

## Application for Commercial Credit

**Effective on and from November 2023**

This document is an application for commercial credit to the Liberty Primary and InfraBuild business groups, which for the purpose of this application consists of the following companies and their trading businesses:

- (a) **The Australian Steel Company (Operations) Pty Ltd** ACN 069 426 955;
- (b) **InfraBuild Trading Pty Limited** ACN 007 519 646 ;
- (c) **InfraBuild Construction Solutions Pty Limited** ACN 004 148 289;
- (d) **InfraBuild Wire Pty Limited** ACN 000 010 873;
- (e) **InfraBuild NSW Pty Limited** ACN 003 312 892;
- (f) **XMS Holdings Pty Limited** ACN 008 742 014;
- (g) **P&T Tube Mills Pty Ltd** ACN 010 469 977;
- (h) **Austube Mills Pty Limited** ACN 123 666 679;
- (i) **InfraBuild Manufacturing Pty Ltd** ACN 623 194 070;
- (j) **InfraBuild (Newcastle) Pty Ltd** ACN 623 285 718;
- (k) **Liberty InfraBuild Ltd** ACN 631 112 108;
- (l) **InfraBuild Australia Pty Ltd** ACN 631 112 457;
- (m) **InfraBuild NZ Limited** CN 1047789;
- (n) **OneSteel Recycling Hong Kong Limited** CN 849 675;
- (o) **OneSteel Recycling Pty Ltd** ACN 002 707 262;
- (p) **SSX Services Pty Ltd** ACN 083 090 831;
- (q) **Steeforce Holdings Pty Ltd** ACN 120 736 638;
- (r) **Steeforce Australia Pty Ltd** ACN 093 284 078;
- (s) **Steeforce Sydney Pty Ltd** ACN 110 268 829;
- (t) **Austeel Trading Pty Ltd** ACN 110 146 515;
- (u) **Steeforce China Pty Ltd** ACN 114 786 337;
- (v) **Dalian Steeforce Hi-Tech Co Ltd** 210241400000839;
- (w) **Dalian Austeel Trading Pty Ltd** 912102137969189679; and
- (x) any related body corporate (as that term is defined in the Corporations Act 2001 Cth) of any of them from time to time.

(collectively “**InfraBuild**”) and

- (a) **OneSteel Manufacturing Pty Limited** ACN 004 651 325;
- (b) **Liberty Primary Metals Australia Pty Ltd** ACN 631 112 573;
- (c) **Arrium Mining Services Asia Pty Ltd** ACN 139 0655;
- (d) **Whyalla Ports Pty Ltd** ACN 153 225 364;
- (e) **Tahmoor Coal Pty Ltd** ACN 076 663 968;
- (f) **Bargo Collieries Pty Ltd** ACN 000 970 276; and
- (g) any related body corporate (as that term is defined in the Corporations Act 2001 (Cth) of any of them from time to time.

(collectively “**Liberty Primary**”).

If the credit application is accepted, a commercial credit account will then exist on the terms and conditions set out in this document between the Customer and the entity(s) you have nominated as your supplier and the terms of the following documents attached:

- (a) Deed of Guarantee and Indemnity (Liberty Primary)
- (b) Deed of Guarantee and Indemnity (InfraBuild)
- (c) Liberty Primary Standard Terms and Conditions of Sale;
- (d) InfraBuild Standard Terms and Conditions of Sale; and
- (e) Terms and Conditions of contract for supply of Goods and Works (only applies to Goods supplied or works provided by InfraBuild Construction Solutions Pty Ltd).

Note: Terms defined in the applicable enclosed standard terms and conditions of sale (c – e) have the same meaning in this application form.

Terms and conditions are available on the InfraBuild and Liberty Primary websites. Customers should familiarise themselves with those terms, as they are updated from time to time.

The credit limit will be cumulative across all of the companies listed above. Termination of a commercial credit account terminates credit with all the companies above.

The approval and existence of a commercial credit account with the companies above does not in itself create for the Customer any distribution or purchase rights in respect of any goods sold or delivered by each company above– such rights must be separately obtained from the relevant business (and supplier within that business).

#### **Privacy Statement**

The companies above collect the personal information requested in this form for the purpose of determining whether or not to extend commercial credit. The companies above may also collect personal information from external service providers for the purpose of determining whether or not to extend commercial credit. This information may from time to time be disclosed to organisations from whom the companies above receive external services.

You may access your personal information retained by Liberty Primary and InfraBuild on request. For further information regarding privacy policy please visit your nominated supplier's web site at [www.infrabuild.com](http://www.infrabuild.com) for InfraBuild and [www.libertygfg.com](http://www.libertygfg.com) for Liberty Primary.

*Customer:*

1. Please complete and sign the Application for Commercial Credit. If your application relates to InfraBuild and Liberty Primary businesses (as defined above), then please tick both the Liberty Primary and InfraBuild where indicated below for “nominated supplier” and execute and return both deeds of guarantee and indemnity (one is for Liberty Primary and the other for InfraBuild).
2. Provide any relevant financial attachments to support your application.
3. Once faxed/emailed, please send the ORIGINAL form and any attachments to your account manager at address indicated below.

Fax: .....

Return Postal Address:

.....

*(internal use only) Sales:*

Business: .....

Location Code: .....

Account Manager: .....

Mobile Ph: .....

Market Segment: .....

Nominated Supplier – Liberty Primary  InfraBuild

Trading Name

Legal Entity (if different)

Date Started  ACN  ABN

Type of Entity  Public company  Private company  Trustee  Partnership  Sole trader  Government

Parent Company  Parent ACN

Estimated Monthly Trade \$

Statement Address  Invoice Address (if different)   
 mark 'X' if statement not required

Delivery Address

Preferred Method of Receiving Invoices  Fax  Post  E-mail Address   Electronic / EDI Statements

Phone  Fax   
 Email  Mobile

Website  Accountant's Email Address

Accounts Contact Name  Phone

Bank Account Name

Bank Details BSB  Account Number

Have you ever traded with Liberty Primary or InfraBuild?  If yes, please provide Account Code

Trade References

1	<input type="text"/>	Phone	<input type="text"/>
2	<input type="text"/>	Phone	<input type="text"/>
3	<input type="text"/>	Phone	<input type="text"/>

**Details of directors, partners, proprietors**

Full name (no shortened or abbreviated)	Date of Birth	Residential Address (no PO addresses)
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

- The Customer declares and agrees –
- That the information in this Application and any attachments is true and accurate.
  - The credit to be provided to the Customer is to be applied wholly or predominantly for business or investment purposes (or for both purposes).
  - To be bound by the applicable standard terms and conditions of sale enclosed with this form as varied from time to time without notice to the Customer.
  - This Application may be signed only by the person(s), directors, or officers authorised to sign on behalf of the Customer.
  - To supply balance sheet and profit and loss accounts on request.

**IMPORTANT**  
 You should **not** sign this declaration unless this credit is wholly or predominantly for business or investment purposes. By signing this declaration you may **lose** your protection under the National Credit Code.

Signed for the Customer by: Print Name: <input type="text"/> Signature: <input type="text"/> Title: <input type="text"/>	Date <input type="text"/>
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\*\*\*\* TO BE COMPLETED IF LIBERTY PRIMARY IS NOMINATED SUPPLIER- PLEASE ENSURE ALL FIELDS ARE COMPLETED \*\*\*

## Deed of Guarantee and Indemnity [LIBERTY PRIMARY]

In this document ("Guarantee"):

"**Guarantor**" means the person(s) listed below as guarantor (jointly and severally);

"**InfraBuild**" means any entity listed from time to time as forming part of the InfraBuild Group in the InfraBuild Standard Terms and Conditions of Sale (available at [www.infrabuild.com](http://www.infrabuild.com)) including those entities listed on the front page of this document;

"**Ipsa Facto Event**" means the Customer is the subject of an announcement, application, compromise, arrangement, managing controller, or administration as described in section 415D(1), 434 J(1) or 451 (E)(1) of the *Corporations Act 2001 (Cth)* or any process which under any law with a similar purpose may give rise to a stay on, or prevention of, the exercise of contractual rights;

"**Liberty Primary**" means OneSteel Manufacturing Pty Limited ACN 004 651 325, Liberty Primary Metals Australia Pty Ltd ACN 631 112 573; Arrium Mining Services Asia Pty Ltd CN 139 0655; Whyalla Ports Pty Ltd ACN 153 225 364; Tahmoor Coal Pty Ltd ACN 076 663 968; Bargo Collieries Pty Ltd ACN 000 970 276; and any related body corporate (as that term is defined in the *Corporations Act 2001 (Cth)*) of any of them from time to time;

"**Other Default**" means a failure to pay any monies owed by the Customer to InfraBuild under the Other Terms;

"**Other Terms**" means the terms applicable to a sale notified by InfraBuild to the Customer before the date of this Guarantee, or otherwise agreed by InfraBuild and the Customer;

"**Secured Monies**" means all monies owing by the Customer to Liberty Primary from time to time in respect of Goods supplied and all costs and expenses which may be payable by the Customer to Liberty Primary.

"**Terms and Conditions**" means the Liberty Primary Standard Terms and Conditions of Sale applicable to the Customer and published on Liberty Primary's website from time to time, and unless otherwise stated, terms used or defined in the Terms and Conditions have the same meaning in the Guarantee. The Customer acknowledges and agrees that it has read, and will continue to keep appraised of, those terms and conditions, as they are updated from time to time on Liberty Primary's website.

In consideration of Liberty Primary at the request of the Guarantor providing credit to the Customer for Goods supplied from time to time the Guarantor agrees to the following terms:

### 1. Guarantee

The Guarantor guarantees to Liberty Primary the due payment by the Customer of the Secured Monies.

### 2. Indemnity

The Guarantor indemnifies Liberty Primary against all losses, damages, costs and expenses which Liberty Primary may suffer as a consequence of any failure by the Customer to pay any of the Secured Monies by the due date.

### 3. Payment

On any default by the Customer to pay any of the Secured Monies or the occurrence of an Ipsa Facto Event or Other Default, the Guarantor shall forthwith on demand by Liberty Primary pay such Secured Monies to Liberty Primary, provided Liberty Primary has made a reasonable attempt to demand payment from the Customer.

### 4. Charge

The Guarantor agrees to:

- (a) charge in favour of Liberty Primary all beneficial interests (freehold and leasehold) in real estate held now or in the future by it as security for payment of all and any moneys payable by the Guarantor under this Guarantee;
- (b) execute any instrument of security in form requested by Liberty Primary.

### 5. Liability Unaffected

The liability of the Guarantor under this Guarantee is not affected by:

- (a) the granting of time or any other indulgence to the Customer;
- (b) the release, waiver or variation of any of Liberty Primary's rights against the Customer or any neglect or omission to enforce such rights;
- (c) any other things which under the law relating to sureties would or might but for this provision release the Guarantor in whole or in part from the obligations under this Guarantee;
- (d) the release of any one or more Guarantor by Liberty Primary;
- (e) amendment of the Terms and Conditions or Other Terms;
- (f) the Customer:
  - (i) being an individual committing an act of bankruptcy or becoming an insolvent under administration;

(ii) being a body corporate becoming an externally administered body corporate or having an application for winding up filed against it;

(g) the Customer's obligations for payment becoming illegal, void, voidable or unenforceable in whole or in part;

(h) payment by the Customer to Liberty Primary to the extent that payment might be void or voidable for any reason (including under the Bankruptcy Act 1966 or the Corporations Act 2001);

(i) failure to give notice of any matter to the Guarantor (including notice of default by the Customer);

(j) the Guarantor ceasing to be an officer of the Customer;

(k) the termination of any agreement between Liberty Primary and the Customer; or

(l) the withdrawal of or any variation to the credit provided by Liberty Primary to the Customer, including without limitation any increase in credit limits.

## 6. Waiver of Rights

The Guarantor waives any rights as surety or indemnifier (legal, equitable, statutory or otherwise) to the maximum extent permitted by law which may at any time be inconsistent with any provisions of the Guarantee.

## 7. Continuing Obligation

The Guarantee is a continuing security and remains in force until the Secured Monies have been fully paid.

## 8. Costs

The Guarantor must pay Liberty Primary all costs and expenses incurred by Liberty Primary in connection with the Guarantee, including legal costs (on a solicitor-client basis), stamp duty and costs incurred in the recovery of monies owing by the Customer to Liberty Primary or in otherwise

enforcing Liberty Primary's rights against the Customer under the Terms and Conditions or the Guarantor under the Guarantee.

## 9. Severance

(a) If a provision of the Guarantee, would but for this clause be unenforceable, the provision must be read down to the extent necessary to avoid that result;

(b) If the provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of this Guarantee.

## 10. Applicable Law

This document is governed by the law of the State or Territory stated as applicable to the relevant Terms and Conditions and the courts of that State or Territory have non-exclusive jurisdiction in connection with this document.

## 11. Liberty Primary May Assign

Without notice to the Guarantor or the Customer, Liberty Primary may assign to any person:

(a) the whole or any part of a debt comprised in the Secured Money; and/or

(b) this Guarantee including the benefit of any indemnity in this Guarantee.

## 12. Final Discharge

Even when the Guarantor does not owe any money to Liberty Primary, Liberty Primary is not obliged to discharge the Guarantee if in Liberty Primary's opinion:

(a) within a reasonable time the Guarantor might owe money to Liberty Primary; or

(b) a payment made to Liberty Primary might be void or voidable for any reason (including under the Bankruptcy Act 1966 or the Corporations Act 2001).

The guarantor acknowledges that they have read and understood this guarantee and, prior to its execution, have had the opportunity to obtain independent legal and/or financial advice.

