other terms or conditions. Without limiting the foregoing, no terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, documents, correspondence, receipts, acknowledgements or elsewhere will form part of the Contract and the Buyer waives any right which it otherwise might have to rely on such terms and conditions.

### 2.2 Orders for Goods

Each request for Goods by the Buyer to the Company will be deemed to be an offer by the Buyer to buy the Goods subject to these terms and conditions and no such offer by the Buyer will be accepted until the Company either expressly by giving notice of acceptance, or impliedly by fulfilling the Buyer's order, in whole or in part, accepts the offer.

### 2.3 Formation of Contract

A Contract will only come into existence between the Company and the Buyer when the Company has accepted the Buyer's offer in accordance with condition 2.2.

### 2.4 Other terms and conditions

### 2.5 Variations

These terms and conditions apply to all the Buyer's purchases and any variation to these terms and conditions shall have no effect unless expressly agreed in writing and signed by a director of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.

### 2.6 Complete and Accurate Specifications

The Buyer will ensure that the terms of its order and any applicable specification are complete and accurate.

### 2.7 Quotations

Any quotation is given on the basis that no Contract will come into existence until the Company despatches an acceptance of order to the Buyer. Any quotation is valid for a period of the shorter of 30 days from its date or the expiry date in the quotation, provided that the Company has not previously withdrawn it. The Company will not be bound by any error in a quotation and the Company reserves the right to correct any error in a quotation on notice to the Buyer or to withdraw a quotation at any time.

## 3. Description

The quantity and description of the Goods will be as set out in the Company's quotation or acceptance of order. All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of the Contract and no sale by the Company is a sale by sample.

## 4. Delivery

### 4.1 Delivery of Goods

Unless otherwise agreed in writing by the Company, delivery of the Goods will take place at the Company's place of business.

### 4.2 Receipt of Goods

The Buyer will take delivery of the Goods within 5 days of the Company giving it notice that the Goods are ready for delivery.

### 4.3 Date of Delivery

Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery will not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.

### 4.4 Liability for Loss

Subject to the other provisions of these conditions the Company will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor will any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days and in that event, termination will be the sole remedy of the Buyer.

### 4.5 Failure to accept delivery

If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

- (a) risk in the Goods will pass to the Buyer (including for loss or damage caused by the Company's negligence);
- (b) the Goods will be deemed to have been delivered; and
- (c) the Company may store the Goods, and the Buyer will be liable for all related costs and expenses (including, without limitation, storage and insurance).

### 4.6 Equipment and Labour

The Buyer will provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading the Goods.

### 4.7 Instalments

- (a) The Company may deliver the Goods by separate instalments. Each separate instalment will be invoiced and paid for in accordance with the provisions of the Contract.
- (b) Each instalment will be a separate Contract and no cancellation or termination of any one Contract relating to an instalment will entitle the Buyer to repudiate or cancel any other Contract or instalment.

## 5. Non-Delivery

### 5.1 Quality of Goods

The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business will be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

### 5.2 Liability for Non-Delivery

The Company will not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 2 days of the date when the Goods would in the ordinary course of events have been received.

### 5.3 Replacement of Goods

Any liability of the Company for non-delivery of Goods will be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

## 6. Risk/Title

### 6.1 Risk

The Goods are at the risk of the Buyer from the time of delivery.

### 6.2 Ownership of Goods

Ownership of the Goods will not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

- (a) the Goods; and
- (b) all other sums which are or which become due to the Company from the Buyer on any account.

### 6.3 Before transfer of Ownership

Until ownership of the Goods has passed to the Buyer, the Buyer will:

- (a) hold the Goods on a fiduciary basis as the Company's bailee;
- (b) store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- (d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer will produce the policy of insurance to the Company.

### 6.4 Reselling of Goods

The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

- (a) any sale will be effected in the ordinary course of the Buyer's business at full market value; and
- (b) any such sale will be a sale of the Company's property on the Buyer's own behalf and the Buyer will deal as principal when making such a sale.

