

## 1. Definitions

**Acceptance** means the Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts provision of any Works.

**Accepted Order** means any actual supply of Goods or Services by the Supplier to the Client.

**ACL** means the Australian Consumer Laws.

**Approved Payment Method** means a payment by cash, cheque, bank cheque, electronic banking or credit card.

**Cancellation** means the cancellation of an Order after it has been accepted by the Supplier.

**Client** means the person ordering the Works as specified in the Credit Application, any invoice, document or order, and if there is more than one Client then the reference is to each client jointly and severally.

**Consequential Loss** means the loss or expected savings, loss of use, loss of opportunity, loss of profit, loss of revenue, increased financing costs, loss arising from delay or any consequential special or indirect loss or damage whether or not the possibility of potential extended loss or damage was known or foreseeable and whether arising from a claim under indemnity contract tort (excluding negligence) statute or otherwise.

**Credit Account** means the credit given by the Supplier to the Client if this Credit Application is accepted.

**Goods** means all Goods or Services supplied by the Supplier to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).

**Insolvency Event** means, for the Client, as applicable, being in liquidation or provisional liquidation, bankruptcy or under administration, having a controller (as defined in the Corporations Act 2001) or analogous person appointed to the Client or any of the Client's property, being taken under Section 459F(1) of the Corporations Act to have failed to comply with the statutory demand, being unable to pay the Client's debts, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing the Client's own affairs for any reason, take any steps that could result in the Client becoming insolvent under administration (as defined in Section 9 of the Corporations Act 2001), entering into a compromise or arrangement with or assignment for the benefit of any of the Client's members or creditors or any analogous event.

**Order** means a request, howsoever made, by the Client to the Supplier for the supply of Services and materials (if applicable).

**Payment Date** means as specified on invoice (unless some other date is agreed in writing) in which the Accepted Order occurs.

**PPSA** means the Personal Properties Securities Act 2009 and PPSR means the Register created by that Act.

**Price** means the amount agreed to be paid to the Supplier by the Client for the Order.

**Standards** means the current national standards and requirements set out in the Building Code of Australia and Australian Standards AS 1905.1.

**Supplier** means Intermark Australia Pty Ltd Trading as Innovative Rigging Solutions ABN 43 010 712 991 its successors and assigns or any person acting on behalf of and with its authority.

**Terms and Conditions** means these terms and conditions and any other terms and conditions of quotation, hire or supply notified by the Supplier to the Client (whether on an invoice, quotation, order form, hire form, letter, through the Supplier's website, docket or otherwise) or supply agreement (howsoever described) and any document said to be part of these terms and conditions.

**Work Specifications** means architectural drawings, structural drawings, construction drawings, contracts, specifications and directions given by the Client or any person working for the client and specific materials or products nominated or provided by the Client or any person working for the client.

**Works** means all Services (together with materials if applicable) supplied by the Supplier to the Client at the Client's request from time to time.

**Worksite** means where appropriate the place that the Works are to be carried out.

## 2. Credit

2.1 The Client applies to the Supplier to purchase Goods and Services on credit on these Terms and Conditions. Where there is an Accepted Order on credit these Terms and Conditions apply.

2.2 The Client authorises the Supplier to open on its books a Credit Account in the Client's name and to debit to the Credit Account:

(a) the price of an Accepted Order; and

(b) and all other amounts owed by the Client to the Supplier.

2.3 The Supplier may in its sole discretion:

(a) refuse this Credit Application;

(b) close the Credit Account without prior notice;

(c) withhold the supply of Goods or Services whether an order has been accepted or not if for any reason the Supplier determines that no further credit is to be extended to the Client until full payment of the Credit Account and that order; and

(d) vary the Terms and Conditions by the Supplier on giving the Client written notice and unless the Client within seven (7) days closes its Credit Account or in that time places a new order the new Terms and Conditions shall apply to any Approved Orders from then.

## 3. Credit Account

3.1 The Credit Account and the Account Number given to the Client (if any) must only be used by the Client and cannot be assigned, transferred or made available for use by any other entity or person (or by a subsequent purchaser of the Client) without the Supplier's prior written consent.

3.2 The Client must pay to the Supplier the full amount debited to the Credit Account by the Payment Date whether or not the Supplier has delivered a monthly statement to the Client.

3.3 If the Client fails to pay any amount by the Payment Date it will incur interest at a rate of 5% above the Reserve Bank Cash Rate calculated daily and compounded monthly but in no circumstances will the interest charge exceed 20% per annum.

