

SMARTREO

INDUSTRIAL PREFABRICATED SOLUTIONS

Terms and Conditions of Contract for Supply of Goods and Works

Effective 1 Oct 2014

General

All Goods are supplied, and Works are provided to Purchasers on these Terms and Conditions. No person employed by or acting otherwise as agent of SmartReo 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 SmartReo.

1. DEFINITIONS

1.1 In these Terms and Conditions:

- a) Accession means any Goods which are installed in or affixed to other goods such that the identity of the Goods is retained;
- 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 given time, all amounts presently due and owing to SmartReo by the Purchaser in connection with the Goods or a Contract (including, without limitation, any invoiced amount, interest, fees, costs or expenses);
- d) Contract means: (i) a contract created in accordance with clause 4or (ii) any other contract to which these Terms and Conditions are expressly incorporated;
- e) Delivery Offer means the delivery offer which sets out the terms and conditions on which SmartReo delivers Goods and which is available on request from SmartReo office locations;
- f) Goods means goods, products and materials (and any related Works) supplied by SmartReo under a Contract;
- g) SmartReo means SmartReo Pty Limited (ABN 27 166 612 853);
- h) 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;
- i) PPSA means the *Personal Property Securities Act 2009 (Cth)*;

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.

- j) Purchaser means the person, firm, company or other legal entity that enters into a Contract for the supply and/or provision of the Goods or Works;
- k) Quotation means a quote for Goods and/or Works issued to the Purchaser by SmartReo;
- l) Working Documents means architectural drawings, structural drawings, construction drawings, specifications and reinforcement schedules or other documents together with any variation or site instruction in connection with the Goods or Work; and

Works means any labour performed and/or services provided by SmartReo 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.

2. QUOTATIONS AND PRICING

2.1 SmartReo may at any time and in 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 SmartReo specifies otherwise in writing. Notwithstanding the period of validity, a Quotation may be withdrawn earlier by notice from SmartReo acting in its absolute discretion.

2.3 SmartReo 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 SmartReo reserves the right to change the pricing in the Contract for the whole or any part of the Contract if, due to the actions and/or omissions of the Purchaser:

- (a) supply of the quoted Goods and/or Works does not start within 30 days after the date of the written order acknowledgement; or
- (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 six 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, SmartReo 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 applicable 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 SmartReo 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, SmartReo may increase or decrease the Contract price of Goods and/or Works during the term of the Contract where it incurs a bona fide 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 SmartReo providing a notice increasing the price in accordance with clause

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 SmartReo 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 SmartReo only if SmartReo:

- (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 SmartReo 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 SmartReo, unless it obtains prior written consent from SmartReo.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 conditions between SmartReo and the Purchaser shall 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 SmartReo 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, SmartReo may by providing 7 days 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 SmartReo may register a financing statement (or comparable notice in any other relevant jurisdiction) on behalf of itself 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 the steel reinforcing Goods, SmartReo will make calculations on a per metre basis in accordance with AS/NZS4671. SmartReo will add a margin of 4.0% onto the calculated nominal mass to cover rolling variations and other costs.

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 SmartReo 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 Subject to clause 3, no variation to 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 from the Contract. 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) howsoever 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 SmartReo:

- (a) in the case of any Goods supplied by SmartReo 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) if there has been prior agreement between the parties, 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 SmartReo pursuant to the Contract:
 - (i) the provision of the Works again; or
 - (ii) payment of the reasonable 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 SmartReo are subject solely to the warranties (if any) specified by the manufacturers or the third party suppliers to SmartReo, and the Purchaser acknowledges that, to the extent permitted by law, SmartReo gives no warranties beyond such manufacturers' or suppliers' warranties.

7.3 The Purchaser acknowledges that SmartReo 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, SmartReo are not obliged to accept Goods returned for any reason.

7.5 SmartReo is not liable for the design, lifting and/or positioning of any prefabricated 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)*, SmartReo 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 howsoever caused (including negligent or reckless conduct, acts or omissions) 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 SmartReo 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 SmartReo or with any of SmartReo's related bodies corporate (within the meaning of the *Corporations Act 2001 (Cth)*), the Purchaser must comply with the terms and conditions of that commercial credit account. SmartReo reserves the right to charge an administration fee as determined from time to time to cover credit card merchant fees and SmartReo's associated overhead charges.

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

- (a) SmartReo 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; 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.

8.3 If the Purchaser does not have a commercial credit account with SmartReo then the Purchaser must pay SmartReo for the Goods and/or Works at the time it places an order for such Goods and/or Works with SmartReo.

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

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

8.7 The granting of credit does not oblige SmartReo to extend any particular amount of credit to the Purchaser and in its absolute discretion, SmartReo may withdraw, refuse, suspend or limit credit to the Purchaser at any time without notice and without providing reasons.

