



**Liberty Standard Terms and Conditions of Sale – International Sales  
Effective November 2023**

**[Note: these Terms and Conditions are subject to change – see clause 20.]**

**In this document ("Terms and Conditions"):**

- (a) **"Anti-bribery Laws"** means foreign bribery laws contained in Division 70 of the Australian Criminal Code 1995 (Cth), the United States' Foreign Corrupt Practices Act or equivalent legislation in any other relevant jurisdiction applicable to the Customer and Liberty Primary.
- (b) **"Contract"** means the contract formed between Liberty Primary and the Customer by an Order accepted by an Order Acknowledgment;
- (c) **"Corporations Act"** means the Corporations Act 2001 (Cth);
- (d) **"Customer"** means the person placing the Order with Liberty Primary;
- (e) **"Goods"** means any goods, products, services or materials to be supplied by Liberty Primary;
- (f) **"Incoterms"** means Incoterms 2010 International Chamber of Commerce brochure No. 560;
- (g) **"Liberty Primary"** means the Liberty Primary Group and for each Order, the relevant company in the Liberty Primary Group that issues the Order Acknowledgment or appropriates or supplies Goods in connection with an Order Acknowledgment;
- (h) **"Liberty Primary Group"** means OneSteel Manufacturing Pty Ltd ACN 004 651 325; Liberty Primary Metals Australia Pty Ltd ACN 631 112 573; Arrium Mining Services Asia Pty Ltd CN 1390655; Whyalla Ports Pty Ltd ACN 153225364; Tahmoor Coal Pty Ltd ACN 076 663 968; Bargo Collieries Pty Ltd ACN 000 970 276 and any related body corporate (as that term is defined in the Corporations Act 2001 (Cth) of any of them from time to time);
- (i) **"Order"** is defined in clause 1(a);
- (j) **"Order Acknowledgment"** is defined in clause 1(b);
- (k) **"PPSA"** means the Personal Property Securities Act 2009 (Cth);
- (l) **"Security Interest"** has the meaning given to that term in section 12 of the PPSA;
- (m) **"Tax"** or **"Taxes"** includes any and all charges, duties, levies, taxes, imposts or other expenses of any kind which may be payable or incurred in connection with or in relation to the purchase of the Goods and/or the importation of the Goods into, or the transit of the Goods through, the country of destination (other than customs duties where Goods are delivered on a DDP basis);
- (n) unless otherwise stated, an expression used or defined in the *Corporations Act 2001* (Cth) has the same meaning in the Terms and Conditions;
- (o) where used in these Terms and Conditions:
  - (i) **InfraBuild** means any entity listed from time to time as forming part of the InfraBuild Group in the InfraBuild Standard Terms and Conditions of sale available at [www.infrabuild.com](http://www.infrabuild.com); and
  - (ii) **Other Terms** means the terms applicable to a sale by InfraBuild to the Customer.

**1. Orders, Order Acknowledgments and Contract**

- (a) An order or an offer to purchase can be made by the Customer in writing ("**Order**").
- (b) An Order is accepted when the Customer receives from Liberty Primary an order acknowledgment in writing or if writing is not received, acknowledgment verbally or delivery, whichever first occurs ("**Order Acknowledgment**").
- (c) When an Order is accepted by an Order Acknowledgment the terms

of the Contract will be those contained in the following documents:

- (i) Any specific terms separately agreed in writing in relation to that Order;
- (ii) Order Acknowledgment;
- (iii) Terms and Conditions;
- (iv) Order; and
- (v) any Incoterms stated in the above documents to be applicable to the sale.

In the event of any inconsistency between any of those terms, the terms in the earlier listed document above will prevail to the extent of that inconsistency.

- (d) Previous dealings between Liberty Primary and the Customer shall not have any effect on the Contract.
- (e) Trade custom and/or trade usage is superseded by the Contract and shall not be applicable in the interpretation of the Contract.
- (f) A Contract constitutes the entire agreement between Liberty Primary and the Customer with respect to the Goods supplied under the Contract, all prior negotiations, proposals and correspondence are superseded by that Contract and these Terms and Conditions will in all circumstances prevail over the Customer's terms and conditions of purchase (if any).

**2. Cancellation**

Liberty Primary's prior written consent is required in relation to the cancellation or modifications of all or part of any Order. If cancellation or modification is allowed by Liberty Primary, the Customer agrees to pay to Liberty Primary all reasonable expenses incurred and damage sustained by Liberty Primary on account of the cancellation or modification.

