

1 Contract

- 1.1 If the Customer wants Sydney Reo to supply Goods, the Customer may place an Order for the supply of Goods, or make written reference to a Quotation.
- 1.2 The Order constitutes an offer by the Customer to purchase Goods in accordance with these Conditions.
- 1.3 The Order shall only be deemed to be accepted by Sydney Reo when it issues written acceptance of the Order at which point and on which date the Contract shall come into existence.
- 1.4 The Contract constitutes the entire agreement between the Parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Sydney Reo which is not set out in the Contract.
- 1.5 Any samples, drawings, descriptive matter or advertising issued by Sydney Reo and any descriptions of any Goods or illustrations or descriptions contained in Sydney Reo's catalogues or brochures are issued or published for the sole purpose of illustrating an approximate idea of the Goods described in them and do not form part of the Contract or have any contractual force unless expressly referenced in the Quotation as forming part of the Contract.
- 1.6 The Customer acknowledges that any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing, are excluded from this Contract.
- 1.7 The Contract between the Customer and Sydney Reo comprises the following, and to the extent of any inconsistency or ambiguity the descending order of precedence is:
- (a) the Quotation;
 - (b) the Particulars;
 - (c) these Conditions;
 - (d) any terms set out in Sydney Reo's invoices; and
 - (e) the Order, and any other document that the Parties expressly agree in writing will form part of this Contract, and, if contrary to any other part of this Contract, to the extent only that Sydney Reo has expressly agreed in writing to replace or otherwise operate to counteract any particular part of the Quotation, Particulars and these Conditions.

2 Risk and Title

- 2.1 All risk in the Goods transfers to the Customer on the earliest of delivery of the Goods to the place nominated or accepted by the Customer for delivery, or collection by the Customer.
- 2.2 Sydney Reo retains, and does not transfer to the Customer, title to the Goods supplied to the Customer until Sydney Reo receives full payment for the Goods and full payment of all other amounts owing or unpaid by the Customer to Sydney Reo on any account, including in respect of Goods previously or subsequently supplied to the Customer.
- 2.3 Until title in the Goods passes to the Customer:
- (a) Sydney Reo retains ownership of the Goods supplied to the Customer and the Customer holds the Goods as a fiduciary and bailee for the Sydney Reo;
 - (b) the Customer must keep the Goods separate from other property and stored, protected and insured against all prudent and usual risks as Sydney Reo's property;
 - (c) Sydney Reo may enter any premises owned or occupied by the Customer or the Customer's agents to inspect the Goods and repossess the Goods and enter the Customer's premises for this purpose at all reasonable times;
 - (d) the Customer must not charge, pledge or allow any lien or other security interest in the Goods; and
 - (e) the Customer may only use or deal with the Goods in the ordinary course of business provided that if

- the Goods are sold, the sale is at arms' length for market value and the Customer hold the proceeds of any sale of the Goods in a separate bank account on trust for Sydney Reo and account to Sydney Reo for the proceeds.
- 2.4 If the Customer has not fully paid Sydney Reo for the Goods, Sydney Reo is entitled to recover and repossess the Goods and the Customer grants Sydney Reo a licence to enter any place where unpaid Goods are situated for the purposes of removing them and permit them to be removed if not fully paid for in accordance with this Contract and indemnifies Sydney Reo for any Liability suffered by Sydney Reo, or any party claiming against Sydney Reo for Liability, arising howsoever directly or indirectly from Sydney Reo's exercise of its rights pursuant to this clause 2.4.
- 2.5 Despite clause 2.4, Sydney Reo is entitled to maintain an action against the Customer for payment of the purchase price of the Goods.
- 2.6 The Customer agrees that clause 2.2 creates a security interest (including a purchase money security interest) in Goods (and their proceeds) supplied by Sydney Reo to the Customer from time to time. The Customer must do all things necessary and execute all documents required by Sydney Reo to register each security interest. The following provisions of the PPSA do not apply and are "contracted out" of this Contract for the purposes of section 115 of the PPSA: sections 95, 96, 118, 121(4), 125, 129, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA.
- 2.7 The Customer:
- (a) must pay as a debt due Sydney Reo all costs and expenses incurred or payable by Sydney Reo for:
 - (i) registering, maintaining or releasing any security interest, charge, mortgage or caveat in connection with the contract; or
 - (ii) recovery of the Amount Payable; or
 - (iii) otherwise in enforcing Sydney Reo's rights against the Customer;
 - (b) must pay the costs of registering any PPSA financing statement and such costs may be invoiced or debited against the Customer's credit account; and
 - (c) indemnifies Sydney Reo for Loss incurred or suffered as a result of any prosecution, actions, demands, claims or proceedings brought by or against Sydney Reo in connection with the retaking possession of the Goods or otherwise the exercise by Sydney Reo of its rights under this clause, and the Customer shall pay all such Loss on demand.
- 2.8 Repossession and retention of Goods pursuant to the PPSA will:
- (a) only satisfy so much of the amounts owing by the Customer to Sydney Reo as is equal to the lower of Sydney Reo's estimate of the net realisable value of the Goods or their cost price as at the date of repossession; and
 - (b) immediately extinguish any rights or interest the Customer has in the Goods.
- 2.9 Until title to Goods passes to the Customer under clause 2.2, the Customer must not give Sydney Reo a written demand, or allow any other person to give to Sydney Reo a written demand, requiring Sydney Reo to register a financing change statement under the PPSA in respect of or affecting any Goods, or enter into or allow any other person to enter into the personal property securities register a financing change statement under the PPSA in respect of or covering the Goods.
- 2.10 The Customer may not assign or factor the Customer's right and interest in any debt owed by any of the Customer's customers to the Customer on account of the proceeds of sale of any of Sydney Reo's Goods by the Customer on credit or deferred payment terms without Sydney Reo's prior written consent.
- 2.11 Subject to section 275(7) of the PPSA and any provision of any other Contract between Sydney Reo and the

