

## CRISP BROS. & HAYWARDS STANDARD TERMS & CONDITIONS

### 1 ORDERS

1.1 A written quotation issued by CBH to the Client is an invitation to the Client to offer to purchase Goods and/or Services from CBH. A written quotation expires on the date specified as an expiry date. If no expiry date is specified, the written quotation expires 30 days after the date of the written quotation.

1.2 CBH may withdraw, revoke or vary a written quotation at any time prior to the Client submitting and CBH accepting an offer to purchase Goods and/or Services (which may be by way of an order) in response to the invitation to purchase comprised by CBH's written quotation.

1.3 A contract for the provision of Goods and/or Services is made when CBH communicates (by writing or conduct) its acceptance of a Client's offer on the terms of a written quotation.

1.4 An order from the Client on terms which are inconsistent with the terms of a written quotation and/or these Conditions is an offer by the Client to buy Goods and/or Services from CBH. In those circumstances, a contract for the provision of Goods and/or Services is made if:

- (a) CBH communicates that it is prepared to provide the ordered Goods and/or Services on the terms of these Conditions; and
- (b) the Client accepts delivery of the ordered Goods and/or provision of the Services.

1.5 An order is made pursuant to clauses 1.3 or 1.4 and is wholly documented by any specific terms agreed by CBH and the Client in writing including, without limitation, in a quotation and these Conditions (Order).

1.6 To the extent that any inconsistency arises between the terms of a CBH quotation and any clause of these Conditions, the terms of the CBH quotation prevail.

1.7 These Conditions apply to the exclusion of any terms and conditions of trade of the Client whether or not any inconsistency arises,

### 2 CONSTRUCTION AND PROVISION OF GOODS

2.1 CBH will provide the Goods and/or Services in accordance with an Order.

2.2 If an Order refers to a Specification and/or Working Documentation then:

- (a) CBH will construct the Goods in accordance with the Specification and/or Working Documentation with reasonable care, skill and attention based on industry standards;
- (b) CBH will construct any Goods using materials specified in an Order provided that CBH may use substitute materials that are equivalent or superior materials
- (c) the Client represents and warrants to CBH that any Specification or Working Documentation does not and any Goods produced by CBH pursuant to such Specification or Working Documentation will not breach or infringe upon the rights or property of any third party including, without limitation, patent, design, copyright or other intellectual property rights and the Client indemnifies CBH and must hold it harmless from and against any loss, damage, liability or cost suffered or incurred by CBH arising out of a breach by the Client of the representations and warranties made by it pursuant to this clause;
- (b) the Client releases CBH from and waives any rights or causes of action it may at any time have had against CBH but for this release in relation to any fault or defect in any Goods made pursuant to the Client's Specification or Working Documentation arising, whether directly or indirectly, out of the terms of the Specification or Working Documentation provided by the Client to CBH; and
- (c) the Client indemnifies CBH and must hold it harmless from and against any loss, damage, liability or cost suffered or incurred by CBH attributable, whether directly or indirectly, to the terms of any Specification or Working Documentation provided by the Client to CBH.

2.3 Notwithstanding any other provision of these Conditions, it is a term of the contract that CBH has discretion to refuse to provide Goods and/or Services to the Client (without liability to the Client) where:

- (a) Goods or Services are unavailable or insufficient for any reason whatsoever;
- (b) the Client has failed to comply with terms on which CBH has agreed to provide credit to the Client; or
- (c) the Client or a Related Corporation of it has breached a contract with CBH or a Related Corporation of it, including these Conditions.

2.4 The Client agrees that it does not rely on the skill or judgement of CBH in relation to the suitability of any of the Goods for a particular purpose.

### 3 PRICE AND GST

3.1 The price of Goods and/or Services will be those set out in an Order and does not include GST unless expressly stated to the contrary.

3.2 Where a party to these Conditions (Supply Maker) makes a Taxable Supply (within the meaning of the GST Act) under or in connection with these Conditions to another party to these Conditions (Recipient) and the consideration otherwise payable for the Taxable Supply is not specifically stated to include GST, the Supply Maker will be entitled to recover from the Recipient as an additional amount the amount of any GST payable on the Taxable Supply, and the Recipient must pay such GST at the same time that the consideration for the Taxable Supply is payable.