8.8 The Purchaser must notify SmartReo 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 SmartReo'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 under law, SmartReo:
- (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 SmartReo and the Purchaser as repudiated;
 - (h) is entitled to take possession of any Goods or Processed Goods, wherever they are located and the Purchaser must provide access;
 - (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 Except in accordance with clause 3.2, the Purchaser is not entitled to terminate, suspend or cancel part or all of a Contract for any reason (including for convenience) unless SmartReo has failed to remedy its breach of the Contract within a reasonable period after the Purchaser provides SmartReo with 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, SmartReo may recover from the Purchaser the total amount of the order placed on SmartReo, 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) concurrently with payment of the amount in respect of that supply;
- (b) by the due date; and
- (c) 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, SmartReo may recover it from the Purchaser as a debt and owing 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 all necessary steps and action all required adjustments 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 same meaning applied to them as 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. SmartReo may deliver the Goods in any number of instalments.

12.2 If SmartReo quotes the price as "ex works", the Purchaser must collect the Goods from SmartReo's nominated premises at the time notified by SmartReo to the Purchaser.

12.3 If SmartReo 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 SmartReo at least 24 hours prior to the delivery;
- (b) ensure that an area is available which complies with all applicable occupational health, safety, environmental and welfare legislation; and
- (c) ensure that its representative is available at the time of delivery to acknowledge and accept delivery by signing a delivery receipt.

12.4 If SmartReo'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, SmartReo reserves the right to unload the Goods at the nominated site and leave the Goods unattended.

12.5 Where the Purchaser does not accept delivery of the Goods or allow performance of the Works which it has ordered from SmartReo when such Goods and/or Works are ready for delivery or performance, the Purchaser is liable for any additional charges that SmartReo may incur for storage and/or double-handling, at SmartReo's then current rates.

12.6 If Goods are to be despatched "ex works" they are deemed delivered at the premises of SmartReo when SmartReo notifies the Purchaser that the Goods are ready for collection.

12.7 If Goods are to be delivered by SmartReo, they are deemed to be delivered:

- (a) if the parties agree that the Purchaser or the Purchaser's representative will unload the Goods, when SmartReo delivers the Goods to a site adjacent to the Purchaser's nominated site; or
- (b) when SmartReo 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 SmartReo then, unless otherwise agreed in the Contract or unless otherwise provided in the Delivery Offer, the Purchaser must at its own cost unload the Goods.

12.9 SmartReo agrees to make all reasonable efforts to have the Goods delivered to the Purchaser as agreed between the parties, however shall not liable for:

- (a) any failure or delay in delivery for all or part 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 SmartReo will not be responsible for any claim from the Purchaser arising from or in connection to the unloading of the Goods.

13.3 To the full extent permitted by law, if SmartReo's officers, agents or employees enter upon any property at the actual or implied request of the Purchaser, SmartReo accepts no responsibility for any damage suffered or incurred 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 SmartReo'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 SmartReo and keeps SmartReo indemnified against any loss or damage suffered or incurred by SmartReo or as a consequence of SmartReo becoming liable to any third party directly or indirectly as a result of SmartReo's officers, agents or employees entering any property or unloading the Goods at the actual or the implied request of the Purchaser.

14. TITLE AND RELATED MATTERS

14.1 The legal and equitable title to the Goods will only be transferred from SmartReo 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 SmartReo such that a fiduciary relationship exists between the Purchaser and SmartReo.
- (b) the Purchaser must keep the Goods separate and in good condition as a fiduciary of SmartReo clearly showing SmartReo's ownership of the Goods, and must keep books recording SmartReo's ownership of the Goods and the Purchaser's sale or otherwise of them in accordance with clauses 14.5 and 14.6. Acting as Bailee, the Purchaser must deliver the Goods to SmartReo, if so required.

14.3 If the Purchaser defaults, in addition to SmartReo's rights under clause 9, SmartReo may take possession of the Goods wherever the Goods are located and the Purchaser agrees that representatives of SmartReo 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 SmartReo 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, and the Purchaser holds the proceeds of sale, to the extent of the Amount Payable on trust for SmartReo. The Purchaser must keep those proceeds separate and hold them on trust for SmartReo and is prohibited from mixing those proceeds with any other monies.

14.6 Unless otherwise expressly agreed in writing, SmartReo 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) 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 SmartReo, 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 SmartReo. Such part is deemed to equal in monetary value the amount owing by the Purchaser to SmartReo at the time of the receipt of such proceeds. The Purchaser must keep that part of the proceeds separate on trust for SmartReo and is prohibited from mixing those proceeds with any other monies. Notwithstanding anything to the contrary above, the Purchaser is still required to pay SmartReo 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 SmartReo 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 SmartReo ranking in priority behind any other security interest.

15.3 The Purchaser charges and mortgages in favour of SmartReo, 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 SmartReo 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 SmartReo, the Purchaser agrees to immediately execute a mortgage in favour of SmartReo on terms satisfactory to SmartReo 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 SmartReo as its attorney with authority to do, on its behalf, anything 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 Subject to clause 17.2, the Purchaser agrees that it will not re-supply the Goods supplied to it by SmartReo without SmartReo's prior written consent, which SmartReo may withhold in its absolute discretion.