**3. Prices**

- (a) Unless otherwise agreed in writing, the price charged for the Goods shall be: (i) exclusive of any Taxes, (ii) the price applying as determined by Liberty Primary at the date of delivery, and (iii) inclusive of any costs to be borne by Liberty Primary on the Incoterms basis agreed for the sale in the Contract. Any price indications or price lists are subject to alteration in accordance with the price ruling as at that date of delivery. Liberty Primary may issue an invoice at any time on or before delivery. Payment must be made on or before delivery unless otherwise agreed.
- (b) Where a product margin is included on the invoice for Goods the Customer will pay that product margin in addition to any quoted price.
- (c) Where a Tax applies to any purchase made under these Terms and Conditions, Liberty Primary may recover from the Customer an additional amount on account of that Tax.
- (d) Notwithstanding any provision in the Contract, Liberty Primary may increase the price of Goods after an Order Acknowledgment and prior to delivery of the Goods if the price increase results from the costs of complying with an increase in the price of, or costs associated with, any inputs which comprise part of the Goods or are required for the production or transportation of the Goods. Liberty Primary must provide written notice to the Customer of any price ruling, product margin, Tax or any other increase in the price of Goods made in accordance with the Contract not later than 7 days prior to the date of delivery of the Goods. The Customer may by written notice given within 7 days of Liberty Primary providing notice of the change in price cancel any Order (or part thereof) at the new price, provided the increase has a materially adverse impact on the Customer.
- (e) In addition to paying the price for the Goods, the Customer acknowledges and agrees that the Customer is solely responsible for the payment of Taxes.
- (f) In the event that the Customer does not pay any Taxes for any reason (including where it would be unlawful for the Customer to accept responsibility directly for the Taxes):
  - (i) Liberty Primary is expressly authorised to recover the amount of any Taxes incurred by Liberty Primary from the Customer as a debt due to Liberty Primary; and
  - (ii) the Customer will indemnify Liberty Primary against any costs, expenses, loss or other liability Liberty Primary may suffer or incur directly or indirectly as a result of the Customer failing to

pay any applicable Taxes.

- (g) In pursuance of such recovery and/or indemnity, Liberty Primary is permitted to draw down any such amount from the letter of credit established under clause 7 to the extent that such credit is available.
- (h) If any Taxes which are not applicable at the date of Liberty Primary's quotation are imposed or become payable or applicable on or in respect of the Goods, or the transportation, export or importation of the Goods by or under any action or circumstance whatsoever beyond Liberty Primary's control, such Taxes will be to the Customer's account, subject to the Customer's rights under clause 3(d), to the extent to which it is paid or borne by Liberty Primary will increase the price payable for the Goods and will be recoverable from the Customer in accordance with clause 3(e).

#### 4. Delivery

- (a) Liberty Primary will make all reasonable efforts to have the Goods delivered to the Customer or his designated agent as agreed between the parties (or if there is no specific agreement then at Liberty Primary's reasonable discretion), but (despite anything in the Contract to the contrary) Liberty Primary shall not be liable for any failure to deliver or delay in delivery for any reason. Any costs reasonably incurred by Liberty Primary due to any failure by the Customer to accept the Goods at time of delivery will be reimbursed by the Customer to Liberty Primary. Except to the extent Liberty Primary has opted to do so or the parties have so agreed in accordance with clause 11 or otherwise as required by law, Liberty Primary will be under no obligation to accept the return of Goods for any reason.
- (b) Unless otherwise specified in the Contract the reasonable cost of discharge including stevedoring costs, damage to vessels, damage to cargo and any despatch or demurrage at the port of discharge notified by Liberty Primary to the Customer will, in the absence of Liberty Primary's substantial fault or negligence be to the Customer's account and the Customer must accept such conditions relating to discharge as are specified by Liberty Primary (acting reasonably).

#### 5. Packaging

Unless Liberty Primary has otherwise agreed in writing, Liberty Primary shall be under no obligation to package, wrap or load the goods in a particular manner.