3.3 The amount of any cost recovery or compensation for costs under or in connection with these Conditions shall be reduced by the amount of any Input Tax Credits (within the meaning of the GST Act) available in respect of those costs.

3.4 A party to these Conditions will not be obliged to pay any amount in respect of GST to the other party unless and until a Tax Invoice (within the meaning of the GST Act) has been issued in respect of that GST.

3.5 In addition to payment of the price for Goods, the Client is responsible for and CBH may recover from the Client:

- (a) taxes (other than income tax), stamp duty or other statutory charges or levies whether State or Federal payable in relation to the supply of Goods;
- (b) the cost of delivery of Goods including, without limitation, costs relating to long loads, wide loads, escorted loads, drop trailers, crane trucks (including associated personnel), particular dunnage requirements, palletising or crating of materials, early deliveries (at or around 7:00 am), delivery loads of less than 10 tonnes, delivery to non-metropolitan sites;
- (c) the cost of providing materials necessary to manufacture Goods in accordance with a Specification or Working Documentation when such materials are not indicated on the Specification or Working Documentation;
- (d) costs incurred by CBH arising out of late notification by the Client of a change to an agreed delivery time with such costs to include, without limitation, costs of double handling, storage of material, trailer hire and scheduling of production and delivery;
- (e) storage charges where Goods are not collected immediately upon being made available for collection at CBH's premises;
- (f) demurrage costs or charges incurred by CBH for attendance at a delivery point after the expiration of the first three quarters of an hour such charges to be calculated at master carrier rates;
- (g) legal and collection costs and disbursements on an indemnity basis incurred by CBH in relation to a breach of these Conditions by the Client;
- (h) all costs, charges, expenses or any other outgoings incurred by CBH with respect to any Variation by the Client;
- (i) all costs or charges incurred by CBH with respect to the recovery or return of Goods from the Client (including re-stocking charges)

whether or not such recovery or return of Goods occurs in relation to any breach of these Conditions; and

- (j) the cost of any testing or inspection of Goods, or testing or inspection of products or materials required by the Client to be used in relation to the manufacture of Goods.

3.6 The Client must pay to CBH any costs, charges and expenses (including all stamp duty and legal fees on an indemnity basis) incurred by CBH in connection with these Conditions, the exercise or attempted exercise of any power, right or remedy under these Conditions, and the failure of the Client to comply with these Conditions.

#### 4 PAYMENT AND CREDIT TERMS

4.1 Unless CBH has agreed to extend credit to the Client, payment for Goods must be made by the Client in immediately available funds on or immediately prior to delivery of the Goods and/or Services.

4.2 Where CBH has agreed to extend credit to the Client, CBH will submit an invoice to the Client for Goods and/or Services supplied to the Client (including, without limitation, Goods delivered in part fulfilment of an order) and the full amount of the invoice together with any additional charges (if any) must be paid by the Client to CBH by no later than the date which is 30 days after the date of CBH's invoice or such other date for payment as CBH may agree in writing without set-off or counterclaim. All payments are claimed under the Building & Construction Industry Security of Payments Act 2009 (TAS) or equivalent in each state or territory.

4.3 If the Client does not make a payment as set out in an Order (including failing to pay within credit terms), additional interest calculated at the rate set out in the Order (and where no rate is specified at a rate of 12%) shall apply on any unpaid amount and shall continue to apply until the outstanding amount is paid in full.

4.4 Unless otherwise agreed by the Client and CBH, CBH will be entitled to deliver the Goods in one or more instalments. Where delivery of the Goods is effected by way of part delivery, CBH will be entitled to invoice the Client for pro-rata progress payments in respect of Goods delivered.

4.4 CBH is entitled to allocate and apply amounts received from the Client to any part of the Amount Payable or any other amounts due to CBH in any manner it determines, including in any manner required to preserve any purchase money security interest it has in any Goods, and despite any instruction, request or direction from the Client as to how payments should be applied.

4.5 The Client must pay CBH on demand default interest at the rate prescribed from time to time in the Penalty Interest Rates Act 1983 (Vic) on all overdue amounts owed by the Client to CBH which interest will be calculated daily and will be payable together with the overdue amount. All payments made by the Client will be first applied to the accrued interest.