### 6.5 Right to Possession

The Buyer's right to possession of the Goods will terminate immediately if:

- (a) the Buyer fails to make payment of any amounts due to the Company in respect of the Goods;
- (b) the Buyer becomes insolvent or unable to pay its debts; commits an act of bankruptcy or is made bankrupt; assigns assets for the benefit of creditors generally; makes a composition or other arrangement with creditors; convenes a meeting of creditors (whether formal or informal); being a company, goes into liquidation, administration or receivership; any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; ceases to trade; or if anything analogous to the foregoing occurs in relation to the Buyer;
- (c) the Buyer fails to comply with any of its obligations under the Contract or other agreement between the Company and the Buyer; or
- (d) the Buyer encumbers or in any way charges any of the Goods before title has passed to the Buyer.

## 6.6 Recovery of Payment

The Company will be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

## 6.7 Irrevocable Licence

The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

## 7. Personal Property Securities Act 2009

### 7.1 Definitions

In this condition:

**PPS Act** means the Personal Property Securities Act 2009 (Cth).

**PPS Property** means any property over which a Security Interest can be legally granted under the PPS Act.

**PPSR** means the Personal Property Securities Register established under section 147 of the PPS Act.

**Security Interest** has the meaning given to that term under the PPS Act.

**'accession', 'account', 'amendment demand', 'control', 'financing change statement', 'financing statement', 'perfected', 'proceeds', 'purchase money security interest', 'registration event' and 'verification statement'** have the meanings given to them under the PPS Act.

### 7.2 PPSA Provisions

(a) The Buyer acknowledges and agrees that any Security Interest created by this Contract, or any transaction contemplated by it, extends to, and acts as a Security Interest in respect of, any proceeds (including any account) derived from, or from a dealing with, the Goods and accession to the Goods.

(b) The Buyer agrees to do anything which the Company may require from time to time to:

(i) enable the Buyer to register fully valid and effective financing statements or financing change statements with respect to any Security Interest over PPS Property created by these terms and conditions or any transaction contemplated by them; and

(ii) ensure that any Security Interest which is purported to be reserved or created by these terms and conditions, or any transaction contemplated by them, is:

A. a first ranking perfected Security Interest over all PPS Property;

B. perfected by control to the extent possible under the PPS Act; and

C. if applicable, recorded as a purchase money security interest on the PPSR.

(c) The Buyer agrees:

(i) to not, without first providing at least fourteen (14) days written notice to the Company, change its name, ACN, ABN, address, email address, facsimile number or any other details that have been, or are required to be, recorded on the PPSR in connection with any Security Interest created by these terms and conditions or any transaction contemplated by them;

(ii) to pay all costs in connection with the registration, discharge or amendment of any financing statement or financing change statement; and

(iii) to not, without the prior written consent of the Company, lodge or serve a financing change statement or an amendment demand in relation to any Security Interest created by these terms and conditions or any transaction contemplated by them.

(d) The Buyer acknowledges that the Goods are not intended, and shall not be used, for personal, household or domestic purposes.

(e) The Buyer irrevocably waives the right to receive from the Company any verification statement or notice in relation to a registration event in accordance with section 157(3)(b) of the PPS Act.

(f) The Buyer and the Company agree that:

(i) to the extent that section 115(1) of the PPS Act allows them to be excluded, sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 138B(4), 142 and 143; and

(ii) to the extent that section 115(7) of the PPS Act allows them to be excluded, sections 127, 129(2), 129(3), 132, 134(2), 135, 136(5) and 137, do not apply to any enforcement by the Company of any Security Interest in the PPS Property.

### 7.3 Termination of Right to Possession

Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer will be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

### 7.4 Termination

On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 7 will remain in effect.

## 8. Price

### 8.1 Price

Unless otherwise agreed by the Company in writing, the price for the Goods will be the price set out in the Company's quotation, if one was given in relation to those Goods and if not, the Company's price list as at the date of delivery or deemed delivery.

### 8.2 Price is Exclusive

The price for the Goods will be exclusive of any GST and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer will pay in addition when it is due to pay for the Goods.