Customer permitting Sydney Reo to disclose information, Sydney Reo and the Customer will not disclose, or authorise the disclosure of, information of the kind described in section 275(1) of the PPSA.

3 Supply of Goods

- 3.1 Sydney Reo will endeavor, from the Commencement Date, to provide Goods in accordance with this Contract.
- 3.2 If Sydney Reo is delayed in the provision of the Goods due to any act or omission on the Customer's part:
- (a) the Date for Completion will be extended by the period of the delay; and
 - (b) the Customer must pay Sydney Reo the amount of any Loss incurred by Sydney Reo as a direct consequence of the delay, on demand.
- 3.3 Sydney Reo's obligation to provide the Goods is subject always to the availability of Sydney Reo's materials, resources, Personnel and equipment between the period from the delayed Commencement Date to the extended Date for Completion.
- 3.4 To the extent that the Goods are to be manufactured in accordance with a Specification supplied or required by the Customer, the Customer shall indemnify Sydney Reo against all Liabilities and Losses (including Consequential Loss) suffered or incurred by Sydney Reo in connection with any claim made against Sydney Reo for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Sydney Reo's provision of the Goods in accordance with the Specification. This clause 3.4 shall survive termination of the Contract.
- 3.5 Sydney Reo may amend the Specifications of the Goods, at any time, even after Sydney Reo has accepted an Order, if reasonably required to comply with any Law.
- 3.6 If the Customer fails to accept or take delivery of the Goods within seven Business Days of Sydney Reo notifying the Customer that the Goods are ready, then except if such failure or delay is caused by a force majeure event or by Sydney Reo's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the second Business Day following the day on which Sydney Reo notified the Customer that the Goods were ready; and
 - (b) Sydney Reo may store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 3.7 If five Business Days after Sydney Reo notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted delivery of them, Sydney Reo may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.

4 The Customer's Obligations

- 4.1 The Customer must:
- (a) provide safe and unhindered access to the Site as is required to provide the Goods in accordance with this Contract;
 - (b) ensure that it holds all necessary authorisations to enable the Goods to be delivered at the Site under this Contract;
 - (c) provide safe isolation of all electrical, stored energy and potential contaminants within the area at the Site where Goods are delivered;
 - (d) provide any additional Personnel required to meet the Customer's safety requirements (for example, supervisors);
 - (e) pay Sydney Reo the Prices in accordance with clause 6;
 - (f) use all reasonable endeavours to prevent and overcome any delays (howsoever caused) which may prevent Sydney Reo from providing the

- Goods; and
- (g) ensure that all Personnel on the Site comply with all reasonable directions, rules and regulations which may be made or given from time to time by Sydney Reo with respect to the Goods including without limitation all directions concerning safety, occupational health and industrial protection.
- 4.2 The Customer indemnifies Sydney Reo against all consequences of any failure by the Customer or the Customer's Personnel to comply with clause 4.1.
- 4.3 The Customer's Personnel will not under any circumstances be considered to be Sydney Reo's employees for whatever reason. The Customer will be responsible for all industrial matters involving the Customer's Personnel, or which relate to the Site or to safety, health or environmental issues in connection with the Site.
- 4.4 The Customer must not employ, offer employment, solicit or entice away ("relevant action") any of Sydney Reo's Personnel or former Personnel (being any Personnel who ceased being Sydney Reo's Personnel within the period of three months immediately before the relevant action).