#### 6. Standard Grades of Material

- (a) Subject to clause 6(b), Liberty Primary will:
  - (i) supply Goods having the grade of material specified in the Order Acknowledgment; and
  - (ii) ensure that the Goods' grade of material as specified in the Order Acknowledgment will, unless otherwise agreed, be in accordance with applicable Australian Standards and/or as detailed in any current, relevant price schedules, product handbooks or other product literature of Liberty Primary.
- (b) Goods supplied which are not manufactured by Liberty Primary (or to the extent that they are not manufactured by Liberty Primary) are subject to the chemical composition, physical properties and product standards of the original manufacturer, and by such warranty as specified by the original manufacturer (if any), and Liberty Primary does not, unless specifically required by law, give any warranty beyond such warranty.

#### 7. Payment

- (a) Subject to clause 12, payment must be made to Liberty Primary by the Customer by means of an irrevocable letter of credit in favour of Liberty Primary established prior to loading by and with a bank in Sydney, Australia (such bank to be approved by Liberty Primary in writing) and in such form as approved by Liberty Primary in writing.
- (b) Payment for Goods pursuant to an irrevocable letter of credit is only received by Liberty Primary when Liberty Primary has successfully drawn down the letter of credit in immediately available funds for the amount owing by the Customer to Liberty Primary for those Goods. In the event that the letter of credit does not provide immediately available funds sufficient to pay for the Goods, the balance owing will be a debt due to Liberty Primary by the Customer once Liberty Primary has made a claim for the amount.
- (c) Any letter of credit must be in Australian dollars unless otherwise agreed in writing between the parties. The Customer is responsible for and must bear the whole cost of obtaining and maintaining

(including extending) the letter of credit as well as any banking charges, fees and costs in connection with any payment to Liberty Primary under the letter of credit.

- (d) The credit under the irrevocable letter of credit must be issued in acceptable terms to Liberty Primary and under and be governed by either the International Chamber of Commerce Uniform Customs and Practice for Documentary Credits, 1993 Revision, ICC Publication no. 500 (UCP 500) or the International Chamber of Commerce Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication no. 600 (UCP 600), unless otherwise agreed to or specified by Liberty Primary to the Customer in writing.
- (e) Any letter of credit must be drawn so that it is payable in full upon first presentation of the documents required under the terms of the letter of credit (with numbers of originals and copies as agreed in writing between the parties).
- (f) The Customer must advise Liberty Primary by facsimile or email of the relevant letter of credit details (or other agreed arrangements for payment) not later than 15 days prior to the scheduled loading date. The parties agree that no method of payment other than a letter of credit is acceptable unless previously agreed by Liberty Primary in writing.
- (g) In the circumstances set out in clauses 9(a)(ii) and 14 the Customer must (at its sole cost) extend the letter of credit for the period required by Liberty Primary and shall keep extending the letter of credit up to such date (if any) as the Customer is entitled to terminate the Contract.
- (h) Establishment of the letter of credit in proper form and by the time required under these Terms, its extension where required by Liberty Primary under clause 9(a)(ii) or clause 14 or its negotiability generally against presentation of documents by Liberty Primary, are conditions of the Contract, and a breach of such conditions entitles Liberty Primary, at its option and without prejudice to any or all of its other rights and remedies, to terminate the Contract and sell the Goods to a third party.
- (i) The establishment of any letter of credit does not relieve the Customer of its primary obligation to pay for the Goods regardless of Liberty Primary's failure to request or receive payment under the letter of credit for any reason whatsoever.
- (j) The Customer may not set off any monies owing by Liberty Primary to the Customer against any monies owing by Liberty Primary to the Customer on any account.
- (k) Payment must be made in the currency in which the price is described in the Details Sheet.

#### 8. Electronic Data Interchange "EDI"

- (a) Liberty Primary and the Customer may conduct business by EDI. Liberty Primary may provide an electronic trading gateway based on international standards to facilitate EDI. The Customer agrees that if it has an appropriate EDI capability then EDI is the preferred method of conducting business on such additional terms and conditions as may be agreed.

#### 9. Shipment

- (a) If shipment is to be provided by Liberty Primary, then:
  - (i) The performance by the Customer of its various obligations to be performed prior to shipment date (including, subject to clause 12, establishment of an irrevocable letter of credit in accordance with clause 7) specified in the Contract are conditions precedent to Liberty Primary's obligations to ship by the date so specified.
  - (ii) The time stipulated for shipment by Liberty Primary shall not be of the essence and may be extended upon written request by Liberty Primary, such request to be given no later than 14 days before the day upon which the shipment was previously specified. The Customer may consent to a reasonable extension (taking into account all the relevant circumstances including production schedules of Liberty Primary) such consent not to be unreasonably withheld and to be provided no later than 48 hours after Liberty Primary's request.
- (b) If shipment of the Goods is to be provided by the Customer, then the Customer will comply with the following conditions:
  - (i) Advise Liberty Primary of the proposed laycan no less than 4 weeks before the commencement of any laycan (Liberty Primary will (acting reasonably) accept or reject the proposed

laycan within 3 business days of proposal);

