



SRIA MATERIAL SUPPLY AGREEMENT

The Steel Reinforcement Institute of Australia is a not-for-profit organisation which provides technical marketing and information on behalf of the manufacturers and processors of reinforcing steel.

The SRIA has had many requests from its members and the construction industry to consider the provision of an industry standard agreement for the supply of reinforcing products by reinforcing steel companies to building companies for major projects, so that time is not wasted on contractual negotiations between the parties.

A working group over the last three years has worked with industry participants and with legal advisors to produce a document that addresses the interests of both parties in a fair and even handed manner, and provides a vehicle for the industry to work together.

The document is now ready for use by the industry. We invite all parties to consider it as a viable alternative to current negotiations. The greater the use the industry makes of this document, the more opportunities we will have to improve it and therefore improve the process by which conditions of supply of steel reinforcement to major construction projects are optimised.

The SRIA is in discussion with Standards Australia about how in due course a version of this document could be referenced in the AS4000 series of industry agreements, but this process is likely to take considerable time.

This document is not intended to replace individual companies' terms and conditions of supply for their general work. It is clearly targeted as an option for major projects where protracted contractual negotiations can be a common occurrence.

FORMAL INSTRUMENT OF AGREEMENT

CONTRACT FOR SUPPLY OF REINFORCEMENT PRODUCTS

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[INSERT FULL NAME AND ACN]
(Customer)

AND

[INSERT FULL NAME AND ACN]
(Supplier)

FORMAL INSTRUMENT OF AGREEMENT
CONTRACT FOR SUPPLY OF REINFORCEMENT PRODUCTS

FORMAL INSTRUMENT OF AGREEMENT

THIS FORMAL INSTRUMENT OF AGREEMENT made day of

BETWEEN

[INSERT FULL NAME, ACN AND ADDRESS OF CUSTOMER] (*Customer*)

AND

[INSERT FULL NAME, ACN AND ADDRESS OF SUPPLIER] (*Supplier*)

INTRODUCTION

- A. The *Supplier* will supply the *Goods* to the *Customer* in accordance with the provisions of this *Contract*.
- B. The *Customer* will make payments to the *Supplier* in accordance with the provisions of this *Contract*.
- C. The parties agree that they will perform, fulfil, comply with, submit to and observe the provisions, conditions, stipulations and requirements and all matters and things expressed or shown in this *Contract* and which are to be performed, fulfilled, complied with, submitted to or observed by or on the part of the parties.

TERMS

1. THE CONTRACT AND THE CONTRACT DOCUMENTS

The following documents (*Contract Documents*) comprise the contract between the *Customer* and the *Supplier* (*Contract*):

- 1.1 This Formal Instrument of Agreement (*Instrument of Agreement*);
- 1.2 The General Conditions of Contract at Schedule 1 (*Conditions*);
- 1.3 Annexure Part A to the *Conditions*; and
- 1.4 Annexure Part B to the *Conditions* (*Special Conditions*).
- 1.5 Annexure C to the *Conditions* comprising the quotation of the *Supplier* (if any) which is accepted by the *Customer* (*Accepted Quotation*). The *Customer's* acceptance of the *Accepted Quotation* is conclusively evidenced by its inclusion in Annexure Part C. If the *Supplier's* quotation is not included as Annexure C, then it is deemed not to have been accepted by the *Customer* and nothing in that quotation will be binding on either the *Supplier* or the *Customer*.

2. AGREEMENT

In consideration of the *Supplier* supplying the *Goods* to the *Customer* in accordance with the provisions of the *Contract*, the *Customer* agrees to pay to the *Supplier* the *purchase price*. The *purchase price* is subject to adjustment only as specified in this *Contract*.

3. ORDER OF PRECEDENCE IN CONTRACT DOCUMENTS

If there is any conflict between the *Contract Documents* then one has precedence over the other in the following order:

- (i) This *Instrument of Agreement*;
- (ii) the *Special Conditions*;
- (iii) the *Accepted Quotation* (if used);
- (iv) the *Conditions*;
- (v) Annexure Part A to the *Conditions*;

4. ENTIRE AGREEMENT

4.1 This *Contract*:

- (a) contains the entire agreement and understanding between the parties on everything connected with the supply of *Goods*; and
- (b) supersedes any prior agreement or understanding on anything connected with that supply of *Goods*.

4.2 Unless the context requires otherwise:

- (a) words defined in the *Conditions* have the same meaning when used in the *Instrument of Agreement*; and
- (b) words defined in the *Conditions* have the same meaning in any other part of the *Contract*.

5. WARRANTY OF AUTHORITY TO EXECUTE

Each person who executes this *Contract* on behalf of a party warrants to the other party that he or she is duly authorised and has authority to execute this *Contract* on behalf of that party.

EXECUTED by the parties as an agreement

For and on behalf of the *Customer*

For and on behalf of the *Supplier*

Name: [_____]

Name: [_____]

Position: [_____]

Position: [_____]