***Executed as a Deed***

Name of Customer \_\_\_\_\_

Name of Guarantor	Name of Guarantor
Signature of Guarantor	Signature of Guarantor
Address of Guarantor	Address of Guarantor
Name of Witness	Name of Witness
Signature of Witness	Signature of Witness
Date	Date
Name of Guarantor	Name of Guarantor
Signature of Guarantor	Signature of Guarantor
Address of Guarantor	Address of Guarantor
Name of Witness	Name of Witness
Signature of Witness	Signature of Witness
Date	Date

\*\*\*[TO BE COMPLETED IF INFRABUILD IS NOMINATED SUPPLIER – PLEASE ENSURE ALL FIELDS ARE COMPLETED]\*\*\*

## Deed of Guarantee and Indemnity [INFRABUILD]

In this document ("Guarantee"):

"**Guarantor**" means the person(s) listed below as guarantor (jointly and severally);

"**InfraBuild**" means each and all of Liberty InfraBuild Ltd ACN 631 112 108, InfraBuild Australia Pty Ltd ACN 631 112 457, InfraBuild NZ Limited CN 1047789, OneSteel Recycling Hong Kong Limited CN 849 675, InfraBuild Trading Pty Limited ACN 007 519 646, The Australian Steel Company (Operations) Pty Ltd ACN 069 426 955, InfraBuild Wire Pty Limited ACN 000 010 873, InfraBuild NSW Pty Limited ACN 003 312 892, InfraBuild Construction Solutions Pty Limited ACN 004 148 289, OneSteel Recycling Pty Limited ACN 002 707 262, Austube Mills Pty Limited ACN 123 666 679, XMS Holdings Pty Limited ACN 008 742 014, P&T Tube Mills Pty Ltd ACN 010 469 977, InfraBuild (Newcastle) Pty Ltd ABN 50 623 285 718, InfraBuild (Manufacturing) Pty Ltd ABN 38 623 194 070, SSX Services Pty Limited ACN 083 090 831, Steelforce Holdings Pty Ltd ACN 120 736 638, Steelforce Australia Pty Ltd ACN 093 284 078, Steelforce Sydney Pty Ltd ACN 110 268 829, Austeel Trading Pty Ltd ACN 110 146 515, Steelforce China Pty Ltd ACN 114 786 337, Dalian Steelforce Hi-Tech Co Ltd 210241400000839, Dalian Austeel Trading Pty Ltd 912102137969189679 and any related body corporate (as that term is defined in the *Corporations Act 2001* (Cth)) of any of them from time to time;

"**IpsO Facto Event**" means the Customer is the subject of an announcement, application, compromise, arrangement, managing controller, or administration as described in section 415D(1), 434J(1) or 451E(1) of the *Corporations Act 2001* (Cth) or any process which under any law with a similar purpose may give rise to a stay on, or prevention of, the exercise of contractual rights;

"**Liberty Primary**" means any entity listed from time to time as forming part of the Liberty Primary Group in the Liberty Primary Standard Terms and Conditions of Sale (available at [www.libertygfg.com](http://www.libertygfg.com));

"**Other Default**" means a failure to pay any monies owed by the Customer to Liberty Primary under the Other Terms;

"**Other Terms**" means the terms applicable to a sale notified by Liberty Primary to the Customer before the date of the Guarantee, or otherwise agreed by InfraBuild and the Customer;

"**Secured Monies**" means all monies owing by the Customer to InfraBuild from time to time in respect of Goods supplied and all costs and expenses which may be payable by the Customer to InfraBuild;

"**Terms and Conditions**" means the InfraBuild Standard Terms and Conditions of Sale applicable to the Customer and published on InfraBuild's website from time to time, and

unless otherwise stated, terms used or defined in the Terms and Conditions have the same meaning in the Guarantee.

The Customer acknowledges and agrees that it has read, and will continue to keep apprised of, those terms and conditions, as they are updated from time to time on InfraBuild's website.

In consideration of InfraBuild at the request of the Guarantor providing credit to the Customer for Goods supplied from time to time the Guarantor agrees to the following terms:

### 1. Guarantee

The Guarantor guarantees to InfraBuild the due payment by the Customer of the Secured Monies.

### 2. Indemnity

The Guarantor indemnifies InfraBuild against all losses, damages, costs and expenses which InfraBuild may suffer as a consequence of any failure by the Customer to pay any of the Secured Monies by the due date.

### 3. Payment

On any default by the Customer to pay any of the Secured Monies or the occurrence of an IpsO Facto Event or Other Default the Guarantor shall forthwith on demand by InfraBuild pay such Secured Monies to InfraBuild, provided InfraBuild has made a reasonable attempt to demand payment from the Customer.

### 4. Charge

The Guarantor agrees to:

- (a) charge in favour of InfraBuild all beneficial interests (freehold and leasehold) in real estate held now or in the future by it as security for payment of all and any moneys payable by the Guarantor under this Guarantee;
- (b) execute any instrument of security in form requested by InfraBuild.

### 5. Liability Unaffected

The liability of the Guarantor under this Guarantee is not affected by:

- (a) the granting of time or any other indulgence to the Customer;

- (b) the release, waiver or variation of any of InfraBuild's rights against the Customer or any neglect or omission to enforce such rights;
- (c) any other things which under the law relating to sureties would or might but for this provision release the Guarantor in whole or in part from the obligations under this Guarantee;
- (d) the release of any one or more Guarantor by InfraBuild;
- (e) amendment of the Terms and Conditions or the Other Terms;
- (f) the Customer:
  - (i) being an individual committing an act of bankruptcy or becoming an insolvent under administration;
  - (ii) being a body corporate becoming an externally-administered body corporate or having an application for winding up filed against it;
- (g) the Customer's obligations for payment becoming illegal, void, voidable or unenforceable in whole or in part;
- (h) payment by the Customer to InfraBuild to the extent that payment might be void or voidable for any reason (including under the Bankruptcy Act 1966 or the Corporations Act 2001);
- (i) failure to give notice of any matter to the Guarantor (including notice of default by the Customer);
- (j) the Guarantor ceasing to be an officer of the Customer;
- (k) the termination of any agreement between InfraBuild and the Customer; or
- (l) the withdrawal of or any variation to the credit provided by InfraBuild to the Customer including without limitation any increase in credit limits.

**6. Waiver of Rights**

The Guarantor waives any rights as surety or indemnifier (legal, equitable, statutory or otherwise) to the maximum extent permitted by law which may at any time be inconsistent with any provisions of the Guarantee.

**7. Continuing Obligation**

The Guarantee is a continuing security and remains in force until the Secured Monies have been fully paid.

**8. Costs**

The Guarantor must pay InfraBuild all costs and expenses incurred by InfraBuild in connection with the Guarantee, including legal costs (on a solicitor-client basis), stamp duty and costs incurred in the recovery of monies owing by the Customer to InfraBuild or in otherwise enforcing InfraBuild's rights against the Customer under the Terms and Conditions or the Guarantor under the Guarantee.

**9. Severance**

- (a) If a provision of the Guarantee, would but for this clause be unenforceable, the provision must be read down to the extent necessary to avoid that result;
- (b) If the provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of this Guarantee.

**10. Applicable Law**

This document is governed by the law of the State or Territory stated as applicable to the relevant Terms and Conditions and the courts of that State or Territory have non-exclusive jurisdiction in connection with this document.

**11. InfraBuild May Assign**

Without notice to the Guarantor or the Customer, InfraBuild may assign to any person:

- (a) the whole or any part of a debt comprised in the Secured Money; and/or
- (b) this Guarantee including the benefit of any indemnity in this Guarantee.

**12. Final Discharge**

Even when the Guarantor does not owe any money to InfraBuild, InfraBuild is not obliged to discharge the Guarantee if in InfraBuild's opinion:

- (a) within a reasonable time the Guarantor might owe money to InfraBuild; or
- (b) a payment made to InfraBuild might be void or voidable for any reason (including under the Bankruptcy Act 1966 or the Corporations Act 2001).

The guarantor acknowledges that they have read and understood this guarantee and, prior to its execution, have had the opportunity to obtain independent legal and/or financial advice.

**Executed as a Deed**

Name of Customer \_\_\_\_\_

Name of Guarantor	Name of Guarantor
Signature of Guarantor	Signature of Guarantor
Address of Guarantor	Address of Guarantor
Name of Witness	Name of Witness
Signature of Witness	Signature of Witness
Date	Date
Name of Guarantor	Name of Guarantor
Signature of Guarantor	Signature of Guarantor
Address of Guarantor	Address of Guarantor
Name of Witness	Name of Witness
Signature of Witness	Signature of Witness
Date	Date



**Liberty Primary Standard Terms and Conditions of Sale - Effective November 2023**

**[Note: these Terms and Conditions are subject to change - see clause 17.]**

**In this document:**

- (a) **"Accession"** means any Goods which are installed in or affixed to other goods;
- (b) **"ACL"** means the *Australian Consumer Law* which is contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth);
- (c) **"Liberty Primary Group"** means OneSteel Manufacturing Pty Limited ACN 004 651 325, Liberty Primary Metals Australia Pty Ltd ACN 631 112 573; Arrium Mining Services Asia Pty Ltd CN 139 0655; Whyalla Ports Pty Ltd ACN 153 225 364; Tahmoor Coal Pty Ltd ACN 076 663 968; Bargo Collieries Pty Ltd ACN 000 970 276; and any related body corporate (as that term is defined in the *Corporations Act 2001* (Cth) of any of them from time to time;
- (d) **"Amount Payable"** means, at any time, all amounts payable by the Customer to any member of the Liberty Primary Group at that time (whether or not those amounts have become due for payment under clause 4 or any other provision of the Terms and Conditions) in connection with the Goods or a Contract (including, without limitation, any invoiced amount, interest, fees, costs or expenses);
- (e) **"Customer"** means the customer specified in an application for commercial credit (or if there is no application, the person placing the Order, or on whose behalf the Order is placed, with the Supplier);
- (f) **"Default"** is defined in clause 8;
- (g) **"Contract"** means:
  - (i) any contract to which these Terms and Conditions are expressed to form part; and,
  - (ii) for the supply of Goods pursuant to an Order, the contract (which includes these Terms and Conditions) formed for the supply of the Goods to the Customer upon an Order Acknowledgment;
- (h) **"Goods"** means any goods, products, services or materials supplied or to be supplied by the Supplier at any time and from time to time including, without limitation, any goods specified in an Order Acknowledgement or invoice;
- (i) **"Order"** is an order or offer to purchase described in clause 1;
- (j) **"Order Acknowledgment"** is defined in clause 1;
- (k) **"Processed Goods"** means Goods which after their delivery become part of a product or mass by being manufactured, processed, assembled, commingled or otherwise dealt with in such a way that their identity is lost in the product or mass;
- (l) **"PPSA"** means the *Personal Property Securities Act 2009* (Cth);
- (m) **"Supplier"** means:
  - (i) the Liberty Primary Group; and
  - (ii) for each Order, the relevant company in the Liberty Primary Group that issues the Order Acknowledgment or appropriates or supplies the Goods in connection with an Order Acknowledgement;
- (n) **"Terms and Conditions"** means the terms and conditions set out in this document, as modified or amended in relation to a particular Order by a written Order Acknowledgement or in accordance with clause 17;
- (o) the terms "financing statement", "proceeds", "purchase money security interest", "security agreement", "security interest" and "verification statement" have the respective meanings given to them under, or in the context of, the PPSA;
- (p) unless otherwise stated, an expression used or defined in the *Corporations Act 2001* (Cth) has the same meaning in the Terms and Conditions;
- (q) words indicating the singular include the plural and vice versa;
- (r) the governing law of these Terms and Conditions will be .....or otherwise will be as specified in clause 20; and
- (s) where used in these Terms and Conditions:

- (i) "InfraBuild" means any entity listed from time to time as forming part of the InfraBuild Group in the InfraBuild Standard Terms and Conditions of Sale (available at [www.infrabuild.com](http://www.infrabuild.com)); and
- (ii) Other Terms means the terms applicable to a sale by InfraBuild to the Customer.
- (b) Where a product margin is included on the invoice for Goods the Customer will pay that product margin in addition to any quoted price.
- (c) Where a transaction tax applies to any supply made under the Terms and Conditions, the Supplier may recover from the Customer an additional amount on account of that transaction tax.

**1. ORDERS, ORDER ACKNOWLEDGMENTS AND TERMS AND CONDITIONS**

- (a) An order or an offer to purchase can be made by the Customer in writing or verbally. An Order is accepted when the Customer receives from the Supplier an acknowledgment of the Order from the Supplier, the Supplier appropriates the relevant Goods for delivery to the Customer or the Supplier delivers the relevant Goods to the Customer, whichever first occurs ("**Order Acknowledgment**").
- (b) The Terms and Conditions apply to every Order, unless otherwise agreed in writing by the Supplier. Acceptance of Goods by the Customer is conclusive evidence that the Terms and Conditions apply and are binding on the Customer.
- (c) The Customer acknowledges that each Contract constitutes a security agreement, and that any one or more of Liberty Primary Group may register a financing statement (or comparable notice in any other relevant jurisdiction) on behalf of itself and any one or more other members of the Liberty Primary Group in respect of the security interests provided for by the Contracts.
- (d) The Contract for the supply of Goods pursuant to an Order constitutes the entire agreement between the Supplier and the Customer with respect to that Order. All prior negotiations, proposals, previous dealings, correspondence, trade custom and/or trade usage are superseded by and will not affect the interpretation of that Contract.
- (e) If at any time in relation to the supply of the Goods, the Customer provides, refers to, submits or otherwise uses terms and conditions other than the Terms and Conditions, such terms and conditions will not form part of, or be incorporated into, the Order or the Contract.

**2. PRICES**

- (a) Unless otherwise agreed in writing, the price charged for the Goods shall be (i) exclusive of any transaction tax ("**transaction tax**" includes the goods and services tax as well as any identified or new transaction taxes that come into existence after the effective date of the Terms and Conditions), and (ii) as per the price ruling as determined by the Supplier at the date of delivery. Any price indications or price lists are subject to alteration in accordance with the price ruling as at that date of delivery.

- (d) Notwithstanding any provision in the Contract, the Supplier may increase the price of Goods after an Order Acknowledgment and prior to delivery of the Goods if the price increase results from an increase in the price of any inputs which comprise part of the Goods.

- (e) The Supplier must provide written notice to the Customer of any price ruling, product margin, transaction tax or any other increase in the price of Goods made in accordance with the Contract not later than 7 days prior to the date of delivery of the Goods. The Customer may upon the alteration of the price charged for the Goods in accordance with this clause 2, cancel any Order (or part thereof) at the new price within 7 days of the Supplier providing notice of the change of price.

**3. DELIVERY**

- (a) The Supplier will make all reasonable efforts to have the Goods delivered to the Customer or its designated agent as agreed between the parties (or if there is no specific agreement then at the Supplier's reasonable discretion).
- (b) Any costs reasonably incurred by the Supplier due to any failure by the Customer to accept the Goods at time of delivery will be reimbursed by the Customer to the Supplier. Except to the extent the Supplier has opted to do so or the parties have so agreed in accordance with clause 14(a) or otherwise as required by law, the Supplier will be under no obligation to accept Goods returned for any reason.

**4. PAYMENT**

- (a) For so long as the Supplier has agreed to provide credit to the Customer under the Terms and Conditions and has not exercised its powers to withdraw, refuse or suspend credit under clause 8(b) or 10(c) or otherwise, payment for the Goods must be made in full (without any set off) and received by the Supplier by the last business day of the month following the month of delivery unless otherwise specified by the Supplier, with respect to payment for future deliveries only, on any statement of account or invoice or unless the Contract specifies otherwise.
- (b) Payment is only received by the Supplier when it receives cash or when the proceeds of other methods of payment are credited and cleared to the Supplier's nominated bank account. The Supplier may set off any amount due and payable by the

Supplier to the Customer against any amount due and payable by the Customer to the Supplier.

