



LIBERTY

**LIBERTY REINFORCING
TERMS AND CONDITIONS OF CONTRACT FOR SUPPLY OF
GOODS AND WORKS**

Effective 20 November 2017.

These Terms and Conditions replace and supersede all previous Liberty Reinforcing Terms and Conditions issued prior to 20 November 2017

OneSteel Reinforcing Pty Limited ABN 22 004 148 289 trading as Liberty Reinforcing.

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 Liberty Reinforcing 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 Liberty Reinforcing.

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 Liberty Supplier 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) **Liberty Supplier Group** means each and all of OneSteel Trading Pty Limited ACN 007 519 646; OneSteel Manufacturing Pty Limited ACN 004 651 325; The Australian Steel Company (Operations) Pty Ltd ACN 069 426 955; OneSteel Wire Pty Limited ACN 000 010 873; OneSteel NSW Pty Limited ACN 003 312 892; OneSteel Reinforcing 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
- (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 Liberty Reinforcing delivers Goods, and which is available on request from Liberty Reinforcing locations;
- (g) **Goods** means goods, products and materials (and any related Works) supplied by Liberty Reinforcing under a Contract;
- (h) **Liberty Reinforcing** means OneSteel Reinforcing 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 Liberty Reinforcing;
- (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 Liberty Reinforcing 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; and
- (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.

2. QUOTATIONS AND PRICING

- 2.1 Liberty Reinforcing 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 Liberty Reinforcing specifies otherwise in writing. Any Quotation may be withdrawn earlier by notice from Liberty Reinforcing at its absolute discretion.
- 2.3 Liberty Reinforcing 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 Liberty Reinforcing reserves the right to change the pricing in the Contract for the whole or any part of the Contract if:
 - (a) supply of the quoted Goods and/or Works does not start within 30 days after the date of the written order acknowledgement;
 - (b) supply under the Contract is stopped or suspended for more than 30 days; or
 - (c) supply under the Contract is changed in any way before, during or after commencement of supply, including but not limited to re-design of the project, the start date of supply, the completion date of supply and the agreed rate of supply of the Goods and/or Works; or
 - (d) supply under the Contract has not been completed within twelve months of the date of the Quotation.
- 2.5 The price quoted 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 Liberty Reinforcing 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 Liberty Reinforcing quotations and invoices may be rounded up or down to the nearest multiple of 10 cents.
- 3. ESCALATION AND PRICE VARIATION**
- 3.1 In addition to its rights in clause 2 or any rights under a Contract, Liberty Reinforcing 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 Liberty Reinforcing providing a notice increasing the price in accordance with clause 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 Liberty Reinforcing 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 Liberty Reinforcing only if Liberty Reinforcing:
 - (a) formally accepts the order by written acknowledgement; or
 - (b) delivers the ordered Goods and/or Works described in the order or offer,whichever occurs first.
- 4.4 Liberty Reinforcing 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 Liberty Reinforcing, unless Liberty Reinforcing consents in writing.
- 4.6 The Contract, when created, is wholly documented by (in descending order of precedence):
 - (a) any specific terms agreed by the parties in accordance with clause 6;
 - (b) the Quotation (if applicable);
 - (c) these Terms and Conditions;
 - (d) the relevant Working Documents;
 - (e) the applicable Delivery Offer; and
 - (f) the credit terms applying to the Purchaser (if applicable).
- 4.7 Previous dealings between Liberty Reinforcing 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 Liberty Reinforcing 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, Liberty Reinforcing may, by written notice, terminate the Contract 12 months after the date of first delivery of the Goods and/or Works.
- 4.11 The Purchaser acknowledges that each Contract constitutes a security agreement, and that any one or more members of the

Liberty Supplier Group may register a financing statement (or comparable notice in any other relevant jurisdiction) on behalf of itself and any one or more other members of the Liberty Supplier 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, Liberty Reinforcing will make calculations of nominal mass on a per metre basis in accordance with AS/NZ4671. Liberty Reinforcing will increase the nominal mass of steel reinforcing Goods (calculated pursuant to AS/NZ4671) sold by it by a percentage to be set by Liberty Reinforcing from time to time, taking into account factors including manufacturing variations, but the percentage will not exceed 4%.

