

Hallett Group – Terms of Trade (“Terms”)

1 Application of Terms

- 1.1 These Terms govern our supply of Goods and Services to you, including supplies on a cash basis.
- 1.2 If you wish to negotiate these Terms with us then you should respond to this document, marking up these Terms and drawing those changes to our attention and obtain our agreement in writing.
- 1.3 It is not our practice to otherwise review terms and conditions on documents that you issue to us.
- 1.4 Unless we otherwise agree in writing, we do not accept, and will not be bound by, any terms or conditions included in, attached to, or referenced in, any other document you give to us.

2 Quotations

- 2.1 Each quotation that we issue:
 - (a) is an estimate only;
 - (b) is not an offer or obligation to supply any Goods or to provide any Services;
 - (c) is exclusive of GST;
 - (d) does not include the costs of delivering Goods;
 - (e) remains valid for acceptance for a period of thirty (30) days from the date of quotation, unless withdrawn by us before a contract for supply is formed; and
 - (f) contains a price on the basis that all Services are provided, and all Goods delivered, during Business Hours,unless the quotation states otherwise.
- 2.2 A quotation may include additional terms or conditions, which will supplement these Terms.
- 2.3 Should you wish to have services provided outside Business Hours please let us know as additional charges may apply.

3 Formation of contract

- 3.1 We are not obliged to supply any Goods or provide Services until after a contract for supply is formed.
- 3.2 A contract for supply is formed, and you have accepted these Terms, when:
 - (a) you have placed an Order with us; and
 - (b) we have received any deposit we have required from you in respect of the Order before progressing it; and either we have:
 - (c) accepted your Order in writing; or
 - (d) supplied you with any Goods or provided any Services following receipt of your Order.
- 3.3 If you revoke an Order:
 - (a) prior to the formation of a contract for supply then:
 - (i) we will refund you any deposit you have paid in respect of that Order; and
 - (ii) you will not be required to pay any fee for the cancellation of the Order; or alternatively
 - (b) after the formation of a contract for supply then unless we are in breach of the contract for supply:
 - (i) you must pay all our reasonable costs associated with fulfilment of your Order; and
 - (ii) we may apply any deposit you have paid towards those costs.

4 Price

- 4.1 The price payable for the Goods or Services will be:
 - (a) the price agreed in writing; or alternatively
 - (b) the price by our prevailing price list/rates as when you place your Order.
- 4.2 We may vary our price or rates by notice to you if you request:
 - (a) the Goods or Services be rendered outside Business Hours;
 - (b) different Goods or Services to be supplied to the contract for supply; or
 - (c) that we delay provision of the Goods or Services for thirty (30) days or more.

- 4.3 Where we vary the price or rates payable for the Goods or Services pursuant to subclause 4.2, we will notify you of the new price/rates. Thereafter you may reject the new price/rates within seven (7) days and terminate the contract for supply without any cost or penalty to you, otherwise you agree that the price/rates will apply to the contract.
- 4.4 Notwithstanding subclause 4.1, you acknowledge and agree that where Goods ordered are based on weights or quantities (**Ordered Amount**), such as quarry products, we may deliver to and charge you a weight or quantity of those Goods more or less than the Ordered Amount (provided it is no more or less than 10% of the Ordered Amount) which you must accept and pay for in full satisfaction of our obligations under the contract for the supply of Goods.
- 4.5 Where an amount payable by you for Goods, such as quarry products, is calculated on the weight of the Goods to be supplied by us, the records of the weight of the Goods generated by our weighbridge or, subject to our discretion any government/public weighbridge, will be conclusive evidence of the weight of the Goods supplied.
- 4.6 When Goods, such as quarry products, are sold by volume rather than weight, the volume will be determined by the loose uncompacted volume as measured on the delivery vehicle at the time of loading.