5 Environment, Health and Safety

- 5.1 The Customer hereby releases Sydney Reo from all claims, liability and demands whatsoever and whensoever arising which the Customer or the Customer's Personnel may have against Sydney Reo arising out of or in connection with the contamination or pollution of any property, occupied land or premises, or the environment arising out of the performance of this Contract.

6 Prices and Payment

- 6.1 In consideration of Sydney Reo agreeing to provide the Goods, the Customer must pay Sydney Reo the Prices in accordance with the Quotation and this clause 6.
- 6.2 If the Prices are based on a schedule of rates including price per distance, weight or volume or material quality, these rates are valid for the relevant Quotation only and may still be subject to change at any time and for any reason at Sydney Reo's sole discretion. The Customer must confirm with Sydney Reo the validity of all applicable rates prior to placement of any Order.
- 6.3 All Prices or charges for the supply of Goods are based on standard ex works Incoterms with delivery at Sydney Reo facilities.
- 6.4 Sydney Reo may vary the Prices for the Goods if:
- (a) there is any movement in the underlying cost of supplying the Goods specified in the Order;
 - (b) the Goods are varied from those specified in your Order, and Sydney Reo accepted that variation.
- 6.5 The Customer must pay Sydney Reo the amount set out in an invoice within 30 days of Sydney Reo's issue of the invoice.
- 6.6 An invoice from Sydney Reo to the Customer containing an amount payable by the Customer to Sydney Reo is a payment claim made under the *Building and Construction Industry Security of Payment Act 1999* (NSW) and:
- (a) Sydney Reo may serve:
 - (i) more than one payment claim in any particular named month for Goods supplied in that month; and
 - (ii) the payment claim during the term or within three years of the termination of this Contract; and
 - (b) the Customer may only serve a payment schedule within one Business Day of service of the payment claim.
- 6.7 If the Customer fails to pay the Prices or any other payment under this Contract on or before the due date for payment, the Customer must, without prejudice to any other remedy, pay to Sydney Reo on written demand interest on the amount due:
- (a) calculated at the rate equal to the Specified Rate;
 - (b) accruing daily from the due date to the actual

