

Purpose Built Machinery PTY LTD

Sale of goods and storage services standard terms and conditions

1. Definitions

1.1 in these Terms and Conditions unless the context otherwise requires:

'Business Day' means any day which is not a Saturday, Sunday, or a bank or public holiday in Western Australia.

'Claim' means any action, suit, proceeding or demand of any kind.

'Client' means the person, company or body corporate to whom the Quotation is addressed and which is to take delivery of the Goods from the Seller.

'Client Delivery Location' means the location to which the Seller will deliver the Goods in accordance with clause 6.3.

'Client's Property' means the Goods together with any fixtures, fittings, plant, equipment, partitions, shelving and other property brought onto the Storage Area by or on behalf of the Client as agreed by the Seller.

'Consequential Loss' means: any loss of profit, revenue, business, contracts or anticipated savings, loss of expectation, loss of recourse to finance, loss of or inability to use equipment, loss of data, down time costs, loss of goodwill, waster overheads or punitive or exemplary damages; any special, indirect or consequential loss or damage of any nature whatsoever; or loss not arising naturally according to the usual course of things.

'Contract' means the contract for the provision of the Goods formed on the acceptance by the Seller of the Client's Purchase Order and includes these Terms and Conditions and the Quotation.

'Contract Price' means the price as detailed in the Contract

'Credit Account' means the Client's credit account with the Seller established on the terms set out in the Credit Agreement.

'Credit Agreement' means the agreement between the Seller and the Client for the supply of Goods and/or Storage Services on credit, formed by written acceptance by the Seller of the Credit Application.

'Credit Application' means an application for credit completed by the Client and submitted to the Seller.

'Delivery Date' means the date on which the Goods are deemed to be Delivered to the Client determined in accordance with clause 6.1.

'Delivery' means the Seller making the Goods available to the Client in the manner set out in clause 5 and clause 6.

'Delivery Location' means the location to which the Seller will deliver the Goods in accordance with clause 6.1.

'Goods' means the goods, materials, equipment, articles, any other property or parts to be provided or products described and specified in the Contract and the Purchase Order.

'Insolvency Event' means in relation to a Party, an event where anyone of the following occurs: the bankruptcy, winding up or insolvency of that Party; or that Party enters into any scheme of arrangement or composition; or a receiver or administrator is appointed to any property of that Party, but only to the extent that the Corporations Act 2001 (Cth) does not prevent a party from exercising its rights under this Contract because of that Insolvency Event.

'Liabilities' means damages, Claim(s), losses, liabilities, costs, fees and expenses of any kind (including legal costs on a full recovery basis).

'Party' means the Seller or the Client and Parties is a reference to both.

'Premises' means the Seller's premises.

'Purchase Order' means a purchase order or other request issued by the Client to the Seller in writing for the provision of the Goods and/or Storage Services.

'Quotation' means the quotation document provided by the Seller to the Client for the sale of the Goods and/or provision of the Storage Services together with any attachments.

'Seller' means the company named in the Quotation as the Seller which is to supply Goods to the Client and/or provide Storage Services;

'Special Conditions' means provisions of Purchase Order which are inconsistent with any term or condition of these Terms and Conditions and which have been agreed by the Parties.

'Storage Area' means the portion of the premises on which the Client may store the Client's Property as identified in the Contract.

'Storage Charges' means the fee set out in the Contract or as varied in accordance with these Terms and Conditions.

'Storage Commencement Date' means the earlier of:

- a. The date on which the Client delivers any part of the Client's Property or causes any part of the Client's Property to be delivered to the Premises; and
- b. The date set out as the commencement date in the Contract

'Storage Payment Date' means the dates on which the Storage Charges are payable in accordance with clause 13.

'Storage Services' means the storage services to be provided by the Seller pursuant to a Contract.

'Terms and Conditions' means this document titled "Sale of Goods and Storage Services Standard Terms and Conditions".

2. Interpretation

2.1 In this Contract unless the context otherwise applies the following rules of interpretation apply:

- a. Headings in this Contract shall not be used in the interpretation of the Contract;
- b. An expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any authority;
- c. A reference to the word "including" and similar expressions are not words of limitation;
- d. A reference to a document includes all amendments, supplements to, replacements, or novations of that document;
- e. A reference to a Party to a document includes that Party's executive, administrators, successors and permitted assigns;
- f. If a party consists of more than one person this Contract binds them jointly and each of them severally;
- g. Any Special Conditions forming part of this Contract will take precedence over these Terms and Conditions and these Terms and Conditions will take precedence over all annexures, schedules or appendices to this Contract;
- h. References to parties, clauses, schedules or annexures are references to parties, clauses, schedules or annexures to, or of, this Contract and a reference to this Contract includes any schedule or annexure;
- i. A reference to a clause or schedule or annexure is a reference to a clause or schedule or annexure to this Contract; and

- j. No rule of construction applies to the disadvantage of a Party merely because that Party was responsible for the preparation of this Contract or any part of it.

3. Quotations

3.1 Any Quotation issued by the Seller is not an offer to sell, or supply any Goods or Storage Services and may be withdrawn or varied at any time prior to a related Purchase Order being accepted by the Seller in accordance with clause 4.

3.2 A Quotation will only be valid for 30 days from its date of issue unless extended in writing by the Seller.

3.3 All prices contained in a Quotation are subject to variation in accordance with clause 24.3 and relate to the sale or supply of any Goods and/or Storage Services, on these Terms and Conditions.