5 Delivery and risk

- 5.1 We will use reasonable endeavours to deliver the Goods at the time and place agreed for delivery. You will make arrangements necessary to take delivery of the Goods.
- 5.2 You acknowledge and agree that:
 - (a) unless the contract for supply expressly states otherwise, time in respect of delivery is not of the essence; and
 - (b) any timeframe or date for delivery is an estimate only and is not a contractual commitment.
- 5.3 Risk of loss, damage, or deterioration to the Goods passes to you, and delivery is deemed to occur, at the time:
 - (a) you or any third party on your behalf collect the Goods from us;
 - (b) we or our nominated carrier deliver the Goods to the delivery location stated in your Order (or to such other location as agreed in writing); or
 - (c) your nominated carrier takes possession of the Goods.
- 5.4 You acknowledge and agree that:
 - (a) timber is a natural wood product and as such may exhibit variations in the texture, shade, colour, surface, finish, markings, veining, and contains natural fissures, occlusions, and indentations; and
 - (b) timber is a hygroscopic material subject to expansion and contraction, and as such, we, to the extent permitted by law, accept no liability whatsoever for damage, disfiguration, deterioration, or loss to Goods comprised of timber caused as a result of:
 - (i) natural expansion and contraction;
 - (ii) exposure to liquids, moisture or high humidity, or damaging substances;
 - (iii) exposure to sunlight or the elements; or
 - (iv) impact, abrasion, or scratching,after risk in the Goods has passed to you.
- 5.5 It is your responsibility to ensure suitable, safe, and clear access to the place agreed for delivery. For clarity, you must:
 - (a) have obtained all necessary Approvals; and
 - (b) ensure appropriate traffic management policies and procedures are in place.
- 5.6 You must notify us prior to delivery of any obstacles or peculiarities in relation to the site, including whether the site or its approach has a gradient greater than 8%.
- 5.7 If the site is deemed unsuitable or unsafe (at the delivery driver's sole discretion), then the delivery driver may:
 - (a) refuse to deliver the Goods and return the Goods to our premises (in which case an additional delivery fee will apply to any subsequent delivery attempt); or
 - (b) deliver the Goods to the location nearest to the agreed place for delivery where delivery can be safely effected.

- 5.8 The Goods will be delivered to the kerbside of the public road nearest to the agreed place for delivery. If, at your request, we agree to the delivery vehicle leaving the road to enter the site to effect delivery, then you:
- (a) warrant and represent to us that the site is safe for the delivery vehicle to enter; and
 - (b) agree to hold harmless and indemnify (and keep indemnified) us and our Personnel against any Claim arising out of, or in any way related to, the delivery vehicle entering the site.
- 5.9 You agree to sign our delivery docket or consignment note or that of our nominated carrier as confirmation that you have received the Goods, and if appropriate, certify that you have received the Goods in apparent good order and condition in the quantity or volume you have ordered.
- 5.10 If you authorise us to deliver the Goods to an unattended location or to leave them outside the agreed place for delivery, we may deliver the Goods as requested at your risk.
- 5.11 If the Goods are delivered on Pallets (other than junk pallets), the Pallets remain our property. You may be charged for the use of such Pallets. On the return of the Pallets to us:
- (a) if the Pallets are returned to us in good condition (in our sole determination, acting reasonably), we agree to give you a credit in an amount equal to the fee charged by us in respect of the Pallets; or
 - (b) if the Pallets are returned to us in a damaged condition (in our sole determination, acting reasonably), you will be liable to pay to us the cost to repair or replace the Pallets.
- 5.12 If delivery of the Goods is deferred:
- (a) at your request; or
 - (b) due to you being unable or unwilling to accept delivery of the Goods (other than as a result of the Goods delivered not being in accordance with the contract for supply);
- in circumstances where:
- (c) we are ready to deliver the Goods and a delivery date has not been agreed; or
 - (d) the Goods are due to be delivered on an agreed delivery date,
- then you will pay to us:
- (e) reasonable daily storage charges (which will continue to accrue until such time as the Goods are delivered); and
 - (f) any costs associated with us or our nominated carrier attempting to re-deliver the Goods (where we or our nominated carrier has previously attempted to deliver the Goods).
- 5.13 If delivery of the Goods is not discharged in a timely manner, being fifteen (15) minutes or less, you must pay to us our then prevailing waiting time rate or that of the rate charged to us by our nominated carrier.
- 5.14 You acknowledge and agree that we may deliver the Goods in one or more lots and may invoice you for pro rata progress in respect thereof.

6 Payment terms

- 6.1 Unless you have a Credit Facility with us which is not in default:
- (a) deposits we have requested must be paid before we commence supplying any Goods or providing any Services;
 - (b) you must pay for all Goods before they are despatched (in cash or cleared funds); and
 - (c) you must pay for all Services on a progressive basis as they are provided.
- 6.2 Payment may be made by cash, cheque, electronic funds transfer, Visa, or Mastercard credit cards. We reserve the right to change the payment methods that we accept at any time.
- 6.3 We may charge a payment surcharge for applicable payment transactions equal to our reasonable cost of acceptance.
- 6.4 You agree to pay GST on all taxable supplies upon us issuing you a tax invoice relating to the taxable supply.
- 6.5 You agree to pay sums due to us free of any set off or counterclaim and without deduction or withholding.