Signature: _____

Signature: _____

Date: _____

Date: _____

SCHEDULE 1

GENERAL CONDITIONS OF CONTRACT

1. Interpretation and construction of Contract

1.1 In the *Contract*, except where the context otherwise requires:

<i>Accepted Quotation</i>	means the quotation, if any, attached as Annexure C to these <i>Conditions</i> ;
<i>Business Day</i>	means a day on which the <i>Supplier</i> is ordinarily open for business in the jurisdiction of this <i>Contract</i> ;
<i>Compensable Cause</i>	means the causes or events (if any) is specified in <i>Item 6</i> for which the <i>Supplier</i> entitled to claim for delay damages as described in clause 18.5;
<i>Conditions</i>	means these General Conditions of Contract;
<i>Contract</i>	has the meaning in the <i>Instrument of Agreement</i> ;
<i>Contract Documents</i>	means the documents listed in clause 1 of the <i>Instrument of Agreement</i> ;
<i>Customer</i>	means the <i>Customer</i> stated in <i>Item 1</i> ;
<i>Delivery</i>	means delivery to the <i>Site</i> by the <i>Supplier</i> ;
<i>Delivery Date</i>	means the date(s) for delivery of the <i>Goods</i> specified in <i>Item 8</i> ;
<i>Delivery Items</i>	means dunnage, bins, pallets, bases or frames;
<i>Direction</i>	includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;
<i>Dispute</i>	has the meaning in clause 26;
<i>Documents</i>	means all documentation prepared by the <i>Customer</i> or the <i>Principal</i> including all drawings, specifications, engineering data, calculations, samples, models, patterns, instructions, programs, manuals and reports necessary to enable the <i>Supplier</i> to manufacture, supply and deliver the <i>Goods</i> in accordance with this <i>Contract</i> ;
<i>EOT (Extension of Time)</i>	has the meaning in subclause 18.1;
<i>Force Majeure Event</i>	has the meaning in subclause 19.1;
<i>Goods</i>	means the goods specified in <i>Item 7</i> ;
<i>Instrument of Agreement</i>	means the Formal Instrument of Agreement to which these <i>Conditions</i> form Schedule 1;
<i>Intellectual Property Right</i>	means any patent, registered design, trademark or name, copyright or other protected right;
<i>Item</i>	means an <i>Item</i> in Annexure Part A;
<i>Legislative Requirement</i>	includes:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where the *Supplier Obligations* are being carried out;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the *Supplier Obligations*; and
- (c) fees and charges payable in connection with the foregoing;

Prescribed Notice has the meaning in clause 25.1;

Principal means the customer in the *Principal Contract* stated in *Item 5*;

Principal Contract means the agreement between the *Principal* and the *Customer* in respect of which the *Customer* requires the *Goods* for the performance of its obligations thereunder;

Purchase Price means, subject to the escalation provisions (if any) specified in *Item 10(a)*, the amount specified in or calculated in accordance with *Item 10(b)*, being the price per unit of *Goods* specified in *Item 10(c)* multiplied by the quantity of *Goods* to be supplied;

Site means the place(s) made available to the *Supplier* by the *Customer* for the purpose of *Delivery* of the *Goods*, being the site specified in *Item 9(a)*;

Special Conditions means the conditions specified in Annexure Part B to the Conditions;

Supplier Obligations means the supply of *Goods* in accordance with the *Contract*;

Supplier means the person bound to carry out and complete the *Supplier Obligations*;

Taxes means sales tax, import duty, export duty, value added tax or consumption tax (other than GST) and all other taxes or imposts payable in relation to the *Goods* or this *Contract* under the laws of any relevant jurisdiction;

Variation has the meaning in clause 21;

1.2 In the *Contract*:

- (a) references to a person include an individual, firm or a body, corporation or unincorporate;
- (b) time for doing any act or thing under the *Contract* is, if it ends on a Saturday, Sunday or statutory or public holiday, deemed to end on the day next following which is not a Saturday, Sunday or statutory or public holiday;
- (c) clause headings and subclause headings in these *Conditions* do not form part of these *Conditions* and must not be used in the interpretation of the *Contract*;
- (d) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include every gender;
- (e) communications must be in the English language;
- (f) measurements of physical quantities must be in legal units of measurement of the jurisdiction in *Item 11*;
- (g) unless otherwise provided, prices are in the currency in *Item 12* and payments must be made in that currency at the place in *Item 12*;
- (h) the law governing the *Contract*, its interpretation and construction, and any agreement to arbitrate, is the law of the jurisdiction in *Item 11*; and

- (i) if pursuant to Annexure Part B to *Conditions*, clauses or their parts in these *Conditions* are deleted, the *Contract* must be read and construed as though the clause or its part has been deleted, whether or not that particular clauses or its part has been struck from these *Conditions*.

2. Performance and payment

In consideration for the payment of the *Purchase Price* by the *Customer*, the *Supplier* agrees to:

- (a) supply the *Goods* to the *Customer* in accordance with the *Documents*; and
- (b) subject to this *Contract*, deliver those *Goods* to the *Site* on the *Delivery Date(s)*,

in each case, in accordance with the *Contract* and any reasonable *Directions* authorised by the *Contract*.

3. Evidence of Contract

3.1 Until an *Instrument of Agreement* is executed by the parties, documents evidencing the parties' consensus constitute the *Contract*. If the *Contract* requires an *Instrument of Agreement*, the *Customer* must, within 28 days of the date of acceptance of tender, send it in duplicate for execution by the *Supplier*. Within 14 days after receiving them, the *Supplier* must (if they are correct) properly execute both copies and return them.

3.2 Within 14 days after receiving them, the *Customer* must execute both copies, and send one copy to the *Supplier*.

3.3 Either party may extend the time under this clause by written notice to the parties.

4. Quotations

If Annexure C to the *Conditions* is used, the *Customer* acknowledges that:

- (a) the *Accepted Quotation* has been prepared on the basis of the *Documents*;
- (b) if the *Goods* constitute standard steel profiles and sizes (by reference to the relevant Australian standards and codes) then the *Supplier* warrants that:
 - (i) it has used reasonable endeavours to specify in the *Accepted Quotation* suitable quantities and qualities of *Goods* and related materials to satisfy the *Documents*;
 - (ii) any mass of the *Goods* quoted is within the tolerances permitted by the relevant Australian standards and codes including but not limited to AS/NZS 4671, AS 3600, AS 2870, AS 2327 and AS 1100;
 - (iii) when calculating the mass of any steel reinforcing, the *Supplier* has made calculations on a per metre basis in accordance with the relevant Australian standards and codes including AS/NZS 4671 (but with a margin on the calculated mass to cover rolling variations and associated costs);
 - (iv) calculations with respect to length have been made in accordance with the relevant Australian standards and codes, including but not limited to AS 1100, Part 501; and
 - (v) steel will be provided in stock lengths unless otherwise specified in this *Contract*.
- (c) if either or both of the following conditions are satisfied:
 - (i) the *Goods* do not constitute standard steel profiles and sizes;
 - (ii) custom design and detailing services are specified in the quotation,then, despite any other provision of this *Contract*:

- (iii) the *Customer* must pay all the *Supplier's* reasonable fees and costs associated with that supply and those services (as the case may be); and

5. Service of Notices

A notice (and other documents) is deemed to have been given and received;

- (a) if addressed or delivered to the relevant address in the *Contract* or last communicated in writing to the person giving the notice; and
- (b) on the earliest date of:
 - (i) actual receipt;
 - (ii) confirmation of correct transmission of fax; or
 - (iii) 3 days after posting.

6. Contract documents

6.1 Discrepancies

- (a) Figures prevail over scaled dimensions in a discrepancy. Otherwise, if either party discovers any inconsistency, ambiguity or discrepancy in any document prepared for the purpose of the *Supplier* supplying the *Goods*, that party must give the other party written notice of it. The *Customer*, thereupon, and upon otherwise becoming aware, must direct the *Supplier* as to the interpretation to be followed.
- (b) The *Customer* indemnifies the *Supplier* in respect of any cost, loss or damage suffered or liability incurred as a result of compliance with any such direction except to the extent that the *Supplier* does not use due care and skill in complying with the direction.

6.2 Customer-supplied documents

- (a) The *Customer* must supply to the *Supplier* the *Documents* and the other documents and the number of copies thereof, both stated in *Item 13*.
- (b) Such *Documents*:
 - (i) remain the *Customer's* property and must be returned to the *Customer* on written demand; and
 - (ii) must not be used, copied nor reproduced for any purpose other than for the purposes performing the *Supplier Obligations*.

6.3 Ongoing Customer's Obligations

The *Customer* must, upon making any amendments to the *Documents*, notify the *Supplier* of the fact and the nature of the amendment and supply electronic versions of the updated *Documents* to the *Supplier* showing the changes made.

6.4 Confidential information

- (a) The parties must ensure that all documents, samples, models, patterns and other information supplied to them and clearly identified as confidential are kept confidential.
- (b) If required in writing by a party, the other party must enter into a separate agreement not to disclose to anyone else other than the *Principal* and their identified consultants any confidential matter even after expiry or earlier termination of the *Contract*.

6.5 Media

Neither party may disclose any information concerning the project for distribution through any communications media without the other party's prior written approval (which must not be unreasonably withheld). A party must refer to the other party any enquiries from any media concerning the project.

7. Assignment

Neither party may, without the other's prior written approval (including terms), assign the *Contract* or any payment or any other right, benefit or interest thereunder.

8. Intellectual property rights

- 8.1 The *Customer* warrants that unless otherwise provided in the *Contract*, the *Documents*, and other design, materials, documents and methods of working, each specified in the *Contract* or provided or directed by the *Customer* must not infringe any *Intellectual Property Right*.
- 8.2 The *Supplier* warrants that any other materials, documents and methods of working provided by the *Supplier*, must not infringe any *Intellectual Property Right*.
- 8.3 Each party must indemnify the other against such respective infringements.
- 8.4 The parties acknowledge that the *Supplier* retains ownership of all pre-existing *Intellectual Property Right* it uses or supplies to the *Purchaser* under or in relation to this *Contract* and the *Supplier* owns all new *Intellectual Property Right* that the *Supplier* develops under or in relation to this *Contract*, whether requested by the *Purchaser* or on the *Supplier's* own initiative.
- 8.5 If paragraph 4.(c)(ii) applies, the *Supplier* owns all *Intellectual Property Rights* contained in documents prepared by the *Supplier* in relation to the custom design and detailing services, provided that the *Supplier* grants to the *Customer* a royalty-free non-exclusive licence to use those documents for the purposes only of fulfilling the *Customer's* obligations under the *Principal Contract*.

9. Legislative requirements

9.1 Compliance

- (a) The *Supplier* must satisfy all *Legislative Requirements* except those in *Item 14(a)* and *Item 14(b)* or directed by the *Customer* to be satisfied by or on behalf of the *Customer*.
- (b) The *Supplier*, upon finding that a *Legislative Requirement* is at variance with the *Contract*, must promptly give the *Customer* written notice thereof.

9.2 Changes

If a *Legislative Requirement*:

- (a) necessitates a change to the *Goods*;
- (b) comes into effect after the 14th day before the closing of tenders but could not reasonably then have been anticipated by a competent *Supplier*; and
- (c) causes the *Supplier* to incur more or less cost than otherwise would have been incurred;

the difference must be reasonably assessed by the *Supplier* and added to or deducted from the *Purchase Price*.

10. Damage to persons and property

10.1 Indemnity by Supplier

- (a) The *Supplier* indemnifies the *Customer* against:

- (i) loss of or damage to the *Customer's* tangible property; and
- (ii) claims in respect of personal injury or death or loss of, or damage to, any other tangible property,

arising out of or as a consequence of the *Supplier's* breach of any provision of the *Contract*, but the indemnity is reduced proportionately to the extent that the act or omission of the *Superintendent*, the *Principal*, the *Customer* or the consultants, agents or other contractors (not being employed by the *Supplier*) of the *Principal* or the *Customer* may have contributed to the injury, death, loss or damage.