3.4 All prices contained in the Quotation do not include the cost of any packing. The cost of providing packing requested by the Client must be paid for by the Client.

4. Acceptance of Purchase Orders

4.1 The Client may request the Seller to sell or supply Goods and/or Storage Services to the Client in accordance with these Terms and Conditions by providing a Purchase Order to the Seller.

4.2 All Purchase Orders received by the Seller are subject to acceptance by the Seller in writing. The Seller may accept or reject a Purchase Order in whole or in part in its absolute discretion.

4.3 The issue by the Seller of a written acceptance of a Purchase Order will not be, or imply, acceptance of any terms or conditions in the Purchase Order which are inconsistent with these Terms and Conditions.

5. Delivery of Goods

5.1 The Seller will supply the Goods in accordance with the Contract and in consideration of the payment of the Contract Price by the Client.

5.2 The Client acknowledges that the time within which the Seller may advise the Client that it will make Delivery of Goods will be regarded as a best estimate, but will not be guaranteed and may be subject to extension to cover delays cause by or contributed to by causes beyond the control of the Seller and no responsibility will be accepted by the Seller for the consequences of such delays.

5.3 Neither the Seller nor the Client shall be held liable for any breach of this Contract where the breach arises from an act of God, war, natural disaster or terrorism.

5.4 If, as a result of cause beyond the Seller's reasonable control, the Seller determines that it will not be able to deliver all or part of the Goods the subject of this Contract within a reasonable timeframe, the Seller may terminate the purchase. On such termination, both parties release each other from any Claims in relation to the purchase and in respect of the termination.

5.5 The Seller may affect Delivery of the Goods the subject of this Contract as a whole or in separate parts.

5.6 If the Client requests the Seller to delay Delivery of any or all of the Goods, the Seller may, in its absolute discretion, agree to store the Goods with such storage to be at the Client's expense.

6. Point of Delivery

6.1 The Goods will be delivered and made available to the Client "ex-works" at either the Seller's Premises and all costs of removing the Goods from the Delivery Location will be paid by the Client. Delivery will be deemed to occur when the Client is informed by the Seller that the Goods are ready for collection from the Delivery Location.

6.2 The Client must remove the Goods from the Delivery Location within 14 days of the Delivery Date.

6.3 If the Seller agrees, following a request from the Seller, to arrange for the Goods to be freighted to or otherwise provided to the Client at a location other than the Delivery Location:

- a. The Client will be deemed to take Delivery of the Goods and the Goods will be at the Client's risk from earlier of the Delivery Date and the Goods leaving the Seller's Premises;
- b. All costs associated with packing, transporting and removing the Goods from the Seller's Premises and providing them to the Client other than the Delivery Location must be paid for by the Client;
- c. The Seller will not be liable for any delay or failure to supply the Goods to the Client at a location other than the Delivery Location;
- d. Without limiting clause 23, the Client releases and discharges the Seller from all claims and demands on the Seller and any loss or damage whatsoever and whenever caused to the Client or any other person of any nature or kind arising from or associated with the Seller providing the Goods to the Client at the Client Delivery Location; and
- e. Without limiting clause 23, the Client indemnifies and holds the Seller harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by the Seller and from and against all actions, proceedings, claims or demands made against the Seller arising from or associated with the Seller providing the Goods to the Client at the Client Delivery Location.

7. Access to Client Delivery Location

7.1 The Client must provide to the Seller, safe, efficient and appropriate access to Client Delivery Location necessary to enable the Seller to properly supply and deliver the Goods without interference.

7.2 The Client must obtain all necessary permits and approvals for the Goods to be supplied to a Client Delivery Location

7.3 The Seller will ensure that its employees, representatives and agents act in a safe and lawful manner and that they comply with all relevant safety legislation, its own safety procedures and with any safety standards and policies provided by the Client to the Seller when the Seller's employees, representatives and agents are at Client Delivery Location.

8. Amendment and Cancellation

8.1 The Client will not, after a contract is formed, cancel or amend the Purchase Order on which the Contract is based in any way without the prior written approval of the Seller.

8.2 The Seller may, on consenting to an amendment, revise its price and other terms of supply and amend the Contract to reflect such change(s).

8.3 In the event of an amendment or cancellation of the Purchase Order or the Contract, the Client must reimburse the Seller for all costs and expenses already incurred by the Seller and any additional costs and expenses resulting from the amendment or cancellation.

9. Inspection, Rejection and Acceptance of Goods

9.1 The purchase of all Goods is subject to inspection, testing and acceptance by the Client. The Client must inspect and test all Goods immediately upon the Goods being Delivered

9.2 Where the point of delivery is the Seller's Delivery Location, the Client's inspectors will be given full access to all relevant areas of the Seller's Premises for a period of five (5) Business Days from the Delivery Date for the purpose of inspection and testing of the

Goods. Inspectors are required to seek appointments for those inspections through the Seller's appointed representative by giving at least two (2) Business Days' prior notice. The Client's inspectors must be accompanied at all times by a Seller's representative while inspecting and testing the Goods. The costs of the inspection and testing, and travel and related expenses for the inspection and testing of the Goods by the Client's inspectors is at the Client's expense.

9.3 Where the point of delivery is the Client's Delivery Location, the costs of the inspection and testing, and travel and related expenses for the inspection and testing of the Goods by the Client's inspectors is at the Client's expense.

9.4 The Client acknowledges and accepts that, unless stated otherwise in the Quotation, the Goods purchased may be previously used and may not be new and, as such, the Goods may have a second-hand appearance.