- payment date; and
(c) capitalised monthly.
- 6.8 If a Sydney Reo makes a supply to the Customer or any other party (**Recipient**) under, or in connection with, this Contract, then the consideration for that supply (unless it is expressly stated to be inclusive of GST) is exclusive of GST.
- 6.9 The Customer must, in addition to and at the same time as any GST-exclusive consideration is payable or to be provided for the supply, pay to Sydney Reo an additional amount equal to any GST for which the Sydney Reo may be liable on that supply, without deduction or set-off of any other amount.
- 6.10 The Customer must pay GST to Sydney Reo if Sydney Reo has issued a Tax Invoice for the supply.
- 6.11 Any payment of Prices or other payments due by the Customer under this Contract must be made free and clear of any deductions or withholding, including set-off or counterclaim, except if that deduction or withholding is required or compelled by law.
- 6.12 If the Customer is required or compelled by law to make any deduction or withholding from any payment due under this Contract, the Customer must, to the full extent permitted by law, pay to Sydney Reo an additional amount sufficient to ensure that the amount received by Sydney Reo equals the full amount that would have been received by Sydney Reo if the deduction or withholding had not been required or compelled.
- 6.13 A certificate signed by a director, secretary or officer of Sydney Reo stating that an amount of money is payable by the Customer to Sydney Reo, or of any underlying matter including but not limited to stating that Sydney Reo has supplied or applied a particular amount of time or resources on, for or in providing any Goods in accordance with or for the purposes of this Contract, is conclusive evidence of that fact and the Customer must not, and waives any right to, object, and is barred from objecting, to the admissibility of such a certificate in any legal proceedings.
- 7 Force Majeure**
- 7.1 If Sydney Reo is prevented from, or delayed in, performing an obligation under this Contract due to a Force Majeure:
- (a) the obligations of Sydney Reo will be suspended to the extent that they are affected by the Force Majeure for so long as the Force Majeure continues, and the time for performing the obligation is extended by the duration of the Force Majeure; and
- (b) Sydney Reo will not be liable for any Loss suffered or incurred by the Customer as a result of, and to the extent that, Sydney Reo's performance of its obligations are affected by the Force Majeure.
- 7.2 If a Force Majeure prevents Sydney Reo from performing its obligations for a period of more than 90 days then Sydney Reo may, by seven days written notice to the Customer having immediate effect, terminate this Contract without prejudice to any rights which have accrued to Sydney Reo prior to termination.
- 7.3 If this Contract is terminated pursuant to clause 7.2, then the Customer must pay Sydney Reo for Goods supplied or provided under this Contract in the relevant period up to the date of termination.
- 7.4 Despite anything else in this Contract, Sydney Reo will not be in breach of this Contract or subject to any Liability for any delay or suspension in the performance of the Services arising as a result of:
- (a) a Force Majeure; or
- (b) a delay caused by the Customer.
- 8 Intellectual Property**
- 8.1 All intellectual property of Sydney Reo in any way related to the Goods shall remain Sydney Reo's property without any licence granted to the Customer to use it being implied except to the extent required to perform obligations under the Contract.
- 9 Consequential Loss and limitation of liability**
- 9.1 The Customer releases Sydney Reo from all claims for Consequential Loss arising out of or in connection with this Contract.
- 9.2 Subject to clause 9.3 and otherwise despite anything else in this Contract, so far as the Law permits, Sydney Reo is not liable to the Customer or any third party under contract, law of tort (including negligence), statute, in equity or otherwise for, and the Customer hereby releases Sydney Reo from, any Loss arising from or related to any Goods supplied.
- 9.3 Sydney Reo will only be liable to the extent that the Liability results from:
- (a) a material breach of any warranty in clause 11.1;
- (b) any willful contravention of any Laws or rights of third parties; or
- (c) gross recklessness.
- 9.4 Sydney Reo's total Liability to the Customer in relation to any cause of action under or in connection with this Contract or the supply of Goods (including breach of contract and negligence) is, to the extent permitted by Law, limited to the sum of the amounts payable by the Customer to Sydney Reo in accordance with the Quotation.
- 9.5 If the *Competition and Consumer Act 2010* (Cth) or any other legislation implies a condition or warranty into these Conditions in respect of Goods supplied, and Sydney Reo's liability for breach of that condition or warranty may not be excluded but may be limited, clause 9.4 does not apply to that liability and instead Sydney Reo's liability for any breach of that condition or warranty is limited to Sydney Reo (at its election) replacing the Goods or supplying equivalent goods, repairing the Goods, paying the cost of replacing the Goods or of acquiring equivalent goods, or paying the cost of having the Goods repaired, or more than one of those.
- 10 Termination**
- 10.1 Sydney Reo may terminate this Contract at any time and in Sydney Reo's sole discretion by giving the Customer seven days prior notice.
- 10.2 Sydney Reo may, by notice to the Customer, immediately terminate this Contract, without prejudice to Sydney Reo's rights at law or otherwise, if:
- (a) the Customer is in breach of the Customer's obligations under this Contract, and such breach is not remedied within seven days of the receipt of a notice from Sydney Reo, or if such breach is remedied but repeated within 90 days after the receipt of such a notice;
- (b) the Customer has failed to make a payment in accordance with the Contract; or
- (c) an Insolvency Event occurs.
- 10.3 If Sydney Reo terminates this Contract pursuant to clause 10.1, the Customer must pay for all Goods provided up to and including the date of termination.
- 10.4 Any termination of this Contract will not prejudice or affect the accrued Liabilities of either Party under this Contract.
- 10.5 The Customer may only cancel an Order if it obtains the prior written agreement of Sydney Reo and the following charges must be paid by the Customer:
- (a) for any cancellation occurring between Order placement and five business days prior to the contracted date of supply of the Goods, payment must be made for the amount the Customer agreed to pay for the Goods plus 15% and reduced by any amount that Sydney Reo is able to recover by selling the Goods to a third party; and
- (b) for any other cancellation or termination of the Order, the amount set out in the Order that the Customer agreed to pay for the Goods.
- 11 Representations and Warranties**