7 Claims

- 7.1 Subclauses 7.2 to 7.4 only apply if the contract for supply is not a Consumer Contract and not a Small Business Contract.
- 7.2 You must, within seven (7) days of the date of delivery:
- (a) give us notice in writing, with particulars, of any Claim that the Goods delivered are not in accordance with the contract for supply (including any Claim for shortfall, incorrect supply, or damage to the Goods); and
 - (b) at our request, provide us with photographic evidence (to our satisfaction) of any alleged damage to the Goods.
- 7.3 You must notify us in writing of any Claim for non-delivery within seven (7) days of the date of the invoice which relates to the Goods the subject of your Claim.
- 7.4 If you fail to notify us in accordance with subclause 7.2 and 7.3, then, to the extent permitted by law, the Goods are deemed to have been delivered in good condition and in accordance with the contract for supply.

8 Returns

- 8.1 We will accept the return of any Goods if:
- (a) the Goods supplied do not conform with the contract for supply;
 - (b) the Goods are defective; or
 - (c) we are required by law to accept the return of the Goods.
- 8.2 At our discretion, we may accept the return of Goods if you change your mind if:
- (a) you agree to:
 - (i) pay the lesser of a handling and administration charge of 20% of the purchase price of the returned Goods or \$200; and
 - (ii) reimburse us for all costs we incur in connection with the return of those Goods (except for Goods we have incorrectly supplied or we agree are defective);
 - (b) the Goods are in substantially the same condition to the condition in which they were delivered; and
 - (c) the Goods were not specifically produced or procured at your request.
- 8.3 You indemnify and release us from any damage that occurs to any Goods in return transit. You should ensure that any returned Goods are insured against such damage.

9 Retention of title

- 9.1 Until such time as you have made payment in full (in cash or cleared funds) for any Goods we have supplied:
- (a) title in the Goods does not pass to you and we retain the legal and equitable title in the Goods;
 - (b) you will hold the Goods as fiduciary and bailee for us and agree to store the Goods in such a manner as to enable them to be readily identifiable as our property;
 - (c) you undertake to not mix the Goods with similar goods;
 - (d) unless and until we notify you to the contrary, you will be entitled to sell the Goods in the ordinary course of your business (provided any such sale is at arm's length and on market terms) and will sell the Goods as our agent and bailee; and
 - (e) you undertake to hold any proceeds derived from the sale of the Goods on trust for us absolutely.
- 9.2 While title in the Goods remains with us, you permit us to enter upon any premises you occupy (or any premises any receiver, receiver and manager, administrator, liquidator, or trustee in bankruptcy of yours occupies) as your invitee to inspect the Goods and, when you are in default of payment of any invoice, to repossess any Goods in your possession, custody, or control.
- 9.3 Where we exercise our right of entry pursuant to subclause 9.2, you agree that us doing so will not give rise to any Claim for trespass or similar action against us or our officers, employees, and agents.
- 9.4 Where we have retaken Goods into our possession, we have the right to sell or deal with those Goods, and, if necessary, sell any Goods bearing your name or trade mark, and you hereby grant us an irrevocable licence to do all things necessary to sell those Goods.

9.5 For the removal of doubt, our interest under this clause 9 constitutes a purchase money security interest for the purposes of the PPS Act.

10 Security interest

10.1 Unless you have obtained our prior written and fully informed consent, you undertake not to:

- (a) register a financing change statement in respect of a security interest in our favour; or
- (b) create, or purport to create, any security interest in the Goods (or any proceeds derived from the sale of such Goods), nor register, nor permit to be registered, a financing statement or financing change statement in relation to the Goods in favour of any third party.

10.2 You:

- (a) waive your right to receive a copy of any verification statement in accordance with section 157 of the PPS Act; and
- (b) agree that, to the extent permitted by the PPS Act:
 - (i) sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132, 134, 135, 142, and 143 of the PPS Act do not apply and are hereby contracted out of; and
 - (ii) you waive your right to receive notices under sections 95, 118, 121(4), 127, 130, 132(3)(d), and 132(4) of the PPS Act.

10.3 We need not disclose information of the kind detailed in section 275(1) of the PPS Act, unless required by law.

10.4 Where we have rights in addition to those under Part 4 of the PPS Act, those rights continue to apply.

11 Terms applying to the sale of trusses and engineered Goods

11.1 To the extent permitted by law, we will not accept responsibility for, and will not be held liable for, the aesthetic appearance and structural integrity of finished Goods which have been manufactured to meet a delivery date in the current month and have then been deferred by you into the following month or beyond. Additional labour and/or material costs required to ensure the structural integrity of the finished Goods will be charged to you (including dismantling packs, repressing nail plates, the removal and replacement of deteriorated timber, and re-assembly) where you have deferred the delivery date of the Goods.