4.6 The Client must not retain or withhold any money owing to CBH notwithstanding any breach or alleged breach by CBH of these Conditions including the supply of allegedly faulty or defective Goods. CBH expressly disclaims any right of the Client to set off amounts due or alleged to be due from CBH to the Client against amounts due or alleged to be due from the Client to CBH under these Conditions.

4.7 CBH may, at any time, without cause, vary, suspend, limit or withdraw any credit granted to the Client.

4.8 If the Client breaches a provision of these Conditions including, without limitation, a provision relating to the payment of money or if the Client, being a natural person, is the subject of any personal insolvency event including, without limitation, arising out of the Client committing an act of bankruptcy or if the Client, being a company, has a receiver, receiver and manager, official manager, trustee, administrator, other controller (as defined in the Corporations Act) or similar official appointed or steps are taken for such appointment over any of the assets or undertaking of the Client or if the Client suspends payment of its debts generally or is or becomes unable to pay its debts when they are due or is presumed to be insolvent under the Corporations Act or if the Client ceases or threatens to cease to carry on business or any guarantee or security given to CBH in relation to the Client is purported to be revoked or asserted to be unenforceable then CBH may, without limiting any other rights it may have, do any or all of the following things:

- (a) withdraw any credit facilities which may have been extended to the Client and require immediate payment of all moneys owed to CBH by the Client;
- (b) terminate, without CBH incurring liability to the Client any contract in force between CBH and the Client for the sale or supply of Goods or Services or both and, without limitation, withhold any deliveries of Goods or performance of Services pursuant to any purchase order accepted by CBH;
- (c) suspend performance under or terminate, in either case without CBH incurring liability to the Client, any contracts in force between CBH and the Client, not being contracts for the sale or supply of Goods.

4.9 The Client as beneficial owner charges and mortgages in favour of CBH all of the Client's interest and rights in all of the present and future real property of the Client as security for the due and punctual payment of all debts and monetary liabilities owed by the Client to CBH pursuant to a contract on or including the terms of these Conditions, including the Amount Payable. The Client acknowledges that CBH has a caveatable interest in any real property owned by the Client and consents to CBH lodging a caveat to note its interest.

4.10 Upon demand by CBH, the Client agrees to immediately execute a mortgage in favour of CBH on terms satisfactory to CBH to more particularly describe the mortgage conferred by this clause.

4.11 Should the Client fail within a reasonable time of such demand to execute such mortgage or should the Client be in default of any of its obligations under the contract, then the Client irrevocably appoints CBH and each of its authorised officers, jointly and severally, 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, register and deliver any document and to take possession of, use, sell or otherwise dispose of any property of the Client, including real property, and the Client ratifies all acts and things done by CBH and its authorised officers in exercising this power of attorney. A third party may rely on a certified copy of these Conditions as evidence of CBH's appointment as the Client's attorney.

#### 5 DELIVERY AND RISK

5.1 CBH's delivery obligations are subject always to the Client providing CBH with Working Documentation (if relevant) no later than the Lead Times for any corresponding Goods unless CBH agrees otherwise in writing.

5.2 Subject to clause 3.1, CBH will deliver Goods to the Client as follows:

- (a) CBH reserves the right to arrange transport by any means in its absolute discretion;
- (b) delivery will be made during Working Hours to the location agreed (delivery point);
- (c) CBH or its transport contractor will deliver the Goods as close (Drop Spot) to the delivery point as, in the opinion of CBH or its transport contractor, it is safe or prudent to do so and delivery occurs and risk in the Goods passes to the Client when CBH's or its transport contractor's delivery vehicle arrives at the Drop Spot;
- (d) the unloading of Goods at a Drop Spot is the Client's responsibility at its own cost and risk but CBH or its transport contractor may, without liability to the Client, unload the Goods at the Drop Spot if the Client requests CBH to do so or is absent from the Drop Spot at the time CBH or its transport contractor wishes to unload and the Client releases and forever discharges CBH and its transport contractor from and against any claim, cause of action or liability arising out of the unloading of Goods at the Drop Spot;
- (e) where the Client attends CBH's premises to acquire Goods, CBH may, in its discretion:
- (1) deliver the Goods into or onto the Client's vehicle in which case risk in the Goods passes to the Client and delivery is effected when the Goods are set down in or on the Client's vehicle; or

- (2) deliver the Goods by setting them down along side the Client's vehicle in which case risk in the Goods passes to the Client and delivery is effected when the Goods are set down along side the Client's vehicle notwithstanding that CBH's staff may, on request, assist the Client to load the Goods into or onto the Client's vehicle.