## 9. Payment

### 9.1 Invoicing

(a) The Company may, at its discretion, submit invoices at the time the Buyer submits an order for goods and every day thereafter until all amounts payable to the Company by the Buyer under the Contract have been paid in full.

(b) To remove all doubt, every day from the time the Buyer submits an order for goods until all amounts payable to the Company by the Buyer under the Contract have been paid in full is a 'reference date' for the purposes of the *Building and Construction Industry Payments Act 2004* (Qld) and equivalent legislation in other States and Territories.

### 9.2 Last day for Payment

Except as set out to the contrary in any quotation or invoice given in relation to the Goods, payment of the price for the Goods plus GST and other amounts due under condition 7.2 is due within seven days from the time the invoice is submitted.

### 9.3 Time is of the essence

Time for payment will be of the essence.

### 9.4 Receipt of Payment

No payment will be deemed to have been received until the Company has received cleared funds.

### 9.5 Payment Due

All payments payable to the Company under the Contract will become due immediately on its termination despite any other provision.

### 9.6 Payment in Full

The Buyer will make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to

such deduction to be paid by the Company to the Buyer. A counterclaim by the Buyer in any court proceedings issued by the Company will, to the maximum extent permitted by law, not serve to delay or defer the Company's right to receive payment.

### 9.7 Interest

If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer will be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 2% above the Commonwealth Bank Corporate Overdraft Reference Rate from time to time, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under any law providing for interest on late payment.

## 10. Quality

### 10.1 Warranties

The Company warrants that (subject to the other provisions of these conditions) on delivery, the Goods will meet the specification published for those Goods by the Company.

### 10.2 Liability for breach of warranties

(a) The Company will not be liable for a breach of a warranty in relation to Goods unless:

(i) the Buyer gives written notice of the defect to the Company within 14 days of the time when the Buyer discovers or ought to have discovered the defect; and

(ii) the Company is given a reasonable opportunity after receiving the notice to examine the Goods, and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost for the examination to take place there.

(b) The Company will not be liable for a breach of a warranty in relation to Goods if:

(i) the Buyer makes any further use of the Goods after giving notice under condition 10.2(a); or

(ii) the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

(iii) the Buyer alters or repairs the Goods without the written consent of the Company.

### 10.3 Goods which do not meet Warranty

Subject to condition 10.2, if any of the Goods do not conform with the warranty in condition 10.1, the Company will at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer will, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.

### 10.4 Further Liability

If the Company complies with condition 10.3 it will have no further liability for a breach of the warranty in condition 10.1 or otherwise arising in respect of such Goods.

### 10.5 Replacement of Goods

Any Goods replaced will belong to the Company and any repaired or replacement Goods will be subject to the warranty in condition 10.1.

## 11. Expert Determination

### 11.1 Scope

Any dispute, disagreement or controversy regarding a Contract, these terms and conditions or their subject matter (**Dispute**) must be referred to determination under this condition 11.

### 11.2 Independent Expert

The Independent Expert will be, if agreement is not reached within five days of either party giving notice to the other that it wishes to refer a matter to an Independent Expert, such persons as is appointed by the Queensland Law Society at the request of either party.

### 11.3 Procedure

(a) The parties are entitled to make submissions to the Independent Expert in writing and will provide (or procure that others provide) the Independent Expert with all such assistance and documents as the Independent Expert may reasonably require for the purpose of reaching a decision. Each party shall with reasonable promptness supply each other with all information and give each other access to all documentation and personnel as the other party reasonably requires to make a submission under this condition.

(b) The parties agree that the Independent Expert may in its reasonable discretion determine such other procedures to assist with the conduct of the determination as it considers appropriate.

(c) The Independent Expert will act as an expert and not as an arbitrator. The Independent Expert's decision shall be final and binding on the parties in the absence of fraud or manifest error.

(d) The Independent Expert's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs of any advisers appointed by the Independent Expert) shall be borne by the parties in equal shares or in such proportions as the Independent Expert directs.