11.2 Where Goods have been on hold for an extended period (greater than one month), Goods may be in a condition such that they require replacement/re-manufacture, in which case this will be undertaken at your sole expense.

11.3 All remedial work will be at your expense and will not be undertaken until you provide us with a signed Order accepting the costs for remedial work to be undertaken.

11.4 Extra loads to roof trusses and wall frames, such as hot water systems, air conditioning units, or any other thing, must be brought to our attention in writing on your Order to allow further design or certification modifications. To the extent permitted by law, we will not be liable for any loss or damage suffered or incurred by you or any third party in connection with the failure, deflection, or movement in any form of any members due to loads applied beyond which the Goods were designed for where you have failed to notify us as such.

11.5 You understand and agree that trusses supplied by us:

- (a) must be erected and braced to comply with Australian Standard AS 4440-2004 (or its replacement/successor);
- (b) must be laden with covering as indicated in the quotation we issue to you (i.e. tiles, sheet, etc.)
- (c) must be spaced correctly and in accordance with our requirements and local council ordinances;
- (d) must only be slung by panel points;
- (e) must not under any circumstances be cut or altered without our prior written consent; and
- (f) must be effectively clad and weather protected at all times.

11.6 You further understand and agree that:

- (a) the lintels over all openings in external walls must comply with AS 1684 or and approved engineer's design;
- (b) all other materials and construction methods used as part of the roof's structure must accord with AS 4440-

2004, local council ordinances and accepted building standards;

- (c) you must check with the fabricator as to any proposed method of construction of auxiliary roof timbers which could impair the structural efficiency of the roof trusses;
- (d) bottom plates are to be blocked correctly where required on bearers;
- (e) wall connectors are to be used at all junctions on top plates; and
- (f) all junction studs are to be nailed at mid-point to blocks provided.

11.7 Engineered Goods, including glue laminated beams and joists, webbed floor joists, roof trusses, or critical members in wall frames must not be altered or used for purposes other than the intended design based on the information you have made known to us, nor may they be cut or bored in any way outside of tolerances relevantly specified by us, relevant Australian Standards, or the relevant manufacturer's tolerances.

12 Terms applying to the sale of pre-mixed concrete

12.1 Unless our quotation states otherwise, prices are based on "Normal Class Concrete" as specified in the current issue of Australian Standard AS1379 (Specification & Supply of Concrete) and having a nominal slump not exceeding 100mm and using a nominal 20mm maximum size aggregate. If you require a slump in excess of 100mm or aggregate with a maximum size other than 20mm, additional charges may apply.

12.2 The delivery of pre-mixed concrete is subject to our Concrete Delivery Requirements, a copy of which may be found at https://hallett.com.au/pdf/concrete_delivery_requirements_2023.pdf.

12.3 We reserve the right to charge for return cartage, handling, and disposal costs for:

- (a) any pre-mixed concrete ordered for which you do not accept delivery (except where non-acceptance is due to the pre-mixed concrete not complying with the specifications set out in the contract for supply);
- (b) pre-mixed concrete which is returned due to you being unable to use the full quantity ordered; and
- (c) pre-mixed concrete you have rejected because the time between batching and discharge is greater than the time permitted by AS1379 or the specification that covers the project being supplied, provided that the delay was not caused by us.

12.4 Unless otherwise agreed in writing, pre-mixed concrete will comply with AS1379. If compliance with AS1379 requires the addition of a cooling agent, additional charges may apply.

12.5 Pre-mixed concrete is sold in the plastic state and the subsequent in-situ performance when set is greatly affected by your work practices in handling, placing, and curing of the concrete. To the maximum extent permitted by law, we accept no responsibility for:

- (a) the performance of pre-mixed concrete other than with respect to the criteria specified in AS1379 (when tested in strict accordance with the relevant Australian Standard by us or by another NATA-accredited construction materials testing facility);
- (b) if water or any other material (including, for example, fibres, water proofing agents, or oxides) is added to the plastic concrete before or after discharge from the delivery vehicle, unless there is prior approval by us or our authorised representative;
- (c) the delivery of or acceptance of the Goods by you exceeds the time between batching and discharge as allowed under AS1379, provided we have not caused this to occur;
- (d) if you have specified or prescribed a pre-mixed concrete mix design other than a mix design devised by us; or
- (e) the surface texture and colour of hardened pre-mixed concrete, including where the aggregate in the concrete has been exposed by you, and for any future colour change or oxidation of aggregates that have been exposed to the atmosphere.