5.3 Where CBH or its transport contractor enters the Client's premises or the premises of a third party nominated by the Client as a delivery point, the Client releases CBH from any claim the Client may at any time have had against CBH but for this release in respect of damage occasioned to the Client's premises or injury to persons arising out of the delivery by CBH or its transport contractor of Goods to such premises.

5.4 A statement on an invoice or delivery docket given to the Client by CBH as to the quantity, description, date and place of delivery of Goods will be a conclusive statement and bind the Client for all purposes.

5.5 CBH will not be liable for any loss incurred as a result of delay or failure to make any supply of Goods and/or Services or to observe any of these Conditions due directly or indirectly to an event of force majeure, being any cause or circumstance beyond CBH's reasonable control, including but not limited to, any lack of production capacity or raw materials, strikes, lock-outs, labour disputes, fires, floods, acts of God or public enemy, malicious or accidental damage, delays in transport, breakdowns in machinery or restrictions or prohibitions by any government or any semi-government authorities or embargoes. During the continuance of an event of force majeure CBH's obligations under these Conditions will be suspended. In these circumstances, CBH has no liability whatsoever to the Client and if the force majeure event continues for 28 days or longer, CBH may terminate the contract for convenience.

## 6 TITLE TO GOODS

6.1 The Client agrees that legal and equitable title to the Goods is retained by CBH until the Amount Payable has been paid in full by the Client for the Goods, the Services and all other goods and services supplied to the Client at any time. Prior to title in the Goods passing to the Client, the Client:

- (a) holds the Goods and any Processed Goods as bailee and fiduciary agent of CBH;
- (b) must store the Goods and such part of the Processed Goods separate from its own goods and those of any other third party in such a way as to clearly indicate at all times that the Goods and such part of the Processed Goods are owned by CBH; and
- (c) must ensure that, at all times, the Goods and such part of the processed goods are properly stored, protected, readily identifiable and insured.

6.2 The Client hereby agrees to accept this appointment as bailee and fiduciary agent of CBH.

6.3 The Client 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 the Client's normal business.

6.4 The Client may sell or deal in the ordinary course of business with the Goods, and such part of the Processed Goods or any Accession provided that:

- (a) any such sale or dealing is at arms' length and on market terms; and
- (b) the Client holds the proceeds of any sale of or dealing in the Goods and such part of the proceeds of any sale of or dealing in the Processed Goods on trust for CBH in a separate identifiable account as the beneficial property of CBH and the Client must pay such amount to CBH on demand.

6.5 For purpose of this clause 4, "such part" means an amount equal in dollar terms to the amount owing by the Client to CBH at the time the Goods are used in the manufacture of, or incorporated into, the Processed Goods or Accession.

6.6 Notwithstanding any other provision to the contrary, CBH reserves the following rights in relation to the Goods until the Amount Payable has been

paid in full by the Client in respect of the Goods and all other goods and services supplied to the Client at any time:

- (a) legal and equitable ownership of the Goods;
- (b) to retake possession of the Goods; and
- (c) to keep or resell any of the Goods repossessed.

6.7 In the event of a breach of this contract by the Client including, without limitation, failure by the Client to pay any Amount Payable by the required date, the Client must return the Goods to CBH immediately on demand. If the Client does not return the Goods to CBH on demand, CBH is entitled (without further notice) to:

- (a) enter upon the Client's premises at any time to do all things necessary to recover the Goods or any Processed Goods;
- (b) take possession of the Goods or any Processed Goods wherever located;
- (c) take possession of any Goods which have become an Accession, wherever located; and/or
- (d) appoint a person to be a receiver of all or any of the Goods, Accessions, Processed Goods or other property the subject of the security interests created by the contract.

6.8 The Client hereby grants an irrevocable licence to CBH and any person authorised by CBH to enter upon any premises where the Goods, Processed Goods or Accessions may for the time being be placed or stored for the purpose of retaking possession of those Goods, Processed Goods or Accessions.