- (ii) Advise Liberty Primary of the name of the vessel nominated no less than 4 weeks before the commencement of any laycan (Liberty Primary will (acting reasonably) accept or reject the nominated vessel within 1 business day of nomination);
  - (iii) Advise Liberty Primary of the nominated vessel's estimated time of arrival (ETA) promptly after the Customer becomes aware; and
  - (iv) Confirm the ETA of the nominated vessel 10 days, 7 days, 48 hours and 24 hours prior to vessel's arrival.
- (c) Part deliveries do not amount to a rescission of the Contract on the part of Liberty Primary and do not entitle the Customer to rescind the Contract.
- (d) The Customer must secure licences or other authorities to permit the importation of the Goods into, or the transit of the Goods through, the Customer's own country or other designated place of destination. The Customer must indemnify Liberty Primary for any costs or expenses incurred by Liberty Primary due to the Customer's failure to secure such licences or authorities. The Customer is not entitled to rescind the Contract or treat it as rescinded and Liberty Primary will not in any way be liable to the Customer if Liberty Primary cannot import the Goods due to the Customer's failure to secure such licences or authorities.

#### 10. Title and related matters

- (a) The legal and equitable title to the Goods will only be transferred from Liberty Primary to the Customer when the Customer has met and paid all that is owed to Liberty Primary on any account whatsoever.
- (b) The Customer acknowledges that until the Customer has met and paid all that is owed to Liberty Primary on any account whatsoever, the Customer holds the Goods as bailee for Liberty Primary and that a fiduciary relationship exists between the Customer and Liberty Primary.
- (c) Until Liberty Primary receives full payment of all monies due to it from the Customer, the Customer shall keep the Goods separate and in good condition as a fiduciary of Liberty Primary, clearly showing Liberty Primary's ownership of the Goods and, shall keep books recording Liberty Primary's ownership of the Goods and the Customer's sale or otherwise of them in accordance with clauses 10(e) and 10(f). The Customer, if required, shall deliver the Goods up to Liberty Primary.
- (d) If the Customer defaults in any payment due, in addition to clause 11(b), Liberty Primary may take possession of the Goods wherever the Goods are located and the Customer agrees that representatives of Liberty Primary may enter upon the Customer's premises for that purpose or, if the premises where the Goods are located are owned by a third party, that the Customer will use its best endeavours to obtain for Liberty Primary that third party's consent to enter the said premises.
- (e) Despite clause 10(a), the Customer may sell as fiduciary agent for Liberty Primary the Goods to a third party in the normal course of the Customer's business provided that where the Customer is paid by that third party, the Customer holds the proceeds of sale to the extent of the amount owing by the Customer to Liberty Primary at the time of receipt of such proceeds on trust for Liberty Primary. The Customer must keep those proceeds separate on trust for Liberty Primary and not mix those proceeds with any other monies.
- (f) If the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as related to the Goods on trust for Liberty Primary. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to Liberty Primary at the time of the receipt of such proceeds. The Customer must keep that part of the proceeds separate on trust for Liberty Primary and not mix those proceeds with any other monies.
- (g) Risk in the Goods passes as provided by the relevant section of Incoterms for the form of sale agreed, and in any event risk in the Goods passes from Liberty Primary to the Customer no later than on the Goods being cleared through customs in the country of destination (and in any event, prior to the Goods leaving the customs control area).
- (h) In the event that the Contract does not specify the form of sale by reference to the Incoterms, the Goods will be supplied Free on

Board "FOB" as that term is understood in the Incoterms. Where other forms of sale are specified, the relevant Incoterms will apply unless varied by the Contract.