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 Liberty Reinforcing 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.

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 Liberty Reinforcing:

- (a) in the case of any Goods supplied by Liberty Reinforcing 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 Liberty Reinforcing 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 Liberty Reinforcing 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 Liberty Reinforcing are subject solely to the warranties (if any) specified by the manufacturers or the third party suppliers to Liberty Reinforcing, and the Purchaser acknowledges that, to the extent permitted by law, Liberty Reinforcing gives no warranties beyond such manufacturers' or suppliers' warranties.

7.3 The Purchaser acknowledges that Liberty Reinforcing 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 Except as required by law, Liberty Reinforcing is not obliged to accept Goods returned for any reason.

7.5 Liberty Reinforcing 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), Liberty Reinforcing 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 Liberty Reinforcing 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 Liberty Reinforcing or with any of Liberty Reinforcing's related bodies corporate (within the meaning

of the *Corporations Act 2001*), the Purchaser must comply with the terms and conditions of that commercial credit account. Liberty Reinforcing reserves the right to charge an administration fee as determined from time to time to cover credit card merchant fees and Liberty Reinforcing's associated overhead charges.

8.2 If the Purchaser has a commercial credit account with Liberty Reinforcing then, unless otherwise agreed in writing:

- (a) Liberty Reinforcing 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 Liberty Reinforcing then the Purchaser must pay Liberty Reinforcing for the Goods and/or Works at the time it places an order for such Goods and/or Works with Liberty Reinforcing.

8.4 Liberty Reinforcing reserves the right to charge additional administration fees (such as commercial credit account keeping fees) as determined by Liberty Reinforcing from time to time.

8.5 If Liberty Reinforcing 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 Liberty Reinforcing or against any pending or unsecured claim against Liberty Reinforcing. If the Purchaser withholds any money as retention money, Liberty Reinforcing reserves the right to withhold further supply under the Contract or any other contract between Liberty Reinforcing and the Purchaser.