17.2 The Purchaser may sell any Accession or Processed Good to a third party in the normal course of the Purchaser's business, provided that the Purchaser holds the proceeds of any sale on trust for SmartReo to the extent of the Amount Payable. The Purchaser must keep those proceeds separate on trust for SmartReo and not mix those proceeds with any other monies.

18. FORCE MAJEURE

18.1 If SmartReo 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 SmartReo's own suppliers to deliver to SmartReo 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), SmartReo 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.

19.2 No claim by the Purchaser for shortages or improper or defective or damaged Goods, or defective or improper Works, will be recognised by SmartReo unless notified to SmartReo within forty eight (48) hours of delivery or performance.

19.3 SmartReo will endeavor 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) howsoever caused arising out of or resulting from such inaccuracies or short supply.

19.4 If, due to any cause whatsoever, SmartReo 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 SmartReo 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 SmartReo and the Purchaser arising from or in relation to a Contract, neither party may commence legal proceedings unless the party raising the dispute has first used all reasonable endeavors and exhausted appropriate alternative dispute resolution procedures to resolve the dispute in a timely manner.

20.2 Nothing in this clause 20 prevents a party seeking urgent interlocutory or declaratory relief from a court or compels a party to participate in alternative dispute resolution procedures for longer than 30 days after a dispute has formally arisen.

21. CONFIDENTIALITY

21.1 SmartReo 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 written approval has been obtained from the other party;
- (b) disclosure is required by law to be communicated to a person who is authorised by law to receive that information; 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 meters or exceeding diameter of 36mm, delivery of oversized loads or provision of vehicle escorts, unloading of goods at site, 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 reinforcing cage, 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 the item into 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 those associated with the performance of any Works.

23.2 SmartReo reserves the right to charge for any or all Works.

23.3 If fees are applicable to the performance of any Works required under or in connection with a Contract, SmartReo will provide details of the associated fees to the Purchaser prior to commencing the Work. For the avoidance of doubt, SmartReo shall not be liable for any delay incurred due to any negotiation of the fees.

23.4 The Purchaser must pay SmartReo's fees upon performance of the Works.

23.4 SmartReo will use all reasonable endeavors 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 steel-fixing and/or prefabrication as part of the Works, the Purchaser must give SmartReo sufficient notice to arrange such steel-fixing and/or prefabrication and to meet associated health and safety requirements.

24. WORKING DOCUMENTS

24.1 SmartReo 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 SmartReo prior to commencement of the Works.

24.3 Where the Purchaser submits electronic copies of Working Documents to SmartReo, SmartReo 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 SmartReo.

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 SmartReo unless stated in the Quotation. The Purchaser must pay SmartReo's fees for such services (if applicable) when such Working Documents are prepared.

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

24.8 SmartReo 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 SmartReo (whether prepared on a fee paying basis or not). Any unauthorised reproduction, adaptation or use may constitute a breach of copyright and actionable by SmartReo.

24.10 The Purchaser indemnifies SmartReo against all claims and all costs, liabilities and expenses incurred by SmartReo 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 SmartReo for the purposes of or in the course of the supply of Goods or performance of Works; and
- (c) breach of third party intellectual property rights.

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

24.12 This clause 24 survives termination or expiry of the Contract.

25. COSTS

25.1 The Purchaser must pay SmartReo all costs and expenses incurred by SmartReo 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 SmartReo 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 SmartReo's rights against the Purchaser under a Contract.

25.2 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 SmartReo 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). SmartReo 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 SmartReo as the attorney of the Purchaser. The Purchaser must ratify all acts and things done by SmartReo and its authorised officers in the exercise of this power of attorney.

27. DEFAULT INTEREST

27.1 SmartReo 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 SmartReo. Such interest will be payable on demand by SmartReo 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 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 Queensland and the courts of that jurisdiction have exclusive jurisdiction in connection with the Contract.

28.3 A party must not assign its benefits or obligations under a Contract without the prior written consent of the other party and such other party must not unreasonably withhold its consent to an assignment.

28.4 A party may only waive a right under the Contract if it provides written notice to the other party.

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. PRIVACY

29.1 Where the Customer provides SmartReo with personal information (as defined in the Privacy Act 1988) about any individual (including the Customer where applicable), the Customer must have that individual's consent to provide that information to SmartReo having regard to and for the purposes set out in this clause 29. This policy is available on request and contains more information about SmartReo'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.

29.2 SmartReo may collect, use and disclose that personal information for purposes relating to a Contract and to the Customer's credit application and account. This includes assessing the Customer's application, monitoring the value of and enforcing the security interests created by a Contract, reviewing credit arrangements on a periodic basis or in connection with changes (e.g. credit limit) as though assessing a new application, order fulfillment and delivery, market research, planning, business development, debt collection and customer relationship management. SmartReo may also conduct lawful and relevant credit and reference checks (including consumer credit checks on the Customer where the Customer is an individual), and deal with personal information in connection with any acquisition or potential acquisition of any part of SmartReo's business. Without the personal information sought, SmartReo may not be able to do these things, including fulfill orders and process credit applications.

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