



TERMS AND CONDITIONS OF CONTRACT FOR SALE OF GOODS FOR QUOTATION AND NON-QUOTATION SALES

General

All Purchases of goods are supplied on the following Terms and Conditions, unless varied and authorised in writing by Ausreo Pty Ltd and associated companies (ABN:11 094 555 192)

PART "A" - GENERAL TERMS AND CONDITIONS APPLICABLE TO QUOTATION AND NON QUOTATION SALES

1. DEFINITIONS

In these Terms and Conditions

"Contract" shall mean goods, products and material supplied by the supplier under the Contract;

"Delivery Terms" shall mean the delivery terms setting out the terms and conditions on which the Supplier delivers Goods, as varied from time to time in writing;

"Goods" shall mean goods, products and materials supplied by the Supplier under the Contract;

"Purchaser" shall mean the person, firm or Company that agrees to purchase the Goods or Works;

"Supplier" shall mean Ausreo Pty Ltd and associated companies. (ABN 11 094 555 192)

"Working Documents" shall mean architectural drawings, structural drawings, construction drawings, specifications and Reinforcement schedules or other documents together with any variation or site instruction

"Works" shall mean any labour performed and/or services provided by the Supplier under the Contract.

"Writing" means

- (a) hard copy, signed by a person authorised in writing; or
- (b) electronic, transmitted by a person authorised in writing.

2. THE CONTRACT

- (a) When a Purchaser accepts these terms and conditions, a Contract is created. Acceptance by a Purchaser can be:
 - (i) by signature and returns to the Supplier a copy of the quotation (where applicable) and acceptance of quotation letter; or
 - (ii) verbally; or
 - (iii) in writing; or
 - (iv) as expressed or implied by virtue of acts done or not done or otherwise.
- (b) That the Contract is then wholly documented by (in descending order of precedence) any specific terms agreed by the parties in accordance with Clause 4, the quotation (if applicable), these terms and conditions, the relevant Working Documents, the applicable delivery offer and the credit terms (if applicable).
- (c) Previous dealings between the Supplier and the Purchaser shall not have any effects on the Contract.
- (d) Trade custom/trade usage is suspended by the Contract and is not applicable in interpretation of the Contract.
- (e) A Contract constitutes the entire agreement between the Supplier and the Purchaser with respect to the Goods supplied or Works provided under the Contract and all prior negotiations, proposals and correspondence are superceded by that Contract.

3. QUANTITIES – Steel Reinforcing

- (a) Generally, the steel mass and length supplied will be within the tolerances permitted by the Australian Standards AS4671, AS3600, and AS2870.
- (b) When calculating the mass of the steel reinforcing, the Supplier will make calculations on a per metre basis in accordance with Table 5A of AS4671, plus an allowance for manufacturing tolerances as detailed in clause 7.3 of AS4671.

4. VARIATIONS

No purported variation of a Contract will be effective unless it is in writing and agreed by both parties.

5. WARRANTIES AND LIMITATION OF LIABILITY

- (a) Except to the extent to which conditions and warranties implied by law are not a law able to be excluded, all conditions and warranties are excluded. To the extent that any conditions and warranties cannot be excluded by contract the Purchaser's sole and exclusive remedy for any damages caused by breach of contract whether direct, indirect, liquidated, special or consequential shall, where permitted at law, be limited to any one of the following, as determined by the Supplier:

In the case of Goods

(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 the Supplier and the Purchaser, payment of the cost of replacing or having the Goods replaced or repaired.

(iv) Any replacement, repair or agreement to pay for rectification received in writing or verbal agreement by approved supplier personnel, shall be within 48hrs of agreement of error.

In the case of Works

(i) the provision of the Works again; or

(ii) payment of the cost of having the relevant Works provided again.

- (b) Except as required by law, the Supplier will not be obliged to accept Goods returned for any reason.