- 11.1 If the Customer does not advise Sydney Reo in writing of any fault, damage or defect in Goods or failure of Goods to comply with the terms of an Order made pursuant to these Conditions within two Business Days hours of delivery: (a) the Customer is deemed to have accepted the Goods and is deemed to agree that the Goods are not faulty, damaged or defective and comply the Order and the Contract; and (b) the Customer releases and discharges Sydney Reo from any Liability relating to any fault, damage or defect in the Goods or any failure of the Goods to comply with an Order or the Contract.
- 11.2 If the Customer advises Sydney Reo in writing of a fault, damage or defect in Goods or a failure of Goods to comply with the terms of a contract made pursuant to these Conditions within two Business Days of delivery then Sydney Reo may, if in its opinion the Customer's advice is reasonable and the Customer has not used the Goods, replace the Goods that appear to be faulty, damaged or defective or not in compliance with the terms of the Order and the Contract and Sydney Reo will have no, and the Customer hereby waives any right to claim Sydney Reo has any, additional liability to the Customer.
- 11.3 The Customer hereby waives, and releases Sydney Reo from any Liability with respect to, any right to claim Goods are faulty, damaged or defective by reason of the presence of rust, millscale or rolling seams except as provided for in *Australian Standard AS3600-2018 Concrete Structures*.
- 11.4 Unless otherwise agreed by Sydney Reo in writing, Sydney Reo may package Goods in its discretion and the Customer releases and discharges Sydney Reo from any Liability arising out of such bundling or packaging by Sydney Reo.
- 11.5 The Customer acknowledges that by entering into this Contract:
- (a) the Customer is capable of evaluating adequately the merits and risks associated with entering into and performing its obligations under this Contract;
 - (b) the Customer has relied on the Customer's own enquiries, and have not relied on any other conduct, representation, warranty, promise, statement or condition by Sydney Reo or on Sydney Reo's behalf or any of Sydney Reo's Personnel; and
 - (c) no representations, warranties, promises, undertakings, statements or conduct from Sydney Reo or any of Sydney Reo's Personnel, have induced or influenced the Customer to enter into or agree to any terms or conditions of this Contract, been relied on in any way, represented or warranted to the Customer as being accurate or been taken into account as important in the Customer's decision to enter into and agree to any of the terms of this Contract.
- 11.6 Except as expressly specified to the contrary in this Contract, all terms, conditions, representations, warranties, undertakings and inducements whether express, implied, written, oral, statutory or otherwise, are excluded from or in connection with this Contract, to the fullest extent permitted by law, and the Customer does not rely on and hereby disclaims any right or remedy against Sydney Reo in relation to that term, condition, representation or warranty.
- 11.7 If the Customer is a consumer for the purposes of the Australian Consumer Law under the *Consumer and Competition Act 2010 (Cth)*, Sydney Reo's Goods come with guarantees that cannot be excluded under Law, the Customer is entitled to a replacement or refund for a major failure and for compensation for any reasonably foreseeable loss or damage and the Customer is 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.
- 11.8 The Customer represents and warrants to Sydney Reo that:
- (a) the Customer has the right, power and authority to enter into and perform the Customer's obligations in accordance with this Contract;
 - (b) all corporate and other necessary action has been taken to authorise the signing and performance of this Contract; and
 - (c) this Contract is valid and legally binding on the Customer in accordance with the terms of this Contract.
- 11.9 Sydney Reo offers Goods by specification. The Customer decides what purpose to use the Goods for or (in the case of a purchase for re-supply) to re-supply them for and the Customer alone is responsible for determining its technical requirements for the purpose. The Customer is solely responsible for determining whether, and hereby releases Sydney Reo from any Claim regarding, any Goods Sydney Reo supplies is fit and suitable for the Customer's purposes. Any performance figures Sydney Reo provides are approximations and only for general guidance and a particular performance figure, even after allowing an approximation tolerance, may not be obtainable continuously or in all circumstances.
- 12 Indemnity**
- 12.1 The Customer indemnifies Sydney Reo against all Liability, including legal fees, costs and disbursements on a full indemnity basis determined without taxation, assessment or similar process and whether incurred or awarded against Sydney Reo, arising from or incurred in connection with:
- (a) the Customer's use or possession of the Goods;
 - (b) any breach of this Contract (including late payment) by the Customer;
 - (c) a claim of any kind by any of the Customer's Personnel or the Customer's clients;
 - (d) any claim relating to any damage or loss howsoever caused to any property owned, hired or leased by either the Customer or its clients;
 - (e) subject to (f) below, any claim relating to any damage or loss caused at any time to Sydney Reo equipment or property but only to the extent caused or contributed to by any exposure to harmful substances, misuse or neglect on the part of the Customer;
 - (f) any claim howsoever caused relating to any damage or loss caused to Sydney Reo equipment or property while in the control of the Customer or its agents or contractors;
 - (g) any claim by any person whomsoever, whether or not a party to this Contract or the Customer's Personnel, related to any act or omission of the Customer; and
 - (h) any claim resulting from the discharge or escape of any pollutant or waste material at any place where Sydney Reo supplying Goods to the Customer under this Contract..
- 12.2 The Customer releases Sydney Reo from any claim with respect to, and Sydney Reo shall not be liable for and may plead these Conditions in bar to any proceedings regarding, any loss or damage whatsoever, howsoever arising whether direct indirect or consequential and including injury, relating directly, indirectly or as a consequence of any damage, deterioration, deficiency or other fault or harm in the Goods provided by or on behalf of or in any arrangement with Sydney Reo or occasioned to or for the Customer or any third or other party and whether or not due to the negligence of Sydney Reo its servants or agents or any delay in delivery whether due to the negligence of Sydney Reo or any other party, or any breach of contract, strike or industrial action, or any other cause whatsoever.
- 12.3 The Customer releases Sydney Reo from any claim with respect to, and Sydney Reo shall not be liable for and may plead these Conditions in bar to any proceedings regarding, any:

- (a) defects or damages caused in whole or in part by misuse, abuse, neglect by the Customer or any other party transport, freight, charges installation, removal, labour or other costs relating thereto;
- (b) defects in Goods not manufactured by Sydney Reo and the Customer accepts that Sydney Reo will endeavour to pass on to the Customer the benefit of any claim made by Sydney Reo and accepted by the manufacturer under a warranty given by the manufacturer of such Goods provided that nothing contained in this clause shall limit the rights of the Customer to proceed against Sydney Reo pursuant to the Australian Consumer Law under the Consumer and Competition Act 2010 (Cth); and technical advice or assistance given or rendered by it to the Customer in connection with the manufacture construction or supply of Goods for or to the Customer.
- 12.4 Each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the Parties and survives termination, completion and expiration of this Contract. It is not necessary for a Party to incur expense or make any payment before enforcing a right of indemnity conferred by this Contract. The Customer must pay on demand any amount the Customer must pay under an indemnity in this Contract.
- 13 Waiver and Variation**
- 13.1 This Contract and any power, right or remedy available to Sydney Reo arising from this Contract may only be:
- (a) waived if in writing signed by Sydney Reo granting the waiver; or
- (b) varied if in writing signed by the Sydney Reo.
- 13.2 Sydney Reo's failure to exercise, or delay in exercising, any power, right or remedy does not operate as a waiver of that power, right or remedy, nor does any single exercise of a power, right or remedy preclude any other or further exercise of it or the exercise of any other power, right or remedy.
- 14 Assignment and Subcontracting**
- 14.1 Sydney Reo may assign or subcontract its rights or obligations under this Contract without the Customer's prior written consent.
- 14.2 The Customer may not assign any of its rights or obligations under this Contract without Sydney Reo's prior written consent.
- 15 Notices**
- 15.1 Any notice, approval, consent or other communication in relation to this Contract must be:
- (a) in writing;
- (b) given by being:
- (i) left at or sent by prepaid ordinary post to the last notified address of the Party;
- (ii) sent by facsimile to the last notified facsimile number of the Party; or
- (iii) sent by email to the last notified email address of the Party.
- 15.2 A notice, approval, consent or other communication is deemed to be given and received:
- (a) if it is delivered by 5pm on a Business Day, on that day, or if delivered after 5pm, on the next Business Day;
- (b) if sent by mail within Australia, two Business Days after posting, or if sent by mail to or from outside Australia, seven Business Days after posting;
- (c) if sent by facsimile before 5pm on a Business Day and the sender receives a complete transmission report, on the day of transmission, and otherwise on the next Business Day after the sender receives a complete transmission report;
- (d) if sent by email before 5pm on a Business Day and the sender receives confirmation on its server that the message has been sent, on the day it is sent, and otherwise on the next Business Day after the sender receives confirmation on its server that the message has been sent.
- 15.3 The address of each Party is the address set out in the Quotation or another address of which that Party may from time to time give notice to each other Party.
- 16 Further Assurances**
- 16.1 Each Party must, at its own expense, at the request of the other Party, to do everything reasonably necessary to give full effect to this Contract and the rights and obligations of the Parties under it, including the execution of documents.
- 17 Legislation**
- 17.1 Any Law which operates at any time to vary the obligations of the Parties in connection with this Contract with the result that Sydney Reo's rights, powers or remedies are adversely affected is excluded except to the extent that its exclusion is prohibited or rendered ineffective by Law.
- 18 Certificates**
- 18.1 Sydney Reo may give the Customer a certificate specifying the amount due and payable or other matter under or in connection with this Contract as at any date. The certificate constitutes conclusive evidence of the amount or matter, unless it is proved to be incorrect.
- 19 Severability**
- 19.1 Any provision in this Contract which is invalid or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent only of such invalidity or unenforceability and will not invalidate the remaining provisions of this Contract.
- 20 Relationship between Parties**
- 20.1 Nothing in this Contract, whether express or implied, creates a relationship of employment, trust, agency or partnership between the Parties.
- 21 Survival**
- 21.1 Any indemnity or any obligation of confidence under this Contract is independent and survives termination or expiry of this Contract. Any other term by its nature intended to survive termination or expiry of this Contract survives termination or expiry of this Contract.
- 22 Terms are exclusive**
- 22.1 This Contract constitutes the entire agreement between the Parties in connection with the supply of the Goods between the Customer and Sydney Reo and supersedes all previous agreements or understandings between the Parties in connection with its subject matter. All other terms and conditions, express or implied, including the terms of the United Nations Convention on Contracts for the International Sale of Goods, 1980 are excluded to the fullest extent permitted by Law.
- 23 Governing law and jurisdiction**
- 23.1 This Contract will be governed by the Laws of the State of New South Wales.
- 23.2 The parties submit to the exclusive jurisdiction of the courts of the State of New South Wales and any courts which may hear appeals from those courts in respect of any proceedings in connection with this Contract.
- 24 Privacy Notice and Consent**
- 24.1 Sydney Reo may, before, during or after the supply of Goods to the Customer on any basis other than payment on delivery, give the following information about the Customer to a credit reporting agency:
- (a) name, gender, address (and previous two addresses), date of birth, name of employer, and driver's licence number;
- (b) that the Customer has applied for credit and the