- (i) Without limiting any other provision of this clause 10, if the Contract creates, gives rise to, or provides for a Security Interest in favour of Liberty Primary, the Customer acknowledges and agrees:
  - (i) that Liberty Primary may do anything Liberty Primary considers reasonably necessary including, but not limited to, registering those Security Interests under the PPSA;
  - (ii) the Customer will do all things necessary to assist Liberty Primary to take the steps referred to in clause 10(i)(i).
- (j) The Customer waives or contracts out of its rights to receive any notice or statement (including notice of a verification statement) under any provision of the PPSA unless the notice or statement is required by the PPSA and cannot be excluded. In connection with the enforcement of a security interest arising under these Terms and Conditions or a Contract, to the fullest extent permitted by the PPSA, the parties agree that Liberty Primary need not comply with sections 95, 117, 118, 121(4), 125, 130, 132(3)(d) and 132(4) of the PPSA and sections 142 and 143 of the PPSA are excluded.

#### 11. Default

- (a) A party will be in default if:
  - (i) in the case of the Customer, it breaches any of the material Terms and Conditions, except if:
    - (A) clause 7(h) applies to such breach; or
    - (B) such breach is a failure to pay described in clause 11(a)(iii) (in which case, that clause will apply),  
and that breach is not remedied within 14 days of receiving notice from Liberty Primary requiring it to so remedy;
  - (ii) in the case of Liberty Primary, it breaches any of the material Terms and Conditions:
    - (A) but only where such breach is not remedied within 14 days of receiving notice from the Customer requiring it to so remedy; and
    - (B) except if the breach arises out of the supply of defective Goods, in which case Liberty Primary shall remedy the breach within a reasonable period in the circumstances (and no breach will arise until such period has expired);
  - (iii) in the case of the Customer, payment for the Goods has not been received by Liberty Primary by the due date of payment;
  - (iv) in the case of the Customer being an individual, it commits an act of bankruptcy or becomes an insolvent under administration, or similar under any law whether in Australia or elsewhere;
  - (v) in the case of the Customer being a body corporate, it becomes an externally-administered body corporate or has an application for winding up filed against it or similar under any law whether in Australia or elsewhere; or
  - (vi) Liberty Primary forms the opinion on reasonable grounds that the Customer's credit worthiness or credit standing has materially deteriorated since the date of the Order Acknowledgement or the Customer defaults on payment under the Other Terms.
- (b) If a party defaults as described in clause 11(a), the other party may:
  - (i) treat the whole of the Contract and any other Contract with the defaulting party as repudiated and sue for breach of contract; and/or
  - (ii) if Liberty Primary, refuse to supply any Goods to the Customer; and/or
  - (iii) if Liberty Primary, claim the return of any Goods in the Customer's possession where title has not passed to the Customer, with all costs of such return to be borne by the Customer; and/or
  - (iv) if Liberty Primary, without notice to the Customer withdraw, suspend or vary any credit Liberty Primary has provided to the Customer; and/or
  - (v) if Liberty Primary, without notice to the Customer make all monies owing by the Customer to Liberty Primary on any

account immediately due and payable.

## 12. Credit

- (a) Liberty Primary may grant the Customer credit upon the Terms and Conditions on the basis of such documents and information as may be required by Liberty Primary.
- (b) Until Liberty Primary grants the Customer credit by notice in writing, Liberty Primary will only supply Goods to the Customer on the basis that payment for the Goods must be made in accordance with clause 7.
- (c) The granting of credit does not oblige Liberty Primary to extend any particular amount of credit to the Customer.

## 13. Intellectual Property

- (a) The Customer warrants to Liberty Primary that all documents provided by the Customer are accurate and that Liberty Primary is entitled to use all such documents for the purposes of the Contract and that such use does not infringe any third party's intellectual property rights.
- (b) The Customer indemnifies Liberty Primary against all claims and all losses and damages incurred by Liberty Primary as a result of documents provided by the Customer to Liberty Primary for the purposes of or in the course of the supply of the Goods breaching a third party's intellectual property rights.
- (c) If a party receives any confidential information ("**Recipient**") from the other party ("**Disclosing Party**"), the Recipient may not use or disclose such information unless it receives the prior written consent of the Disclosing Party, such information enters the public domain (other than as a result of a breach of this clause), such disclosure is necessary for the relevant party's performance of the Contract or the use or disclosure is required by law.