### 11.4 Non suspension

This condition does not suspend or delay a party's obligations under these terms and conditions.

## 12. Limitation of Liability

### 12.1 Financial Liability

The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Buyer in respect of:

(a) any breach of these conditions;

(b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and

(c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

### 12.2 Exclusions

All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

### 12.3 Limited Liability

Nothing in these conditions excludes or limits the liability of the Company to the extent that it would be illegal for the Company to exclude or attempt to exclude its liability; or

### 12.4 Total Liability

Subject to condition 12.2 and 12.3:

(a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract will be limited to the Contract price; and

(b) the Company will not be liable to the Buyer for any loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation or loss whatsoever and howsoever caused which arise out of or in connection with the Contract.

## 12.5 Indemnity

The Buyer shall be responsible for and shall save, indemnify, defend and hold harmless the Company from and against any claims and losses in respect of:

- (a) loss or damage to any property, whether owned by the Buyer, the Company or a third party; and  
personal injury or death of any person, arising from or in connection with the use of the Goods.

## 12.6 Insurance

(a) During the Contract and for a period of one year afterwards, the Buyer must maintain in force the following insurance policies with reputable insurance companies:

- (i) public liability insurance with a limit of at least the amount per claim and per series of claims in a calendar year reasonably determined and notified by the Company or in the absence of such notification, \$10 million per claim; and  
(ii) public liability insurance with a limit of at least the amount per claim and per series of claims in a calendar year reasonably determined and notified by the Company or in the absence of such notification, \$10 million per claim.

(b) The insurance policies the Buyer is required to maintain under this condition must note the Company as an insured party and must waive any express or implied rights of subrogation by insurers against the Company to the extent necessary to provide coverage for the liabilities assumed by the Buyer under the Conditions.

## 13. Confidentiality

(a) Each party undertakes that it shall not at any time disclose to any person any confidential information disclosed to it by the other party concerning the business or affairs of the other party, including but not limited to information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers (**Confidential Information**), except as permitted by condition (b).

(b) Each party may disclose the other party's Confidential Information:

- (i) to its employees, officers, agents, consultants or sub-contractors (**Representatives**) who need to know such information for the purposes of carrying out the party's obligations under these terms and conditions, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this condition 13 as though they were a party to these terms and conditions. The disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this condition; and  
(ii) as may be required by law, court order or any governmental or regulatory authority.

(c) Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in these terms and conditions are granted to the other party or to be implied from these terms and conditions. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right held, made, obtained or licensable by either party now or in the future.

## 14. Intellectual Property Rights

(a) All Intellectual Property Rights are the sole and exclusive property of the Company, as and when they are created and to the extent necessary to give effect to this, the Buyer assigns and agrees to assign all Intellectual Property Rights arising from the supply of the Goods to the Buyer, to the Company, free of all Encumbrances.

(b) The Company grants to the Buyer a non-exclusive, non-assignable, non-sublicensable, royalty free licence in Australia to use the Intellectual Property Rights encapsulated in the Goods solely for the purpose of using the Goods for their intended purpose.

## 15. Assignment

(a) The Company may assign the Contract or any part of it to any person, firm or company.

(b) The Buyer will not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

## 16. Termination

The Company is entitled to terminate a Contract with immediate effect by giving written notice to the Buyer if:

- (a) the Buyer fails to pay any undisputed amount due under these terms and conditions on the due date for payment and remains in default not less than 5 days after being notified in writing to make such payment; or  
(b) the Buyer commits a material breach of its obligations under these terms and conditions and (if such breach is remediable) fails to remedy that breach within a period of 10 days after receipt of notice in writing requiring it to do so; or  
(c) the Buyer commits a series of persistent minor breaches which when taken together amount to a material breach; or  
(d) the Buyer suspends, or threatens to suspend, payment of its debts or is, or is deemed to be, insolvent or unable to pay its debts as they fall due for payment or admits inability to pay its debts; or  
(e) the Buyer enters into any composition or arrangement with its creditors; or  
(f) an order is made or resolution is passed, or any analogous proceedings are taken for the winding-up, administration or dissolution (other than for the purposes of a solvent amalgamation or reconstruction) of the Buyer; or  
(g) any liquidator, trustee in bankruptcy, receiver, administrative receiver, administrator or similar officer is appointed over or in respect of the Buyer or any part of its business or assets; or  
(h) a creditor or encumbrancer of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or  
(i) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (h) (inclusive); or  
(j) the Buyer ceases, or threatens to cease, to carry on all or substantially the whole of its business; or  
(k) there is a change of control of the Buyer (control is defined in the Corporations Act 2001 (Cth)).