9.5 If upon or after any such inspection or test pursuant to this clause 9 if any Goods, in the Client's reasonable opinion, do not conform with the Contract, the Client may provide a notice of rejection of the Goods within five (5) Business Days of delivery of the Goods notifying the Seller of the reason of rejection.

9.6 If any Goods are rejected by the Client pursuant to this clause 9, the Client must safely store the rejected Goods at the Delivery Location and allow the Seller to access the Delivery Location to collect the rejected Goods without interference.

9.7 If any Goods are rejected by the Client pursuant to this clause 9, the Seller will remove the rejected Goods within 10 Business Days the notice of rejection.

9.8 The Client is deemed to have accepted the Goods if:

- a. The Client has provided a notice of acceptance to the Seller within seven (7) Business Days of delivery;
- b. The Client has not issued a notice of rejection in accordance with this clause 9; or
- c. The Client has used the Goods.

10. Specification and Warranty

10.1 The Client acknowledges that the Goods purchased are previously used and are not new and, as such, the Goods may have a second-hand appearance. The Seller warrants that the Goods are of a merchantable quality for the mining industry.

10.2 Subject to any warranties implied by law and cannot otherwise be excluded and any other warranties given expressly in these Terms and Conditions, the Seller excludes all other warranties, conditions or liability in relation to the manufacture, sale or supply of the Goods and the Seller will not be liable for any Claim arising out of or contributed to by the manufacture, sale, use or supply of the Goods.

10.3 Subject to clause 10.2, to the extent that the Seller's liability cannot be excluded, the Seller's liability shall be limited to, in its sole discretion, either repairing the defective Goods or part of the Goods or replacing it with the same Goods (or part of the Goods) or a comparable product.

10.4 The Seller makes no representation or warranty in relation to the supply of spare parts or the availability of facilities for the repair of the Goods (or any part of the Goods)

10.5 The Client acknowledges and agrees that it has made its own enquiries as to the suitability of the Goods (or any part of the Goods) for the Client's intended use and the Client does not rely on any statement, representation or information provided by or on behalf of the Seller in relation to the Goods (including the use of the Goods) other than the statements, representations and information set out in writing in the Quotation.

11. Brokering

11.1 Where the Seller sells or supplies Goods as an agent for the owner of the Goods, the Seller makes no representation and gives no warranties in relation to the Goods.

11.2 Without limiting this clause, the Client acknowledges and agrees that where the Seller sells or supplies Goods as an agent for the owner of the Goods, the Seller makes no representation and gives no warranties that:

- a. Goods are of acceptable quality when Delivered to the Client;
- b. Goods will be reasonably fit for any purpose that Client specified;
- c. The Seller's description of Goods is accurate;
- d. Goods will match any sample or demonstration model and any description provided;
- e. Goods will satisfy any extra promises made about them;
- f. No one will try to repossess or take back the Goods, or prevent the Client using the Goods; or
- g. Goods are free from any security interest and will remain so.

12. Retention of Title

12.1 The Goods will remain the sole and absolute property of the Seller as legal and equitable owner, and property in and title to the Goods will not pass from the Seller to the Client, until the Client has paid the Seller for the Goods in full.

12.2 Where the Seller is acting as an agent for the owner of the Goods, the Goods will remain the sole and absolute property of the owner and property in and title to the Goods will not pass from the owner to the Client until the Client has paid the Seller for the Goods in full.

12.3 Any payment made by or on behalf of the Client which is later avoided or reduced by the application of any law will be deemed not to discharge the Seller's title in the Goods or the Client's indebtedness to the Seller.

12.4 The Client must not sell, transfer, hire, lease, dispose of or part with possession of the Goods to any person without the Seller's prior written consent until all amounts owed to the Seller are paid in full. If the Client does anything which breaches this clause 12.4, the proceeds must be held by the Client on trust for the Seller irrespective of whether the proceeds are held in a separate account by the Client or otherwise.

12.5 Until title in the Goods has passed pursuant to clause 12.1, the Client holds the Goods as bailee in the capacity of a fiduciary for the Seller. The Client will keep the Goods supplied to it by the Seller in its possession and take good care of them and store them and mark them in a manner that identifies the Goods supplied and clearly shows that they belong to the Seller.

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

13. Storage of Goods

13.1 The Client may use the Storage Area for storage of the Client's Property. The Client has no interest in the Premises, notwithstanding that the Premises includes the Storage Area. The Seller has the legal right to exclusive possession of the and control of the Storage Area and the Premises at all times.

13.2 The Client must pay the Seller the Storage Charges on the Storage Payment Dates on the Storage Commencement Date and monthly thereafter during the Term (and any extension or extension of the Term).

13.3 In addition to the Storage Charges, the Client must pay the following amounts, if requested by the Seller to do so, on the earlier of the next Storage Payment Date or 14 days after receiving a demand from the Seller to do so:

- a. gas, electricity, water and/or any other utilities supplied to the Storage Area which will not cost more than the appropriate tariff that would have been payable by the Client if the relevant authority supplied the utility directly to the Client;
- b. Any taxes, charges, licence fees or other assessments that may be assessed directly against the Storage Area; and
- c. Rubbish removal and cleaning of the Storage Area.

13.4 If the Storage Charges are calculated as a monthly or yearly amount, the Storage Charges will be apportioned on a daily basis for any broken period less than a month or a year by dividing the monthly or yearly Storage Charges by the number of days in the month or year in which the broken period falls.

13.5 The Storage Charges may be reviewed once each calendar year by the Seller in its absolute discretion, becoming effective from the anniversary of the Storage Commencement Date each year.