- (c) amount;
 - (d) that Sydney Reo is a current credit provider to the Customer;
 - (e) payments which are overdue by more than 60 days, and for which debt collection action has started;
 - (f) that payments are no longer overdue in respect of any default;
 - (g) that, in the opinion of Sydney Reo, the Customer has committed a serious credit infringement (that is, acted fraudulently or shown an intention not to comply with credit obligations); or
 - (h) cheques drawn by the Customer for \$100 or more which have been dishonoured more than once,
- for the purpose of obtaining a consumer credit report, or allowing the credit reporting agency to create or maintain a credit information file containing information, about the Customer or for any related purpose.

24.2 Sydney Reo may obtain:

- (a) information about the Customer from a business which provides information about the commercial creditworthiness of persons; and
 - (b) a consumer credit report containing information about the Customer from a credit reporting agency,
- for the purpose of assessing any initial or ongoing credit or for any related purpose.

24.3 Sydney Reo may exchange information about the Customer with those credit providers and suppliers (including trade references):

- (a) of which Sydney Reo is, or becomes, aware; and
 - (b) named in a consumer credit report issued by a credit reporting agency,
- for the purpose of assessing an application for credit, notifying other credit providers (including trade references) of a default, exchanging information with other credit providers (including trade references) as to the status of credit where the Customer is in default with other credit providers (including trade references), or assessing the Customer's creditworthiness or for any related purpose.

24.4 The information obtained or disclosed about the Customer in accordance with these Conditions may include a credit report and anything about the Customer's creditworthiness, credit standing or credit history or any related information.

24.5 Without limiting the foregoing, the Customer consents and authorises Sydney Reo at any time and from time to time to:

- (a) obtain information about the Customer's commercial activities and personal or commercial credit worthiness from:
 - (i) the bank or trade referee as disclosed in this Application for Credit Account; or
 - (ii) any other credit provider; or
 - (iii) any credit reporting agency; and
- (b) use, disclose or exchange with other credit providers information about the Customer's personal or commercial credit arrangements in order to assess this Application for Credit Account, monitor credit worthiness and collect overdue accounts;
- (c) disclose to any credit opening agency any personal or commercial information (including an opinion) relating to the Customer to maintain or create a credit information file containing information about the Customer; and
- (d) disclose the contents of a credit report by credit reporting agency to contractors or agents of Sydney Reo, including Sydney Reo's solicitors or collection agents for collection purposes.

25 Definition and Interpretation

25.1 In this Contract, unless the contrary intention appears:

Authorities means the Commonwealth and applicable State or Territory governments, any local or municipal council and any other governmental body, authority or agency.

Business Day means a day on which trading banks are open for business in Sydney, New South Wales.

Commencement Date means the date of commencement of this Contract as set out in the Particulars, and if not specified, the date referred to in clause 1.3.

Conditions means these terms and conditions of sale, as updated or amended from time to time by Sydney Reo.

Consequential Loss means all indirect and consequential loss, whether in contract, tort (including negligence), under statute or otherwise and without limiting the generality of the foregoing include loss of profits, revenue and anticipated or expected profits or revenue, business interruption, loss of market share, loss of business opportunity, borrowing costs, damage to reputation or credit rating, increased overhead or holding costs, economic loss of any other kind and any loss suffered as a result of any claim or claims of third parties.

Contract means the Quotation between Sydney Reo and the Customer for the supply of Goods and is subject to these Conditions.

Customer means the party named in the Quotation or Order as the client or customer or, if no client or customer is named, the party who requests Sydney Reo to provide the Goods provided that where the party who requests Sydney Reo to provide the Goods is a person, and that person made the request as an employee of the entity, then that entity.

Date for Completion means the later of the date on which Sydney Reo is to provide the Goods as specified in the Particulars or any later date as Sydney Reo may advise the Customer in writing from time to time.