8.7 The granting of credit does not oblige Liberty Reinforcing to extend any particular amount of credit to the Purchaser and Liberty Reinforcing 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 Liberty Reinforcing 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
 - (b) the Purchaser defaults in performing any of its obligations under a Contract; or
 - (c) in Liberty Reinforcing'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) the Purchaser is in breach of contract, then, in addition to and without prejudice to any other rights it has by law, Liberty Reinforcing:
 - (e) is entitled to treat the whole of the Contract as repudiated;
 - (f) may refuse to supply the Goods or provide the Works to the Purchaser;
 - (g) is entitled to treat any other contract between Liberty Reinforcing and the Purchaser as repudiated; and
 - (h) is entitled to take possession of any Goods or Processed Goods, wherever they are located;
 - (i) is entitled to remove any Goods which have become an Accession;
 - (j) 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 reason (including for convenience) except if Liberty Reinforcing has failed to remedy its breach of the Contract within a reasonable period after the Purchaser gives it written notice of such breach. 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, Liberty Reinforcing may recover from the Purchaser the total amount of the order placed on Liberty Reinforcing, 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, Liberty Reinforcing may recover it from the Purchaser as a debt under the Contract.
- 11.5 Any party that becomes aware of the occurrence of any adjustment event in connection with the Contract must notify the other party as soon as possible. The parties must then take whatever steps are necessary and make whatever adjustments are required to ensure that any additional GST, or refund of GST, on that supply is paid no later than 20 business days after the parties first become aware of the adjustment event.
- 11.6 For the purposes of this clause 11, terms used in this clause 11 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* have the meaning given to them in that Act.
- 12. DELIVERY**
- 12.1 Delivery of Goods will be in accordance with the applicable Delivery Offer. It is the obligation of the Purchaser to ensure that it is familiar with and observes the Delivery Offer. Liberty Reinforcing may deliver the Goods in any number of instalments.
- 12.2 If Liberty Reinforcing quotes the price as "ex works", the Purchaser must collect the Goods from Liberty Reinforcing's nominated premises at the time notified by Liberty Reinforcing to the Purchaser.
- 12.3 If Liberty Reinforcing 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 Liberty Reinforcing 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 Liberty Reinforcing'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, Liberty Reinforcing 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 Liberty Reinforcing when such Goods and/or Works are ready for delivery or performance, the Purchaser is liable for any additional charges that Liberty Reinforcing may incur for storage and/or double-handling, at Liberty Reinforcing's then current rates.
- 12.6 If Goods are to be despatched "ex works" they are deemed delivered at the premises of Liberty Reinforcing when Liberty Reinforcing notifies the Purchaser that the Goods are ready for collection.
- 12.7 If Goods are to be delivered by Liberty Reinforcing, they are deemed to be delivered:
- (a) if the parties agree that the Purchaser or the Purchaser's representative will unload the Goods, when Liberty Reinforcing delivers the Goods on a truck to a site adjacent to the Purchaser's nominated site; or
 - (b) when Liberty Reinforcing 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 Liberty Reinforcing 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 Liberty Reinforcing will make all reasonable efforts to have the Goods delivered to the Purchaser as agreed between the parties but Liberty Reinforcing is not liable for:
- (a) any failure or delay in delivery of part or all of the Contract for any reason; or
 - (b) any damage or loss due to unloading or packaging; or
 - (c) damage to property caused upon entering premises to deliver the Goods.
- 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 Liberty Reinforcing will not be responsible for any claim from the Purchaser arising from or in any way relating to the unloading of the Goods.
- 13.3 If Liberty Reinforcing's officers, agents or employees enter upon any property at the actual or implied request of the Purchaser, Liberty Reinforcing 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 Liberty Reinforcing'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 cost of salvage of or repair to the vehicle. The Purchaser indemnifies Liberty Reinforcing and keeps Liberty Reinforcing indemnified against any loss or damage suffered by Liberty Reinforcing or as a consequence of Liberty Reinforcing becoming liable to any third party directly or indirectly as a result of Liberty Reinforcing's officers, agents or employees entering any property at the actual or the implied request of the Purchaser or unloading the Goods.
- 14. TITLE AND RELATED MATTERS**
- 14.1 The legal and equitable title to the Goods will only be transferred from Liberty Reinforcing 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 Liberty Reinforcing and that a fiduciary relationship exists between the Purchaser and Liberty Reinforcing.
 - (b) the Purchaser must keep the Goods separate and in good condition as a fiduciary of Liberty Reinforcing, clearly showing Liberty Reinforcing's ownership of the Goods, and must keep books recording Liberty Reinforcing's ownership of the Goods and the Purchaser's sale or otherwise of them in accordance with clauses 14.5 and 14.6. The Purchaser, if required, must deliver up the Goods to Liberty Reinforcing.
- 14.3 If the Purchaser defaults, in addition to Liberty Reinforcing's rights under clause 9, Liberty Reinforcing may take possession of the Goods wherever the Goods are located and the Purchaser agrees that representatives of Liberty Reinforcing 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 Liberty Reinforcing 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 Liberty Reinforcing. The Purchaser must keep those proceeds separate on trust for Liberty Reinforcing and not mix those proceeds with any other monies.
- 14.6 Unless otherwise expressly agreed in writing, Liberty Reinforcing 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 Liberty Reinforcing, 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, then the Purchaser holds such part of the proceeds of such manufacturing or construction process as related to the Goods on trust for Liberty Reinforcing. Such part is deemed to equal in dollar terms the amount owing by the Purchaser to Liberty Reinforcing at the time of the receipt of such proceeds. The Purchaser must keep that part of the proceeds separate on trust for Liberty Reinforcing and not mix those proceeds with any other monies. Notwithstanding the above, the Purchaser is still required to pay Liberty Reinforcing for Goods already delivered and for Goods manufactured or ordered to specification and not yet delivered.
- 15. SECURITY INTEREST, CHARGE AND MORTGAGE**
- 15.1 The Purchaser grants to the Liberty Supplier 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 Liberty Supplier Group ranking in priority behind any other security interest.
- 15.3 The Purchaser charges and mortgages in favour of Liberty Reinforcing, 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 Liberty Reinforcing has a caveatable interest in any real property of the Purchaser under this clause and may lodge a caveat over that property. Upon demand by Liberty Reinforcing, the Purchaser agrees to immediately execute a mortgage in favour of Liberty Reinforcing on terms satisfactory to