- 12.6 Without limiting the preceding subclauses, the supply and delivery of 'Hallettcrete' is subject to our Hallettcrete -Terms & Conditions, a copy of which may be found at https://hallett.com.au/pdf/hallettcrete_terms_conditions.pdf.
- 12.7 We will not test the pre-mixed concrete we supply unless you have specifically requested us to do so, in which we will organise a test to be carried out in accordance with AS1012 (Methods of Testing Concrete) and will charge you for the costs associated with such test.

13 Safety

- 13.1 You acknowledge that freshly mixed cement, mortar, concrete, or grout may cause skin irritancy. You must ensure that your Personnel follow appropriate safety measures in relation to the Goods, including avoiding contact with exposed skin areas and eyes. The following are general guidelines relating to exposure, and should not be treated as exhaustive. You acknowledge that you have apprised yourself of these risks and that you will take appropriate safety precautions and training of your Personnel. Should exposure occur, immediately rinse eyes and wash affected skin areas with clean fresh running water for ten (10) minutes. Seek medical advice if symptoms persist. Avoid breathing dust generated from drilling, sawing, or chiselling hardened concrete, or quarry products as it may contain crystalline silica. Wear appropriate protective clothing, gloves, safety goggles, and a particulate respirator. If dust is inhaled, immediately remove to fresh air. Seek medical advice should inhalation occur or if symptoms persist.
- 13.2 Contact Hallett Group for more information or to be provided with a copy of a Material Safety Data Sheet or go to www.hallett.com.au.

14 Description of Goods

If you require any Goods for a particular purpose, you must advise us of that purpose prior to placing your Order and must obtain a written assurance from us that the Goods will meet your requirements. If you do not advise us of your requirements and we do not expressly warrant in writing that the Goods will be fit for your particular purpose, then you agree that you did not rely upon our skill or judgment in relation to the suitability of the Goods for that purpose.

15 Testing

If you require any testing or certification to be conducted, any such testing or certification will be at your sole expense.

16 Terms applying to Transport Services

- 16.1 We are not a common carrier and accept no liability as a common carrier.
- 16.2 We may refuse to handle, store, or transport any goods (or any class of goods) for any reason (and without any requirement to provide any reason).
- 16.3 Notwithstanding subclause 4.1, you acknowledge and agree we may charge freight by weight, measurement, or value and may at any time reweigh, revalue, or remeasure or require the Consigned Goods to be reweighed, revalued, or remeasured.
- 16.4 All uncrated plant, machinery, and equipment will be deemed to have a height of 2.6 metres and will be measured and charged accordingly.
- 16.5 You acknowledge and agree you must:
- (a) pay any charge for demurrage at the rate we are charged directly by any railway, shipping authority, or any other person;
 - (b) if the Consigned Goods are under customs control, pay all customs duty, excise duty, and costs (including any fine or penalty) which we become liable to pay (other than as a result of an act or omission of ours); and
 - (c) supply or pay for labour or machinery (or both) to load or unload the Consigned Goods.
- 16.6 You warrant and represent to us that:
- (a) you have complied with all laws and regulations relating to the nature, conditioning, classification, description, labelling, and packaging of the Consigned Goods, including the ADG Code;
 - (b) the Consigned Goods are accurately described in writing, whether on a consignment note or otherwise, and accurately detail the nature and value of the Consigned Goods, as well as the requirements of any

relevant authority and any other relevant information we may reasonably require (including the weight and measurements of the Consigned Goods);