13.6 The Client will be liable for all costs and expenses incurred in the delivery, collection or movement of the Client's Property or any part of the Client's Property, including but not limited to paying or reimbursing the Seller for any costs and expenses incurred by or on behalf of the Seller.

13.7 If the Client requires a party other than the Seller to deliver, collect or move the Client's Property or any part of the Client's Property, the Client must ensure that such delivery, collection or movement is undertaken by a suitably qualified professional in accordance with usual industry practice and best safety practice, including the Seller's occupational health and safety procedures and any reasonable direction by the Seller.

13.8 No responsibility is accepted by the Seller for any loss or damage to the Client's equipment or other goods left in the Seller's possession or at the Seller's premises.

13.9 Except to the extent of any neglect or default of the Seller, the Client releases and indemnifies the Seller from any Claim in relation to:

- a. The delivery, storage, collection or movement of the Client's Property or any part of the Client's Property including but not limited to any Claim arising from any loss or damage to the Client's Property and any loss or Claim for any injury or any damage to, or destruction of, any property other than the Client's Property; and
- b. loss, damage, death or injury to any property or person in or about the Premises and all buildings and other structures erected on the Premises caused or contributed to by the Client or its agents or any use or occupation of the Storage Area by the Client or its agents or neglect or default of the Client or its agents.

14. Access to Storage Area

14.1 The Client must not use the Storage Area for any purpose other than storage of the Goods and must keep the Storage Area in good repair and condition.

14.2 The Client acknowledges that the Storage Area forms part of the Premises and that the Seller may licence or otherwise cause the remainder of the Premises to be occupied or otherwise utilised from time to time for other purposes.

14.3 The Client must give the Seller two (2) Business Days' prior notice if it desires access to any part of the Premises other than the Storage Area, including but not limited to such entry as is required to access the Storage Area. The Seller will, acting reasonably, determine whether to grant such access and if the Seller does not grant access, it will provide written notice to the Client setting out the basis of its refusal.

14.4 The Client must give the Seller five (5) Business Days' prior notice if it desires to deliver, collect or move the Client's Goods.

14.5 The Client acknowledges and agrees that it is reasonable for the Seller to refuse to grant access to the Premises, including the Storage Area, outside of the Seller's usual business hours on a Business Day.

14.6 Notwithstanding any other term, the Seller is not required to provide the Client with access to the Premises or to permit the Client's Property to be delivered, collected or moved if the Client is in default of the Contract.

15. Use of Storage Area

15.1 The Seller gives no warranty (either present or future) as to the suitability or adequacy of the Storage Area or the use to which the Storage Area may be put.

15.2 The Client must, at its own cost, comply with all laws relating to the Storage Area and the use of the Storage Area for the Storage of the Client's Items.

15.3 Client warrants that the Client's Property is packed and secured in a proper manner to withstand the ordinary risks of storage in the Storage Area and that the Client's Property complies with all applicable laws and regulations about the notification, classification, description, labelling, transport, packaging and storage of the Client's Property given its nature.

15.4 The Client must inform the Seller of any law or regulation relevant to the storage of the Client's Property and pay the Seller expenses of complying with any law or regulation relevant to the storage or the Client's Property.

16. Storage Area and Dangerous Goods

16.1 The Client must not, without the Seller's prior written consent, store any volatile or explosive items or items which are or may become dangerous or inflammable (including radioactive material) or which are or may become liable to damage any person or property in the Storage Area.

16.2 If in the Seller's opinion the Client's Property is or is liable to become dangerous, inflammable, explosive, volatile or damaging in nature, the Seller may at any time and at the Client's cost, destroy, dispose or, abandon or render them harmless without compensation to the Client.

16.3 The Client will indemnify the Seller for any cost, expense or loss to the Seller's property or the property of any third party caused by the Client's Property, the transport of the Client's Property into or out of the Storage Area or the presence of the Client's Property in the Storage Area.

17. Title and Records of Client's Property

17.1 The Client warrants that it is the legal and beneficial owner of the Client's Property or that it is authorised by the legal and beneficial owner of the Client's Property stored in the Storage Area.

17.2 The Client must immediately inform the Seller in writing if it ceases to be the legal and beneficial owner of the Client's Property or ceases to be authorised by the legal and beneficial owner of the Client's Property to store or otherwise deal with the Client's Property as state in the list.

17.3 The Client will provide a list of the Client's Property to the Seller on the Storage Commencement Date and will update the list when an item of the Client's Property is delivered, collected, moved or removed from the Storage Area, or as requested by the Seller from time to time. The Seller may rely on the Client's description of the Client's Property as stated in the list.

17.4 The list of the Client's Property must include a description of the Client's Property in a form acceptable to the Seller, including serial or other identification numbers where relevant

and a full written description disclosing the nature of any dangerous goods stored with the Seller's consent under clause 16.

18. Expiry of Term for Storage

18.1 If the Client (with the consent of the Seller, which consent may be granted or withheld at the Seller's discretion) continues to use the Storage Area after the expiry of the term set out in the Contract, the Client does so on a month to month agreement on the same terms as the Storage Agreement.

18.2 The Seller or the Client may terminate that monthly agreement on any day by giving at least one month's written notice to the other party.