6.9 The Client:

- (a) must pay CBH all costs and expenses incurred or payable by CBH for registering, maintaining or releasing any security interest, charge, mortgage or caveat in connection with the contract, or recovery of the Amount Payable or in otherwise enforcing CBH's rights against the Client;
- (b) must pay the costs of registering any PPSA financing statement and such costs may be invoiced or debited against the Client's credit account; and
- (c) indemnifies CBH for all fees (including legal and debt collection fees on a full indemnity basis), costs and expenses incurred or suffered as a result of any and all prosecution, actions, demands, claims or proceedings brought by or against CBH in connection with the retaking possession of the Goods or the exercise by CBH of its rights under this clause, and the Client shall repay all such fees, costs, losses, damages, expenses or any other sums of money on demand.

6.10 The Client acknowledges and agrees that the contract between the parties comprises a security agreement and that CBH is entitled to register a financing statement in respect of the security interests given under that contract.

## 7 PPSA

7.1 The Client grants a security interest in the Goods to CBH 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.

7.2 The Client must not do or permit anything to be done that may result in the purchase money security interest granted to CBH ranking in priority behind any other security interest.

7.3 The Client:

- (a) waives its 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 a security interest created under the 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 7.2).

**7.4 The Client undertakes to:**

- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which CBH may reasonably require to:
- (i) Register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- (ii) Register any other document required to be registered on the PPSA;
- (iii) Correct a defect in a statement;
- (b) indemnify, and upon demand reimburse CBH for all expenses incurred in registering a financing statement or financing change statement on the PPSR established by the PPSA or releasing any Goods charged thereby;
- (c) immediately advise CBH of any material change in its business practices which would result in a change in the nature of the proceeds derived from such sales.

7.5 CBH and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Conditions.

7.6 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d), and 132(4) of the PPSA.

7.7 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

7.8 Unless otherwise agreed in writing by CBH, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.

7.9 The Client must unconditionally ratify any actions taken by CBH under this clause.

7.10 Subject to any express provisions to the contrary, nothing in these Conditions is intended to have the effect of contracting out of any of the provisions in the PPSA.

**8 WARRANTIES AND LIMITATION OF LIABILITY**

8.1 Where the Goods relate to a Specification or Working Documents, the design and engineering of the Goods is the responsibility of the Client. In addition, any elements supplied by the Client will also be the responsibility of the Client. The Client acknowledges that it has satisfied itself as far as it wants to that the Goods, if constructed in accordance with the Specification and/or Working Documents will comply with any Regulations and will be fit for the intended purposes and enters into an Order relying solely on its own judgment.

8.2 No statement or recommendation made or advice, supervision or assistance given by CBH, its employees, agents, transport contractors or representatives whether oral or written must be construed as or constitutes a warranty or representation by CBH or a waiver of any clause in these Conditions. CBH is not liable for loss or damage arising directly or indirectly from any act or omission to act arising directly or indirectly from any such statements, recommendations, advice, supervision or assistance.

8.3 Subject to clause 8.3, CBH is not liable for any loss or damage, however caused (including, but not limited to, by the negligence of CBH), suffered by the Client in connection with a supply of Goods and/or Services under these Conditions.

8.4 If the CCA or any other legislation implies a condition or warranty into these Conditions in respect of goods or services supplied, and CBH's liability for breach of that condition or warranty may not be excluded but may be limited, clause 8.3 does not apply to that liability and instead CBH's liability for any breach of that condition or warranty is limited to:

- (a) the
- (i) replacing the Goods or supplying equivalent goods;
- (ii) repairing the Goods;
- (iii) paying the cost of replacing the Goods or of acquiring equivalent goods;
- (iv) paying the cost of having the Goods repaired; or
- (b) in the case of a supply of Services, CBH doing either or both of the following (at its election):
- (i) supplying the Services again;
- (i) paying the cost of having the Services supplied again.

8.5 Any liability under 8.4 will be limited for a period of 12 months from the date upon which Goods were handed over to the Client.

8.6 Notwithstanding any other provision of these Conditions, CBH is not liable to the Client for any indirect, special or consequential loss or damage suffered or incurred by the Client arising out of a breach by CBH of a contract made pursuant to these Conditions or a negligent act or omission of CBH or a breach of a statutory duty or obligation by CBH. The phrase "indirect, special or consequential loss or damage" is deemed to include the following: economic loss, loss of opportunity, loss of profit or revenue, loss or damage in connection with claims against the Client by third parties, liquidated sums or liquidated damages.