Force Majeure means any event or circumstance which:

- (a) is beyond the control of the Party affected by the event or circumstance;
- (b) causes or results in delay in or prevention of, the performance of any of the affected Party's obligations under this Contract;
- (c) cannot be prevented, overcome or remedied by the exercise of reasonable care, proper precautions and the consideration of reasonable alternatives; and
- (d) could not have been reasonably foreseen.

Goods means the goods specified in the Quotation, if any.

GST means a goods and services tax or any similar tax which is imposed in Australia and has effect during the term of this Contract.

Insolvency Event means:

- (a) the Customer's board passes a resolution under section 436A of the *Corporations Act 2001* (Cth);
- (b) the Customer is placed into administration pursuant to Part 5.3A of the *Corporations Act 2001* (Cth);
- (c) any step is taken to enter into a deed of arrangement;
- (d) an application is made to a court for the Customer's winding up;
- (e) the Customer resolve that the Customer be wound up voluntarily;
- (f) a winding up order is made in respect of the Customer;
- (g) any step is taken to appoint a receiver or receiver and manager to the Customer;
- (h) a court orders that there be a meeting of the Customer's creditors or members for any purpose related to Part 5.1 of the *Corporations Act 2001* (Cth);
- (i) any step is taken by a mortgagee or security holder to take possession or dispose of any of the Customer's assets, operations or business;
- (j) the Customer ceases to be able to pay the Customer's debts as they become due;
- (k) the Customer ceases to carry on business or disposes of the whole or any part of its operations or business other than in the ordinary course of

- business; or
(l) the Customer informs Sydney Reo or any of the Customer's creditors that the Customer is insolvent.

Law means any statute, decree, convention, act, circular, rule, regulation, subordinate legislation, bylaw, judgment, common law, equity, ruling by any Authorities whether now or at any time in future in effect.

Liability means any liability or obligation (whether actual, contingent or prospective), including for any Loss irrespective of when the acts, circumstances, events or matters giving rise to the liability occurs.

Loss means all damage, loss, cost, claim, liability, obligation or expense, including legal costs and expenses on a full indemnity basis of any kind.

Order means the Customer's request for the supply of Goods, as set out by the Customer's purchase order, or the Customer's written reference to Sydney Reo's Quotation, as the case may be.

Particulars means any schedule of design and performance specifications for the Goods accompanying, forming part of or referred to by the Quotation.

Parties means the parties in this Contract as specified in the Order or Quotation.

Personnel in respect of a Party, means the Party's directors, officers, employees, consultants, agents, affiliates, contractors and subcontractors.

PPSA means the *Personal Property Securities Act 2009* (Cth) as amended from time to time and including regulations made under it at any time.

Prices means the amounts payable by the Customer to Sydney Reo as set out in the Quotation, as varied or adjusted in accordance with this Contract.

Quotation means the document entitled "proposal scope", "scope", or "quotation", or such other similar document, that Sydney Reo provides to the Customer containing a schedule of rates and amounts to be paid by the Customer and the corresponding Goods to be provided by Sydney Reo, or if no such document has been provided by Sydney Reo to the Customer then the Order provided by the Customer.

related body corporate means:

- (a) a holding company of a party; or
- (b) a subsidiary of a party; or

- (c) a subsidiary of a holding company of a party.

Security Interest has the meaning given to it in the PPSA.

Site means the site or sites specified in the Particulars and if not specified, the site where the Goods are to be delivered or the Goods are to be collected (as the case may be) under this Contract.

Specified Rate means the interest rate specified in the Particulars as the Specified Rate and if not specified in the Particulars then means an interest rate equal to 4% above the Cash Rate Target set by the Reserve Bank of Australia.

Sydney Reo means Amiran Australia Pty Ltd ABN 19 652 307 447 or a related body corporate as specified in the Quotation.

Tax Invoice has the same meaning as in the *A New Tax System (Goods) Tax Act 1999* (Cth).

Taxes means taxes (including a GST) levies, imposts, deductions, charges, withholdings and duties (including stamp and transaction duties), together with any related interest, penalties, fines and other statutory charges.

In this Contract unless the contrary appears:

- (a) a reference to this Contract or another instrument includes any variation or replacement of either of them;
- (b) the singular includes the plural and vice versa;
- (c) a reference to person includes a firm, a body corporate, an unincorporated association or an authority;
- (d) a reference to a person includes a reference to the person's executives, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns;
- (e) if a period of time is specified and dates from a given day or the day of an actual event, it is to be calculated exclusive of that day;
- (f) a reference to a clause is a reference to a clause in this Contract;
- (g) a reference to a third person or a third party is a reference to a person who is not a party to this Contract; and
- (h) a reference to "A\$", "\$A", "dollar" or "\$" is a reference to Australian currency.

25.3 Headings are inserted for convenience only and do not affect the interpretation of this Contract