## 14. Force Majeure

Liberty Primary is not liable for failure to perform the Contract to the extent and for so long as its performance is prevented, hindered or delayed without substantial fault or negligence by Liberty Primary because of:

- (a) act of God, unavoidable accident, war, threat of war, port blockage of any kind, act of terrorism, restrictions rules or regulations of any duly constituted government authority, fire or flood or other circumstances beyond the control of Liberty Primary whether or not of the nature or character specifically enumerated in this clause; and/or
  - (b) strike, lock out or other labour difficulty,
- provided that Liberty Primary gives notice to the Customer of the delay and uses reasonable efforts to mitigate the cause of the delay.
- (c) Liberty Primary is not liable for damage caused or suffered as a result of delay in performance due to a force majeure event described above. In the event that a force majeure event (as described above) continues for 3 months or more Liberty Primary may terminate the Contract without any penalty or liability for loss or damage to the Customer other than to the extent expressly set out in the Contract.

## 15. Representations and Fitness for Purpose

Except as expressly provided to the contrary in the Contract, all representations, warranties, terms and conditions in relation to the Goods (whether implied or otherwise) are hereby excluded to the maximum extent permitted by law.

## 16. Insurance

- (a) Where the Goods are sold at a price including insurance Liberty Primary will arrange at its cost marine insurance, the terms of which insurance will be with a reputable insurer at the sole discretion of Liberty Primary.
- (b) If there is evidence of cargo damage at the time of discharge of the Goods from the vessel the Customer shall notify Liberty Primary immediately of such damage but in any event not later than 6 days after completion of the discharge.
- (c) Where the Goods are at the Customer's risk and title has not passed to the Customer, the Customer must insure them against loss or damage until title does pass and in the event of loss or damage to the Goods, the Customer shall hold the proceeds of such insurance on behalf of Liberty Primary as trustee for Liberty Primary. In the event that title does not pass to the Customer under the Contract,

the Customer must immediately pay any such insurance proceeds to Liberty Primary on demand by Liberty Primary.

## 17. Limitation of Liability

- (a) Subject to clause 17(c), Liberty Primary's liability to the Customer (and any party claiming through the Customer against Liberty Primary) for any claim for loss or damages (including legal expenses) made in connection with a Contract in contract, under any indemnity or warranty, in tort (including negligence), under statute, in equity or otherwise shall be as follows:
  - (i) if Liberty Primary is in breach of the Contract Liberty Primary's liability is strictly limited to:
    - (A) for goods, products or materials the cost of replacement of the defective Goods as soon as reasonably practicable, or the repair of the defective Goods or the repayment (or allowance) of the invoice price of the defective Goods at the option of Liberty Primary;
    - (B) for services, to the provision of the services again or payment of the cost of having the relevant services provided again at the option of Liberty Primary;
  - (ii) Liberty Primary's liability for breach of a Contract does not extend beyond the defective Goods to any other Goods that are part of an Order or otherwise;
  - (iii) where loss or damage is not covered by subclause 17(a)(i), Liberty Primary is not liable to the Customer on any other basis for any loss or damage to person or property arising from or caused in any way by the Goods;
  - (iv) Liberty Primary shall not be liable for any indirect, special or consequential loss or damage of any nature whatsoever resulting from or caused in any way by the Goods;
  - (v) "indirect, special or consequential loss or damage" includes:
    - (A) any loss of income, profit or business;
    - (B) any loss of goodwill or reputation;
    - (C) any loss of value of intellectual property.
- (b) Any claim by the Customer in respect of defective Goods and/or damaged Goods must be made in writing within 28 days of the delivery of the Goods.
- (c) Liberty Primary's obligations in the event of clause 17(a)(i) applying do not include:
  - (i) the cost of removal of defective Goods whether installed or otherwise;
  - (ii) the cost of installation of replacement for defective Goods;
  - (iii) defects in Goods caused by improper installation or maintenance of Goods or related components or normal wear and tear and damage.

## 18. Waiver

A party waives a right under the Contract only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.

## 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 altering the validity and enforceability of the remainder of the Contract.

## 20. Variation

Liberty Primary may vary the Terms and Conditions for Orders after the initial accepted Order and may notify the Customer (and must publish the revised Terms and Conditions or notice on its website if InfraBuild does not notify the Customer directly). The Customer may by written notice given within 7 days of becoming aware of the variation terminate any Order which has not been completed and which was accepted prior to the variation of the Terms and Conditions where the impact of the variation is materially adverse to the Customer.

## 21. Costs and Default Interest

Each party must pay its own costs and expenses incurred in connection

with the negotiation, preparation and performance of the Contract. The costs of registering any PPSA financing statement will be paid by the Customer and may be invoiced or debited against the Customer's credit account. Liberty Primary may charge interest on any overdue amount due and payable under the Contract at a rate equivalent to 2.5% p.a above business overdraft interest rate of its principal banker, as determined and calculated by Liberty Primary. Such interest will be payable on demand by Liberty Primary and for so long as it remains unpaid will compound monthly.