**9 INTELLECTUAL PROPERTY**

9.1 Any Intellectual Property developed as part of constructing the Goods will be owned by CBH.

9.2 In some circumstances, in the course of performing its obligations under th, a Party may need to use intellectual property belonging to another Party ("Owner"). Before using the Owners' Intellectual Property, a Party must first obtain written consent to such use.

9.3 The Party using the Owner's Intellectual Property ("Licensee") acknowledges that the rights granted to it in clause 13 ("Intellectual Property") are non-exclusive and that the Owner may use or permit any other person to use any of its intellectual property in relation to any goods or services.

9.4 A Party permitted to use Intellectual Property under this clause may not sub-license any of its rights in respect of the intellectual Property to any person.

9.5 Where a Party uses the Owner's Intellectual Property, it must comply with all reasonable directions, instructions and specifications given by the Owner from time to time regarding the representation of the Intellectual Property and the manner of its use.

9.6 The Owner indemnifies any Licensee using its intellectual property against liability under any final judgement or settlement agreed by the Owner in proceedings brought by a third Party in respect of any claim for intellectual property infringement. This indemnity is conditional on the Licensee:

- (a) Notifying the Owner immediately of any suspected or actual Infringement Claim;
- (b) Giving the Owner the option to conduct the defence of the Infringement Claim, including full authority in respect of any settlement or compromise negotiations;
- (c) Giving the Owner all necessary assistance relating to the Infringement Claim; and
- (d) Authorising the Owner to procure the right to the Licensee to continue using the Trade Marks the subject of the Infringement Claim.

**10 SECURITY AND CHARGE**

10.1 In consideration of CBH agreeing to the payment terms as set out in clause 4, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned

by the Client either now or in the future, to secure the performance by the Client of its obligations under these Conditions (including but not limited to the payment of any money).

10.2 The Client indemnifies CBH from and against all of CBH's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising CBH's rights under this clause.

10.3 The Client irrevocably appoints CBH and each director of the Client as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause including, but not limited to, signing any document on the Client's behalf.

## 11 DIRECTORS GUARANTEE

11.1 If the Client is a company, a director of the Client company or other person whose details are provided in an Order agrees, by way of signature, to be the guarantor of the Client and the guarantor guarantees to CBH the performance by the Client of all of its obligations under an Order and indemnifies CBH from and against all and any costs claims damages and expenses whatsoever and howsoever arising out of the breach or non-performance by the Client of the terms of an Order.

11.2 The guarantee and indemnity referred to in this clause continues during the currency of an Order between the Client and CBH and the guarantors liability shall not be affected by CBH giving time or any other concession indulgence or compromise to the Purchaser for the performance of its obligations.

11.3 This guarantee and indemnity may be enforced against the guarantor without CBH first taking action against the Client or pursuing any other available recourse and may be enforced despite any neglect or omission to enforce any rights against the Client or if any of Orders between the Client and CBH are wholly or partially unenforceable or if the Client goes into liquidation.

## 12 MISCELLANEOUS

12.1 Nothing in these Conditions is intended to exclude, restrict or modify rights which the Client may have under the CCA or any other legislation which may not be excluded, restricted or modified by agreement.

12.2 A party waives a right under these Conditions only if it does so in writing. A party does not waive a right simply because it fails to exercise the right, delays exercising the right or only exercises part of the right. A waiver of one breach of a term of these Conditions does not operate as a waiver of another breach of the same term or any other term.

12.3 If a provision in these Conditions is wholly or partly invalid or unenforceable in any jurisdiction, that provision or the part of it that is invalid or unenforceable must, to that extent, and in that jurisdiction, be treated as deleted from these Conditions. This does not affect the validity or enforceability of the remaining provisions in that jurisdiction, or of the deleted provision in any other jurisdiction.

12.4 CBH may assign or otherwise deal with the benefit of any contract made pursuant to these Conditions without the consent of the Client. The Client may not assign its rights under a contract or lease, licence or loan the Goods to any third party or grant a security interest in the Goods without prior notice to and written consent from CBH.