- Liberty Reinforcing to more particularly describe the mortgage conferred by this clause. Should the Purchaser fail within a reasonable time of such demand to execute that mortgage, then the Purchaser irrevocably appoints Liberty Reinforcing as its attorney with authority to do on its behalf any thing that it may lawfully authorise an attorney to do including, without limitation, to make, sign, execute, seal and deliver any document and to take possession of, use, sell or otherwise dispose of any real property of the Purchaser.
- 16. CONTRACTING OUT OF THE PPSA**
- 16.1 The Purchaser:
- (a) waives the right under section 157 of the PPSA to receive a copy of the verification statement verifying registration of a financing statement or a financing change statement relating to any security interest created under a Contract; and
- (b) contracts out of its rights to receive any other notice or statement under any other provision of the PPSA (including for the avoidance of doubt, any of the provisions specified in clause 16.2).
- 16.2 To the fullest extent permitted by the PPSA, the parties agree to contract out of sections 95, 117, 118, 120, 121(4), 125, the second sentence of section 126(2), sections 129(2), 129(3), 130, 132(3)(d), 132(4), 142 and 143, which sections (or parts of sections) do not apply.
- 17. RESALE**
- 17.1 The Purchaser agrees that it will not re-supply the Goods supplied to it by Liberty Reinforcing without Liberty Reinforcing's prior written consent, which Liberty Reinforcing 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 Liberty Reinforcing to the extent of the Amount Payable. The Purchaser must keep those proceeds separate on trust for Liberty and not mix those proceeds with any other monies.
- 18. FORCE MAJEURE**
- 18.1 If Liberty Reinforcing 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, delay in the manufacture of the Goods for any reason whatsoever, interruption of transport, government action, non-delivery of raw material or products, refusal or failure of Liberty Reinforcing's own suppliers to deliver to Liberty Reinforcing any Goods or components of Goods, or any other cause whatsoever outside its control (whether or not of a like nature to those specified above), Liberty Reinforcing is under no liability whatsoever to the Purchaser and is entitled, at its discretion, to give notice to the Purchaser, either to cancel any Contract or to extend the time for its performance.
- 19. SHORTAGES, DEFECTS AND INACCURACIES, FAILURE OF, OR DELAY IN, SUPPLY**
- 19.1 The Purchaser hereby agrees to check all Goods received immediately upon unloading at their destination and all Works immediately upon completion. No claim by the Purchaser for shortages or improper or defective or damaged Goods, or defective or improper Works, will be recognised by Liberty Reinforcing unless notified to Liberty Reinforcing within forty-eight (48) hours of delivery or performance.
- 19.2 Liberty Reinforcing will endeavour to rectify inaccuracies or short supply within forty-eight (48) hours of notification, but will not be responsible for any loss or damage (including consequential loss) however caused arising out of or resulting from such inaccuracies or short supply.
- 19.3 If, due to any cause whatsoever, Liberty Reinforcing is unable to supply any part of a Contract by the nominated delivery date or at all, it is entitled, at its option:
- (a) to supply to the Purchaser similar Goods and/or Works which in the opinion of Liberty Reinforcing are an appropriate substitute without prior reference to the Purchaser; or
- (b) not to supply part or all of the Goods and/or Works; or
- (c) delay supply of part or all of the Goods and/or Works.
- 20. DISPUTE RESOLUTION**
- 20.1 If there is a dispute or disagreement between Liberty Reinforcing and the Purchaser arising in any way from or in relation to a Contract, then Liberty Reinforcing 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 Liberty Reinforcing 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 law or;
- (c) 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®, ROMTEC®, 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 Liberty Reinforcing reserves the right to charge for any or all Works.
- 23.3 Where Liberty has agreed to provide Works, the Purchaser must pay Liberty Reinforcing's fees for such Works, if applicable, when such Works have been performed.
- 23.4 Liberty Reinforcing will use all reasonable endeavours to perform 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 Liberty Reinforcing sufficient notice to arrange such steelfixing and/or prefabrication and meet associated health and safety requirements.
- 24. WORKING DOCUMENTS**
- 24.1 Liberty Reinforcing 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 Liberty Reinforcing prior to commencement of the Works.
- 24.3 Where the Purchaser submits electronic copies of Working Documents to Liberty Reinforcing, then Liberty Reinforcing 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 Liberty Reinforcing.
- 24.6 A Quotation does not include any fee for design, re-design, detailing, re-detailing, scheduling or re-scheduling of Working Documents to be prepared by Liberty Reinforcing unless stated in the Quotation. The Purchaser must pay Liberty Reinforcing's fees for such services, if applicable, when such Working Documents are prepared.
- 24.7 Liberty Reinforcing will provide only two copies of material processing supply schedules and associated installation location plans.
- 24.8 Liberty Reinforcing 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 Liberty Reinforcing (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 Liberty Reinforcing.
- 24.10 The Purchaser indemnifies Liberty Reinforcing against all claims and all costs, liabilities and expenses incurred by Liberty Reinforcing 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 Liberty Reinforcing for the purposes of or in the course of the supply of Goods or performance of Works, breaching a third party's intellectual property rights. and this clause 24.10 survives termination or expiry of the Contract.
- 24.11 The Purchaser may not use any trade mark or other intellectual property of Liberty Reinforcing, unless it receives the prior written consent of Liberty Reinforcing (which consent may be given,