18.3 During the period of 14 days before the expiry of the term or the end of any monthly agreement created under clause 18.1 or, within 14 days of early termination prior to the expiry of the term, the Client must, with the Seller's consent:

- a. Remove the Client's Property from the Storage Area (except for any item that the Seller may require to remain in the Storage Area);
- b. Remove all rubbish, repair and make good any damage and reinstate so that the Storage Area is converted back to the state of good repair and condition at the earlier of the Storage Commencement Date and the date on which the Client originally occupied the Storage Area under the Contract; and
- c. Otherwise deliver up vacant possession of the Storage Area in the condition required by the Contract and return all keys and access devices for the Storage Area to the Seller.

19. Lien over Client's Property

19.1 The Seller has a general lien on the Client's Property for all amounts due or which become due on any account by the Client to the Seller from time to time pursuant to and in accordance with the warehousemen's Lien Act 1952 (WA).

19.2 In addition to and without limiting any lien arising under the Warehousemen's Lien Act 1952 (WA) to the extent that the Seller does not have or is unable to enforce a lien under the Warehousemen's Lien Act 1952 (WA) in whole or in part in relation to any amounts due or which become due on any account by the Client to the Seller from time to time, the Client grants the Seller a contractual lien on the Client's Property for all amounts due or which become due on any account by the Client to the Seller from time to time.

20. Other Services

20.1 If the Seller agrees to provide any other services to the Client other than the supply of the Goods and/or Storage Services, including but not limited to the assembly, disassembly or installation of the Goods, instructing the Client, its personnel or any other person in the use or operation of the Goods or operating or supplying an operator for the Goods ("Other Services"):

- a. The Seller will provide the Other Services on the terms nominated by the Seller in its absolute discretion;
- b. All costs, expenses and liabilities to be incurred by the Seller or associated with providing the Other Services must be paid by the Client to the Seller on demand; and
- c. The Seller will not be liable for any delay or failure to supply the Other Services within any time period nominated or requested by the Client.

20.2 Without limiting clause 23, the Client:

- a. Releases and discharges the Seller from all Claims and demands on the Seller and any loss or damage whatsoever and whenever caused to the Client or any other person of any nature or kind; and

- b. Indemnifies and holds the Seller harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by the Seller and from and against all actions, proceedings, claims or demands made against the Seller, arising from the provision of the Other Services.

20.3 Without limiting clause 23 or any other provision of this clause, any employee, agent or contractor of the Seller supplying or providing Other Services for or on behalf of the Seller to the Client will be deemed to be an employee of the Client for the period in which the person is providing Other Services.

21. Delays

21.1 The Client acknowledges and agrees that the Seller will not be liable for and the Client releases the Seller from any liability in respect of any loss, damage or expense that the Client may suffer or incur arising out of or contributed to any delays in obtaining the Goods.

21.2 The Client shall reimburse the Seller for the reasonable costs of all committed resources plus an overhead cost of 15%, incurred by the Seller for all delays, except to the extent that the delays were solely caused by the Seller.

22. Return of Goods

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

23. Release and Indemnity

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

- a. The Client's failure to comply with any laws, rules, standards, or regulations applicable to the Goods or use of the Goods;
- b. Any use of the Goods contrary to any instructions or warnings given by the Seller or the manufacturer of the Goods;
- c. Any other negligence or any breach of duty by the Client;
- d. Any compliance or adherence by the Seller with any instruction by the Client; or
- e. Any reliance by the Seller on any representation by the Client.

23.2 The Parties agree and acknowledge that, for the purposes of clause 23.1, a reference to the Client includes the Client's agents, employees, directors, representatives and contractors and any person or party who uses the Goods or claims an interest in the Goods as a result of a transaction with, or otherwise with the permission of, the Client.

24. Invoicing and Payment

24.1 The Contract Price and/or each rate constituting the Contract Price is fixed, and is exclusive of GST.

24.2 The Seller will, after any Goods are supplied and/or Storage Services provided, submit to the Client an invoice for the Goods supplied and/or Storage Services provided by the Seller. The Seller will invoice the Client for:

- a. The price of the Goods and/or Storage Services provided being the price set out in the Contract, as varied in accordance with clause 24.2(b);
- b. Any applicable GST or other stamp duty or statutory charges or levied payable in relation to or in connection with the supply of the Goods and/or Storage Services in accordance with clause 24.2(a);
- c. Any applicable packing, freight, storage, delivery or other costs payable by the Client in accordance with the Contract;
- d. Any other costs or expenses for which the Client is liable to pay under or in connection with these Terms and Conditions.

24.3 Any change, after the earlier of the date of the Seller's Quotation (if applicable), the Purchase Order or the Contract and before the date of the invoice, in the cost of labour, materials, transport, essential services, tariffs, duties, exchange, or any other costs or expenses incurred by the Seller must be paid for by the Client.

24.4 The Client must assess each invoice within fourteen (14) days of receipt. If the invoice is not assessed within this time, the invoice is deemed to be agreed in full.

24.5 The Client is not entitled to deduct any invoiced amount from any amounts owing to the Client by the Seller.

24.6 Except as otherwise agreed by the Seller in writing, the Client shall pay all invoiced amounts in Australian Dollars, without the right of set off and in full, within fourteen (14) days from the date of the invoice.

24.7 If the Client has not made a payment by the due date, the Seller may immediately and without notice suspend and/or cease the supply of the Goods and/or Storage Services. The Client will be liable to pay the Seller interest on the sum outstanding at the rate of 10% per annum, accruing daily.

24.8 In the event the Client defaults in payment of an invoice, the Client shall indemnify the Seller from any costs incurred by the Seller in recovering the outstanding amount, including but not limited to debt collection, agency fees and solicitors' fees.