## 5. TITLE AND RELATED MATTERS

- (a) The legal and equitable title to the Goods will only be transferred from the Supplier to the Customer when the Amount Payable has been reduced to zero.
- (b) Until the Amount Payable has been reduced to zero, the Customer holds the Goods as bailee for the Supplier and a fiduciary relationship exists between the Customer and the Supplier.
- (c) If there is any Amount Payable, until the Goods are sold in accordance with clause 5(f), or become an Accession or Processed Goods, or such amount has been reduced to zero (whichever is earlier), the Customer shall:
  - (i) keep the Goods separate and in good condition as a fiduciary of the Supplier, clearly showing the Supplier's ownership of the Goods;
  - (ii) keep books recording the Supplier's ownership of the Goods and the Customer's sale or otherwise of them in accordance with clause 5(f); and
  - (iii) if required by the Supplier, deliver the Goods up to the Supplier.
- (d) The Customer may only install or affix the Goods to other goods (so that they become an Accession to those other goods) or use or permit the Goods to be manufactured, processed, assembled, commingled or otherwise dealt with (so that they become Processed Goods) in the ordinary course of its normal business.
- (e) If the Customer is in Default, in addition to the Supplier's other rights under the Terms and Conditions, the PPSA or any other applicable law, the Supplier may:
  - (i) take possession of the Goods or any Processed Goods, wherever they are located;
  - (ii) remove any Goods which have become an Accession; and/or
  - (iii) enter upon the Customer's premises for that purpose; and/or
  - (iv) appoint any person to be a receiver of all or any of the Goods, Accessions, Processed Goods or other assets the subject of the security interests created by this document.
- (f) Despite clause 5(a), the Customer may sell the Goods, any Accession or any Processed Goods to a

third party in the normal course of the Customer's business provided that the Customer holds the proceeds of sale on trust for the Supplier to the extent of the Amount Payable. The Customer must keep those proceeds separate on trust for the Supplier and not mix those proceeds with any other monies.

- (g) Unless otherwise expressly agreed in writing, the Supplier will allocate and apply amounts received from the Customer in the following order:
  - (i) in or towards payment of any part of the Amount Payable which is not part of the purchase price of any Goods, in the order in which those amounts were incurred; and
  - (ii) secondly, in or towards payment of the purchase price of Goods in the order in which those Goods were invoiced.

This order of allocation and application will apply notwithstanding any instruction, request or appropriation of the Customer as to the way in which a payment made by it should be applied by the Supplier, or any condition attached by the Customer to any payment made by it.

## 6. SECURITY INTEREST AND CHARGE

- (a) The Customer grants to the Supplier a security interest in the Goods to secure payment of the Amount Payable. The security interest:
  - (i) extends to and continues in all proceeds, Accessions and Processed Goods; and
  - (ii) is a purchase money security interest to the extent to which it secures payment of that part of the Amount Payable which comprises the aggregate unpaid purchase price of Goods.
- (b) The Customer must not do or permit anything to be done that may result in the purchase money security interest granted to the Supplier ranking in priority behind any other security interest.
- (c) The Customer charges in favour of the Supplier, all of the Customer's interest and rights in all present and future real property of the Customer to secure the performance of the Customer's obligations under each Contract, including payment of the Amount Payable. The Customer acknowledges that the Supplier has a caveatable interest in any real property of the Customer under this clause and may lodge a caveat over that property. For the purposes of this clause 6(c) the Supplier will be the relevant company in the Liberty Primary Group that issues the Order Acknowledgment or appropriates or supplies the Goods in connection with an Order Acknowledgement.

## 7. CONTRACTING OUT OF THE PPSA

- (a) The Customer waives or contracts out of its rights to receive any notice or statement (including notice of a verification statement) under any provision of the PPSA unless the notice or statement is required by the PPSA and cannot be excluded.
- (b) In connection with the enforcement of a security interest arising under these Terms and Conditions or a Contract, to the fullest extent permitted by the PPSA, the parties agree that the Liberty Primary Group need not comply with sections 95, 117, 118, 121(4), 125, 130, 132(3)(d) and 132(4) of the PPSA and sections 142 and 143 of the PPSA are excluded.

## 8. DEFAULT

- (a) A party will be in Default if:
  - (i) it breaches a material term of any Contract (except, in the case of the Customer, to the extent such breach is a failure to pay as described in clause 8(a)(iv)) and such breach is not remedied within 14 days of receiving notice from the other party requiring it to do so, unless such breach arises out of the supply of defective Goods, in which case the Supplier shall remedy the breach within such time as is reasonable in the circumstances and a Default will not arise until such time period has expired;
  - (ii) in the case of the Customer being a body corporate, it becomes an externally-administered body corporate or has an application for winding up filed against it;
  - (iii) in the case of the Customer being an individual, it commits an act of bankruptcy or becomes an insolvent under administration;
  - (iv) in the case of the Customer, payment for the Goods has not been received by the Supplier by the due date for payment; or
  - (v) in the case of the Customer, any representation or warranty made by it in or in connection with a Contract, or any information provided by it to the Supplier in or in connection with a credit application, is incorrect, misleading or deceptive (whether by omission or otherwise) in any material respect; or
  - (vi) in the case of the Customer, the Supplier forms the opinion in its absolute discretion that the Customer's creditworthiness or credit standing alters from that indicated in its credit application or the Customer has defaulted on payment under the Other Terms.

- (b) If a party Defaults, the other party may:

- (i) treat an Order Acknowledgement or the whole of the Contract as repudiated and sue for breach of contract; and/or
- (ii) being the Supplier, refuse to supply or suspend supply of Goods to the Customer on credit or at all and/or amend the terms of any credit granted; and/or
- (iii) being the Supplier, claim the return of any Goods in the Customer's possession where title has not passed to the Customer or exercise any other right or remedy available to it under the Contract, the PPSA or any other applicable law, including to enforce the security interests created by the Contract;
- (iv) being the Supplier, by written notice to the Customer declare all monies owing by the Customer to the Supplier on any account immediately due and payable (including the Amount Payable); and/or
- (v) being the Customer and only to the extent Goods paid for in advance have not yet been delivered, by written notice to the Supplier declare any cash paid to the Supplier under clause 10(b) in respect of such Goods to be payable within 20 Business Days of the date of such notice.

## 9. RISK

Risk in the Goods passes to the Customer upon delivery (including all risks associated with unloading) or upon title in the Goods passing to the Customer, whichever is the earlier.

## 10. CREDIT

- (a) Any agreement by the Supplier to grant the Customer credit upon these Terms and Conditions has been or will be made on the basis of a credit application and such other documents and information as may be required by the Supplier.
- (b) Until the Supplier grants the Customer credit by notice in writing, or if having granted credit, the Supplier exercises its powers to withdraw, refuse or suspend credit under clause 8(b) or 10(c) or otherwise under these Terms and Conditions, the Supplier will only supply Goods to the Customer on the basis of cash in advance.
- (c) The granting of credit does not oblige the Supplier to extend any particular amount of credit to the Customer and the Supplier may withdraw, refuse, suspend or limit credit to the Customer at any time, in its absolute discretion, without notice or providing any reason.
- (d) The Customer must notify the Supplier in writing if there is any change in the shareholding or ownership

of the Customer or any material change in the Customer's financial position.

#### 11. INTELLECTUAL PROPERTY

- (a) The Customer warrants to the Supplier that all documents provided by the Customer are accurate and that the Supplier is entitled to use all such documents for the purposes of the Contract and that such use does not infringe any third party's intellectual property rights.
- (b) The Customer indemnifies the Supplier against all claims and all losses and damages incurred by the Supplier as a result of documents provided by the Customer to the Supplier for the purposes of or in the course of the supply of the Goods breaching a third party's intellectual property rights.
- (c) If a party receives any confidential information ("**Recipient**") from the other party ("**Disclosing Party**"), the Recipient may not use or disclose such information unless: (i) it receives the prior written consent of the Disclosing Party, (ii) such information enters the public domain (other than as a result of a breach of this clause), (iii) such disclosure is necessary for the relevant party's performance of the Contract, or (iv) the use or disclosure is required by law.
- (d) The Customer may not use any trade mark or other intellectual property of any entity of Liberty Primary Group, unless it receives the prior written consent of the Supplier (which consent may be given, withheld or withdrawn, or given subject to conditions, at the Supplier's discretion).

#### 12. FORCE MAJEURE

The Supplier is not liable for failure to perform its obligations under the Contract to the extent and for so long as its performance is prevented or delayed without substantial fault or negligence by the Supplier because of circumstances outside the Supplier's control, provided that the Supplier gives notice to the Customer of the delay and uses reasonable efforts to mitigate the cause of the delay quickly.

#### 13. REPRESENTATIONS AND FITNESS FOR PURPOSE

- (a) Except as expressly provided to the contrary in the Contract, all representations, warranties, guarantees and implied terms or conditions in relation to the Goods (whether implied or otherwise) are hereby excluded to the maximum extent permitted by law.
- (b) The Customer agrees that if it is aware (or should be aware) that the Goods, the subject of an Order, are for a particular purpose (including, but not limited to, use as a component part of another product) or are required to possess special or uniform characteristics, the Customer will clearly specify that

purpose or those characteristics in any such Order. The Customer otherwise agrees that, unless expressly agreed by the Supplier in writing and set out in the Contract, it has made its own enquiries in relation to the suitability of the Goods and does not rely on representations by the Supplier in relation to their suitability for a particular purpose or any steps which may need to be taken in relation to their use.

#### 14. LIMITATION OF LIABILITY

- (a) The Supplier's liability to the Customer (and any party claiming through the Customer against the Supplier) for any claim for loss or damages (including legal expenses) made in connection with the Contract (including the supply of Goods described in the Contract) whether in contract, under any warranty or indemnity, in tort (including negligence), under statute, in equity or otherwise shall be strictly limited as follows (except to the extent that the law prohibits such a limitation):
  - (i) for any liability arising from Goods not meeting the specification or which are said to be otherwise defective or deficient, the Supplier's liability is limited to the cost of replacement of those Goods as soon as reasonably practicable, or the repair of those Goods or the repayment (or allowance) of the invoice price of those Goods (at the option of the Supplier, acting reasonably, or otherwise as agreed);
  - (ii) for any liability arising from the services forming part of the Goods not meeting the scope or which are said to be otherwise defective or deficient, the Supplier's liability is limited to the provision of the services again or payment of the cost of having the relevant services provided (at the option of the Supplier, acting reasonably, or otherwise as agreed);
  - (iii) for any liability that does not fall within the scope of clauses 14(a)(i) or (ii), the Supplier's liability for any loss or damage arising from or caused in any way by the Supplier, the Goods it supplies or the Contract is excluded (to the maximum extent permitted by law).

- (b) The Supplier shall not be liable, to the maximum extent permitted by law, for any indirect, special or consequential loss or damage of any nature whatsoever resulting from or caused in any way by the Goods it supplies, where "indirect, special or consequential loss or damage" includes: (A) any loss of income, profit, production, contract, customers, business opportunity or business; (B) any loss of goodwill or reputation; (C) any loss of value of intellectual property; (D) any loss or damage resulting from the loss or damage to goods other than the Goods.

- (c) Any claim by the Customer in respect of defective, non-conforming or damaged Goods must be made in writing within 14 days of the delivery of the Goods, unless a longer period is expressly agreed to by the Supplier in writing.
- (d) Despite any other provision of the Contract, the Supplier is not liable, to the maximum extent permitted by law, for:
  - (i) the cost of removal of Goods not meeting the specification or which are said to be otherwise defective or deficient, whether installed or otherwise;
  - (ii) the cost of installation of replacements for Goods not meeting the specification or which are said to be otherwise defective or deficient;
  - (iii) defects or deficiencies in Goods caused by improper installation or maintenance of Goods or related components or normal wear and tear and damage.

## 15. WAIVER

Except as expressly set out in the Terms and Conditions, a party waives a right under the Contract only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.

## 16. SEVERANCE

If a provision of the Contract would, but for this clause, be unenforceable:

- (a) the provision must be read down to the extent necessary to avoid that result;
- (b) if the provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of the Contract.

## 17. VARIATION AND NOTICES

- (a) The Supplier may at any time vary the Terms and Conditions applicable to future Orders and may notify the Customer of these changes or provide any other notice under or in connection with the Terms and Conditions by email, facsimile, post or, in the case of a variation of the Terms and Conditions, by publishing the revised Terms and Conditions or notice on its website (and must publish the revised Terms and Conditions or notice on its website if the Supplier does not notify the Customer directly). If the Supplier publishes the revised Terms and Conditions on its website, the revised Terms and Conditions are effective from the Effective Date noted in those Terms and Conditions. At any time prior to the date which is 12 months after the date of publication of a variation in terms, the Customer may by 7 days'

notice in writing terminate any Order which has not been completed and which was accepted prior to the variation where the impact of the variation is materially adverse to the Customer.

- (b) Notices given by the Supplier will be deemed to be received:
  - (i) if given by email, on being sent, provided the notice is sent to the email address of an officer or employee of the Customer responsible for placing or administering orders for Goods and no "out of office" or other automated reply is received indicating that the message has not been or will not be received or read by the intended recipient;
  - (ii) if given by facsimile transmission to a facsimile number shown in the application for credit (or any other number provided by the Customer) by production by the Supplier of a copy of the facsimile transmission bearing the time and date of dispatch, on that date and at that time; and
  - (iii) if given by post, on the third day after posting.

- (c) The Customer agrees to regularly check the Supplier's website ([www.libertygfg.com](http://www.libertygfg.com)) for any notices of changes to the Terms and Conditions together with [www.infrabuild.com](http://www.infrabuild.com) for any changes to the Other Terms if the Customer also purchases from InfraBuild. The Customer also agrees to accept any notices from the Supplier as agent for any guarantor.

## 18. COSTS

Each party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of this Contract (and any documents referred to in it). The costs of registering any PPSA financing statement will be paid by the Customer and may be invoiced or debited against the Customer's credit account.

## 19. DEFAULT INTEREST

The Supplier may charge interest on any overdue amount due and payable under the Contract at a rate equivalent to 2.5% p.a. above the business overdraft interest rate of its principal banker, as determined and calculated by the Supplier. Such interest will be payable on demand by the Supplier and for so long as it remains unpaid will compound on a monthly basis.

## 20. APPLICABLE LAW

Each Contract is governed by, and the Customer submits to the law of the State or Territory specified in the preamble to the Contract or, if nothing is specified, the State of New South Wales. The courts of that State or Territory have non-exclusive jurisdiction in connection with the Contract. *The Sale of Goods (Vienna Convention) Act 1986* (New South Wales) (and any similar legislation relating to the Vienna

Convention in other States or Territories) does not apply to the Contract.

## 21. ASSIGNMENT

The Supplier may assign its rights or novate its rights and obligations under a Contract (in whole or in part) to any person without the consent of the Customer. The Customer must execute such documents as the Supplier may require to effect any such assignment or novation. In the event of a novation, the Customer may, if it has reasonable grounds to believe that the novatee will not comply with the Contract, by written notice given within 30 days of receiving notice of the novation terminate any Order which has not been completed and which was accepted prior to the novation. The Customer may not assign or otherwise transfer its rights under a Contract without prior notice to and consent from the Supplier (such consent not to be unreasonably withheld). The Customer must promptly notify the Supplier in writing of any change to its registered address or other contact details provided to the Supplier.