withheld or withdrawn, or given subject to conditions, at Liberty Reinforcing's discretion).

25. COSTS

25.1 The Purchaser must pay Liberty Reinforcing all costs and expenses incurred by Liberty Reinforcing in connection with the Contract including legal expenses (on a full indemnity basis), stamp duty (including fines and penalties) and costs incurred or payable by Liberty Reinforcing in connection with registering, maintaining or releasing any security interest, charge, mortgage or caveat in connection with a Contract, or the recovery of the Amount Payable or in otherwise enforcing Liberty Reinforcing's rights against the Purchaser under a Contract. 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. ATTORNEY

26.1 The Purchaser irrevocably appoints Liberty Reinforcing and each of its authorised officers, jointly and severally, to be its attorney to do any act or thing which the Purchaser is required to do under a Contract, if the Purchaser is in default under the Contract, including as described in clause 9.1 (including executing and registering instruments). Liberty Reinforcing may exercise its powers even if this involves a conflict of duty and even if it has a personal interest in doing so. A third party may rely on a copy of the Terms and Conditions certified by a solicitor as evidence of the appointment of Liberty Reinforcing as the attorney of the Purchaser. The Purchaser must ratify all acts and things done by Liberty Reinforcing and its authorised officers in the exercise of this power of attorney.

27. DEFAULT INTEREST

27.1 Liberty Reinforcing may charge interest on any overdue amount at a rate equivalent to 2.5% p.a. above the business overdraft interest rate of its principal banker, as determined and calculated by Liberty Reinforcing. Such interest will be payable on demand by Liberty Reinforcing 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 Liberty Reinforcing 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 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 Liberty Reinforcing.

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 Liberty Reinforcing Additional Consumer Terms and Conditions of Sale located at www.libertygfg.com are incorporated into and form part of the Terms and Conditions, such that they apply as part of the Contract; and
- (b) clause 7 does not apply and, except as expressed otherwise in the Liberty Reinforcing 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 Liberty Reinforcing with personal information (as defined in the Privacy Act 1988) about any individual (including the Purchaser where applicable), the Purchaser must have that individual's consent to provide that information to Liberty Reinforcing having regard to and for the purposes set out in this clause 30 and in Liberty Reinforcing's Privacy Policy. This policy is available on request or via

www.libertygfg.com, and contains more information about Liberty Reinforcing'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 Liberty Reinforcing 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. Liberty Reinforcing 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 Liberty Reinforcing's business. Without the personal information sought, Liberty Reinforcing may not be able to do these things, including fulfill orders and process credit applications.

30.3 Liberty Reinforcing may provide marketing communications to the Purchaser by email and other means on an ongoing basis, unless the Purchaser opts out by contacting Liberty Reinforcing or legal restrictions apply.

30.4 Liberty Reinforcing may exchange personal information with other companies in the Liberty Supplier 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 Liberty Reinforcing's service providers. Liberty Reinforcing 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) Liberty Reinforcing 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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