- (c) Subject to the foregoing provisions of this clause and Part VA of the Trade Practices Act 1974 the Supplier shall not be 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 how so ever caused (including negligence) 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:

(i) The Goods or any defect therein;

(ii) The failure or omission on the part of the Supplier to comply with its obligations under a Contract;

(iii) The failure or the omission on the part of the Supplier or any officer, agent or employee of the Supplier to comply with any obligation imposed by law;

Or

(iv) The reckless or negligent conduct or omission of the Supplier or any office, agent or employee of the Supplier

6. PAYMENT

- (a) The Purchaser shall not nor be entitled to demand or hold any sum on account of retention for completion of the Contract to be performed by the Supplier or against any pending or unsecured claim against the Supplier. If the Purchaser wrongfully withholds any money as retention money, the Supplier reserves the right to withhold further supply under the Contract or any other contract between the Supplier and the Purchaser.
- (b) Where the Purchaser has an established and approved credit account with the Supplier, the Purchaser shall ensure that payment for the Goods or Works is made to the Supplier in accordance with the credit account conditions.
- (c) Where (b) does not apply, the Purchaser shall ensure that payments for the Goods or Works are made to the Supplier at the time of placement of the order.
- (d) The Supplier reserves the right to charge additional administration fees (such as commercial credit account keeping fees) as determined by the Supplier from time to time.
- (e) The Supplier will charge at its discretion the Purchaser an interest charge of 24% per annum (charged per month) for any overdue amount or a late payment.

7. DEFAULT

Should:

- (a) the Purchaser fail to pay any amounts when due under a Contract, or
- (b) the Purchaser default in the performance of any of its obligations under the Contract; or
- (c) the Purchaser, if an individual commit an act of bankruptcy, or if a company became subject to external administration within the meaning of Section 9 of the Corporations Law or pass a resolution to wind up then, in addition to and without prejudice to any rights the Supplier has by law:

Then:

- (d) the Purchaser shall be in breach of contract and the Supplier shall be entitled to treat the whole of the Contract as repudiated;
- (e) the Supplier may refuse to supply the Goods or provide the Works to the Purchaser;
- (f) the Supplier shall be entitled to treat any other contract between the Supplier and the Purchaser as repudiated;
- (g) the Supplier shall be entitled to claim return of any Goods in the possession of the Purchaser where title has not passed to the Purchaser.
- (h) Any expenses, cost or reimbursements incurred by supplier in recovering any outstanding monies including debt collection fees and solicitor costs, shall be paid by the customer.
- (i) Any expenses, cost or reimbursements incurred by the supplier in recovering any outstanding monies including debt collection fees and solicitor costs, shall be paid by the customer.

8. MONEY'S OWING

A statement in writing as to any amount owing under a Contract by the Purchaser on the date mentioned in such statement shall be prima facie evidence that such amount is owing.

9. TAX

- (a) The Purchaser shall be liable for all excise, duties, or any other taxes or charges which may be established or levied by a government authority (domestic or foreign) upon the Goods or Works or any part thereof, or the manufacture, use, sale or delivery thereof, irrespective of whether such excise duties taxes or charges are included in the invoice or the quotation or not.
- (b) Any amounts payable by the Purchaser under a Contract are calculated or expressed exclusive of GST.
- (c) If GST is or becomes payable by the Supplier under a Contract, the Purchaser must pay to the Supplier on amount equal to the GST payable on the supply.
- (d) An amount payable under paragraph (c) must be paid.
 - (i) at the same time as the payment of the amount in respect of that supply is due; and
 - (ii) in addition to the amount payable under the Contract.
- (e) If the Purchaser fails to pay such GST when due the Supplier may recover it from the Purchaser as a debt under the Contract.
- (f) Unless a tax invoice for an amount payable under paragraph (c) has already been provided, the Supplier must deliver a tax invoice to the Purchaser within 14 days after receiving such payment.
- (g) in this clause "GST" means goods and services tax or any other similar tax imposed by reason of a supply of Goods or provision of Works under a Contract.