- (c) the Consigned Goods are, given their nature, packed in an appropriate manner to withstand the ordinary risks of handling, storage, and transport;
 - (d) subject to subclauses 16.7 and 16.8, the Consigned Goods are not Dangerous Goods;
 - (e) you are either:
 - (i) the owner of the Consigned Goods; or
 - (ii) the duly authorised agent of the person who owns, or has an interest in, the Consigned Goods and are authorised to tender the Consigned Goods for transport;
 - (f) you have in place, and will maintain, an insurance policy to cover any and all loss, damage, or deterioration to the Consigned Goods (however so caused) while the Consigned Goods are at our risk.
- 16.7 You acknowledge and agree you must not tender for transport any Dangerous Goods without our prior written and fully informed consent.
- 16.8 If we agree to accept for transport any Dangerous Goods:
- (a) such Dangerous Goods must be accompanied by an accurate written declaration that details the nature and value of the Dangerous Goods, as well as the requirements of any relevant authority and any other relevant information we may reasonably require; and
 - (b) you warrant and represent to us that you have complied with all laws and regulations in relation to the nature, conditioning, classification, description, labelling, and packaging of the Dangerous Goods, including the ADG Code.
- 16.9 If, in our reasonable opinion, the Dangerous Goods we accept for transport are liable to become dangerous, inflammable, explosive, volatile, offensive, or damaging in nature (whether to persons or property), we may, at any time and at your sole expense, destroy, dispose of, abandon, or render harmless the Dangerous Goods, without any liability to you or the Recipient whatsoever.
- 16.10 You acknowledge and agree that we are not an insurer of goods (either warehoused or in transit) and will not effect insurance in respect of the Consigned Goods, unless otherwise agreed writing (in which case such insurance will be effected in your name and will be at your sole expense).
- 16.11 We will use reasonable endeavours to deliver the Consigned Goods at the time and place agreed for delivery.
- 16.12 You acknowledge and agree that:
- (a) time in respect of delivery is not of the essence; and
 - (b) any timeframe or date for delivery is an estimate only and is not a contractual commitment,
- unless the contract for transport expressly states otherwise.
- 16.13 You further acknowledge and agree that:
- (a) we may use any appropriate method to handle, transport, or store the Consigned Goods; and
 - (b) you authorise us using such methods,
- unless the contract for transport expressly states otherwise.
- 16.14 You authorise us, if we believe it reasonably necessary or desirable, to deviate from the usual route or method of transport.
- 16.15 Risk of loss, damage, or deterioration to the Consigned Goods passes from us to the Recipient, and delivery is deemed to occur, at the time we deliver the Consigned Goods to the place agreed for delivery stated in your Order (or to such other location as agreed in writing).
- 16.16 Where:
- (a) (the agreed place for delivery is attended): we will endeavour to obtain a signed delivery docket or consignment note from the Recipient (or any person with apparent authority on their behalf); or
 - (b) (the agreed place for delivery is unattended): we may:
 - (i) deposit the Consigned Goods at the delivery location; or
 - (ii) store the Consigned Goods on your behalf; or
 - (iii) return the Consigned Goods to you.
- 16.17 If delivery of the Consigned Goods is deferred:
- (a) at your request; or
 - (b) due to the Recipient being unable or unwilling to accept delivery of the Consigned Goods;

in circumstances where:

- (c) we are ready to deliver the Consigned Goods and a delivery date has not been agreed; or
- (d) the Consigned Goods are due to be delivered on an agreed delivery date,

then you will pay to us:

- (e) reasonable daily storage charges (which will continue to accrue until such time as the Consigned Goods are delivered); and
- (f) any costs associated with us attempting to re-deliver the Consigned Goods (where we have previously attempted to deliver the Consigned Goods).

16.18 You acknowledge and agree that we may deliver the Consigned Goods in one or more lots and may invoice you for pro rata progress in respect thereof.

16.19 If you have instructed us that:

- (a) the Recipient will be responsible for the payment of any customs duty, excise duty, costs, or other charges; and
 - (b) the Recipient fails to pay such sums within seven (7) days of the date of delivery; and/or
 - (c) we pay such sums on your or the Recipient's behalf,
- then you agree to promptly pay such sums to us on demand.

17 Default

17.1 Subclauses 17.3 to 17.5 apply if you fail to pay sums to us when they fall due.

17.2 We will have the right of a general lien on any Consigned Goods (and any relevant documentation) in our possession to secure payment of all amounts due to us.

17.3 We may charge you interest on the outstanding debt (including any judgment debt) at the rate of 1.5% per calendar month, calculated daily.

17.4 We may suspend or cease the supply of any further Goods or Services to you.

17.5 We may require pre-payment in full for any Goods or Services which have not yet been supplied.

18 Indemnity

18.1 If you default in the performance or observance of your obligations under any contract of which these Terms form part, then:

- (a) we will take steps to mitigate our loss and act reasonably in relation to any default by you; and
- (b) we will give you notice requesting payment for loss and damage occasioned in respect of those events and requesting that you remedy any breach within a reasonable time; and
- (c) if that demand is not met then you indemnify us in respect of loss, damage, costs (including collection costs, bank dishonour fees, and legal costs on an indemnity basis) that we have suffered arising therefrom.

18.2 Your liability to indemnify us will be reduced proportionally to the extent that any fraud, negligence, or wilful misconduct by us or a breach of our obligations under contract has contributed to the Claim, loss, damage, or cost which is the subject of the indemnity.

18.3 Your liability to indemnify us is a continuing obligation separate and independent from your other obligations and survives the termination or performance of any contract of which these Terms form part.

19 Limitation of liability

19.1 No party is liable to the other party for any Consequential Loss, including under clause 18, however caused arising out of or in connection with any contract for supply of which these Terms form part.