## 22. NOT USED

## 23. STANDARD GRADES OF MATERIALS AND MEASURES

- (a) Subject to clause 23(b), the Supplier will:
- (i) supply Goods having the grade of material specified in the Order Acknowledgment (if applicable); and
  - (ii) ensure that any grade of material as specified in the Order Acknowledgment will, unless otherwise agreed, be in accordance with applicable Australian Standards and/or as detailed in any current, relevant price schedules, product handbooks or other product literature of the Supplier.
- (b) Unless otherwise agreed in writing:
- (i) all Goods will be supplied and delivered in accordance with the Supplier's standard practice and shall be subject to the Supplier's normal tolerances, limitations and variations of the following: dimension, weight, shape, composition, mechanical properties, structure, quality and service conditions;
  - (ii) any statements made by the Supplier as to weight, length, quantity or other characteristics of Goods are approximate and the Supplier may supply Goods on an actual or calculated basis (calculated in accordance with applicable Australian standards); and
  - (iii) the Supplier's statements as to weight, length, quantity or other characteristics are final (in the absence of manifest error) and will not be contested by the Customer unless the Customer has given the Supplier written

notice of any error within 14 days of delivery and a reasonable opportunity to examine and re-test the Goods before they are used or dealt with.

## 24. SHORTAGES

- (a) The Customer will inspect and check all Goods received as soon as practicable upon unloading. To the maximum extent permitted by law, no claim by the Customer for shortages of Goods may be made unless such claim is notified to the Supplier within 96 hours of such inspection.
- (b) The Supplier will endeavour to rectify any shortages as soon as practicable after receiving notice.

## 25. CONSUMER TRANSACTIONS

Where and only to the extent that the supply of Goods is to a "consumer" (as that term is defined by the ACL) then:

- (a) the Additional Consumer Terms and Conditions located at [www.libertygfg.com](http://www.libertygfg.com) are incorporated into and form part of the Terms and Conditions, such that they apply as part of the Contract; and
- (b) clause 14 shall not apply and, except as expressed otherwise in the Additional Consumer Terms and Conditions, nothing in the Terms and Conditions shall be construed as excluding, restricting or modifying any Consumer Guarantee provided under the ACL,

in respect of that supply of Goods.

## 26. PRIVACY

- (a) Where the Customer provides the Supplier with personal information (as defined in the Privacy Act 1988) about any individual (including the Customer where applicable), the Customer must have that individual's consent to provide that information to the Supplier having regard to and for the purposes set out in this clause 26 and in the Supplier's Privacy Policy. This policy is available on request or via [www.libertygfg.com](http://www.libertygfg.com) and contains more information about the Supplier's handling of personal information, types of information collected, types of service providers used, countries to which personal information is likely to be disclosed, accessing and correcting personal information, privacy complaints, the credit reporting bodies used, information shared with those bodies and individuals' rights in relation to their information held by those bodies.
- (b) The Supplier may collect, use and disclose that personal information for purposes relating to a Contract and to the Customer's credit application and account. This includes assessing the Customer's application, monitoring the value of and enforcing the security interests created by a Contract, reviewing credit arrangements on a periodic basis or in

connection with changes (e.g. credit limit) as though assessing a new application, order fulfilment and delivery, market research, planning, business development, debt collection and customer relationship management. The Supplier may also conduct lawful and relevant credit and reference checks (including consumer credit checks on the Customer where the Customer is an individual), and deal with personal information in connection with any acquisition or potential acquisition of any part of the Supplier's business. Without the personal information sought, the Supplier may not be able to do these things, including fulfil orders and process credit applications.

- (c) The Supplier may provide marketing communications to the Customer by email and other means on an ongoing basis, unless the Customer opts out by contacting the Supplier or legal restrictions apply.
- (d) The Supplier may exchange personal information with InfraBuild, other related bodies corporate of the Liberty Primary Group, and its affiliates, the Customer's guarantors and prospective guarantors (e.g. for the purpose of them deciding whether to act as guarantor), the Customer's representatives and the Supplier's service providers. The Supplier may also exchange that information with other credit providers for purposes including to: assess a credit or guarantor application; determine credit/default status; and assess or comment on credit worthiness. Some of these third parties may be located in other countries. While these parties outside Australia will often be subject to privacy and confidentiality obligations, Customer acknowledges and agrees for itself and as agent for each of its officers, employees, agents, contractors, guarantors and representatives that: (a) privacy obligations overseas may not always apply or may differ from Australian privacy laws; (b) the Supplier may not be accountable for the third party under the Privacy Act or for the overseas recipient's storage, use or disclosure of the information; (c) individuals may not be able to seek redress under the Privacy Act for that disclosure or for the acts or omissions of the overseas recipient of the information; and (d) the third party may be subject to foreign laws which might compel further disclosures of personal information (e.g. to government authorities).



## InfraBuild Standard Terms and Conditions of Sale – Effective November 2023

**[Note: these Terms and Conditions are subject to change - see clause 17.]**

### In this document:

- (a) **"Accession"** means any Goods which are installed in or affixed to other goods;
- (b) **"ACL"** means the *Australian Consumer Law* which is contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth);
- (c) **"InfraBuild Group"** means each and all of Liberty InfraBuild Ltd ACN 631 112 108, InfraBuild Australia Pty Ltd ACN 631 112 457, InfraBuild NZ Limited CN 1047789, OneSteel Recycling Hong Kong Limited CN 849 675, InfraBuild Trading Pty Limited ACN 007 519 646, The Australian Steel Company (Operations) Pty Ltd ACN 069 426 955, InfraBuild Wire Pty Limited ACN 000 010 873, InfraBuild NSW Pty Limited ACN 003 312 892, InfraBuild Construction Solutions Pty Limited ACN 004 148 289, OneSteel Recycling Pty Limited ACN 002 707 262, Austube Mills Pty Limited ACN 123 666 679, XMS Holdings Pty Limited ACN 008 742 014, P&T Tube Mills Pty Ltd ACN 010 469 977, InfraBuild (Newcastle) Pty Ltd ABN 50 623 285 718, InfraBuild (Manufacturing) Pty Ltd ABN 38 623 194 070, SSX Services Pty Limited ACN 083 090 831, Steelforce Holdings Pty Ltd ACN 120 736 638, Steelforce Australia Pty Ltd ACN 093 284 078, Steelforce Sydney Pty Ltd ACN 110 268 829, Austeel Trading Pty Ltd ACN 110 146 515, Steelforce China Pty Ltd ACN 114 786 337, Dalian Steelforce Hi-Tech Co Ltd 210241400000839, Dalian Austeel Trading Pty Ltd 912102137969189679 and any related body corporate (as that term is defined in the Corporations Act 2001 (Cth)) of any of them from time to time;
- (d) **"Amount Payable"** means, at any time, all amounts payable by the Customer to any member of the InfraBuild Group at that time (whether or not those amounts have become due for payment under clause 4 or any other provision of the Terms and Conditions) in connection with the Goods or a Contract (including, without limitation, any invoiced amount, interest, fees, costs or expenses);
- (e) **"Customer"** means the customer specified in an application for commercial credit (or if there is no application, the person placing the Order, or on whose behalf the Order is placed, with the Supplier);
- (f) **"Default"** is defined in clause 8;
- (g) **"Contract"** means:
  - (i) any contract to which these Terms and Conditions are expressed to form part; and,
  - (ii) for the supply of Goods pursuant to an Order, the contract (which includes these Terms and Conditions) formed for the supply of the Goods to the Customer upon an Order Acknowledgment;
- (h) **"Goods"** means any goods, products, services or materials supplied or to be supplied by the Supplier at any time and from time to time including, without limitation, any goods specified in an Order Acknowledgment or invoice;
- (i) **"Order"** is an order or offer to purchase described in clause 1;
- (j) **"Order Acknowledgment"** is defined in clause 1;
- (k) **"Processed Goods"** means Goods which after their delivery become part of a product or mass by being manufactured, processed, assembled, commingled or otherwise dealt with in such a way that their identity is lost in the product or mass;
- (l) **"PPSA"** means the Personal Property Securities Act 2009 (Cth);
- (m) **"Supplier"** means:
  - (i) the InfraBuild Group; and
  - (ii) for each Order, the relevant company in the InfraBuild Group that issues the Order Acknowledgment or appropriates or supplies the Goods in connection with an Order Acknowledgment;
- (n) **"Terms and Conditions"** means the terms and conditions set out in this document, as modified or amended in relation to a particular Order by a written Order Acknowledgment or in accordance with clause 17;
- (o) the terms "financing statement", "proceeds", "purchase money security interest", "security agreement", "security interest" and "verification statement" have the respective meanings given to them under, or in the context of, the PPSA;
- (p) unless otherwise stated, an expression used or defined in the *Corporations Act 2001* (Cth) has the same meaning in the Terms and Conditions;
- (q) words indicating the singular include the plural and vice versa;

(r) the governing law of these Terms and Conditions will be .....or otherwise will be as specified in clause 20; and

(s) where used in these Terms and Conditions:

(i) Other Terms means the terms applicable to a sale by Liberty Primary to the Customer; and

(ii) 'Liberty Primary' means any entity listed from time to time as forming part of the Liberty Primary Group in the Liberty Primary Standard Terms and Conditions of Sale (available at [www.libertygfg.com](http://www.libertygfg.com))

**1. ORDERS, ORDER ACKNOWLEDGMENTS AND TERMS AND CONDITIONS**

(a) An order or an offer to purchase can be made by the Customer in writing or verbally. An Order is accepted when the Customer receives from the Supplier an acknowledgment of the Order from the Supplier, the Supplier appropriates the relevant Goods for delivery to the Customer or the Supplier delivers the relevant Goods to the Customer, whichever first occurs ("Order Acknowledgment").

(b) The Terms and Conditions apply to every Order, unless otherwise agreed in writing by the Supplier. Acceptance of Goods by the Customer is conclusive evidence that the Terms and Conditions apply and are binding on the Customer.

(c) The Customer acknowledges that each Contract constitutes a security agreement, and that any one or more members of the InfraBuild Group may register a financing statement (or comparable notice in any other relevant jurisdiction) on behalf of itself and any one or more other members of the InfraBuild Group in respect of the security interests provided for by the Contracts.

(d) The Contract for the supply of Goods pursuant to an Order constitutes the entire agreement between the Supplier and the Customer with respect to that Order. All prior negotiations, proposals, previous dealings, correspondence, trade custom and/or trade usage are superseded by and will not affect the interpretation of that Contract.

(e) If at any time in relation to the supply of the Goods, the Customer provides, refers to, submits or otherwise uses terms and conditions other than the Terms and Conditions, such terms and conditions will not form part of, or be incorporated into, the Order or the Contract.

**2. PRICES**

(a) Unless otherwise agreed in writing, the price charged for the Goods shall be (i) exclusive of any transaction tax ("transaction tax" includes the goods and services tax as well as any identified or new

transaction taxes that come into existence after the effective date of the Terms and Conditions), and (ii) as per the price ruling as determined by the Supplier at the date of delivery. Any price indications or price lists are subject to alteration in accordance with the price ruling as at that date of delivery.

(b) Where a product margin is included on the invoice for Goods the Customer will pay that product margin in addition to any quoted price.

(c) Where a transaction tax applies to any supply made under the Terms and Conditions, the Supplier may recover from the Customer an additional amount on account of that transaction tax.

(d) Notwithstanding any provision in the Contract, the Supplier may increase the price of Goods after an Order Acknowledgment and prior to delivery of the Goods if the price increase results from an increase in the price of any inputs which comprise part of the Goods.

(e) The Supplier must provide written notice to the Customer of any price ruling, product margin, transaction tax or any other increase in the price of Goods made in accordance with the Contract not later than 7 days prior to the date of delivery of the Goods. The Customer may upon the alteration of the price charged for the Goods in accordance with this clause 2, cancel any Order (or part thereof) at the new price within 7 days of the Supplier providing notice of the change of price.

**3. DELIVERY**

(a) The Supplier will make all reasonable efforts to have the Goods delivered to the Customer or its designated agent as agreed between the parties (or if there is no specific agreement then at the Supplier's reasonable discretion).

(b) Any costs reasonably incurred by the Supplier due to any failure by the Customer to accept the Goods at time of delivery will be reimbursed by the Customer to the Supplier. Except to the extent the Supplier has opted to do so or the parties have so agreed in accordance with clause 14(a) or otherwise as required by law, the Supplier will be under no obligation to accept Goods returned for any reason.

**4. PAYMENT**

(a) For so long as the Supplier has agreed to provide credit to the Customer under the Terms and Conditions and has not exercised its powers to withdraw, refuse or suspend credit under clause 8(b) or 10(c) or otherwise, payment for the Goods must be made in full (without any set off) and received by the Supplier by the last business day of the month following the month of delivery unless otherwise specified by the Supplier, with respect to payment for

future deliveries only, on any statement of account or invoice or unless the Contract specifies otherwise.

- (b) Payment is only received by the Supplier when it receives cash or when the proceeds of other methods of payment are credited and cleared to the Supplier's nominated bank account. The Supplier may set off any amount due and payable by the Supplier to the Customer against any amount due and payable by the Customer to the Supplier.

## 5. TITLE AND RELATED MATTERS

- (a) The legal and equitable title to the Goods will only be transferred from the Supplier to the Customer when the Amount Payable has been reduced to zero.
- (b) Until the Amount Payable has been reduced to zero, the Customer holds the Goods as bailee for the Supplier and a fiduciary relationship exists between the Customer and the Supplier.
- (c) If there is any Amount Payable, until the Goods are sold in accordance with clause 5(f), or become an Accession or Processed Goods, or such amount has been reduced to zero (whichever is earlier), the Customer shall:
  - (i) keep the Goods separate and in good condition as a fiduciary of the Supplier, clearly showing the Supplier's ownership of the Goods;
  - (ii) keep books recording the Supplier's ownership of the Goods and the Customer's sale or otherwise of them in accordance with clause 5(f); and
  - (iii) if required by the Supplier, deliver the Goods up to the Supplier.
- (d) The Customer may only install or affix the Goods to other goods (so that they become an Accession to those other goods) or use or permit the Goods to be manufactured, processed, assembled, commingled or otherwise dealt with (so that they become Processed Goods) in the ordinary course of its normal business.
- (e) If the Customer is in Default, in addition to the Supplier's other rights under the Terms and Conditions, the PPSA or any other applicable law, the Supplier may:
  - (i) take possession of the Goods or any Processed Goods, wherever they are located;
  - (ii) remove any Goods which have become an Accession; and/or
  - (iii) enter upon the Customer's premises for that purpose; and/or

- (iv) appoint any person to be a receiver of all or any of the Goods, Accessions, Processed Goods or other assets the subject of the security interests created by this document.

- (f) Despite clause 5(a), the Customer may sell the Goods, any Accession or any Processed Goods to a third party in the normal course of the Customer's business provided that the Customer holds the proceeds of sale on trust for the Supplier to the extent of the Amount Payable. The Customer must keep those proceeds separate on trust for the Supplier and not mix those proceeds with any other monies.

- (g) Unless otherwise expressly agreed in writing, the Supplier will allocate and apply amounts received from the Customer in the following order:

- (i) in or towards payment of any part of the Amount Payable which is not part of the purchase price of any Goods, in the order in which those amounts were incurred; and
- (ii) secondly, in or towards payment of the purchase price of Goods in the order in which those Goods were invoiced.

This order of allocation and application will apply notwithstanding any instruction, request or appropriation of the Customer as to the way in which a payment made by it should be applied by the Supplier, or any condition attached by the Customer to any payment made by it.