- (b) Subclause 10.1(a) does not apply to:
 - (i) the extent that the *Supplier's* liability is limited by another provision of the *Contract* including under clause 11;
 - (ii) damage which is the unavoidable result of the provision of the *Goods* and their *Delivery* in accordance with the *Contract*; and
 - (iii) claims in respect of the *Customer's* right to have the *Goods* provided.

10.2 Indemnity by Customer

The *Customer* indemnifies the *Supplier* in respect of damage referred to in subclause 10.1(b)(ii) and claims referred to in subclause 10.1(b)(iii).

11. Limitation of liability

- 11.1 The *Supplier's* liability to the *Customer* (including to any party claiming through the *Customer* against the *Supplier*) for any claim for loss or damage (including legal expenses) made in connection with the *Contract* for contract, tort (including negligence), under statute, in equity or otherwise is as follows:
 - (a) unless otherwise specified in *Item 15(a)*, if the *Supplier* is in breach of the *Contract*, in respect of the supply of defective *Goods* or *Goods* not complying with specification, the *Supplier's* liability is strictly limited to:
 - (i) for *Goods*, the cost of replacement of the defective *Goods* as soon as reasonably practicable or the repair of the defective *Goods* or the repayment (or allowance) of the invoice price of the defective *Goods* at the option of the *Supplier*; and
 - (ii) for any services, to the provision of the services again or payment of the cost of having the relevant services provided again at the option of the *Supplier*; and
 - (b) in the case of a personal injury, illness or death or damage to property, the *Supplier's* liability is limited to the amount specified in *Item 15(b)*
- 11.2 Where loss or damage is not covered by subclauses 11.1 (a) or (b), the *Supplier's* maximum aggregate liability for any other loss or damage is limited to the amount specified or calculated by reference to *Item 15(c)*.
- 11.3 Unless otherwise specified in *Item 15(d)*, despite any other provision of this *Contract*, neither party is liable under this *Contract* for any indirect, special or consequential loss or damage of any nature. For the purpose of this clause "indirect, special or consequential loss" includes but is not limited to:
 - (a) any loss of income, profit or business; and
 - (b) any loss of goodwill or reputation.

12. Insurance

12.1 Public and Products Liability Insurance

The *Supplier* must obtain and maintain for a period of 12 months from *Delivery*, from solvent and reputable insurers, a public and products liability insurance policy in the amount specified in *Item 16*.

12.2 Noting of Interest and Currency

If requested by the *Customer* in writing, the *Supplier* must:

- (a) ensure that the insurance the *Supplier* obtains and maintains notes the interests of the *Customer* under this *Contract*; and
- (b) give the *Customer* a certificate of currency for those insurance policies.

12.3 Notices of potential claims

A party must, as soon as practicable, inform the other party in writing of any occurrence in connection with the *Contract* that may give rise to a claim under the insurance policy and must keep the other party informed of subsequent developments concerning the claim.

13. Delivery to Site

- 13.1 The *Supplier* endeavours to ensure that the *Goods* are delivered to the *Customer*, subject to clause 18, on or by the *Delivery Date* and at the *Site* or other place reasonably specified by the *Customer* by notice in writing to the *Supplier* not less than 14 days prior to the *Delivery Date (Site)*.
- 13.2 The *Supplier* may deliver the *Goods* to the *Customer* in any number of instalments.
- 13.3 The *Customer* must ensure that a clean and safe area is available for the *Goods* to be delivered and unloaded at the *Site*.
- 13.4 Unless otherwise specified in *Item 9(b)*, the *Customer* must arrange at its cost for the *Goods* to be unloaded at the *Site*.
- 13.5 *Delivery* of the *Goods* is deemed to have occurred when the *Goods* are made available at the *Site* for unloading from the *Supplier's* arranged transport.
- 13.6 If the *Customer* is unable to accept *Delivery* of the *Goods* on the *Delivery Date* (as extended), then the *Supplier* must store the *Goods* for up to the maximum period specified in *Item 9(c)* and deliver or make the *Goods* available for collection on the extended date.
- 13.7 The *Supplier* must ensure that any *Goods* stored under subclause 13.6 are reasonably secured.
- 13.8 The *Customer* must pay the *Supplier's* standard storage costs and additional delivery charges (if applicable) for all *Goods* so stored, when payment of the *Purchase Price* is due or if the *Purchase Price* has been paid, on demand.
- 13.9 Without limiting subclause 13.3, if any vehicle of the *Supplier* or any person delivering the *Goods* on behalf of the *Supplier* is disabled or damaged due to the condition of the delivery area, the *Customer* is liable for the cost of repair or salvage of the vehicle.
- 13.10 The *Supplier* must use reasonable endeavours to ensure that the *Goods* are supplied with suitable *Delivery Items* to enable the *Goods* to be loaded onto trolleys, cranes, trucks, forklifts or similar vehicles.
- 13.11 Any *Delivery Items* supplied to the *Customer* under subclause 13.10 must be maintained in good condition and returned empty by the *Customer*, and otherwise in a condition corresponding to their supply, to the *Supplier* or made available for collection by the *Supplier* when no longer being used with the *Goods*. Such items must not be used for any purpose other than holding the *Goods*.

- 13.12 The *Customer* must reimburse the *Supplier* for the *Supplier's* reasonable costs associated with any repair or replacement of the *Delivery Items* required because of any damage to or loss of the *Delivery Items* caused by the *Customer* or because of the failure of the *Customer* to return the *Delivery Items* when reasonably requested by the *Supplier*.