3.4 All costs and expenses associated with recovering any monies owed to the Supplier by the Client under these Terms and Conditions (including but not limited to legal costs on a solicitor and own client basis) are to be paid by the Client to the Supplier.

3.5 A statement signed by an authorised person for the Supplier stating the sum due and owing by the Client to the Supplier as at the date specified in the statement shall be a conclusive statement and will be binding on the parties in the absence of a patent error, or until a contrary is proven.

## 4. Cancellation

4.1 The Supplier may cancel any order or quotation or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On the giving of such notice the Supplier shall repay to the Client any money paid by the Client for the Goods or Services but shall not be liable for any loss or damage whatsoever suffered by the Client arising from any cancellation.

4.2 In the event that the Client cancels the delivery of Goods the Client shall be liable for any Consequential Loss to the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).

4.3 Cancellation of orders by the Client for Goods made, developed to the Client's specifications, or for non-stocklist items, will not be accepted by the Supplier once the order has been placed.

## 5. Warranties

5.1 The Client (and the persons signing the Credit Application) warrant that:

(a) they (and those persons) are solvent and able to pay their debts on time;

(b) they shall give written notice to the Supplier if they suffer an insolvency event;

(c) they (and those persons) have a good credit history and nothing has occurred that could lead to an Insolvency Event;

(d) that all the information given to the Supplier is true and correct;

(e) they have legal capacity to enter into these Terms and Conditions; and

(f) where the Client is a trustee of a trust that all Accepted Orders will be for

the purposes of the trust and that the Client is, and will be, entitled to have resort to the trust assets to satisfy the balance of the Credit Account and that the trustee's right of indemnity against the trust or the trust fund is not, and will not be, excluded and that nor shall the Client release that right of indemnity without the Supplier's prior written consent.

## 6. Acknowledgements

6.1 The Client (and the persons signing the Credit Application) acknowledge and agree that:

- (a) the failure by the Supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision;
- (b) if any part of these Terms and Conditions is void or unenforceable, it may be severed without affecting the enforceability of any other part;
- (c) the Supplier shall be under no liability whatsoever to the Client for any indirect or consequential loss or expense (including loss of profit) suffered by the Client arising out of a breach by the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods);
- (d) the Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute;
- (e) the Supplier may license or sub-contract all or any part of its rights and obligations without the Client's consent;
- (f) the client must pay any stamp duty assessed on this document or the transactions contemplated by it or fee to any Register or maintain any security interest held or to be held by the Supplier under these Terms and Conditions; and
- (g) **Change of Control** the Client shall give the Supplier not less than seven (7) days prior written notice of any proposed change affecting the structure, management, ownership or control of the Client including its ACN, ABN or any details required on the PPSR or any other change in the Client's Contact Details. The Client shall be liable for any loss incurred by the Supplier as a result of the Client's failure to comply with this clause.

6.2 If there are any inconsistencies between these Terms and Conditions and a mandatory requirement of any relevant legislation (including regulations rules and by-law) then the legislation shall apply.

6.3 Electronic signatures shall be accepted providing that the persons signing have complied with the Electronic Transactions Act of the relevant State or Territory

6.4 The Client agrees that the Supplier may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at the same time as the Client makes a further request for the Supplier to provide Works to the Client.

## 7. Exclusion of Implied Terms

7.1 The Client may have the benefit of consumer guarantees under the ACL and otherwise, to the maximum extent permitted by law, all terms conditions or warranties that would be implied into these Terms and Conditions or in connection with the supply of any Goods or Services by the Supplier under law or statute or custom or international convention are excluded.

## 8. Limitation of Liability under ACL Guarantees

8.1 To the extent that Goods supplied by the Supplier are not Goods of a kind ordinarily acquired for personal, domestic or household use and the Client is deemed to be a consumer for the purpose of Section 64A of the ACL, the Client agrees that the Supplier's liability for a failure to comply with a consumer guarantee that the Client may have a benefit of under the ACL (other than a guarantee under Sections 51 (Title), 52 (Undisturbed Possession) and 53 (Undisclosed Securities) is limited to at the option to the Supplier to one or more of these:

- (a) replacement of the Goods or the Supply of equivalent Goods;
- (b) the repair of the Goods;
- (c) the payment of the costs of replacing the Goods or of acquiring equivalent Goods; or
- (d) equivalent Goods or payment of the costs of having the Goods repaired.