## 6. SECURITY INTEREST AND CHARGE

- (a) The Customer grants to the Supplier a security interest in the Goods to secure payment of the Amount Payable. The security interest:
  - (i) extends to and continues in all proceeds, Accessions and Processed Goods; and
  - (ii) is a purchase money security interest to the extent to which it secures payment of that part of the Amount Payable which comprises the aggregate unpaid purchase price of Goods.
- (b) The Customer must not do or permit anything to be done that may result in the purchase money security interest granted to the Supplier ranking in priority behind any other security interest.
- (c) The Customer charges in favour of the Supplier, all of the Customer's interest and rights in all present and future real property of the Customer to secure the performance of the Customer's obligations under each Contract, including payment of the Amount Payable. The Customer acknowledges that the Supplier has a caveatable interest in any real property of the Customer under this clause and may lodge a caveat over that property. For the purposes of this clause 6(c) the Supplier will be the relevant

company in the InfraBuild Group that issues the Order Acknowledgment or appropriates or supplies the Goods in connection with an Order Acknowledgement.

application or the Customer has defaulted on payment under the Other Terms.

(b) If a party Defaults, the other party may:

- (i) treat an Order Acknowledgement or the whole of the Contract as repudiated and sue for breach of contract; and/or
- (ii) being the Supplier, refuse to supply or suspend supply of Goods to the Customer on credit or at all and/or amend the terms of any credit granted; and/or
- (iii) being the Supplier, claim the return of any Goods in the Customer's possession where title has not passed to the Customer or exercise any other right or remedy available to it under the Contract, the PPSA or any other applicable law, including to enforce the security interests created by the Contract;
- (iv) being the Supplier, by written notice to the Customer declare all monies owing by the Customer to the Supplier on any account immediately due and payable (including the Amount Payable); and/or
- (v) being the Customer and only to the extent Goods paid for in advance have not yet been delivered, by written notice to the Supplier declare any cash paid to the Supplier under clause 10(b) in respect of such Goods to be payable within 20 Business Days of the date of such notice.

## 7. CONTRACTING OUT OF THE PPSA

- (a) The Customer waives or contracts out of its rights to receive any notice or statement (including notice of a verification statement) under any provision of the PPSA unless the notice or statement is required by the PPSA and cannot be excluded.
- (b) In connection with the enforcement of a security interest arising under these Terms and Conditions or a Contract, to the fullest extent permitted by the PPSA, the parties agree that the Liberty Primary Group need not comply with sections 95, 117, 118, 121(4), 125, 130, 132(3)(d) and 132(4) of the PPSA and sections 142 and 143 of the PPSA are excluded.

## 8. DEFAULT

- (a) A party will be in Default if:
  - (i) it breaches a material term of any Contract (except, in the case of the Customer, to the extent such breach is a failure to pay as described in clause 8(a)(iv)) and such breach is not remedied within 14 days of receiving notice from the other party requiring it to do so, unless such breach arises out of the supply of defective Goods, in which case the Supplier shall remedy the breach within such time as is reasonable in the circumstances and a Default will not arise until such time period has expired;
  - (ii) in the case of the Customer being a body corporate, it becomes an externally-administered body corporate or has an application for winding up filed against it;
  - (iii) in the case of the Customer being an individual, it commits an act of bankruptcy or becomes an insolvent under administration; in the case of the Customer, payment for the Goods has not been received by the Supplier by the due date for payment; or
  - (iv) in the case of the Customer, any representation or warranty made by it in or in connection with a Contract, or any information provided by it to the Supplier in or in connection with a credit application, is incorrect, misleading or deceptive (whether by omission or otherwise) in any material respect; or
  - (v) in the case of the Customer, the Supplier forms the opinion in its absolute discretion that the Customer's creditworthiness or credit standing alters from that indicated in its credit

## 9. RISK

Risk in the Goods passes to the Customer upon delivery (including all risks associated with unloading) or upon title in the Goods passing to the Customer, whichever is the earlier.

## 10. CREDIT

- (a) Any agreement by the Supplier to grant the Customer credit upon these Terms and Conditions has been or will be made on the basis of a credit application and such other documents and information as may be required by the Supplier.
- (b) Until the Supplier grants the Customer credit by notice in writing, or if having granted credit, the Supplier exercises its powers to withdraw, refuse or suspend credit under clause 8(b) or 10(c) or otherwise under these Terms and Conditions, the Supplier will only supply Goods to the Customer on the basis of cash in advance.
- (c) The granting of credit does not oblige the Supplier to extend any particular amount of credit to the Customer and the Supplier may withdraw, refuse, suspend or limit credit to the Customer at any time,

in its absolute discretion, without notice or providing any reason. (b)

- (d) The Customer must notify the Supplier in writing if there is any change in the shareholding or ownership of the Customer or any material change in the Customer's financial position.

#### 11. INTELLECTUAL PROPERTY

- (a) The Customer warrants to the Supplier that all documents provided by the Customer are accurate and that the Supplier is entitled to use all such documents for the purposes of the Contract and that such use does not infringe any third party's intellectual property rights.
- (b) The Customer indemnifies the Supplier against all claims and all losses and damages incurred by the Supplier as a result of documents provided by the Customer to the Supplier for the purposes of or in the course of the supply of the Goods breaching a third party's intellectual property rights.
- (c) If a party receives any confidential information ("**Recipient**") from the other party ("**Disclosing Party**"), the Recipient may not use or disclose such information unless: (i) it receives the prior written consent of the Disclosing Party, (ii) such information enters the public domain (other than as a result of a breach of this clause), (iii) such disclosure is necessary for the relevant party's performance of the Contract, or (iv) the use or disclosure is required by law.
- (d) The Customer may not use any trade mark or other intellectual property of any entity of the InfraBuild Group, unless it receives the prior written consent of the Supplier (which consent may be given, withheld or withdrawn, or given subject to conditions, at the Supplier's discretion).

#### 12. FORCE MAJEURE

The Supplier is not liable for failure to perform its obligations under the Contract to the extent and for so long as its performance is prevented or delayed without substantial fault or negligence by the Supplier because of circumstances outside the Supplier's control, provided that the Supplier gives notice to the Customer of the delay and uses reasonable efforts to mitigate the cause of the delay quickly.

#### 13. REPRESENTATIONS AND FITNESS FOR PURPOSE

- (a) Except as expressly provided to the contrary in the Contract, all representations, warranties, guarantees and implied terms or conditions in relation to the Goods (whether implied or otherwise) are hereby excluded to the maximum extent permitted by law.

The Customer agrees that if it is aware (or should be aware) that the Goods, the subject of an Order, are for a particular purpose (including, but not limited to, use as a component part of another product) or are required to possess special or uniform characteristics, the Customer will clearly specify that purpose or those characteristics in any such Order. The Customer otherwise agrees that, unless expressly agreed by the Supplier in writing and set out in the Contract, it has made its own enquiries in relation to the suitability of the Goods and does not rely on representations by the Supplier in relation to their suitability for a particular purpose or any steps which may need to be taken in relation to their use.

#### 14. LIMITATION OF LIABILITY

- (a) The Supplier's liability to the Customer (and any party claiming through the Customer against the Supplier) for any claim for loss or damages (including legal expenses) made in connection with the Contract (including the supply of Goods described in the Contract) whether in contract, under any warranty or indemnity, in tort (including negligence), under statute, in equity or otherwise shall be strictly limited as follows (except to the extent that the law prohibits such a limitation):
  - (i) for any liability arising from Goods not meeting the specification or which are said to be otherwise defective or deficient, the Supplier's liability is limited to the cost of replacement of those Goods as soon as reasonably practicable, or the repair of those Goods or the repayment (or allowance) of the invoice price of those Goods (at the option of the Supplier, acting reasonably, or otherwise as agreed);
  - (ii) for any liability arising from the services forming part of the Goods not meeting the scope or which are said to be otherwise defective or deficient, the Supplier's liability is limited to the provision of the services again or payment of the cost of having the relevant services provided (at the option of the Supplier, acting reasonably, or otherwise as agreed);
  - (iii) for any liability that does not fall within the scope of clauses 14(a)(i) or (ii), the Supplier's liability for any loss or damage arising from or caused in any way by the Supplier, the Goods it supplies or the Contract is excluded (to the maximum extent permitted by law).

- (b) The Supplier shall not be liable, to the maximum extent permitted by law, for any indirect, special or consequential loss or damage of any nature whatsoever resulting from or caused in any way by the Goods it supplies, where "indirect, special or consequential loss or damage" includes: (A) any loss of income, profit, production, contract, customers,

business opportunity or business; (B) any loss of goodwill or reputation; (C) any loss of value of intellectual property; (D) any loss or damage resulting from the loss or damage to goods other than the Goods.

- (c) Any claim by the Customer in respect of defective, non-conforming or damaged Goods must be made in writing within 14 days of the delivery of the Goods, unless a longer period is expressly agreed to by the Supplier in writing.
- (d) Despite any other provision of the Contract, the Supplier is not liable, to the maximum extent permitted by law, for:
  - (i) the cost of removal of Goods not meeting the specification or which are said to be otherwise defective or deficient, whether installed or otherwise;
  - (ii) the cost of installation of replacements for Goods not meeting the specification or which are said to be otherwise defective or deficient;
  - (iii) defects or deficiencies in Goods caused by improper installation or maintenance of Goods or related components or normal wear and tear and damage.

## 15. WAIVER

Except as expressly set out in the Terms and Conditions, a party waives a right under the Contract only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.

## 16. SEVERANCE

If a provision of the Contract would, but for this clause, be unenforceable:

- (a) the provision must be read down to the extent necessary to avoid that result;
- (b) if the provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of the Contract.

## 17. VARIATION AND NOTICES

- (a) The Supplier may at any time vary the Terms and Conditions applicable to future Orders and may notify the Customer of these changes or provide any other notice under or in connection with the Terms and Conditions by email, facsimile, post or, in the case of a variation of the Terms and Conditions, by publishing the revised Terms and Conditions or notice on its website (and must publish the revised Terms and Conditions or notice on its website if the Supplier does not notify the Customer directly). If the

Supplier publishes the revised Terms and Conditions on its website, the revised Terms and Conditions are effective from the Effective Date noted in those Terms and Conditions. At any time prior to the date which is 12 months after the date of publication of a variation in terms, the Customer may by 7 days' notice in writing terminate any Order which has not been completed and which was accepted prior to the variation where the impact of the variation is materially adverse to the Customer.

- (b) Notices given by the Supplier will be deemed to be received:
  - (i) if given by email, on being sent, provided the notice is sent to the email address of an officer or employee of the Customer responsible for placing or administering orders for Goods and no "out of office" or other automated reply is received indicating that the message has not been or will not be received or read by the intended recipient;
  - (ii) if given by facsimile transmission to a facsimile number shown in the application for credit (or any other number provided by the Customer) by production by the Supplier of a copy of the facsimile transmission bearing the time and date of dispatch, on that date and at that time; and
  - (iii) if given by post, on the third day after posting.

- (c) The Customer agrees to regularly check the Supplier's website ([www.infrabuild.com](http://www.infrabuild.com)) for any notices of changes to the Terms and Conditions together with [www.libertygfg.com](http://www.libertygfg.com) for any changes to the Other Terms if the Customer also purchases from Liberty Primary. The Customer also agrees to accept any notices from the Supplier as agent for any guarantor.

## 18. COSTS

Each party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of this Contract (and any documents referred to in it). The costs of registering any PPSA financing statement will be paid by the Customer and may be invoiced or debited against the Customer's credit account.

## 19. DEFAULT INTEREST

The Supplier may charge interest on any overdue amount due and payable under the Contract at a rate equivalent to 2.5% p.a. above the business overdraft interest rate of its principal banker, as determined and calculated by the Supplier. Such interest will be payable on demand by the Supplier and for so long as it remains unpaid will compound on a monthly basis.

## 20. APPLICABLE LAW

Each Contract is governed by, and the Customer submits to the law of the State or Territory specified in the preamble to the Contract or, if nothing is specified, the State of New South Wales. The courts of that State or Territory have non-exclusive jurisdiction in connection with the Contract. *The Sale of Goods (Vienna Convention) Act 1986* (New South Wales) (and any similar legislation relating to the Vienna Convention in other States or Territories) does not apply to the Contract.

## 21. ASSIGNMENT

The Supplier may assign its rights or novate its rights and obligations under a Contract (in whole or in part) to any person without the consent of the Customer. The Customer must execute such documents as the Supplier may require to effect any such assignment or novation. In the event of a novation, the Customer may, if it has reasonable grounds to believe that the novatee will not comply with the Contract, by written notice given within 30 days of receiving notice of the novation terminate any Order which has not been completed and which was accepted prior to the novation. The Customer may not assign or otherwise transfer its rights under a Contract without prior notice to and consent from the Supplier (such consent not to be unreasonably withheld). The Customer must promptly notify the Supplier in writing of any change to its registered address or other contact details provided to the Supplier.

## 22. NOT USED

## 23. STANDARD GRADES OF MATERIALS AND MEASURES

- (a) Subject to clause 23(b), the Supplier will:
- (i) supply Goods having the grade of material specified in the Order Acknowledgment (if applicable); and
  - (ii) ensure that any grade of material as specified in the Order Acknowledgment will, unless otherwise agreed, be in accordance with applicable Australian Standards and/or as detailed in any current, relevant price schedules, product handbooks or other product literature of the Supplier.
- (b) Unless otherwise agreed in writing:
- (i) all Goods will be supplied and delivered in accordance with the Supplier's standard practice and shall be subject to the Supplier's normal tolerances, limitations and variations of the following: dimension, weight, shape, composition, mechanical properties, structure, quality and service conditions;
  - (ii) any statements made by the Supplier as to weight, length, quantity or other characteristics of Goods are approximate and

the Supplier may supply Goods on an actual or calculated basis (calculated in accordance with applicable Australian standards); and

- (iii) the Supplier's statements as to weight, length, quantity or other characteristics are final (in the absence of manifest error) and will not be contested by the Customer unless the Customer has given the Supplier written notice of any error within 14 days of delivery and a reasonable opportunity to examine and re-test the Goods before they are used or dealt with.

## 24. SHORTAGES

- (a) The Customer will inspect and check all Goods received as soon as practicable upon unloading. To the maximum extent permitted by law, no claim by the Customer for shortages of Goods may be made unless such claim is notified to the Supplier within 96 hours of such inspection.
- (b) The Supplier will endeavour to rectify any shortages as soon as practicable after receiving notice.

## 25. CONSUMER TRANSACTIONS

Where and only to the extent that the supply of Goods is to a "consumer" (as that term is defined by the ACL) then:

- (a) the Additional Consumer Terms and Conditions located at [www.infrabuild.com](http://www.infrabuild.com) are incorporated into and form part of the Terms and Conditions, such that they apply as part of the Contract; and
  - (b) clause 14 shall not apply and, except as expressed otherwise in the Additional Consumer Terms and Conditions, nothing in the Terms and Conditions shall be construed as excluding, restricting or modifying any Consumer Guarantee provided under the ACL,
- in respect of that supply of Goods.