14. Shortages and defective Goods

- 14.1 The *Customer* must check all *Goods* received as soon as practicable, and in any event within the time specified in *Item 9(d)*, after *Delivery*.
- 14.2 The *Customer* may, by notice to the *Supplier* within the time specified in *Item 9(e)* after *Delivery*, advise the *Supplier* of any alleged defect in the *Goods* or shortage in the quantity of the *Goods*.
- 14.3 The *Customer* must provide the *Supplier* with a reasonable opportunity to investigate any alleged shortages or defects.
- 14.4 The *Supplier* agrees to rectify any shortages or defects within a reasonable time of notification from the *Customer*.
- 14.5 Where *Goods* are defective, the *Supplier* will, at its option and cost:
- (a) replace the defective *Goods* as soon as reasonably practicable; or
 - (b) repair the defective *Goods* as soon as reasonably practicable; or
 - (c) repay the *Customer* any amount that the *Customer* has paid for the defective *Goods*,
provided that, if requested by the *Supplier*, the *Customer* first returns the defective *Goods* to the *Supplier*.
- 14.6 The *Supplier* is required to rectify any shortages or defects in the *Goods* only if:
- (i) the *Supplier* has caused the shortage or defect; and
 - (ii) the *Customer* notifies the *Supplier* under subclause 17.2 within the period specified in *Item 9(e)* after *Delivery* of the *Goods*.

15. Returns

15.1 Application of Clause

This clause 15 applies only to the extent that the *Goods Delivered* comply with the requirements of this *Contract*. It does not limit the *Customer's* rights in relation to *Goods* which do not so conform to this *Contract*.

15.2 Conditions of Return

Subject to the *Supplier's* agreement, the *Supplier* will only accept returns on any of the *Goods* from the *Customer* if the following conditions apply:

- (a) the relevant returned *Goods* must be standard lengths (for example, the *Goods* must not have been custom fabricated or shaped in any way);
- (b) the relevant returned *Goods* are, in terms of weight or volume (as reasonably determined by the *Supplier*), no greater than 10% of the total amount of weight or volume (as reasonably determined by the *Supplier*) of the *Goods Delivered* or to be delivered to the *Customer* pursuant to this *Contract*;
- (c) the relevant returned *Goods* are in the same condition as they were in when delivered to the *Customer* (for example the relevant *Goods* must not be cut, bent, painted, treated or otherwise interfered with in any way by the *Customer*);

- (d) the *Supplier* receives (at the *Customer's* expense) the relevant returned *Goods* back from the *Customer* within the period specified in *Item 9(f)* after their *Delivery* to the *Customer*; and
- (e) the *Customer* has not granted any security interest over any of the relevant returned *Goods*.

15.3 **Acceptance**

If the *Customer* complies with the requirements of subclause 15.2, the *Supplier* agrees to accept the relevant returned *Goods* and to credit the *Customer* part of the *Purchase Price* which relates to the relevant returned *Goods* (excluding any transport, restocking or storage components) within the period specified in *Item 9(g)* of receipt of the relevant returned *Goods* from the *Customer*.

15.4 **Non compliance**

If any of the conditions specified in subclause 15.2 are not met, then the *Supplier* is under no obligation to provide the *Customer* with any refund on those *Goods*; and

15.5 **Failure to Collect**

If the *Customer* does not collect the cancelled or returned *Goods* from the *Supplier*, then:

- (a) those *Goods* become the property of the *Supplier*; and
- (b) the *Supplier* is not required to pay the *Customer* for them and may deal with them as it wishes.

16. Warranties

16.1 **Goods and Services**

The *Supplier* makes no representations or warranties in relation to the *Goods* except that:

- (a) the *Goods* will comply with the specifications set out in the *Documents*;
- (b) the *Goods* will be of merchantable quality;
- (c) any services supplied will be performed with due care and skill; and
- (d) the *Goods* will comply with any Australian Standards specified in the *Documents* unless otherwise agreed to in writing.

16.2 **Documents and Specifications**

The *Customer* bears sole responsibility for ensuring that:

- (a) the *Documents* and the specifications in those *Documents*, if met by the *Supplier*, will ensure that the *Goods* will be fit for any intended purpose, application or use;
- (b) upon completion of any related services and prior to further process, including concrete pours, the *Customer's* structural engineer certifies in writing that the *Goods* as installed comply with the *Documents* and are otherwise fit for purpose.

16.3 The *Customer* acknowledges that the *Supplier* provides no warranties about, and has no responsibility for, those matters in subclauses 16.1 and 16.2.

16.4 **Avoidance of Doubt**

For the avoidance of doubt, the parties acknowledge that:

- (a) any comments or suggestions made by the *Supplier* in the course of performing its obligations under the *Contract* do not:

- (i) amount to professional advice in relation to those matters; or
 - (ii) give rise to any express or implied warranty by the *Supplier* in relation to the *Goods* or any other matter;
- (b) unless expressly specified otherwise in *Item 17*, the *Supplier* is not responsible for any detailing work in respect of the project including, without limitation, the selection of the appropriate *Goods* required for the performance of the *Customer's* obligations under the *Principal Contract* and the *Customer* bears sole responsibility for all detailing work and the selection of the appropriate *Goods* for the such performance; and
- (c) the *Supplier* has no obligation to check, comment on or review the *Documents* and is not liable for failing to identify any errors, omissions or inconsistencies in the *Documents*.

16.5 The parties acknowledge that the *Supplier* provides no other warranties and that all implied warranties are excluded to the extent permitted by law.

17. Suspension of delivery

17.1 Customer's suspension

The *Customer* may direct the *Supplier* to suspend *Delivery* of the *Goods* for such time as the *Customer* reasonably thinks fit, if the *Customer* is of the reasonable opinion that it is necessary:

- (a) because of an act, default or omission of:
 - (i) the *Customer* or its employees, consultants, agents or other contractors (not being employed by the *Supplier*); or
 - (ii) the *Supplier*, or the *Supplier's* employees or agents;
- (b) for the protection or safety of any person or property;
- (c) to comply with a court order; or
- (d) because suspension of work under the *Principal Contract*, in the *Customer's* reasonable opinion, prevents performance of the *Supplier Obligations*.