24.9 If the Seller suspends and/or ceases supply of the Goods and/or Storage Services in accordance with clause 24.7, the Client shall reimburse the Seller all reasonable costs for all committed resources plus an overhead cost of 15%, for the duration of the suspension. The suspension is taken to commence on the day that the Seller actually suspends and/or ceases all or part of the supply of the Goods and/or Storage Services and finishes on the day all (not just part) of the supply of the Goods and/or Storage Services is recommenced or on the day this Contract is terminated.

24.10 All payments to the Seller must be made in the way reasonably required by the Seller (which may include electronic funds transfer). If payment is made by way of cheque or electronic funds transfer, the Seller will be deemed to receive payment of funds on the date the Seller receives cleared funds in its bank account.

24.11 All sums payable to the Seller, whether or not such amounts are due for payment, will immediately become due and payable if:

- a. Any payment by the Client to the Seller is overdue, in whole or part;
- b. The Client is otherwise in default under any Contract or Credit Agreement or any Contract or Credit Agreement is terminated; or
- c. If an Insolvency Event occurs to the Client or any guarantor of the Client.

24.12 If the Client makes a payment to the Seller at any time, whether in connection with a Contract or otherwise, the Seller may apply the payment to any part of the amounts owed by it to the Seller as the Seller sees fit.

24.13 The Seller may, in its absolute discretion, offset any amount due from the Seller to the Client against any amount due from the Client to the Seller, or which will in the future be due from the Client to the Seller, whether in connection with the Contract or otherwise.

24.14 The Seller reserves the right to issue an invoice for partial Deliveries and Deliveries delayed at the request of the Client.

25. Insurance and Risk

25.1 All Goods (and any part of the Goods) will be at the Client's risk from the Delivery Date. The Seller will not be responsible for any loss or damage to the Goods occurring after such time and no such loss or damage will affect the obligation of the Client to pay any amount relating to the supply of the Goods in accordance with the Contract.

25.2 The Client must take out and maintain an insurance policy to cover any insurable loss in respect of the Goods howsoever caused between the Delivery Date and the earlier of;

- a. The Seller receiving full payment of the invoice relating to the Goods; and
- b. The Client returning the Goods to the Seller and the Seller accepting the return of the Goods in accordance with these Terms and Conditions.

25.3 The insurance policy must:

- a. Note the Seller's interest in the Goods;
- b. Be on the terms and for the amount satisfactory to the Seller; and
- c. Be with an insurer approved by the Seller.

25.4 The Client must provide written evidence of such insurance policy to the Seller within seven (7) days of receiving a request to do so from the Seller.

25.5 Unless the Seller otherwise agrees in writing, the Seller will not insure the Goods after the Delivery Date. If the Seller does agree to insure the Goods after the Delivery Date, such insurance will be at the Client's expense.

25.6 Notwithstanding the termination, completion or expiry of any Contract, the Client must keep any Goods which are the property of the Seller and are in custody, possession or control, safe and secure.

25.7 Notwithstanding any provision contrary in clause 25, both the Seller and the Client will maintain public liability insurance with a minimum limit of \$10,000,000 to cover their own liability for any personal injury, death or property damage caused or contributed to.

26. Storage Insurance

26.1 Where the Client engages the Storage Services of the Seller, the Client must, at its cost, and in the name of the Client, effect and maintain the following insurances:

- a. Adequate insurance of the Client's Property;
- b. Public risk liability insurance applying to the Storage Area and all operations of the Client, written on a comprehensive basis with limits of not less than \$10,000,000 per occurrence or any higher limits that the Seller may reasonably require;
- c. Insurance in all plate and other glass in or otherwise enclosing the Storage Area (if any); and
- d. Any other insurance that the Seller may reasonably require.

26.2 Where the Client engages the Storage Services of the Seller, the Client must pay to the Seller:

- a. All insurance excess, deductible or shortfall payable by the Seller for any insurance claim made concerning the Storage Area if the claim arises because of any act, omission, neglect or default of the Client; and
- b. All extra insurance costs incurred by the Seller for any extra risk caused by any use or occupation of the Storage Area.

26.3 The insurance policies taken out under these Terms and Conditions, must note the Seller as an interested party.

23.4 The Client must deliver certificates of its insurance to the Seller whenever reasonably required by the Seller.

27. Liability

27.1 Notwithstanding any provision to the contrary and to the full extent permitted by law, the Seller will not be liable to the Client (including in respect of any indemnity), on any basis (including negligence, tort, Contract, statute or otherwise), for any Consequential Loss suffered or incurred by the Client, or suffered or incurred by a third party for which the Client is liable, directly or indirectly arising out of or in connection with the performance or non-performance of the supply of the Goods or this Contract, and the Seller is released from any liability to the Client in respect of such Consequential Loss.

27.2 Notwithstanding any provision to the contrary and to the full extent permitted by law, the Seller's maximum aggregate liability to the Client for all Liabilities arising under or in respect of this Contract is limited to and will not exceed \$10,000.

27.3 To the full extent permitted at law, if any part of the Premises, Client Delivery Location, any structure, or any other item, thing or property that does not constitute to the supply of the Goods is lost or damaged, the Client will release and indemnify (and will keep indemnified) the Seller (and its officers, employees and contractors) from and against any resulting Liability unless the loss or damage was caused solely by the negligent action of the Seller.

27.4 The Client indemnifies the Seller and its officers, employees, agents and contractors against any Liabilities which the Seller suffers or incurs in respect of any breach by the Client of this Contract.