## 26. PRIVACY

- (a) Where the Customer provides the Supplier with personal information (as defined in the Privacy Act 1988) about any individual (including the Customer where applicable), the Customer must have that individual's consent to provide that information to the Supplier having regard to and for the purposes set out in this clause 26 and in the Supplier's Privacy Policy. This policy is available on request or via [www.infrabuild.com](http://www.infrabuild.com) and contains more information about the Supplier's handling of personal information, types of information collected, types of service providers used, countries to which personal information is likely to be disclosed, accessing and correcting personal information, privacy complaints, the credit reporting bodies used, information shared

with those bodies and individuals' rights in relation to their information held by those bodies.

- (b) The Supplier may collect, use and disclose that personal information for purposes relating to a Contract and to the Customer's credit application and account. This includes assessing the Customer's application, monitoring the value of and enforcing the security interests created by a Contract, reviewing credit arrangements on a periodic basis or in connection with changes (e.g. credit limit) as though assessing a new application, order fulfilment and delivery, market research, planning, business development, debt collection and customer relationship management. The Supplier may also conduct lawful and relevant credit and reference checks (including consumer credit checks on the Customer where the Customer is an individual), and deal with personal information in connection with any acquisition or potential acquisition of any part of the Supplier's business. Without the personal information sought, the Supplier may not be able to do these things, including fulfil orders and process credit applications.
- (c) The Supplier may provide marketing communications to the Customer by email and other means on an ongoing basis, unless the Customer opts out by contacting the Supplier or legal restrictions apply.
- (d) The Supplier may exchange personal information with Liberty Primary, other related bodies corporate of the InfraBuild Group and its affiliates, the Customer's guarantors and prospective guarantors (e.g. for the purpose of them deciding whether to act as guarantor), the Customer's representatives and the Supplier's service providers. The Supplier may also exchange that information with other credit providers for purposes including to: assess a credit or guarantor application; determine credit/default status; and assess or comment on credit worthiness. Some of these third parties may be located in other countries. While these parties outside Australia will often be subject to privacy and confidentiality obligations, Customer acknowledges and agrees for itself and as agent for each of its officers, employees, agents, contractors, guarantors and representatives that: (a) privacy obligations overseas may not always apply or may differ from Australian privacy laws; (b) the Supplier may not be accountable for the third party under the Privacy Act or for the overseas recipient's storage, use or disclosure of the information; (c) individuals may not be able to seek redress under the Privacy Act for that disclosure or for the acts or omissions of the overseas recipient of the information; and (d) the third party may be subject to foreign laws which might compel further disclosures of personal information (e.g. to government authorities).



**[Only applies to Goods supplied or works provided by InfraBuild Construction Solutions Pty Ltd]  
TERMS AND CONDITIONS OF CONTRACT FOR SUPPLY OF GOODS AND WORKS**

**Effective November 2023**

These Terms and Conditions replace and supersede all previous Terms and Conditions by InfraBuild Construction Solutions Pty Ltd (formerly known as OneSteel Reinforcing Pty Ltd) issued prior to the above mentioned effective date.

InfraBuild Construction Solutions Pty Limited ABN 22 004 148 289 trading as InfraBuild Construction Solutions ("InfraBuild Construction").

**General**

All Goods are supplied, and Works provided, to Purchasers on these Terms and Conditions. No person employed by or acting otherwise as agent of InfraBuild Construction or purporting to do so has authority to accept orders and supply Goods or provide Works on any other terms and conditions or to vary these Terms and Conditions in any way whatsoever unless the person has been authorised to do so by InfraBuild Construction.

**1. DEFINITIONS**

1.1 In these Terms and Conditions:

- (a) **Accession** means any Goods which are installed in or affixed to other goods;
- (b) **ACL** means the *Australian Consumer Law* which is contained in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*;
- (c) **Amount Payable** means, at any time, all amounts payable by the Purchaser to any member of the InfraBuild Group at that time (whether or not those amounts have become due for payment under any provision of these Terms and Conditions) in connection with the Goods or a Contract (including, without limitation, any invoiced amount, interest, fees, costs or expenses);
- (d) **Contract** means: (i) a contract created in accordance with clause 4; and (ii) any other contract to which these Terms and Conditions are expressed to form part;
- (e) **Delivery Offer** means the delivery offer, which sets out the terms and conditions on which InfraBuild Construction delivers Goods, as provided by InfraBuild Construction to the Purchaser;
- (f) **Goods** means goods, products and materials (and any related Works) supplied by InfraBuild Construction under a Contract;
- (g) **InfraBuild Construction** means InfraBuild Construction Solutions Pty Limited ABN 22 004 148 289;
- (h) **InfraBuild Group** means each and all of Liberty InfraBuild Ltd ACN 631 112 108, InfraBuild

Australia Pty Ltd ACN 631 112 457, InfraBuild NZ Limited CN 1047789, OneSteel Recycling Hong Kong Limited CN 849 675, InfraBuild Trading Pty Limited ACN 007 519 646, The Australian Steel Company (Operations) Pty Ltd ACN 069 426 955, InfraBuild Wire Pty Limited ACN 000 010 873, InfraBuild NSW Pty Limited ACN 003 312 892, InfraBuild Construction Solutions Pty Limited CAN 004 148 289, OneSteel Recycling Pty Limited ACN 002 707 262, Austube Mills Pty Limited ACN 123 666 679, XMS Holdings Pty Limited ACN 008 742 014, P&T Tube Mills Pty Ltd ACN 010 469 977, InfraBuild (Newcastle) Pty Ltd ABN 50 623 285 718, InfraBuild (Manufacturing) Pty Ltd ABN 38 623 194 070, SSX Services Pty Limited ACN 083 090 831, Steelforce Holdings Pty Ltd ACN 120 736 638, Steelforce Australia Pty Ltd ACN 093 284 078, Steelforce Sydney Pty Ltd ACN 110 268 829, Austeel Trading Pty Ltd ACN 110 146 515, Steelforce China Pty Ltd ACN 114 786 337, Dalian Steelforce Hi-Tech Co Ltd 210241400000839, Dalian Austeel Trading Pty Ltd 912102137969189679 and any related body corporate (as that term is defined in the *Corporations Act 2001 (Cth)*) of any of them from time to time;

- (i) **Processed Goods** means Goods which after their delivery become part of a product or mass by being manufactured, processed, assembled, commingled or otherwise dealt with in such a way that their identity is lost in the product or mass;
- (j) **PPSA** means the Personal Property Securities Act 2009 (Cth);
- (k) **Purchaser** means the person, firm or company that agrees to purchase the Goods or Works;

- (l) **Quotation** means a quote for Goods and/or Works issued to the Purchaser by InfraBuild Construction;
  - (m) **Working Documents** means architectural drawings, structural drawings, construction drawings, specifications and reinforcement schedules or other documents together with any variation or site instruction;
  - (n) **Works** means any labour performed and/or services provided by InfraBuild Construction under a Contract (whether or not a fee is charged for such labour and/or services), including but not limited to estimating, scheduling, re-scheduling, detailing, re-detailing, design, re-design, prefabrication, project management, steel fixing and administrative services;
  - (o) **writing** means hard copy, signed by a person authorised in writing, or electronic, transmitted by a person authorised in writing;
  - (p) the terms "financing statement", "proceeds", "purchase money security interest", "security agreement", "security interest" and "verification statement" have the respective meanings given to them under, or in the context of, the PPSA; and
  - (q) the governing law of these Terms and Conditions will be .....or otherwise will be as specified in clause 28.2; and
  - (r) where used in these Terms and Conditions:
    - (i) "Other Terms" means the terms applicable to a sale by Liberty Primary to the Purchaser; and
    - (ii) "Liberty Primary" means any entity listed from time to time as forming part of the Liberty Primary Group in the Liberty Primary Standard Terms and Conditions of Sale (available at [www.libertyqfg.com](http://www.libertyqfg.com))
  - (b) supply under the Contract is stopped or suspended for more than 30 days;
  - (c) supply under the Contract is changed in any way before, during or after commencement of supply, including but not limited to re-design of the project, the start date of supply, the completion date of supply and the agreed rate of supply of the Goods and/or Works; or
  - (d) supply under the Contract has not been completed within twelve months of the date of the Quotation,
- and the Purchaser may upon the alteration of the price charged for the Goods and/or Works in accordance with this clause, terminate the Contract (or part thereof) within 7 days of InfraBuild providing notice of the change of price provided such change in price materially adversely impacts the Purchaser.
- 2.5 The price quoted in a Quotation is subject to the Purchaser ordering the whole quantity of the Goods and Works described in the Quotation. If the Purchaser orders less than the whole quantity of Goods and Works specified in the Quotation, then InfraBuild Construction reserves the right to revise the pricing for such Goods and/or Works.
  - 2.6 Unless otherwise agreed in writing, the price charged for the Goods and Works is the price applying at the date of despatch. Any price indications or price lists are subject to alteration in accordance with these Terms and Conditions.
  - 2.7 All amounts shown in InfraBuild Construction quotations and invoices may be rounded up or down to the nearest multiple of 10 cents.
  - 2.8 Notices under clauses 2.4, 2.5 or 3.1 in respect of the price of Goods must be provided not later than 7 days prior to despatch of the Goods.

### 3. ESCALATION AND PRICE VARIATION

- 3.1 In addition to its rights in clause 2 or any rights under a Contract, InfraBuild Construction may increase or decrease the Contract price of Goods and/or Works during the term of the Contract where it incurs an increase or decrease in its costs (including any transaction or other taxes) of supplying the Goods and/or Works.
- 3.2 The Purchaser may terminate the Contract for convenience (or part thereof) within 7 days of InfraBuild Construction providing a notice increasing the price in accordance with clause 2.4, 2.5 or 3.1.

### 4. THE CONTRACT

- 4.1 An order or offer to purchase Goods and/or Works can be made by the Purchaser in writing or verbally.
- 4.2 An order or offer made by the Purchaser does not constitute a binding contract until InfraBuild Construction has accepted such order or offer in accordance with these Terms and Conditions.
- 4.3 An order or offer made by a Purchaser is accepted by InfraBuild Construction only if InfraBuild Construction:

## 2. QUOTATIONS AND PRICING

- 2.1 InfraBuild Construction may at any time and at its absolute discretion accept or reject in whole or in part any request from the Purchaser for a Quotation.
- 2.2 A Quotation is valid for a period of 30 days from the date of the Quotation, unless InfraBuild Construction specifies otherwise in writing. Any Quotation may be withdrawn earlier by notice from InfraBuild Construction at its absolute discretion.
- 2.3 InfraBuild Construction reserves the right to withdraw, change or re-issue a Quotation if supply of the quoted Goods and/or Works does not start within 30 days after the date of the Quotation.
- 2.4 InfraBuild Construction reserves the right to change the pricing in the Contract for the whole or any part of the Contract by prior notice in writing if:
  - (a) supply of the quoted Goods and/or Works does not start within 30 days after the date of the written order acknowledgement;

- (a) formally accepts the order by written acknowledgement; or
- (b) delivers the ordered Goods and/or Works described in the order or offer,
- whichever occurs first.
- 4.4 InfraBuild Construction may at any time and at its absolute discretion accept or reject part or all of any order or offer made by the Purchaser.
- 4.5 The Purchaser is not entitled to cancel or change part or all of any order or offer accepted by InfraBuild Construction, unless InfraBuild Construction consents in writing (such consent not to be unreasonably withheld).
- 4.6 The Contract, when created, is wholly documented by (in descending order of precedence):
- (a) any specific terms agreed by the parties in accordance with clause 6;
- (b) the Quotation (if applicable);
- (c) these Terms and Conditions;
- (d) the relevant Working Documents;
- (e) the applicable Delivery Offer; and
- (f) the credit terms applying to the Purchaser (if applicable).
- 4.7 Previous dealings between InfraBuild Construction and the Purchaser have no effect on the Contract.
- 4.8 Trade custom and/or trade usage is superseded by the Contract and is not applicable in interpretation of the Contract.
- 4.9 The Contract for the supply of Goods and/or Works pursuant to an order or offer constitutes the entire agreement between InfraBuild Construction and the Purchaser with respect to the Goods supplied or Works provided under that Contract and all prior negotiations, proposals and correspondence are superseded by that Contract.
- 4.10 Unless agreed otherwise in writing, InfraBuild Construction may, by providing 1 month's prior written notice to the Purchaser, terminate the Contract and may issue an invoice to the Purchaser for any Goods and/or Works supplied prior to the date of termination. In the event InfraBuild Construction exercises its rights under this clause, the Purchaser must pay any invoice in accordance with clause 8.2(b) (and in respect of each Contract clause 8 shall survive termination of such Contract).
- 4.11 The Purchaser acknowledges that each Contract constitutes a security agreement, and that any one or more members of the InfraBuild Group may register a financing statement (or comparable notice in any other relevant jurisdiction) on behalf of itself and any one or more other members of the InfraBuild Group in respect of the security interests provided for by the Contracts.
- 5. QUANTITIES**
- 5.1 Generally, the steel mass of steel reinforcing Goods supplied will be within the tolerances permitted by Australian Standards AS/NZS4671, AS3600, AS5100, AS2870, AS2327 and AS/NZS1100.
- 5.2 When calculating the mass of steel reinforcing Goods, InfraBuild Construction will make calculations of nominal mass on a per metre basis in accordance with AS/NZ4671. InfraBuild Construction will increase the nominal mass of steel reinforcing Goods (calculated pursuant to AS/NZ4671) sold by it by a percentage to be set by InfraBuild Construction from time to time, taking into account factors including manufacturing variations, but the percentage will not exceed 4.5%.
- 5.3 Calculations with respect to the length of steel reinforcing will be made in accordance with AS/NZS1100 Part 501.
- 5.4 Unless the Quotation states that the price is a lump sum, the price in the Quotation is based on estimated quantities of Goods and Works as applicable and, unless the price is a lump sum, the Purchaser is liable to pay for the actual quantity of Goods and the quantum of the Works necessary for InfraBuild Construction to perform its obligations. Other than with a lump sum price, any adjustment in the actual price compared to the quoted price will reflect the increase or decrease of the Goods and/or Works actually supplied or provided in accordance with the Contract.
- 6. VARIATIONS**
- 6.1 No variation of the Contract is effective unless it is agreed to by both parties in writing.
- 7. WARRANTIES AND LIMITATION OF LIABILITY**
- 7.1 To the extent permitted by law, all implied conditions and warranties are excluded. To the extent that any implied conditions and warranties cannot be excluded, the Purchaser's sole and exclusive remedy for any loss or damage (whether direct, indirect, liquidated, special or consequential and including loss or damage arising as a result of death or personal injury to the Purchaser or any other person) however arising (including by reason of any breach of contract, condition or warranty in the Contract (whether express or implied)) is, where permitted by law, limited to any one of the following, as determined by InfraBuild Construction acting reasonably, or otherwise as agreed:
- (a) in the case of any Goods supplied by InfraBuild Construction pursuant to the Contract:
- (i) the replacement of the relevant Goods or supply of equivalent Goods; or
- (ii) the repair of the Goods; or
- (iii) after prior agreement between InfraBuild Construction and the Purchaser, payment of the cost of replacing or repairing or having the Goods replaced or repaired; or
- (iv) reimbursement of some or all amounts paid by the Purchaser in respect of the Goods.