10. DELIVERY

- (a) Delivery of Goods will be in accordance with the applicable Delivery Terms. The Delivery Terms are available from the Supplier on request. It is the obligation of the Purchaser to ensure that it is familiar with and observes of the Delivery Terms.
- (b) If the Supplier quotes the price as "ex factory" the Supplier shall deliver the Goods at the premises of the Supplier. If the Supplier quotes the price as "delivered" the Supplier shall sell/provide the Goods to the Purchaser.
- (c) Where the Supplier is required to deliver the Goods to the Purchaser
 - (i) The Purchaser shall nominate the site for delivery in writing to the Supplier prior to the delivery;
 - (ii) The Purchaser shall ensure that an area is available which complies with all applicable Occupational Health and Safety and Welfare Legislation;
 - (iii) The Supplier shall satisfy its obligation by delivering the Goods on a truck at a site adjacent to the Purchaser's job or store; or delivering the Goods on a truck, which may be unloaded by a crane to a ground level, flat area of an appropriate size to accommodate the Goods. At no time will material be unloaded onto a suspended working deck.
- (d) Goods will be deemed delivered and unloaded as determined by the Supplier.
- (e) Where the Purchaser does not accept delivery of Goods or allow provision of the Works which it has ordered from the Supplier when the Goods or the Works are ready for delivery or provision by the Supplier, the Purchaser shall be liable for additional charges at the Supplier's then current rates for storage and/or double handling.
- (f) If, due to any cause whatsoever, the supplier is unable to supply particular Goods, the Supplier shall be entitled, at its option, to supply to the Purchaser similar Goods, which in the opinion of the Supplier are an appropriate substitute without prior reference to the Purchaser.
- (g) The Purchaser must ensure that its representative is available at the time of delivery to acknowledge delivery by signing a delivery receipt. Where the Purchaser or his representative is not in attendance when the Goods are delivered, the Supplier reserves the right to unload the Goods.
- (h) The Supplier will not be responsible for any claim from the Purchaser arising from or in any way relating to the unloading of the Goods.
- (i) In the event of the Supplier or its officer's agents or employees entering upon any property at the actual or the implied request of the Purchaser, the Supplier will not accept any responsibility for any damages suffered by the Purchaser or the Purchaser's officers, agents or employees or to the Purchaser's property.

In the event that a vehicle engaged in the delivery of Goods to the Purchaser's property is disabled due to the condition of the Purchaser's property, the Purchaser shall be liable for the cost of salvage of the vehicle. The Purchaser shall indemnify the Supplier and keep the Supplier indemnified against any loss or damage suffered by the Supplier or as a consequence of the Supplier becoming liable to any third party directly or indirectly as a result of the Supplier or its officers, agents or employees entering any property at the actual or the implied request of the Purchaser or unloading the Goods.

11. FORCE MAJEURE

If the supplier 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, breakdowns, delay in the manufacture of the Goods for any reason whatsoever, interruption of transport, government action, non-delivery of raw material or any cause whatsoever (whether or not of a like nature to those specified above) outside its control, the Supplier shall be under no liability whatsoever to the Purchaser and shall be entitled, at its option, to give notice to the Purchaser, either to cancel the Contract or to extend the time for its performance.

12. RISK

The Goods are at the Purchaser's risk from the occurrence of the first in of the following events:

- (a) Title in Goods passing to the Purchaser; or
- (b) The delivery of the Goods to the Purchaser; or
- (c) Collection of the Goods by the Purchaser.

13. SHORTAGES

- (a) The Purchaser hereby agrees to check all Goods received immediately upon unloading at their destination. No claim by the Purchaser for shortages or improper or defective or damaged Goods unless notified in writing to the Supplier within forty-eight (48) hours of delivery.
- (b) The Supplier 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 inaccuracies or short supply.