8.2 To the extent that the Services provided by the Supplier are Services

other than Services of a kind ordinarily required for personal, domestic or household use or consumption, the Supplier's liability for failure to comply with the consumer guarantee that the Client may have the benefit of is limited to, at the option of the Supplier:

- (a) the supply of the Services again;
- (b) the payment of the fair cost of having the Services provided again.

## 9. Limitation of Liability

9.1 To the maximum extent permitted by law and subject to clauses 8 and 9 the Supplier's total liability arising out of or in connection with its performance or its obligations pursuant to these Terms and Conditions arising out of or in connection with the supply of specific Goods or Services (including pursuant to or for any breach of the Terms or repudiation of those, under statute, in equity or for tort, including negligent acts or omissions) is limited as follows:

- (a) The Supplier shall have no liability to the Client for any Consequential Loss; or
- (b) the Supplier's total aggregate liability for loss, however arising shall not exceed the GST exclusive aggregate price paid by the Client to the Supplier for the specific Goods or Services that gave rise to the loss in question.

9.2 Each party must take reasonable steps to mitigate any loss it suffers or incurs.

## 10. Dispute Resolution

10.1 If there is a dispute between the Parties that is in any way connected with these Terms and Conditions or the Works then the Party alleging the dispute (the Disputing Party) must notify the other Party in writing giving full particulars of the dispute and their proposal to remedy the dispute.

10.2 The other Party must within fourteen (14) days provide a written response to the Disputing Party including their proposal to remedy dispute.

10.3 The Parties must then within seven (7) days use their best endeavours to resolve the dispute including any necessary meetings and if the dispute is not resolved then either Party may refer the dispute to arbitration to be conducted by the Institute of Arbitrators Australia pursuant to their Rules for conduct of commercial arbitrations.

## 11. The Works and the Worksite

11.1 The Client shall ensure that the Worksite is ready for the Works to commence when the Supplier is notified by the Client that it may start the Works.

11.2 If the Supplier retains ownership of the Materials under Clause 15 then where the Supplier is to both supply and install or use Materials then the Supplier shall maintain a contract works insurance policy until the Works are completed. Upon Completion of the Works all risk for the Works shall immediately pass to the Client.

## 12. Defects and Warranties

12.1 The Client must give the Supplier written notice of any alleged defects in the Works within seven (7) days of the Completion of the Works or 2 days after the delivery of material in which event Clause 10 shall apply otherwise the Client shall be deemed to have accepted that the Works have been completed to its satisfaction.

12.2 Where the Client has selected or provided any Materials or products and those items are subject to a manufacturer's warranty the Client acknowledges that they must rely on that warranty and that they are responsible for any Work carried out by the Supplier if those items fail and the Supplier is not paid under the manufacturer's warranty.

## 13. Orders and Price

13.1 All Orders are subject to these Terms and Conditions and the Client shall be bound by these Terms and Conditions on placing an Order or when an Accepted Order occurs. These Terms and Conditions shall, in the absence of a specific separate written contract to vary these terms and conditions, override any terms that the Client may seek to impose on the Supplier.

13.2 Any Order is an offer by the Client and is not binding on the Supplier until it is accepted in writing by the Supplier or an Accepted Order has occurred.

13.3 The Supplier may by written notice vary the Price if:

- (a) the Client varies the Work;
- (b) where additional Works become necessary due to matters that are

only discovered on the commencement of the Works, such as but not limited to not complying with the standards, latent Worksite defects like structural impediments, errors in the Work Specifications, sizing issues caused by Materials provided by the Client, delays or problems caused by third parties on the Worksite, access to the Worksite or the like; or  
(c) an increase in the costs of the Supplier's Personnel or Materials specifically purchased for the Works.

#### 14. Payment

14.1 If the Client has a Credit Account with the Supplier in the absence of any other arrangement in writing the Client authorises the Supplier to charge the Price to the Credit Account.

14.2 If the Client does not have a Credit Account with the Supplier then the Client must pay the Price by an Approved Payment Method before the Accepted Order is completed.

14.3 If required, the Client shall pay the Supplier a deposit before the Works commence by an approved payment method unless otherwise agreed.

14.4 The Client must pay the Supplier the full amount debited to the Credit Account immediately on demand if the Client fails to comply with or is in breach of these Terms and Conditions, suffers an insolvency event or makes any misrepresentation to the Supplier.