17.2 Supplier's suspension

If the *Supplier* wishes to suspend *Delivery* of the *Goods*, due to the customer not meeting his obligations under the contract, and otherwise than pursuant to subclause 17.1, the *Supplier* must advise the customer in writing.

17.3 Cost

The *Supplier* must bear the cost of suspension pursuant to subclause 17.1(a)(ii) and subclause 17.2. If the *Supplier* made the protection, safety or court order necessary, the *Supplier* must bear the cost of suspension pursuant to subclause 17.1(b) or 17.1(c). In all other instances of suspension, if the *Supplier* incurs more or less cost than otherwise would have been incurred, the difference must be added to or deducted from the *Purchase Price*.

18. Time

18.1 Claim

- (a) The *Supplier* is entitled to a reasonable extension of time to the *Delivery Date* ('EOT'), if the *Supplier* is or will be delayed in achieving the *Delivery Date* as a result of:
 - (i) any act, default or omission of the *Customer* or its consultants, agents or other contractors (not being employed by the *Supplier*);
 - (ii) any act, default or omission of the *Principal* or its consultants, agents or other contractors (not being employed by the *Supplier*); or

(iii) a *Force Majeure Event* other than:

- a breach or admission by the *Supplier*,
- industrial conditions or inclement weather occurring after the *Delivery Date*; or
- as stated in *Item 20*,

(each of these circumstances being an “*EOT Event*”).

- (b) To be eligible to claim an *EOT*, the *Supplier* must give the *Customer*, within 10 days of becoming aware of the *EOT Event*, a written claim for the *EOT* specifying the *EOT Event* and the likely delay.

18.2 **Overlapping Causes**

The *Supplier* is entitled to an *EOT* only where the *EOT Event* is the sole cause of the particular delay.

18.3 **Extension of time**

- (a) Within 10 days after receiving a claim for an *EOT* which complies with subclause 18.1, the *Customer* must give to the *Supplier* a written *Direction* evidencing a reasonable *EOT*. If the *Customer* does not do so, there must be a deemed assessment and *Direction* for an *EOT* as claimed by the *Supplier*.
- (b) Notwithstanding that the *Supplier* is not entitled to or has not claimed an *EOT*, the *Customer* may at any time and from time to time direct an *EOT* unless otherwise agreed by the parties.

18.4 **Liquidated damages**

- (a) If specified in *Item 19(a)*, if the *Supplier* does not deliver the *Goods* by the *Delivery Date* (as extended in accordance with this clause) the *Supplier* must pay liquidated damages in *Item 19(a)* but only up to the maximum specified in *Item 19(b)*, for every day after the *Delivery Date* to and including the earliest of the termination of the *Contract* or the *Delivery* of the *Goods*.
- (b) If an *EOT* is directed after the *Supplier* has paid liquidated damages, the *Customer* must forthwith repay to the *Supplier* such of those liquidated damages as represent the days the subject of the *EOT*.

18.5 **Delay damages**

For every day the subject of an *EOT* for *Compensable Cause* and for which the *Supplier* gives the *Customer* a claim for delay damages, the *Supplier's* reasonable costs attributable to the delay are due and payable by the *Customer* to the *Supplier*.

19. **Force Majeure**

19.1 **No liability for Force Majeure Event**

The *Supplier* is not liable for failure to perform the *Contract* to the extent and for so long as its performance is prevented or delayed because of:

- (a) circumstances outside of the *Supplier's* reasonable control;
- (b) strike, lock-out or other labour difficulty (not caused by the *Supplier*);
- (c) any act, default, or omission on the part of the *Customer* or its employees, agents or contractors; or

(d) any other event or circumstance specified in *Item 20*;

19.2 Suspension (in this clause, a “Force Majeure Event”)

The *Supplier Obligations* are suspended during the time and to the extent it is prevented from or delayed in complying with that obligation by a *Force Majeure Event*. Subject to subclause 19.3, the *Contract* continues and is not otherwise affected or diminished by a *Force Majeure Event* and the *Supplier* is not in any way liable to the *Customer* for damages caused as a result of delay in performance due to a *Force Majeure Event*.

19.3 Extended Force Majeure

If the *Supplier* does not perform an obligation under the *Contract* for more than 90 consecutive days because of the effects of a *Force Majeure Event*, then either party may terminate the *Contract* without further liability by giving a written notice to that effect to the other party. Any such termination will not prejudice any rights which have accrued prior to the date of termination.

20. Unavailability of Supply

If, due to any cause whatsoever, the *Supplier* is unable to supply particular *Goods* by the *Delivery Date* or at all, it is entitled, at its option:

20.1 to supply to the *Customer* similar *Goods* which in the *Supplier's* opinion are an appropriate substitute; or

20.2 delay supply of part or all of the *Goods*.

21. Variations

21.1 Proposed variations

(a) The *Customer* may give the *Supplier* written notice of a proposed *Variation*.

(b) The *Supplier* must as soon as practicable after receiving such notice, notify the *Customer* whether the proposed *Variation* can be effected, together with, if it can be effected, the *Supplier's* estimate of the:

(i) effect on the *Delivery Date*, and

(ii) cost (including all time-related costs and services, if any) of the proposed *Variation*.

(c) The *Customer* may direct the *Supplier* to give a detailed quotation for the proposed *Variation* supported by measurements or other evidence of cost.

(d) The *Supplier's* reasonable costs for each compliance with this subclause 21.1 are to be treated as moneys payable to the *Supplier*.