14. LEGAL TITLE

- (a) The legal and equitable title to the Goods will only be transferred from the Supplier to the Purchaser when the Purchaser has met and paid all that is owed to the Supplier on any account whatsoever.
- (b) The Purchaser acknowledges that until the Purchaser has met and paid all that is owed to the Supplier on any account whatsoever, the Purchaser holds the Goods as bailee for the Supplier and that a fiduciary relationship exists between the Purchaser and the Supplier.
- (c) Until the Supplier receives full payment of all monies due to it from the Purchaser, the Purchaser shall keep the goods separate and in good condition as a fiduciary of the Supplier, clearly showing the Supplier's ownership of the Goods and, shall keep books recording the Supplier's ownership of the Goods and the Purchaser's sale or otherwise of them in accordance with paragraphs 14(e) and 14(f). The Purchaser, if required, shall deliver the Goods to the Supplier.
- (d) If the Purchaser defaults, in addition to the Supplier's rights under clause 7, the Supplier may take possession of the Goods wherever the Goods are located and the Purchaser agrees that representatives of the Supplier may enter upon the Purchaser's premises for that purpose.
- (e) Despite paragraph 14(a), the Purchaser may sell as fiduciary agent for the Supplier the Goods to a third party in the normal course of the Purchaser's business provide that where the Purchaser is paid by the third party, the Purchaser holds the proceeds of the sale to the extent of the amount owing by the Purchaser to the Supplier at the time of receipt of such proceeds on trust for the Supplier. The Purchaser must keep those proceeds separate on trust for the Supplier and not mix these proceeds with any other monies.
- (f) If the Purchaser uses the Goods in some manufacturing or construction process of its own or some third party, then the Purchaser shall hold such part of the proceeds of such manufacturing or construction process as related to the Goods on trust for the Supplier. Such part shall be deemed to equal in dollar terms the amount owing by the Purchaser to the Supplier at the time of the receipt of such proceeds. The Purchaser must keep that part of the proceeds on trust for the Supplier and not mix those proceeds with any other monies.

Notwithstanding the above, the Purchaser is still required to pay the Supplier for Goods already delivered and for the Goods manufactured or ordered to specification and not yet delivered.

15. NOTICE

- (a) Notice under a Contract can only be in writing.
- (b) Notice can only be given to a party:
 - (i) personally;
 - (ii) 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 will be delivered in the ordinary course of post;
 - (iii) by facsimile transmission to the last known facsimile. Such notice is deemed to be received when the sending machine confirms notice has been sent.
 - (iv) by electronic transmission. Such notice is deemed to be received when the sending machine confirms notice has been sent.

16. GOVERNING LAW

The laws in the governing state govern a Contract and the courts of that jurisdiction have exclusive jurisdiction in connection with the Contract.

17. NO ASSIGNMENT

- (a) A party must not assign its benefits or obligations under a Contract without the prior consent in writing of the other party.
- (b) A party must not unreasonably withhold its consent to an assignment.

18. NO WAIVER

A party waives a right under a Contract only by notice that it waives that right.

19. SEVERANCE

If a provision of a Contract would, but for this clause, be unenforceable.

- (a) the provision must be read down to the extent necessary to avoid that result;
- (b) if the provision cannot be read down to that extent, it must be severed without effecting the validity and enforceability of the remainder of the Contract.

20. DISPUTE RESOLUTION

- (a) If there is a dispute or disagreement between the Supplier and the Purchaser arising in any way from or in relation to a Contract, then the Supplier and the Purchaser will use all reasonable endeavors and reasonable appropriate alternative dispute resolution procedures as soon as possible before resorting to litigation.
- (b) Nothing in this clause 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

The Supplier and the Purchaser agree that a Contract and any other information furnished by one party to the other party pursuant to the Contract shall be and remain confidential between the parties and the parties shall 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 the public domain prior to the disclosure by the party.
- 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. PURCHASER'S INDEMNITY

The Purchaser indemnifies the Supplier against all claims and all costs, liabilities and expenses incurred by the Supplier as a result of:

- (a) Working Documents prepared by the Purchaser or a third party; or
- (b) Any other documents provided by the Purchaser to the Supplier for purposes of or in the course of the supply of Goods or provisions of Works breaching a third party's intellectual property rights.