14.5 (a) The Client must pay the Supplier the amount owing on the Credit Account by the payment methods accepted by the Supplier and on the Supplier's usual terms specified on the Invoice. If no payment methods or terms are specified on the Supplier's Invoice, payment is to be by Electronic Funds Transfer within seven (7) days of date of invoice. (b) The Accepted Order may specifically vary when and how the Price must be paid by the Client to the Supplier and may at the Supplier's discretion allow the Client to retain an agreed amount that is to be paid on the later of the completion of the Works or any defects that the Parties have agreed that the Supplier will rectify.

14.6 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if any money payable to the Supplier becomes overdue, or in the Supplier's opinion the client will be unable to make a payment when it falls due.

#### 15. Title

15.1 The Supplier retains legal and equitable title in any Materials supplied to the Client until payment and until then the Client may sell the Materials or use the Materials in a manufacturing or construction process in the ordinary course of the Client's business for true market value but as between the Client and the Buyer of the Materials, the Client sells as principal and not as the agent of the Supplier. The proceeds of any such sale must be held by the Client in a separate fund on trust for the Supplier and the Client is under a duty to account to the Supplier for those proceeds. The creation of, or any failure of, any such trust shall not in any way limit the obligation of the Client to pay the Supplier for the Materials.

15.2 Until the Materials are sold or used in a manufacturing construction process, the Client must keep the Materials safe and free from deterioration, loss or harm and clearly designate the Materials as the property of the Supplier and keep full and complete records of the physical location of the Materials and the ownership of the Materials by the Supplier. The Supplier is irrevocably entitled to, at any time, and from time to time before any sale of any of the Materials by the Client to enter any of the Client's premises, vehicles or vessels to inspect or to recover and retake possession of the Materials and otherwise in relation to the Materials exercise any of its rights whether those rights are as owner or unpaid seller or otherwise and whether those rights are conferred by common law, contract, statute or any way. If the Materials are held by a third party then the Client shall obtain the consent of that third party so that the Supplier may exercise its rights under this Clause and shall indemnify the Supplier and its agents from any liability arising from the exercise of those rights.

15.3 The reservation of title and ownership is effected whether or not the Materials have been altered from their supplied form or co-mingled with other Materials.

#### 16. Personal Property Securities Act 2009 (PPSA)

16.1 The Supplier's rights set out in these Terms and Conditions where applicable constitute the grant of a purchase money security interest (PMSI) by the Client in favour of the Supplier for the purposes of the PPSA.

16.2 The Client must immediately, if requested by the Supplier sign any documents, provide all necessary information and do anything else required by the Supplier to ensure that the Supplier's PMSI is a perfected security interest under the PPSA.

16.3 The Client will not enter into any security agreement that permits any other person to have or to register any security interests in respect of the Materials or any proceeds from the sale of the Materials until the Supplier has perfected its PMSI under the PPSA.

16.4 In this Clause collateral, financing statement, and security interest has the meaning given to it by the PPSA.

16.5 Upon agreeing to these Terms and Conditions in writing the Client acknowledges and agrees that these Terms and Conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Materials or collateral being a monetary obligation of the Client to the Supplier for Services that have previously been supplied and that will be supplied in the future by the Supplier to the Client.

16.6 The Client undertakes to:

(a) promptly sign any further documents or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to;

(i) register a financing statement or financing change statement in relation to a security interest on the PPSR;

(ii) register any other document required to be registered by the PPSA; or

(iii) correct a defect in a statement referred to in this sub-Clause;

(b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing any Materials so charged;

(c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;

(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials or collateral in favour of a third party without the prior written consent of the Supplier; and

(e) immediately advise the Supplier of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.

16.7 The Supplier and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Terms and Conditions.

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

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

16.10 Unless otherwise agreed to in writing by the Supplier, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.

16.11 The Client must unconditionally ratify any actions taken by the Supplier under Clauses 16.6 to 16.8.

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

#### 17. Security and Charge

17.1 The Client charges all of the Client's right, title and interest in all present and after-acquired property and present and after-acquired land held by the Client, to secure the payment of all amounts due and payable under these Terms and Conditions (Secured Monies). The Client consents to the Supplier lodging a caveat or caveats or to registering the Supplier's security interest on the PPSR to note the Supplier's interest under this Clause.

17.2 On demand by the Supplier, the Client will immediately provide any information, or do any action required by the Supplier, including executing a mortgage or any other instrument of security, in terms satisfactory to the

Supplier, to further secure payment of the Secured Monies.