19.2 While we will take reasonable endeavours to meet any estimated delivery date or estimated time for Goods and Services, you acknowledge and agree that we are not liable for any delay associated with meeting those estimated timeframes.

19.3 If the contract for supply is not a Consumer Contract or a Small Business Contract then, to the extent permitted by law, our liability is limited to:

- (a) (in the case of a supply of Goods):

- (i) us repairing or replacing the Goods; or
- (ii) us paying you the cost of having the Goods repaired or replaced.

(b) (in the case of a supply of Services):

- (i) us supplying the Services again; or
- (ii) us paying you the cost of having equivalent Services supplied.

20 Termination

A party may, with immediate effect, terminate any contract for supply of which these Terms form part by notice in writing, if the other party:

- (a) commits a material or persistent breach of these Terms and does not remedy that breach (if capable of remedy) within seven (7) days of the receipt of a notice (or such longer time as specified in the notice) identifying the breach and requiring its remedy; or
- (b) has failed to pay sums due to the party within seven (7) days; or
- (c) has indicated that it is, or may become, insolvent; or
- (d) ceases to carry on business; or
- (e) comprises an entity which is the subject of the appointment of receivers or managers; or
- (f) comprises a natural person who:
 - (i) has committed an act of bankruptcy; or
 - (ii) has been made bankrupt;
- (g) comprises a corporation which:
 - (i) enters into voluntary administration;
 - (ii) is subject to a deed of company arrangement; or
 - (iii) is subject to the appointment of liquidators or provisional liquidators.

21 Force majeure

21.1 If a party is wholly or partly unable to carry out any obligation under a contract for supply (other than a payment obligation) because of a Force Majeure Event and the affected party:

- (a) gives the non-affected party prompt notice of that Force Majeure Event including particulars of the event relied upon and so far as known the probable extent to which it will be unable to perform or be delayed in performing that obligation; and
- (b) uses all reasonable diligence to remove or remedy that Force Majeure Event as quickly as possible,

that obligation is suspended to the extent that it is affected by the continuation of the Force Majeure Event.

21.2 Despite subclause 21.1, the non-affected party may terminate the contract for supply immediately by giving notice to the affected party if the suspension of the affected party's obligation continues under subclause 21.1 for more than one (1) month.

22 Variation

We may amend these Terms in the future by notifying you in writing. The amended Terms will thereafter apply to each Order you place unless you earlier give us written notice in advance of placing a further Order.

23 Assignment

A party may only assign its rights under the contract for supply with the written consent of the other party.

24 Subcontracting

24.1 You acknowledge that we may subcontract:

- (a) the manufacturing and supply of any part of the Goods to be supplied; and
- (b) the Services we are to provide (or any part of those Services),

however, doing so will not relieve us of any of our obligations to you under any contract of which these Terms form part.

25 Conflicts and Inconsistencies

If there is any conflict or inconsistency between any of the documents which together govern the relationship between the parties, it is agreed the order of precedence will be (highest to lowest):

- (a) any terms governing your Credit Facility;
- (b) any additional terms or conditions contained in our quotation applicable to the supply of Goods or Services; and
- (c) these Terms.

26 Severance

If any part or term of our agreement with you (including any Credit Facility) is illegal, invalid, or unenforceable, it will be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it will be severed from the contract and the remaining provisions will not be affected, prejudiced, or impaired by such severance.

27 Governing law and jurisdiction

- 27.1 Our relationship is governed by and must be construed according to the law applying in the State of South Australia.
- 27.2 The parties irrevocably submit to the non-exclusive jurisdiction of the courts of the State of South Australia with respect to any proceedings that may be brought at any time relating to our relationship.

28 Definitions

In these Terms, unless the context otherwise requires, the following definitions apply.