23. ESCALATION

During a contract term to supply goods or services to the Purchaser the Supplier may increase an accepted price, where the Supplier incurs an increase in costs to its production or cartage. This increase shall be termed an "Escalation" and it means that we reserve the right to implement published price increases from a specified date to be notified in writing.

PART B. APPLICABLE FOR QUOTATION (PROJECT) CONTRACTS ONLY

1. QUOTATION

- (a) A quotation shall be open for acceptance by the Purchaser for a period of one (1) calendar month from the date of quotation, unless such quotation previously withdrawn by notice from the Supplier.
- (b) The Supplier reserves the right to quote for the whole or any part of the project, which has not been, performed/supplied within twelve months of the date of the quotation.
- (c) The Supplier reserves the right to increase the price if supply of Goods and/or Works to the project does not start within thirty (30) days of the Supplier confirming the prices in writing to the Purchaser in a document called the "Confirmation of Acceptance of Quotation". Prices may also be increased should the project be stopped for more than thirty (30) days.
- (d) If a project is in any way redesigned before, during or after the commencement of supply, the Supplier reserves the right to revise the prices applicable to the project.
- (e) The Supplier reserves the right to charge for estimating costs.

2. EXTRAS

- (a) Unless noted in the quotation, the price quoted does not include the following items:
 - *Tie wire
 - *Bar chairs
 - *Threading
 - *Saw cutting
 - *Mechanical splices
 - *Welding of any nature
 - *Blacksmithing
 - *Presswork
 - *Screwing or butt-welding of lengths exceeding 12 metres
 - *Assembly of reinforcing bars
 - *Supply of bars exceeding lengths of 10m or exceeding diameter of 36mm
 - *Brickwork reinforcing or holding down bolts
 - *Galvanizing or on-site scheduling
 - *Such other items that are nominated on the front of the quotation
- (b) Where the Supplier notes on the quotation that placing and fixing is included, unless otherwise noted on the front of the quotation the price quoted does not include:
 - (i) lifting or lowering of reinforcements into position on site;
 - (ii) costs associated with site scaffolding; or
 - (iv) welding
- (c) The Purchaser shall give the Supplier fourteen (14) days notice to arrange site steel fixing.
- (d) Unless otherwise specified in the quotation, the Supplier's price is based on a normal five- (5) day working week.
- (e) The price quoted is subject to the Purchaser taking delivery of the whole amount of the Goods.

3. INVOICED QUANTITIES

Unless the Supplier has indicated in the quotation that the price quoted is a lump sum, the Supplier's price is based on estimated quantities of Goods and Works per tonne or per hour as applicable and the Purchaser will be liable to pay for the actual quantity of Goods and the quantum of the Works necessary for the Supplier to perform its obligations. Any adjustment in the actual price compared to the quoted price will be reflective of the increase or decrease of the Goods or Works supplied or provided.

4. WORKING DOCUMENTS

- (a) The Supplier accepts no responsibility for the correctness of Working Documents prepared by the Purchaser or a third party.
- (b) Unless otherwise agreed, the Purchaser shall deliver all Working Documents without charge to the Supplier prior to commencement of the Works.
- (c) Should errors occur as a result of Working Documents prepared by the Purchaser or a third party, the Purchaser shall be liable for the cost of rectification
- (d) All Working Documents shall remain in the custody and control of the Supplier.
- (e) A quotation does not include any design fee for Working Documents to be prepared by the Supplier. The Purchaser shall pay the Supplier's design fee immediately such Working Documents are prepared.
- (f) The Supplier shall provide two (2) copies of Material Processing Supply Schedules only.
- (g) Distribution steel shall be provided in stock lengths unless alternative requirements are fully detailed on Working Documents.
- (h) Unless authorized in writing, neither the Purchaser nor any third party is authorized to reproduce, adapt or use in any manner whether part or whole any Working Documents prepared by the Supplier (whether prepared on a free paying basis or not). Any unauthorized reproduction, adaptation or use may be, among other things, a breach of copyright and actionable by the Supplier.
- (i) The Supplier reserves the right to charge for the printing of copies of the Working Documents which are sent electronically.