(e) If the *Customer* accepts the *Supplier's* quotation, then the *Supplier* must make the *Variation* and the *Customer* must pay the quoted amount as an increase to the *Purchase Price*. If the *Customer* considers that the *Supplier's* quotation for the *Variation* is unreasonable having regard to prevailing market prices or rates, the *Customer* may trigger the dispute resolution procedures under clause 26. If the *Customer* fails to accept the *Supplier's* quotation within 30 days from the date of the quotation, it will be deemed to have been rejected by the *Customer*.

21.2 Variations for convenience of Supplier

If the *Supplier* requests the *Customer* to agree to a *Variation* for the convenience of the *Supplier*, the *Customer* may do so. The *Direction* must be written and may be conditional.

22. Payment of Purchase Price

22.1 Inclusive Price

Unless otherwise specified in the *Contract*, the *Purchase Price* includes all freight costs to the *Site*, transit insurance and all other charges payable in connection with the sale of the *Goods* and all *Taxes* payable under the laws of any relevant jurisdiction.

22.2 Payment

Subject to the *Supplier's* rights under any applicable legislation relating to the security of payments, on or before the last *Business Day* of each month (or such other date specified in *Item 21A*), the *Supplier* may send an invoice to the *Customer* for all *Goods Delivered* by the *Supplier* that month. The monthly invoice issued by the *Supplier* must specify the quantity of *Goods Delivered* that month and the respective date of *Delivery* of the *Goods*. All such invoices must be paid by the *Customer* within the period specified in *Item 21*.

22.3 GST

- (a) All amounts payable under this *Contract* are calculated or expressed exclusive of GST.
- (b) If GST is or becomes payable by a supplier in relation to a supply under this *Contract*, the recipient of that supply must pay to that supplier an amount equal to the GST. An amount payable under this clause must be paid:
 - (i) at the same time as the payment of the amount in respect of that supply is due; and
 - (ii) in addition to the amount payable under this *Contract* ;
- (c) The *Customer* is not obliged to pay any GST unless a valid tax invoice has been issued.
- (d) If the *Customer* fails to pay such GST when due, the *Supplier* may recover it from the *Customer* as a debt under this *Contract*.
- (e) Any party that becomes aware of the occurrence of any adjustment event in connection with this *Contract* must notify the other party as soon as possible. The parties must then take whatever steps are necessary and make whatever adjustments are required to ensure that any additional GST, or refund of GST, on that supply is paid not later than 20 *Business Days* after the parties first become aware of the adjustment event.
- (f) For the purposes of this clause, terms which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth) have the meaning given to them in that Act.

22.4 Interest

Interest specified in *Item 22* is due and payable by the *Customer* on all amounts which are invoiced but unpaid by the period specified in *Item 22*, calculated from the date of default in payment.

23. Title and risk

23.1 Risk

Risk in the *Goods* passes from the *Supplier* to the *Customer* on *Delivery* of the *Goods*.

23.2 Title

Title to *Goods* passes from the *Supplier* to the *Customer* only upon payment in full of all monies owing by the *Customer* to the *Supplier* on any account. The *Customer* acknowledges that until the *Customer* has met and paid all that is owed to the *Supplier* on any account whatsoever, the *Customer* holds the *Goods* as bailee for the *Supplier* and that a fiduciary relationship exists between the *Customer* and the *Supplier*.

23.3 Separation of Goods

Until the *Supplier* receives full payment of all monies due to it from the *Customer*, for the period commencing on the date of *Delivery* and ending on the date upon which the *Goods* are incorporated into the work under the *Principal Contract* ("***Incorporation of the Goods***"), the *Supplier* must keep the *Goods* separate and in good condition as a fiduciary of the *Supplier*, clearly showing the *Supplier*'s ownership of the *Goods* and, must keep books recording the *Supplier*'s ownership of the *Goods*.

23.4 Repossession

If the *Customer* defaults in payment prior to the *Incorporation of the Goods*, the *Supplier* may take possession of the *Goods* for which payment has not yet been made in full wherever those *Goods* are located and the *Customer* agrees that representatives of the *Supplier* may enter upon the *Customer*'s premises for that purpose.

24. Default or insolvency

24.1 Preservation of other rights

If a party breaches (including repudiates) the *Contract*, nothing in this clause prejudices the right of the other party to recover damages or exercise any other right or remedy.

24.2 Supplier's default

- (a) If the *Supplier* commits a substantial breach of this *Contract*, the *Customer* may, by hand or by registered post, give the *Supplier* a written notice to show cause.
- (b) Substantial breaches include, but are not limited to:
 - (i) failure to:
 - (A) provide evidence of insurance;
 - (B) provide the *goods* required by this *Contract*;
 - (ii) knowingly providing documentary evidence containing an untrue statement.

24.3 Customer's notice to show cause

A notice under subclause 24.2 must state:

- (a) that it is a notice under clause 24 of these *Contract* conditions;
- (b) the alleged substantial breach;
- (c) that the *Supplier* is required to show cause in writing why the *Customer* should not exercise a right referred to in subclause 24.4;
- (d) the date and time by which the *Supplier* must show cause (which must not be less than 10 clear *Business Days* after the notice is received by the *Supplier*); and
- (e) the place at which cause must be shown.

24.4 Customer's rights

If the *Supplier* fails to show reasonable cause by the stated date and time, the *Customer* may, by written notice to the *Supplier*, terminate the *Contract*.

24.5 Customer's default

- (a) If the *Customer* commits a substantial breach of the *Contract*, the *Supplier* may, by hand or by registered post, give the *Customer* a written notice to show cause.