17.3 The Client irrevocably appoints the Supplier and, any person nominated by the Supplier, severally the attorney of the Client with power to execute, sign, seal and deliver (which delivery may be subject to such terms and conditions as the attorney thinks fit) such mortgage or other document to give effect to this security.

17.4 The Client:

(a) indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on an indemnity basis incurred in exercising the Supplier's rights under this Clause.

(i) register a financing statement or financing change statement in relation to a security interest on the PPSR;

(ii) register any other document required to be registered by the PPSA; or

(iii) correct a defect in a statement referred to in this sub-Clause;

(b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing any Materials so charged.

### 18. Privacy Act 1988

18.1 The Supplier will comply with the Australian Privacy Principles in all dealings with the Client and in accordance with the Privacy Policy posted on the Supplier's website.

18.2 The Supplier may need to collect personal information about the Client and, if applicable its Directors, including but not limited to full names and addresses, drivers licence details, credit card details, dates of birth and credit or business history (the Personal Information).

18.3 The Client consents to the Supplier using the Personal Information in order to:

(a) satisfy itself as to the Client's credit worthiness or exercising the Supplier's rights under clauses 16 and 17;

(b) provide Goods and Services to the Client;

(c) prevent the theft of the Goods;

(d) enter into contracts with the Client or third parties; and

(e) market to the Client and maintain a client relationship with the Client.

18.4 The Client agrees that the supplier may exchange information about the Client with those credit providers and with related body corporates for the following purposes:

(a) to assess an application by the Client; and/or

(b) to notify other credit providers of a default by the Client; and/or

(c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default

with other credit providers; and/or

(d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.

18.5 The Client has a right to access the Personal Information the Supplier holds about the Client. The Supplier's Privacy Policy and Credit Reporting Policy form part of these Terms and Conditions. The Client acknowledges that it has received a copy of each Policy and the policies are also on the Supplier's website.

### 19. Risk

19.1 The risk of any loss or damage to or deterioration of the Goods from any cause whatsoever passes from the Supplier to the Client when the Client takes possession of the Goods or otherwise if:

(a) the Client collects the Goods and if the Supplier or its contractors have loaded the Goods for the Client, when the Goods are fully loaded onto the Client's vehicle or vessel;

(b) the Supplier delivers the Goods to the Delivery Site and the Client unloads the Goods, when the Client begins unloading the Goods;

(c) the Supplier delivers the Goods and unloads them at the Delivery Site, when the Supplier has finished unloading the Goods; or

(d) the Client requests the Supplier to deliver the Goods to an unattended location or the Delivery Site is closed when the Goods are unloaded and they will be left there at the Client's risk.

19.2 If any of the Goods are damaged after risk has passed to, but prior to ownership passing to the Client, the Supplier is entitled to receive the proceeds of any insurance claim whether the policy is owned by the Supplier or the Client who assigns that benefit to the Supplier.

### 20. Claim for Payment

If applicable a claim for monies owed under these Terms and Conditions is a claim for payment under the Building Constructions and Payments Act 2004 (QLD), Building and Construction Industry Security of Payment Act 1999 (NSW).

### 21. Jurisdiction

These Terms and Conditions and any contract, agreement or transaction to which they apply shall be governed by the laws of Queensland and dealt with by the appropriate Court in Brisbane.

### 22. Confidentiality

The existence and terms of this agreement and information provided in connection with its performance are confidential and the parties must treat this information confidentially. They must not, and must ensure that any person who with approval receives the information does not, disclose any of the information in any form to anyone else or use any of the information except to perform its obligations under this agreement.

### 23. Returns

The Supplier may in its absolute discretion accept non-defective Goods for return in which case the Supplier may require the Client to pay handling/restocking fees of 20% of the value of the returned Goods plus any freight costs. Goods such as special order items are not returnable.

### 24. Entire agreement

This agreement is the entire agreement and understanding between the parties on everything connected with the subject matter of this agreement, and supersedes any prior understanding, arrangement, representation or agreements between the parties as the subject matter contained in this agreement.

### 25. Events beyond control

The Supplier shall not be liable to the Client for any loss caused by any failure to observe the terms and conditions of this agreement, where such failure is occasioned by causes beyond its reasonable control including but not limited to by fire, flood, riot, strike, war restrictions and prohibitions or any other actions by any government or semi government authorities.

### 26. Counterparts

This agreement may be executed in any number of counterparts each of which will be an original but such counterparts together will constitute one and the same instrument and the date of the agreement will be the date on which it is executed by the last party.