- (b) In the case of any Works supplied by InfraBuild Construction pursuant to the Contract:
- (i) the provision of the Works again; or
  - (ii) payment of the cost of having the relevant Works provided again; or
  - (iii) reimbursement of some or all amounts paid by the Purchaser in respect of the Works.
- 7.2 Goods which are not manufactured by InfraBuild Construction are subject solely to the warranties (if any) specified by the manufacturers or the third party suppliers to InfraBuild Construction, and the Purchaser acknowledges that, to the extent permitted by law, InfraBuild Construction gives no warranties beyond such manufacturers' or suppliers' warranties. InfraBuild Construction must provide to the Purchaser (when reasonably requested by the Purchaser) copies of such warranties (if any) as soon as reasonably practicable after such warranties are received by InfraBuild Construction.
- 7.3 The Purchaser acknowledges that InfraBuild Construction makes no representations or warranties as to the fitness or suitability for any purpose of any of the Goods or Works described in the Quotation or Contract.
- 7.4 Subject to clause 7.1 but otherwise, except as required by law, InfraBuild Construction is not obliged to accept Goods returned for any reason.
- 7.5 InfraBuild Construction is not liable for the design, lifting and/or positioning of any pre-fabricated elements at the Purchaser's site, including but not limited to manually tied and/or welded components.
- 7.6 Subject to clause 7.1 and the *Competition and Consumer Act 2010* (Cth), InfraBuild Construction is not liable to the Purchaser for any loss or damage, whether direct, indirect, liquidated, special or consequential and including loss or damage arising as a result of death or personal injury, however caused (including negligent or reckless conduct or omission) which the Purchaser or any other person may suffer or incur and which may, without limiting the generality of the foregoing, arise directly or indirectly in respect of the Goods and/or Works, any defects in the Goods and/or Works or in respect of any failure or omission by InfraBuild Construction or any of its officers, agents or employees to comply with the Contract or any obligation imposed by law.
- 8. INVOICING AND PAYMENT**
- 8.1 Where the Purchaser has an established and approved commercial credit account with InfraBuild Construction or with the InfraBuild Group or Liberty Primary, the Purchaser must comply with the terms and conditions of that commercial credit account. InfraBuild Construction reserves the right to charge an administration fee as determined from time to time to cover credit card merchant fees and InfraBuild Construction's associated overhead charges.
- 8.2 If the Purchaser has a commercial credit account with InfraBuild Construction then, unless otherwise agreed in writing:
- (a) InfraBuild Construction may issue invoices for Goods and Works either:
- (i) on despatch of such Goods and/or Works; or
  - (ii) when such Goods and/or Works are delivered; or
  - (iii) when such Goods and/or Works are deemed delivered in accordance with clause 12; or
  - (iv) at such other intervals or cycles as may be agreed in writing by the parties from time to time; and
- (b) the Purchaser must pay all invoices in full and without set-off by the last business day of the month following the month in which the invoice was issued, or within such other period as may be agreed in writing by the parties from time to time.
- 8.3 If the Purchaser does not have a commercial credit account with InfraBuild Construction then the Purchaser must pay InfraBuild Construction for the Goods and/or Works at the time it places an order for such Goods and/or Works with InfraBuild Construction.
- 8.4 InfraBuild Construction reserves the right to charge reasonable additional administration fees (such as commercial credit account keeping fees) as determined by InfraBuild Construction from time to time.
- 8.5 If InfraBuild Construction delivers only part of an order, then it may invoice, and the Purchaser must pay for, that part of the Goods and/or Works delivered, unless otherwise agreed in writing between the parties.
- 8.6 The Purchaser is not entitled to, and must not demand or hold, any sum on account of retention for completion of the Contract to be performed by InfraBuild Construction or against any pending or unsecured claim against InfraBuild Construction. If the Purchaser withholds any money as retention money, InfraBuild Construction reserves the right to withhold further supply under the Contract or any other contract between InfraBuild Construction and the Purchaser.
- 8.7 The granting of credit does not oblige InfraBuild Construction to extend any particular amount of credit to the Purchaser and InfraBuild Construction may withdraw, refuse, suspend or limit credit to the Purchaser at any time, in its absolute discretion, without notice or providing any reason.
- 8.8 The Purchaser must notify InfraBuild Construction in writing if there is any change in the shareholding or ownership of the Purchaser or any material change in the Purchaser's financial position.
- 9. DEFAULT AND TERMINATION**
- 9.1 If:
- (a) the Purchaser refuses or fails to pay any Amount Payable or defaults on payment under the Other Terms; or

- (b) not used;
- (c) in InfraBuild Construction's reasonable opinion, the Purchaser is insolvent or suffering from financial issues including but not limited to, if the Purchaser is an individual, the Purchaser commits an act of bankruptcy, or, if the Purchaser is a company, it becomes an externally-administered body corporate or passes a resolution to wind up; or
- (d) a party is in breach of contract, (and, in the case of the Purchaser, such breach is not a refusal or failure to pay described in clause 9.1(a)) and such breach is not remedied within 14 days of receiving notice from the other party requiring it to do so, unless such breach arises out of the supply of defective Goods, in which case InfraBuild Construction shall remedy the breach within such time as is reasonable in the circumstances and a default will not arise until such time period has expired,
- then, in addition to and without prejudice to any other rights it has by law, the party which is not in default:
- (e) is entitled to treat the whole of the Contract as repudiated;
- (f) in case of InfraBuild Construction may refuse to supply (or suspend the supply of) the Goods or provide the Works to the Purchaser on credit or at all and/or amend the terms of any credit granted;
- (g) in the case of InfraBuild Construction is entitled to take possession of any Goods or Processed Goods, wherever they are located;
- (h) in the case of InfraBuild Construction is entitled to remove any Goods which have become an Accession; and
- (i) in the case of InfraBuild Construction is entitled to appoint any person to be a receiver of all or any of the Goods, Accessions, Processed Goods or other assets the subject of the security interests created by a Contract.
- 9.2 The Purchaser is not entitled to terminate, suspend or cancel part or all of a Contract for any other reason (including for convenience) except in accordance with clause 9.1. If the Purchaser purports to wrongly terminate or rescind part or all of a Contract or refuses to take delivery of any Goods delivered in accordance with a Contract, InfraBuild Construction may recover from the Purchaser the amount of the order placed on InfraBuild Construction that is subject to termination or rescission, less any amounts already paid by the Purchaser.
- 10. MONEY OWING**
- 10.1 A statement in writing as to any amount owing under a Contract by the Purchaser on the date mentioned in such statement is prima facie evidence that such amount is owing.
- 11. TAX**
- 11.1 Unless otherwise agreed in writing or required by law, all amounts stated in a Quotation or payable under a Contract are calculated or expressed exclusive of GST. If GST is payable, the amount of GST will be specified separately in the relevant documentation.
- 11.2 If GST is or becomes payable by a supplier in relation to a supply under a Contract, the recipient of that supply must pay to that supplier an amount equal to the GST. An amount payable under this clause 11 must be paid:
- (a) at the same time as the payment of the amount in respect of that supply is due; and
- (b) in addition to the amount payable under the Contract.
- 11.3 The Purchaser is not obliged to pay any GST unless a valid tax invoice has been issued.
- 11.4 If the Purchaser fails to pay such GST when due, InfraBuild Construction may recover it from the Purchaser as a debt under the Contract.
- 11.5 Any party that becomes aware of the occurrence of any adjustment event in connection with the 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 no later than 20 business days after the parties first become aware of the adjustment event.
- 11.6 For the purposes of this clause 11, terms used in this clause 11 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* have the meaning given to them in that Act.
- 12. DELIVERY**
- 12.1 Delivery of Goods will be in accordance with the applicable Delivery Offer. It is the obligation of the Purchaser to ensure that it is familiar with and observes the Delivery Offer. Unless otherwise agreed, InfraBuild Construction may deliver the Goods in any number of instalments.
- 12.2 If InfraBuild Construction quotes the price as "ex works", the Purchaser must collect the Goods from InfraBuild Construction's nominated premises at the time notified by InfraBuild Construction to the Purchaser.
- 12.3 If InfraBuild Construction quotes the price as "delivered", it will deliver the Goods to the Purchaser's nominated site, and the Purchaser must:
- (a) nominate the site for delivery in writing to InfraBuild Construction prior to the delivery;
- (b) ensure that an area is available which complies with all applicable occupational health, safety and welfare legislation; and
- (c) ensure that its representative is available at the time of delivery to acknowledge delivery by signing a delivery receipt.

- 12.4 If InfraBuild Construction's obligation is to deliver the Goods, and the Purchaser or its representative is not in attendance when the Goods are delivered at the Purchaser's nominated site and InfraBuild Construction has used reasonable efforts to notify the Purchaser that the Goods are ready for unloading, InfraBuild Construction reserves the right to unload the Goods.
- 12.5 Where the Purchaser does not accept delivery of Goods or allow performance of the Works which it has ordered from InfraBuild Construction when such Goods and/or Works are ready for delivery or performance, the Purchaser is liable for any reasonable additional charges that InfraBuild Construction may incur for storage and/or double-handling, at InfraBuild Construction's then current rates.
- 12.6 If Goods are to be despatched "ex works" they are deemed delivered at the premises of InfraBuild Construction when InfraBuild Construction notifies the Purchaser that the Goods are ready for collection.
- 12.7 If Goods are to be delivered by InfraBuild Construction, unless otherwise agreed, they are deemed to be delivered:
- (a) if the parties agree that the Purchaser or the Purchaser's representative will unload the Goods, when InfraBuild Construction delivers the Goods on a truck to a site adjacent to the Purchaser's nominated site; or
  - (b) when InfraBuild Construction has unloaded the Goods at or adjacent to the Purchaser's site to a ground level, flat area.
- 12.8 If Goods are to be delivered by InfraBuild Construction then, unless otherwise agreed in the Contract or unless otherwise provided in the Delivery Offer, the Purchaser must at its cost unload the Goods.
- 12.9 InfraBuild Construction will make all reasonable efforts to have the Goods delivered to the Purchaser as agreed between the parties.
- 13. RISK**
- 13.1 Risk in the Goods passes to the Purchaser on:
- (a) delivery of the Goods to the Purchaser; or
  - (b) deemed delivery of the Goods to the Purchaser in accordance with clause 12, whichever occurs first.
- 13.2 Not used.
- 13.3 If InfraBuild Construction's officers, agents or employees enter upon any property at the actual request of the Purchaser, InfraBuild Construction accepts no responsibility for any damage suffered by the Purchaser or the Purchaser's officers, agents or employees or to the Purchaser's property as a result of or in connection with InfraBuild Construction's officers, agents or employees entering such property.
- 13.4 If a vehicle engaged in the delivery of Goods to the Purchaser's property is disabled or damaged due to the condition of the Purchaser's property, the Purchaser is liable for the reasonable cost of salvage of or repair to the vehicle, to the extent arising from such damage. The Purchaser indemnifies InfraBuild Construction and keeps InfraBuild Construction indemnified against any loss or damage suffered by InfraBuild Construction (including as a consequence of InfraBuild Construction becoming liable to any third party directly or indirectly) as a result of InfraBuild Construction's officers, agents or employees entering any property at the actual request of the Purchaser or unloading the Goods, except to the extent such loss or damage is caused or contributed to by the negligence or breach of InfraBuild Construction or InfraBuild Construction's officers, agents or employees.
- 14. TITLE AND RELATED MATTERS**
- 14.1 The legal and equitable title to the Goods will only be transferred from InfraBuild Construction to the Purchaser when the Amount Payable has been reduced to zero.
- 14.2 Until the Amount Payable has been reduced to zero:
- (a) the Purchaser holds the Goods as bailee for InfraBuild Construction and that a fiduciary relationship exists between the Purchaser and InfraBuild Construction;
  - (b) the Purchaser must keep the Goods separate and in good condition as a fiduciary of InfraBuild Construction, clearly showing InfraBuild Construction's ownership of the Goods, and must keep books recording InfraBuild Construction's ownership of the Goods and the Purchaser's sale or otherwise of them in accordance with clause 14.5 and 14.7; and
  - (c) the Purchaser, if required, must deliver up the Goods to InfraBuild Construction.
- 14.3 If the Purchaser defaults, in addition to InfraBuild Construction's rights under clause 9, InfraBuild Construction may take possession of the Goods wherever the Goods are located and the Purchaser agrees that representatives of InfraBuild Construction may enter upon the Purchaser's premises for that purpose.
- 14.4 The Purchaser may only install or affix the Goods to other goods (so that they become an Accession to those other goods) or use or permit the Goods to be manufactured, processed, assembled, commingled or otherwise dealt with (so that they become Processed Goods) in the ordinary course of its normal business.
- 14.5 Despite clause 14.1 but subject to clauses 14.4 and 15, the Purchaser may sell as fiduciary agent for InfraBuild Construction the Goods, any Accession or any Processed Goods to a third party in the normal course of the Purchaser's business provided that where the Purchaser is paid by that third party, the Purchaser holds the proceeds of sale, to the extent of the Amount Payable on trust for InfraBuild Construction. The Purchaser must keep those proceeds separate on trust for InfraBuild Construction and not mix those proceeds with any other monies.
- 14.6 Unless otherwise expressly agreed in writing, InfraBuild Construction will allocate and apply amounts received from the Purchaser in the following order:

- (a) in or towards payment of any part of the Amount Payable which is not part of the purchase price of any Goods, in the order in which those amounts were incurred; and
  - (b) secondly, in or towards payment of the purchase price of Goods in the order in which those Goods were invoiced.
- 16.2 In connection with the enforcement of a security interest arising under these Terms and Conditions or a Contract, to the fullest extent permitted by the PPSA, the parties agree that the InfraBuild Group need not comply with sections 95, 117, 118, 121(4), 125, 130, 132(3)(d) and 132(4) of the PPSA and sections 142 and 143 of the PPSA are excluded.

## 17. RESALE

- 17.1 The Purchaser agrees that it will not re-supply the Goods supplied to it by InfraBuild Construction without InfraBuild Construction's prior written consent, which InfraBuild Construction may withhold at its absolute discretion, but the Purchaser may sell any Accession or Processed Goods to a third party in the normal course of the Purchaser's business, and provided that the Purchaser holds the proceeds of any sale on trust for InfraBuild Construction to the extent of the Amount Payable. The Purchaser must keep those proceeds separate on trust for InfraBuild Construction and not mix those proceeds with any other monies.

## 18. FORCE MAJEURE

- 18.1 Subject to clause 18.2, if InfraBuild Construction is prevented (directly or indirectly) from supplying the Goods or providing the Works or any part thereof by reason of acts of God, strikes, lockouts, trade disputes, fire, floods, breakdowns, interruption of transport, government action, or any other cause whatsoever outside its control, InfraBuild Construction is under no liability whatsoever to the Purchaser for failure to perform its obligations under any Contract to the extent and for so long as such performance is prevented or delayed by such event or cause without substantial fault or negligence of InfraBuild Construction.

- 18.2 InfraBuild Construction must give notice to the Purchaser of any delay described in clause 18.1 and must use reasonable efforts to mitigate the cause of the delay quickly. Following receipt of such notice, the Purchaser may agree in writing to extend the time for InfraBuild Construction's performance or either party may cancel the relevant Contract.