12.5 The Client must not disclose CBH's Confidential Information unless the Client receives the prior written consent of CBH, such information enters the public domain (other than as a result of a breach by the Client) or its use or disclosure is required by law. The Client may not use any trade mark or other intellectual property of CBH, unless it receives the prior written consent of CBH (which consent may be given, withheld or withdrawn, or given subject to conditions, at CBH's discretion).

## 13 JURISDICTION

The law of the state or territory in which CBH delivers Goods to the Client is the proper law of these Conditions. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of Tasmania.

## 14 PRIVACY

14.1 Where the Client provides CBH with personal information (as defined in the Privacy Act 1988) about any individual (including the Client where applicable), the Client must have that individual's consent to provide that information to CBH having regard to and for the purposes set out in this

clause 12 and in Arrium's Privacy Policy. This policy is available on request or via [www.arrium.com](http://www.arrium.com), and contains more information about CBH'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.

14.2 CBH may collect, use and disclose that personal information for purposes relating to any contract with the Client and to the Client's credit application and account. This includes assessing the Client'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 Client relationship management. CBH may also conduct lawful and relevant credit and reference checks (including consumer credit checks on the Client where the Client is an individual), and deal with personal information in connection with any acquisition or potential acquisition of any part of CBH's business. Without the personal information sought, CBH may not be able to do these things, including fulfill orders and process credit applications.

14.3 CBH may provide marketing communications to the Client by email and other means on an ongoing basis, unless the Client opts out by contacting CBH or legal restrictions apply.

14.4 CBH may exchange personal information with CBH's Related Corporations, the Client's guarantors and prospective guarantors (e.g. for the purpose of them deciding whether to act as guarantor), the Client's representatives and CBH's service providers. CBH 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, Client 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) CBH 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).

## 15 STANDARDS

15.1 Materials purchased by CBH shall be in accordance with the Table 1 – Parent Material as outlined in this document. Materials shall be in accordance with the current standard nominated within the table.

15.2 Any materials not identified within Table 1 shall be in accordance with the current Australian or International Standard as agreed with the CBH purchaser.

## 16 INTERPRETATION

In these Conditions:

**Accession** means any Goods which are installed in or affixed to other goods;

**ACL** means the Australian Consumer Law in Schedule 2 of the CCA;

**Amount Payable** means all amounts payable by the Client at any time to CBH and/or CBH's Related Corporations (whether or not those amounts have become due for payment under these Conditions) in relation to the Goods or the contract between the Client and CBH (including, but not limited to, any invoiced amount, interest, fees, costs or expenses);

**CBH** means Crisp Bros & Haywards Pty Ltd ACN 009483694;

**CCA** means the Competition and Consumer Act 2010 (Cth);

**Conditions** means these terms and conditions as amended from time to time;

**Confidential Information** means all information (in any form, whether written, electronic or otherwise) including any proprietary information, data, trade secrets, ideas and know-how (including systems, processes,

techniques and algorithms), throughout the world in or relating to the Goods or the Services;

**Client** means a person who makes an Order with CBH on the terms of these Conditions;

**Goods** means any goods supplied by CBH which are the subject of an Order, or part of those Goods where the context allows;

**GST** means the tax payable on Taxable Supplies within the meaning of the GST Act;

**GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax;

**Intellectual Property** means all intellectual property including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, know-how, confidential information, patterns, inventions and discoveries

**Lead Time** means the minimum period before the proposed delivery date by which the Client must provide Working Documentation which period shall be notified by CBH on request.

**Order** has the meaning given to it in clause 1.5 and includes, for the avoidance of doubt, any credit application made by the Client and approved by CBH;

**Processed Goods** means Goods which, after delivery, become part of a product or mass by being manufactured, processed, assembled, commingled or otherwise dealt with so that their identity is lost in the product or mass;

**PPSA** means the Personal Property Securities Act 2009 (Cth);

**Regulations** means all standards, regulations and requirements imposed by any Authority relevant to the Goods and its intended use;

**Related Corporation** has the meaning given to the term "related body corporate" in section 50 of the Corporations Act 2001;

**Services** means services supplied by CBH to the Client in relation to any Goods the subject of an order which has been accepted by CBH;