- (b) Substantial breaches include, but are not limited to the *Customer* failing to:
 - (i) accept *Delivery of Goods* in accordance with this *Contract*; or
 - (ii) make a payment due and payable to the *Supplier* under this *Contract* by its due date.

24.6 **Supplier's notice to show cause**

A notice given under subclause 24.5 must state:

- (a) that it is a notice under clause 24 of these *Contract* conditions;
- (b) the alleged substantial breach;
- (c) that the *Customer* is required to show cause in writing why the *Supplier* should not exercise a right referred to in subclause 24.7;
- (d) the date and time by which the *Customer* must show cause (which must not be less than 10 clear *Business Days* after the notice is received by the *Customer*); and
- (e) the place at which cause must be shown.

24.7 **Supplier's rights**

- (a) If the *Customer* fails to show reasonable cause by the stated date and time, the *Supplier* may, by written notice, to the *Customer*, suspend the whole or any part of the supply of the *Goods*.
- (b) The *Supplier* must remove the suspension if the *Customer* remedies the breach.
- (c) The *Supplier* may, by written notice to the *Customer*, terminate the *Contract*, if within 28 days of the date of suspension under this subclause 24.7, the *Customer* fails:
 - (i) to remedy the breach; or
 - (ii) if the breach is not capable of remedy, to make other arrangements to the reasonable satisfaction of the *Supplier*.
- (d) Damages suffered by the *Supplier* by reason of the suspension are moneys due and payable to the *Supplier*.

24.8 **Termination**

If the *Contract* is terminated pursuant to subclause 24.7, the parties' remedies, rights and liabilities are the same as they would have been under the law governing the *Contract* had the defaulting party repudiated the *Contract* and the other party elected to treat the *Contract* as at an end and recover damages.

24.9 **Insolvency**

- (a) If:
 - (i) a party informs the other in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with the *Contract*;
 - (ii) execution is levied against a party by a creditor;
 - (iii) a party is an individual person or a partnership including an individual person, and if that person:

- (A) commits an act of bankruptcy;
 - (B) has a bankruptcy petition presented against him or her or presents his or her own petition;
 - (C) is made bankrupt;
 - (D) makes a proposal for a scheme of arrangement or a composition; or
 - (E) has a deed of assignment or deed of arrangement made, accepts composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the Bankruptcy Act 1966 (Cwlth) or like provision under the law governing the *Contract*; or
- (iv) in relation to a party being a corporation:
- (A) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
 - (B) it enters a deed of company arrangement with creditors;
 - (C) a controller or administrator is appointed;
 - (D) an application is made to a court for its winding up and not stayed within 14 days;
 - (E) a winding up order is made in respect of it;
 - (F) it resolves by special resolution that it be wound up voluntarily (other than for a member's voluntary winding up); or
 - (G) a mortgagee of any of its property takes possession of that property,
- then, where the other party is:
- (H) the *Customer*, the *Customer* may, without giving a notice to show cause, exercise the right under subclause 24.4; or
 - (I) the *Supplier*, the *Supplier* may, without giving a notice to show cause, exercise the rights under subclause 24.7.
- (b) The rights and remedies given by this clause are additional to any other rights and remedies. They may be exercised notwithstanding that there has been no breach of the *Contract*.

25. Notification of Claims

25.1 Communication of claims

- (a) A *Prescribed Notice* is a written notice of the general basis and quantum of the claim.
- (b) As soon as practicable after a party becomes aware of any claim in connection with the supply of *Goods* under this *Contract*, that party must give to the other party a *Prescribed Notice* or a notice of *Dispute* under subclause 26.1.
- (c) This subclause 25.1 does not apply to any claim, including a claim for payment, the communication of which is required by another provision of the *Contract*.

25.2 Liability for failure to communicate

The failure of a party to comply with the provisions of subclause 25.1 or to communicate a claim in accordance with the relevant provision of the *Contract* does not entitle the other party to damages for breach of the *Contract* but neither bars nor invalidates the claim.

26. Dispute resolution

26.1 Notice of dispute

- (a) If a difference or dispute (together called a '*Dispute*') between the parties arises in connection with the supply of *Goods* under this *Contract*, including a dispute concerning:
- (i) a direction by the *Customer*; or
 - (ii) a claim:
 - (A) in tort;
 - (B) under statute;
 - (C) for restitution based on unjust enrichment or other quantum merit; or
 - (D) for rectification,
- or like claim available under the law governing the *Contract*,
- then either party must, by hand or by registered post, give the other a written notice of the *Dispute* adequately identifying and providing details of the *Dispute*.
- (b) Notwithstanding the existence of a *Dispute*, the parties must, subject to any contrary provision in this *Contract*, continue to perform the *Contract*.

26.2 Conference

- (a) Within 10 *Business Days* after receiving a notice of *Dispute*, the parties must confer at least once to endeavour to resolve the *Dispute* or to agree on methods of doing so. At every such conference each party must be represented by a person having authority to agree to such resolution or methods. The parties must keep confidential all aspects of every such conference.
- (b) If the *Dispute* has not been resolved within 20 *Business Days* of service of the notice of *Dispute*, then either party may, by written notice, refer that *Dispute* to mediation.

26.3 Mediation

If within a further 10 *Business Days* after a notice referring the *Dispute* to mediation is served under subclause 26.2, the parties have not agreed upon a mediator, the mediator must be nominated by the person in *Item 23(a)*. The mediation must be conducted in accordance with the rules in *Item 23(b)*.

26.4 Summary relief

Nothing in this clause 26 prejudices the right of a party to institute proceedings to enforce payment due under the *Contract* or to seek injunctive or urgent declaratory relief.

27. Waiver of conditions

Except as provided at law or in equity or elsewhere in the *Contract*, none of the provisions of the *Contract* may be varied, waived, discharged or released, except with the prior written consent of the parties.