27.5 Nothing in this Contract excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the Australian Consumer Law, which contains protections for the purchasers of goods. Where any legislation implies or imposes a guarantee, term, condition, warranty, undertaking, inducement or representation in relation to this Contract and the Seller is not able to exclude that guarantee, term, condition, warranty, undertaking, inducement or representation ('non-excludable term'), and the Seller is able to limit the Client's remedy for a breach of the non-excludable term, then the Seller's liability for breach of the non-excludable term is limited to (at the Seller's election), the repair or replacement of the Goods or the supply of substitute goods (or the cost of doing so).

28. Default and Termination

28.1 Subject to other clauses of this Contract, if the Seller is of the opinion that Client has breached any of its obligations under this Contract and the breach is, in the opinion of the Seller, capable of remedy, the Seller may give to the Client a written notice of default which will stipulate a period of time within which the Client must remedy the breach. The Seller may suspend or cease the supply of the Goods and/or Storage Services immediately after giving the written notice of default and is entitled to claim, and be paid, reasonable damages resulting from the suspension and/or ceasing and the possible breach of this Contract by the Client. The Seller may immediately terminate this Contract by written notice of termination to the Client if the Client does not comply with written notice of default within the time prescribed in the notice of default or if the breach of this Contract by the Client is, in the opinion of the Seller, not capable of remedy. If this Contract is terminated in accordance with this clause by the Seller, the Client must pay to the Seller for all Goods and/or Storage

Services supplied as at the date of termination, plus any costs that the Seller has incurred up to the date of termination, plus any Liabilities the Seller has to its suppliers or contractors which it cannot unwind, plus 15% of the value of any Goods and/or Storage Services not supplied as at the date of termination but estimated to be supplied under the Contract.

28.2 If the Seller commits a breach of this Contract, the Client may give the Seller a written notice of default stating the Seller's breach and giving the Seller not less than fourteen (14) days to remedy the breach or advise why the Seller does not consider that it has breached this Contract. If the Seller has committed a breach of this Contract and the Seller fails to remedy the breach within the time set out in the Client's written notice, the Client may terminate this Contract by written notice of termination effective immediately. If this Contract is terminated in accordance with this clause by the Client, the Client must pay to the Seller, without right of set-off or making any deduction, for all Goods and/or Storage Services supplied as at the date of termination, plus any costs that the Seller has incurred up to the date of termination, plus all costs of demobilising the Seller's plant equipment and personnel, plus any Liabilities the Seller has to its suppliers or contractors which it cannot unwind. If the Client has incurred Liabilities as a result of the Seller's breach of this Contract, the Client will be required to prove its actual Liabilities and Claim those from the Seller but the Client is not permitted to Claim any Liabilities of having to have the remainder of the Goods and/or Storage Services supplied by itself or another contractor.

28.3 To the extent permitted by law, either Party may terminate this Contract by notice in writing to the other Party if any Insolvency Event occurs in respect of either Party.

28.4 The Seller may, without notice, terminate this Contract if the Client's conduct indicates that it no longer intends to be bound by this Contract.

29. Intellectual Property

29.1 The Seller retains all intellectual or industrial property rights whether registered or unregistered, which are provided by, created or modified by the Seller in the supply of the Goods during this Contract, including without limitation:

- a. All patents, trademarks, copyright, designs, trade secrets, know-how and other rights in any design, materials, processes, documents and methods of working: and
- b. All licences and other rights to use or to grant the use of any of the foregoing.

30. Use of Drawings and Specifications

30.1 Any drawings, specifications, descriptions and other documents attached to any Quotation are for tendering purposes only and may not be included in any Purchase Order and will not form the basis of, nor be part of, any Contract.

30.2 The details contained in any Quotation, any attachment to a quotation or any drawings, specifications, descriptions and other documents otherwise provided by the Seller to the Client will be submitted in good faith as being correct but any errors, omissions or defects therein will not be grounds for cancellation of the Contract nor entitle the Client to make any Claim against the Seller.

30.3 The Seller will provide, if it has agreed in writing to do so, copies of available drawings, specifications and manuals for the Goods to the Client upon the Delivery of the Goods (or such other time the Seller may agree in writing) Any additional manuals, drawings or documentation requested by the Client will be provided by the Seller at the Seller's absolute discretion and the Client's expense.

31. Confidentiality

31.1 The Client acknowledges and agrees that any information submitted by the Seller in its offer which includes but is not limited to pricing, technical specifications and other information is commercial in confidence and submitted solely for evaluation by the Client.

Such information must at all times remain confidential and shall not be disclosed to any third party without the Seller's prior written consent.

31.2 If such information is disclosed to a third party the Seller's prior consent, the Client must ensure that as a condition precedent to the passing of such information that the third party accepts and acknowledges to be bound by confidentiality obligations.

31.3 The Client will indemnify the Seller for all Liabilities arising from or in connection with a breach of this clause by the Client.

32. Taxes and Duties

32.1 Prices quoted to the Client or set out in the Quotation do not include the taxes, imposts and duties described in clause 32.2.

32.2 The Seller may recover from the Client, and the Client must pay, the amount of any sales tax, customs duty, use tax, consumption tax, goods and services tax, value-added tax or any similar tax, impost or duty levied on any supplies made by the Seller to the Client under or in connection with these Terms and Conditions (excluding any income tax imposed on the Seller), whether that tax, impost or duty is currently in force or comes into force after the date of any Quotation or Contract. Any such tax, impost or duty must be paid by the Client at the same time as when payment for the supplies in respect of which tax, impost, or duty is levied is due.

