



TERMS AND CONDITIONS OF CONTRACT FOR SUPPLY OF GOODS AND WORKS BY INFRABUILD CONSTRUCTION SOLUTIONS

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) **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;
- (e) **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;
- (f) **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;
- (g) **Goods** means goods, products and materials (and any related Works) supplied by InfraBuild Construction under a Contract;
- (h) **InfraBuild Construction** means InfraBuild Construction Solutions Pty Limited ABN 22 004 148 289;
- (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) 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).

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:
- supply of the quoted Goods and/or Works does not start within 30 days after the date of the written order acknowledgement;
 - supply under the Contract is stopped or suspended for more than 30 days;
 - 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
 - supply under the Contract has not been completed within twelve months of the date of the Quotation, 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 clauses 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:
- formally accepts the order by written acknowledgement; or
 - 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):
- any specific terms agreed by the parties in accordance with clause 6;
 - the Quotation (if applicable);
 - these Terms and Conditions;
 - the relevant Working Documents;
 - the applicable Delivery Offer; and
 - 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 at 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 thirdparty 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 the 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. 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. 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.
- 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:
- (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; or
- delay supply of part or all of the Goods and/or Works no longer than reasonably necessary.

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 right,
- 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 the laws in the State of New South Wales and the courts of that jurisdiction 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 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,
- 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 ("Privacy Act") 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, 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 fulfill 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).

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