## 19. SHORTAGES, DEFECTS AND INACCURACIES, FAILURE OF, OR DELAY IN, SUPPLY

- 19.1 The Purchaser hereby agrees to check all Goods received as soon as reasonably practicable upon unloading at their destination and all Works as soon as reasonably practicable upon completion. To the maximum extent permitted by law, no claim by the Purchaser for shortages or improper or defective or damaged Goods, or defective or improper Works, will be recognised by InfraBuild Construction unless notified to InfraBuild Construction within ninety-six (96) hours of delivery or performance.

- 19.2 InfraBuild Construction will endeavour to rectify inaccuracies or short supply as soon as reasonably practicable after notification.

- 19.3 If, due to any cause whatsoever, InfraBuild Construction is unable to supply any part of a Contract by the nominated delivery date or at all, it must notify the Purchaser that it will:

This order of allocation and application will apply notwithstanding any instruction, request or appropriation of the Purchaser as to the way in which a payment made by it should be applied by InfraBuild Construction, or any condition attached by the Purchaser to any payment made by it.

- 14.7 If the Purchaser uses the Goods in some manufacturing or construction process of its own or some third party prior to having paid in full for such Goods, then the Purchaser holds such part of the proceeds of such manufacturing or construction process as related to the Goods on trust for InfraBuild Construction. Such part is deemed to equal in dollar terms the amount owing by the Purchaser to InfraBuild Construction at the time of the receipt of such proceeds. The Purchaser must keep that part of the proceeds separate on trust for InfraBuild Construction and not mix those proceeds with any other monies. Notwithstanding the above, the Purchaser is still required to pay InfraBuild Construction for Goods already delivered and for Goods manufactured or ordered to specification and not yet delivered.

## 15. SECURITY INTEREST AND CHARGE

- 15.1 The Purchaser grants to the InfraBuild Group a security interest in the Goods to secure payment of the Amount Payable. The security interest:

- (a) extends to and continues in all proceeds, Accessions and Processed Goods; and
- (b) is a purchase money security interest to the extent to which it secures payment of that part of the Amount Payable which comprises the aggregate unpaid purchase price of Goods.

- 15.2 The Purchaser must not do or permit anything to be done that may result in the purchase money security interest granted to the InfraBuild Group ranking in priority behind any other security interest.

- 15.3 The Purchaser charges in favour of InfraBuild Construction, all of the Purchaser's interest and rights in all present and future real property of the Purchaser to secure the performance of the Purchaser's obligations under each Contract, including payment of the Amount Payable. The Purchaser acknowledges that InfraBuild Construction has a caveatable interest in any real property of the Purchaser under this clause and may lodge a caveat over that property.

## 16. CONTRACTING OUT OF THE PPSA

- 16.1 The Purchaser waives or contracts out of its rights to receive any notice or statement (including notice of a verification statement) under any provision of the PPSA unless the notice or statement is required by the PPSA and cannot be excluded.

- (a) supply to the Purchaser similar Goods and/or Works which in the opinion of InfraBuild Construction acting reasonably are an appropriate substitute without prior reference to the Purchaser; or
  - (b) not supply part or all of the Goods and/or Works and make an adjustment to the price as determined by InfraBuild Construction acting reasonably; or
  - (c) delay supply of part or all of the Goods and/or Works no longer than reasonably necessary.
- 22.2 Where the Quotation states that prefabricated elements, such as reinforcing elements or cages, BAMTEC®, ROMTECH®, engineered manufactured items and steel fixing are included, unless expressly stated otherwise the quoted price does not include the cost of or associated with lifting or lowering to position on site; site scaffolding; supply and welding of lifting points; or site welding.
- 22.3 The Purchaser is responsible for the design and location of any required lifting and/or support items at the Purchaser's site.

## 20. DISPUTE RESOLUTION

- 20.1 If there is a dispute or disagreement between InfraBuild Construction and the Purchaser arising in any way from or in relation to a Contract, then InfraBuild Construction and the Purchaser must use all reasonable endeavours and reasonably appropriate alternative dispute resolution procedures as soon as possible before resorting to litigation.
- 20.2 Nothing in this clause 20 prevents a party seeking urgent interlocutory relief from a court or requires that party to participate in informal resolution processes for longer than 30 days after a dispute has arisen.

## 21. CONFIDENTIALITY

- 21.1 InfraBuild Construction and the Purchaser agree that a Contract and any other information furnished by one party to the other pursuant to the Contract is and remains confidential between the parties and the parties must not disclose the same, or permit or cause the same to be disclosed, either directly or indirectly, to any third party unless:
- (a) prior approval in writing has been obtained from the other party;
  - (b) disclosure is required by a law (including any legally binding notice or order) applicable to, or a requirement of the rules of any stock exchange having jurisdiction over, the Purchaser or any member of the InfraBuild Group;
  - (c) such disclosure is necessary for the relevant party's performance of the Contract; or
  - (d) the information is in the public domain prior to the disclosure by the party.

- 21.2 The expression "any third party" does not include the financial or legal advisers of a party or a related body corporate of a party.

## 22. EXTRAS

- 22.1 Unless noted in the Quotation, the price quoted does not include items such as: tie wire; bar chairs; threading and/or screwing; saw cutting; mechanical splices; welding of any nature; blacksmithing; press work; butt welding; assembly of goods; supply and location of lifting hooks, slings and cradles; supply of bars exceeding lengths of ten metres or exceeding diameter of 36mm; delivery of oversized loads or provision of vehicle escorts; brickwork reinforcing and holding down bolts; galvanizing; on-site scheduling; product containers; steel fixing; on-site

- accommodation; provision of traffic control; or such other items as specified in the Quotation as being excluded.
- 22.2 Where the Quotation states that prefabricated elements, such as reinforcing elements or cages, BAMTEC®, ROMTECH®, engineered manufactured items and steel fixing are included, unless expressly stated otherwise the quoted price does not include the cost of or associated with lifting or lowering to position on site; site scaffolding; supply and welding of lifting points; or site welding.
- 22.3 The Purchaser is responsible for the design and location of any required lifting and/or support items at the Purchaser's site.

## 23. WORKS

- 23.1 Unless expressly stated in a Quotation, the prices, fees or rates quoted do not include any Works.
- 23.2 InfraBuild Construction reserves the right to charge for any or all Works performed pursuant to clause 23.3.
- 23.3 Where InfraBuild Construction has agreed to provide Works, the Purchaser must pay InfraBuild Construction's fees for such Works, if applicable, when such Works have been performed, based on the prices, fees or rates as agreed between the parties in writing or otherwise such fees as are reasonably incurred.
- 23.4 InfraBuild Construction will perform the Works in a competent, proper and workmanlike manner and exercising a reasonable standard of skill and diligence, but is not liable for any inaccuracy, error or omission arising from performance of the Works.
- 23.5 Where a Quotation expressly includes steelfixing and/or prefabrication as part of the Works, the Purchaser must give InfraBuild Construction sufficient notice to arrange such steelfixing and/or prefabrication and meet associated health and safety requirements.

## 24. WORKING DOCUMENTS

- 24.1 InfraBuild Construction accepts no responsibility for the correctness of Working Documents prepared by the Purchaser or a third party.
- 24.2 Unless otherwise agreed, the Purchaser must deliver all Working Documents without charge to InfraBuild Construction prior to commencement of the Works.
- 24.3 Where the Purchaser submits electronic copies of Working Documents to InfraBuild Construction, then InfraBuild Construction reserves the right to charge for the printing costs associated with those Working Documents.
- 24.4 Should errors occur as a result of Working Documents prepared by the Purchaser or a third party, the Purchaser is liable for the cost of rectification.
- 24.5 All Working Documents will remain in the custody and control of InfraBuild Construction.
- 24.6 A Quotation does not include any fee for InfraBuild Construction to prepare any design, re-design, detailing, re-detailing, scheduling or re-scheduling of Working Documents unless stated in the Quotation. The Purchaser

must pay InfraBuild Construction's fees for such services, if applicable, when such Working Documents are prepared.

24.7 InfraBuild Construction will provide only two copies of material processing supply schedules and associated installation location plans.

24.8 InfraBuild Construction reserves the right to schedule distribution steel as detailed in the Working Documents or as otherwise agreed in writing.

24.9 Unless authorised in writing, neither the Purchaser nor any third party is authorised to reproduce, adapt or use in any manner whether part or whole any Working Documents prepared by InfraBuild Construction (whether prepared on a fee paying basis or not). Any unauthorised reproduction, adaptation or use may be, among other things, a breach of copyright and actionable by InfraBuild Construction.

24.10 The Purchaser indemnifies InfraBuild Construction against all claims and all costs, liabilities and expenses incurred by InfraBuild Construction as a result of or related to:

- (a) any inaccuracy, omission or error in the Working Documents prepared by the Purchaser or a third party; or
- (b) Working Documents, or any other documents provided by the Purchaser to InfraBuild Construction for the purposes of or in the course of the supply of Goods or performance of Works, breaching a third party's intellectual property rights.

and this clause 24.10 survives termination or expiry of the Contract.

24.11 The Purchaser may not use any trade mark or other intellectual property of InfraBuild Construction, unless it receives the prior written consent of InfraBuild Construction (which consent may be given, withheld or withdrawn, or given subject to conditions, at InfraBuild Construction's discretion).

## 25. COSTS

25.1 Each party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of this Contract (and any documents referred to in it). The costs of registering any PPSA financing statement will be paid by the Purchaser and may be invoiced or debited against the Purchaser's credit account.

## 26. NOT USED

## 27. DEFAULT INTEREST

27.1 InfraBuild Construction may charge interest on any overdue amount due and payable under the Contract at a rate equivalent to 2.5% p.a. above the business overdraft interest rate of its principal banker, as determined and calculated by InfraBuild Construction. Such interest will be payable on demand by InfraBuild Construction and for so long as it remains unpaid will compound on a monthly basis.

## 28. MISCELLANEOUS

28.1 A notice under a Contract can only be in writing and can only be given to a party:

- (a) personally;
- (b) by registered post to the last known place of business or residence or registered office. Such notice is deemed to be received at the time at which the letter is delivered in the ordinary course of post;
- (c) by facsimile transmission to the last known facsimile number. Such notice is deemed to be received when the sending machine confirms notice has been sent; and
- (d) by electronic transmission to the last known email address. Such notice is deemed to be received when the sending machine confirms notice has been sent.

28.2 Each Contract is governed by, and the Purchaser submits to the law of the State or Territory specified in the preamble to the Contract or, if nothing is specified, the State of New South Wales. The courts of that State or Territory have exclusive jurisdiction in connection with the Contract.

28.3 InfraBuild Construction may assign or otherwise deal or novate its rights and obligations under a Contract (in whole or in part) to any person or otherwise deal with the benefit of any Contract without the consent of the Purchaser. The Purchaser must execute such documents as InfraBuild Construction may require to effect any such assignment, novation or other dealing. In the event of a novation, the Purchaser may, if it has reasonable grounds to believe that the novatee will not comply with the Contract, by written notice given within 30 days of receiving notice of the novation terminate any order which has not been completed and which was accepted prior to the novation. The Purchaser may not assign, transfer or otherwise deal with its rights under a Contract or grant a security interest in a Contract or Goods to any party without prior notice to and written consent from InfraBuild Construction (such consent not to be unreasonably withheld).

28.4 A party waives a right under the Contract only by written notice that it waives that right.

28.5 If a provision of the Contract would, but for this clause 28.5, be unenforceable:

- (a) the provision must be read down to the extent necessary to avoid that result; and
- (b) if the provision cannot be read down to that extent, it must be severed without affecting the validity and enforceability of the remainder of the Contract.

## 29. CONSUMER TRANSACTIONS

29.1 Where and only to the extent that the supply of Goods is to a "consumer" (as that term is defined by the ACL) then:

- (a) the InfraBuild Construction Additional Consumer Terms and Conditions of Sale located at [www.infrabuild.com](http://www.infrabuild.com) are incorporated into and form

part of the Terms and Conditions, such that they apply as part of the Contract; and

- (b) clause 7 does not apply and, except as expressed otherwise in the InfraBuild Construction Additional Consumer Terms and Conditions of Sale, nothing in the Terms and Conditions are to be construed as excluding, restricting or modifying any Consumer Guarantee provided under the ACL,
- (c) in respect of that supply of Goods.

### 30. PRIVACY

- 30.1 Where the Purchaser provides InfraBuild Construction with personal information (as defined in the Privacy Act 1988) about any individual (including the Purchaser where applicable), the Purchaser must have that individual's consent to provide that information to InfraBuild Construction having regard to and for the purposes set out in this clause 30 and in InfraBuild Construction's Privacy Policy. This policy is available on request or via [www.infrabuild.com](http://www.infrabuild.com), and contains more information about InfraBuild Construction's handling of personal information, types of information collected, types of service providers used, countries to which personal information is likely to be disclosed, accessing and correcting personal information, privacy complaints, the credit reporting bodies used, information shared with those bodies and individuals' rights in relation to their information held by those bodies.
- 30.2 InfraBuild Construction may collect, use and disclose that personal information for purposes relating to a Contract and to the Purchaser's credit application and account. This includes assessing the Purchaser's application, monitoring the value of and enforcing the security interests created by a Contract, reviewing credit arrangements on a periodic basis or in connection with changes (e.g. credit limit) as though assessing a new application, order fulfilment and delivery, market research, planning, business development, debt collection and Purchaser relationship management. InfraBuild Construction may also conduct lawful and relevant credit and reference checks (including consumer credit checks on the Purchaser where the Purchaser is an individual), and deal with personal information in connection with any acquisition or potential acquisition of any part of InfraBuild Construction's business. Without the personal information sought, InfraBuild Construction may not be able to do these things, including fulfil orders and process credit applications.
- 30.3 InfraBuild Construction may provide marketing communications to the Purchaser by email and other means on an ongoing basis, unless the Purchaser opts out by contacting InfraBuild Construction or legal restrictions apply.
- 30.4 InfraBuild Construction may exchange personal information with other companies in and affiliates of Liberty Primary and the InfraBuild Group, the Purchaser's guarantors and prospective guarantors (e.g. for the purpose of them deciding whether to act as guarantor), the Purchaser's representatives and InfraBuild Construction's service providers. InfraBuild Construction may also exchange that information with other credit providers for purposes including to: assess a credit or guarantor application; determine credit/default status; and assess or comment on credit worthiness. Some of these third parties

may be located in other countries. While these parties outside Australia will often be subject to privacy and confidentiality obligations, Purchaser acknowledges and agrees for itself and as agent for each of its officers, employees, agents, contractors, guarantors and representatives that: (a) privacy obligations overseas may not always apply or may differ from Australian privacy laws; (b) InfraBuild Construction may not be accountable for the third party under the Privacy Act or for the overseas recipient's storage, use or disclosure of the information; (c) individuals may not be able to seek redress under the Privacy Act for that disclosure or for the acts or omissions of the overseas recipient of the information; and (d) the third party may be subject to foreign laws which might compel further disclosures of personal information (e.g. to government authorities).

#### **InfraBuild Construction Solutions Pty Limited**

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