32.3 The acceptance by the Seller of the Client's sales tax certificate or other documents claiming exemption from any taxes, imposts or duties is at the Seller's absolute discretion and any such acceptance does not exempt the Client from paying any taxes, imposts or duties (including any interest and penalties) subsequently imposed.

33. GST

33.1 The Contract Price detailed in the Quotation is net of any Goods and Services Tax (GST).

33.2 In this clause:

- a. GST means GST within the meaning of the GST Act and includes penalties and interest; and
- b. GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (as amended).

33.3 Expressions used in this clause and in the GST Act have the same meanings as when used in the GST Act.

33.4 Except where this Contract specifies otherwise, an amount payable by a party under this Contract in respect of a taxable supply by the other party represents the value of the supply or the net amount under this clause.

33.5 The recipient of the supply must, in addition to that amount and at the same time, pay to the supplier the amount of GST payable in respect of the supply.

33.6 If this Contract requires a party to pay for, reimburse or compensate against any expense or liability (reimbursable expense) incurred by the other party (payee) to a third reimbursable expense net of any input tax credit to which the payee is entitled in respect of the reimbursable expense (net amount).

34. Application of PPSA

34.1 In this clause:

- a. "PPSA" means the Personal Properties Securities Act 2009 (Cth);
- b. "PPS LAW" means the PPSA together with any subsidiary legislation or regulations made under the PPSA and any amendment to a PPS LAW from time to time;
- c. "PPS Register" means the register established under the PPS Law; and
- d. "Security Interest" has the same meaning as in section 12 of the PPSA.

34.2 The Seller and the Client acknowledge that the Client consents to the Seller registering its Security Interest under the PPSA and will do all things reasonably necessary to assist the Seller to register its Security Interest.

34.3 The Client waives the right to receive from the Seller verification of the registration pursuant to section 157(3)(b) of the PPSA.

34.4 The Client must not, without first giving the Seller 14 days' prior written notice, change its name, ABN or any other identifiers which are required to be recorded on the PPS Register in connection with any Security Interest.

34.5 The Seller and the Client agree that the following provisions of the PPSA do not apply to this Contract or Credit Agreement: section 95 (notice of removal of accession), to the extent that it requires the secured Party to give a notice to the grantor; section 96 (when a grantor may retain an accession); section 125 (obligation to dispose of or retain collateral); section 126 (apparent possession); section 128 (secured Party may dispose collateral); section 129 (disposal by purchase); section 130 (notice of disposal), to the extent that it requires the secured Party to give a notice to the grantor; section 132(3)(d)(contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 134(1) (retention of collateral); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).

35. Notices

35.1 A notice, demand, certification, process or other communication relating to this Contract must be in writing in English and may be given by an agent of the sender. In addition to any other lawful means, a communication may be given by being:

- a. Personally delivered;
- b. Left at the Party's current address for notices;
- c. Sent to the Party's current address for notices by pre-paid ordinary mail or, if the address is outside Australia, by prepaid airmail;
- d. Sent by email to the Party's current email address for notices;
- e. Sent by email to the email address specified in this Contract. Where no email address is specified then notice shall be deemed to have been effectively given if it is sent to an email address which can be demonstrated by the sending Party to be an email address in use by the receiving Party; or
- f. Sent by fax to the Party's current fax number for notices.

35.2 The particulars for delivery of notices are initially those of the contact details of each Party as set out in the Quotation. Each Party may change its particulars for delivery of notices by notice to the other.

35.3 A communication is given if posted:

- a. Within Australia to an Australian address, four (4) days after posting; or
- b. In any other case, fourteen (14) days after posting.

35.4 A communication is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

35.5 If a communication is given after 5.00 pm in the place of receipt it is taken as having been given on the next Business Day.

36. No Assignment

36.1 The Client must not, without the Seller's prior written consent, transfer, assign, encumber or otherwise dispose of any of the Client's rights or obligations under any Contract. The Seller may assign or novate any rights or obligations under any Contract without notice to the Client.

36.2 For the purpose of this clause, if the Client is a corporation, the Client will be deemed to have assigned its rights and obligations if there is a change of effective control of the corporation or its ultimate holding company.

37. Waiver

37.1 No waiver of any term of any Contract will be valid unless such waiver is in writing and signed by the Seller. If the Seller does not enforce any right or delays in enforcing any right under Contract, Credit Agreement or these Terms and Conditions, this must not be construed as a waiver of such right.

38. General

38.1 This Contract is governed by the laws of Western Australia and the parties submit to the exclusive jurisdiction of the courts of Western Australia.

38.2 None of the Terms and Conditions of this Contract will be varied, waived, discharged or released either at law or equity, except with prior consent, in writing by both Parties.

38.3 Every provision of this Contract shall be deemed to be severable and if any provision of this Contract shall be void or illegal or unenforceable for any reason then the same shall be deemed to be severed and omitted here from and this Contract with such provision thus severed and omitted and with such consequent amendment as may be necessary shall otherwise remain in full force and effect.

38.4 This Contract constitutes the entire, final and concluded agreement between the Parties in respect of the Goods and/or Storage Services. Subject to the other express terms of this Contract, no prior or subsequent representation or agreement (whether verbal or in writing) by the Client or the Seller, or any of their respective employees or agents, will bind the Parties.

38.5 The Seller is an independent contractor of the Client and this Contract does not constitute a partnership or a joint venture or employment relationship between the Parties, or authorise a Party to assume or create any obligations on behalf of another Party except as specifically permitted under this Contract.