- 28.1 **ADG Code** means The Australian Code for the Transport of Dangerous Goods by Road & Rail (or its successor).
- 28.2 **Australian Consumer Law** means Schedule 2 to the *Competition and Consumer Act 2010* (Cth), as amended.
- 28.3 **Business Hours** means between 08:30am to 5:00pm on a day that is not a Saturday, Sunday, or gazetted public holiday in the place where the Goods or Services are, or are to be, supplied.
- 28.4 **Claim** includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, or award howsoever arising, whether present, unascertained, immediate, future, or contingent, whether based in contract, tort, pursuant to statute or otherwise and whether involving a third party or a party to a contract for supply.
- 28.5 **Consequential Loss** includes any:
 - (a) consequential loss;
 - (b) loss of anticipated or actual profits or revenue;
 - (c) loss of production or use;
 - (d) financial or holding costs;
 - (e) loss or failure to realise any anticipated savings;
 - (f) loss or denial of business or commercial opportunity;
 - (g) loss of or damage to goodwill, business reputation, future reputation, or publicity;
 - (h) loss or corruption of data;
 - (i) downtime costs or wasted overheads; or
 - (j) special, punitive, or exemplary damages.
- 28.6 **Consigned Goods** means all plant, machinery, equipment, goods, livestock, articles, items, and/or cargo (together with any Pallets) we accept for transportation from one location to another location by way of our Services.
- 28.7 **Consignor, you** means the person or other entity who has engaged us to provide Transport Services (as the context requires).
- 28.8 **Consumer Contract** has the meaning given to this term in section 23(3) of the Australian Consumer Law.
- 28.9 **Credit Facility** means an account we have opened for you on which we may, from time to time, extend you with additional time to pay for our Goods and Services and associated charges.
- 28.10 **Customer, you** means the person or other entity who has engaged us to supply Goods or Services (as the context requires).
- 28.11 **Dangerous Goods** means goods classified as 'Dangerous Goods' by the ADG Code and also includes:
 - (a) goods that are (or may become) dangerous, noxious,

flammable, explosive, or radioactive that may cause damage to property or injury or death to any person; or

- (b) goods that are, in our reasonable opinion, likely to cause damage to property or injury or death to any person.
- 28.12 **Force Majeure Event** means any act of God, acts, decrees, or regulations of government authorities, casualty, fire, explosion, storm, flood, frost or snow, earthquake, embargo, industrial action, strike, lockout, civil commotion, riot, insurrection, war, epidemic or pandemic, damage to or destruction of facilities, equipment or mechanical breakdown, failure of a third-party supplier or service provider, or any other occurrence which is not in the reasonable control of the affected party.
 - 28.13 **Goods** means all goods supplied by us, as described on our quotation, invoice, or any other form issued by us.
 - 28.14 **Order** means a written or oral order placed by you requesting that we provide Goods or Services.
 - 28.15 **Pallets** means any pallets, drums, bearers, or any other containers accompanying the Goods.
 - 28.16 **PPS Act** means the *Personal Property Securities Act 2009* (Cth), as amended.
 - 28.17 **Recipient** means the person to whom the Consigned Goods are delivered.
 - 28.18 **Services** means all services provided by us, as described on our quotation, invoice, or any other form issued by us (and where the context requires, includes Transport Services).
 - 28.19 **Small Business Contract** has the meaning given to this term in section 23(4) of the Australian Consumer Law.
 - 28.20 **Supplier, we, us** means individually and collectively (as the context requires) M.S.P. Group Pty. Ltd. (ACN 007 991 666), M.S.P. Nominees Pty. Ltd. (ACN 008 085 363), Hallett Concrete Pty. Ltd. (ACN 007 955 419), Hallett Resources Pty Ltd (ACN 114 534 753), Direct Plumbing & Building Supplies Pty Ltd (ACN 008 056 371), Kara Resources Pty Ltd (ACN 080 865 103), Major Timber Pty Ltd (ACN 623 388 241), Hallett Constructions & Mining Materials Pty Ltd (ACN 655 530 135), Hallett Structural & Building Materials Pty Ltd (ACN 657 239 088), Hallett Civil & Constructions Pty Ltd (ACN 658 102 491), and Hallett Construction Materials Pty Ltd (ACN 650 531 329).
 - 28.21 **Transport Services** means all transport services provided by us, as described on our quotation, invoice, or any other form issued by us, and includes packing, unpacking, road, rail, sea or air carriage, storage, freight forwarding, customs clearance, and de-consolidation of any Consigned Goods on your behalf.

29 Interpretation

In these Terms, unless the context otherwise requires:

- 29.1 A time is a reference to the time zone of South Australia, Australia unless otherwise specified.
- 29.2 \$, dollar, or AUD is a reference to the lawful currency of Australia.
- 29.3 A party includes a reference to that person's executors, administrators, successors, substitutes (including a person who becomes a party by novation), assigns, and in the case of a trustee, includes any substituted or additional trustee.
- 29.4 A right includes a benefit, remedy, authority, discretion, or power.
- 29.5 The singular includes the plural and vice versa, and a gender includes other genders.
- 29.6 "In writing" or "written" means any expression of information in words, numbers, or other symbols, which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.
- 29.7 If a word or phrase is given a defined meaning, its other grammatical forms have a corresponding meaning.
- 29.8 Words such as "includes", "including", and "for example" are not words of limitation and are to be construed as though followed by the words "without limitation".
- 29.9 A term of an agreement in favour of two or more persons is for the benefit of them jointly and each of them separately.