**Specification** includes metallurgical properties, chemical formulae, ingredients, architectural drawings, engineering drawings or other plans and accompanying schedules provided by a Client;

**Variation** means any modification, amendment or change to the terms of an Order submitted by the Client (whether or not such order has been accepted by CBH) including, without limitation, in relation to scheduling and re-scheduling, loading requirements, delivery times or delivery sites;

**Working Documentation** means architectural drawings, site drawings, structural drawings, construction drawings or any other document or operational information provided by or on behalf of the Client to CBH for the purpose of the transactions contemplated by an Order; and

**Working Hours** means between 8.00am and 5.00pm, Monday to Friday (inclusive) excluding public holidays.

In addition, the following terms have the same meanings given to them in the PPSA:

- (a) financing statement;
- (b) proceeds;
- (c) purchase money security interest;
- (d) security agreement;
- (e) security interest; and
- (f) verification statement.

<b>Table 1 - Parent Material</b>	
<b>Standard</b>	<b>Product Description</b>
<b>Structural</b>	
AS 1397	Continuous hot-dip metallic coated steel sheet and strip – Coatings of zinc and zinc alloyed with aluminium and magnesium
AS 1450	Steel tubes for mechanical purpose
AS 1548	Fine grained, weldable steel plates for pressure equipment
AS 2074	Cast steels
AS/NZS 1163	Cold-formed structural steel hollow section
AS/NZS 1594	Hot-rolled steel flat products
AS/NZS 1595	Cold-rolled, unalloyed, steel sheet and strip
AS/NZS 3678	Structural steel – Hot rolled plates, floorplates and slabs
AS/NZS 3679.1	Structural steel – Hot-rolled bars and sections
AS/NZS 3679.2	Structural steel – Welded I sections
<b>Studs</b>	
AS 1443	Carbon steel and carbon-manganese steels – Cold-finished bars
<b>Reinforcing</b>	
AS/NZS 4671	Steel reinforcing materials
<b>Quench &amp; Tempered</b>	
AS 3597	Structural and pressure vessel steel – Quench and tempered plate
ISO 4950-3	High yield strength flat steel products, Products supplied in the heat – treated (quench + tempered) condition
ASTM A514	Specification for high – yield strength, quench and tempered alloy steel plate, suitable for welding
ASTM A517	Specification for pressure vessel plate, alloy steel, high - strength, quench and tempered
<b>Raw Materials - Stainless Steel</b>	
To be recorded on the PO	
<b>Raw Materials - Aluminium</b>	
AS 1874	Aluminium and aluminium alloys – Ingots and castings
AS/NZS 1734	Aluminium and aluminium alloys – Flat sheet, coiled sheet and plate
AS/NZS 1865	Aluminium and aluminium alloys – Drawn wire, rod, bar and strip
AS/NZS 1866	Aluminium and aluminium alloys – Extruded rod, bar, solid and hollow shapes
AS/NZS 1867	Aluminium and aluminium alloys – Drawn tubes
<b>Welding Consumables</b>	
AS/NZS 4855 Manual Metal Arc Welding MMAW	Welding consumables – Covered electrodes for manual metal arc welding of non-alloy and fine grain steels – Classification
AS/NZS 4857 Manual Metal Arc Welding MMAW	Welding consumables – Covered electrodes for manual metal arc welding of high – strength steels – Classification
AS/NZS 14341 Gas Metal Arc Welding GMAW	Welding Consumables – Wire electrodes and weld deposits for gas shielded metal arc welding of non alloy and fine grain steels – Classification
AS/NZS ISO 17632 Flux Cored Arc Welding FCAW	Welding consumables – Tubular cored electrodes for gas shielded and non-gas shielded metal arc welding of non-alloy and fine grain steels – Classification
AS/NZS 1167.2 or ISO 636 Gas Tungsten Arc Welding GTAW	Welding and brazing – Filler metal for welding
AS/NZS ISO 14171 Submerged Arc Welding SAW (Wire)	Welding consumables – Solid wire electrodes, tubular cored electrodes and electrodes/flux combinations for submerged arc welding of non alloy and fine grain steels – Classification
AS/NZS ISO 14174 Submerged Arc Welding SAW (Flux)	Welding consumables – Fluxes for submerged arc welding and electroslag welding – Classification