### 16.2 Effect of Termination

Termination of these terms and conditions shall not prejudice any of the parties' rights and remedies which have accrued as at termination.

### 16.3 Obligations on termination

On termination of these terms and conditions the Buyer will promptly:

- (a) return to the Company all equipment, materials and property belonging to the Company;  
(b) return to the Company all documents and materials (and any copies) containing the Company's Confidential Information;  
(c) erase all the Company's Confidential Information from its computer systems (to the extent possible); and  
(d) on request, certify in writing to the Company that it has complied with the requirements of this condition.

## 17. Force Majeure

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 30 days, the Buyer will be entitled to give notice in writing to the Company to terminate the Contract.

## 18. General

### 18.1 Right or Remedy

Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

### 18.2 Survival

The following provisions survive termination or expiry of a Contract for any reason: conditions 0, 2, 6.4, 6.6, 6.7, 7.4, 9, 10, 12, 14, 17, 18 and any other provisions which by their inherent nature or the intention of the parties, survive termination or expiry.

### 18.3 Invalid Contract Provisions

If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it will to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision will continue in full force and effect.

### 18.4 Effect of Delay

(a) Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

(b) Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

### 18.5 No third party enforcement of Contract

The parties to the Contract do not intend that any third party will be entitled to benefit from or enforce any provision of the Contract.

### 18.6 Further Assurance

Each party shall (at its own expense) promptly execute and deliver all such documents, and do all such things, or procure the execution and delivery of all documents and doing of all such things as are required to give full effect to these terms and conditions and the transactions contemplated by them.

### 18.7 Variation And Waiver

Any variation of these terms and conditions must be in writing and signed by or on behalf of the parties. Any waiver of any right under these terms and conditions is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given. No failure to exercise or delay in exercising any right or remedy provided under these terms and conditions or by law constitutes a waiver of such right or remedy nor shall it prevent any future exercise or enforcement of such right or remedy. No single or partial exercise of any right or remedy under these terms and conditions will prevent or restrict the further exercise of that or any other right or remedy.

### 18.8 Entire Agreement

These terms and conditions and the documents referred to in it constitute the whole agreement and understanding of the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of these terms and conditions. Each party acknowledges that, in entering into these terms and conditions, it has not relied on any statement, representation, assurance or warranty (whether made negligently or innocently) other than those expressly set out in these terms and conditions or the documents referred to in them. Each party agrees that all liability for and remedies in respect of any representations are excluded except as expressly provided in these terms and conditions.

### 18.9 Counterparts

These terms and conditions may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of these terms and conditions but all the counterparts shall together constitute the same agreement.

### 18.10 Governing Law and Jurisdiction

These terms and conditions and any dispute or claim arising out of or in connection with them or its subject matter will be governed by and construed in accordance with Queensland law. The parties irrevocably agree that the courts of Queensland will have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these terms and conditions or their subject matter.

## 19. Communications

### 19.1 Communication in Writing

All communications between the parties about the Contract will be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:

- (a) (in case of communications to the Company) to its registered office or such changed address as will be notified to the Buyer by the Company; or  
(b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as will be notified to the Company by the Buyer.

### 19.2 Receipt of Communication

Communications will be deemed to have been received:

- (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or  
(b) if delivered by hand, on the day of delivery; or  
(c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

### 19.3 Communication with Company

Communications addressed to the Company will be marked for the attention of the General Manager.