## 22. Notices

All notices must be in writing and can be despatched by mail, electronic mail or facsimile number or electronic mail address or address of the addressee given by the addressee to the sender or last known to the sender.

## 23. Applicable Law

All Contracts will be governed by the law of New South Wales and the courts of New South Wales have non-exclusive jurisdiction in connection with the Contract. The United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention) as well as national implementing legislation of the Vienna Convention do not apply to the Contract.

## 24. Liberty Primary may Assign

Without the consent of the Customer (but provided that, in the case of novation, Liberty Primary gives notice to the Customer), Liberty Primary may assign or novate to any person this document and any Contract. The Customer must execute such documents as Liberty Primary may require to effect any such assignment or novation. In the event of a novation, the Customer may, if it has reasonable grounds to believe that the novatee will not comply with the Contract, by written notice given within 30 days of receiving notice of the novation, terminate any Order which has not been completed and which was accepted prior to the novation.

## 25. Weights and Measurements

- (a) The Customer or its agent may at the Customer's cost arrange inspection of the Goods prior to shipment with consent of Liberty Primary provided that such inspection will not, or not likely inconvenience Liberty Primary or delay shipment of the Goods. Any demurrage or other Taxes resulting from such inspection by Customer or Customer's agent must be paid by the Customer.
- (b) The Customer acknowledges that any and all statements by Liberty Primary as to weight or other characteristics of Goods (whether in the Contract or otherwise) are approximate.
- (c) Liberty Primary may (in its absolute discretion) supply Orders on an actual or calculated basis. A calculated basis will be in accordance with the applicable Australian Standards.
- (d) Liberty Primary's statements as to weight, length, quantity or other characteristics of Goods are final and, to the maximum extent permitted by law, Liberty Primary is not liable for any errors in such statements unless the Customer gives Liberty Primary:
  - (i) written notice of any error within 28 days of receipt of Goods; and
  - (ii) a reasonable opportunity to examine and re-test the Goods before they are used or dealt with.

## 26. Shortages

- (a) The Customer will inspect and check all Goods received as soon as practicable upon unloading. To the maximum extent permitted by law, no claim by the Customer for shortages of Goods may be made unless such claim is notified to Liberty Primary with 96 hours of such inspection.
- (b) Liberty Primary will endeavour to rectify any shortages as soon as practicable after receiving notice.

## 27. Anti-corruption

- (a) The Customer and Liberty Primary agree to continually maintain high ethical standards and not engage in, or aid in any way, corrupt or fraudulent activities that can detrimentally impact on the other.
- (b) The Customer acknowledges that Liberty Primary is subject to the strict obligations contained within the Anti-bribery Laws. The Customer and Liberty Primary warrant to one another that they are familiar with those provisions, and undertake to comply, and will at all times remain in compliance with, the Anti-bribery Laws and will not do anything to put the other party in breach of those laws.

- (c) Neither the Customer or Liberty Primary will directly or indirectly make or offer to make payments, or provide any other benefit, to local or foreign officials, that would violate the Anti-bribery Laws, nor will either party condone or tolerate such conduct by subcontractors or by any other third parties.
- (d) A party must inform the other as soon as practical after it becomes aware of any actual or reasonably anticipated breach of this clause 27, and take all actions necessary to return to compliance.
- (e) For the express purpose of clause 11 (Default), if a party fails to comply with this clause 27, or a party forms the opinion on reasonable grounds that the other party has breached or is reasonably anticipated to breach this clause 27, that party is in default of the Contract and the non-defaulting party shall have the rights set out in clause 11(b), exercisable immediately.
- (f) To the extent permitted by law, the defaulting party agrees to indemnify the non-defaulting party against any loss or damage arising in connection with a breach of this clause 27 by the defaulting party.

## 28. Sanctions and anti-money laundering

- (a) The Customer and Liberty Primary must comply with all applicable UN Sanction Enforcement Laws including laws dealing with:
  - (i) the supply and/or export of sanctioned goods, services or information to foreign nationals or institutions, including those goods, services or information prohibited under the *UN Sanction Enforcement Laws, the Autonomous Sanctions Act 2011* (Cth), the *Customs Act 1901* (Cth) and the *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995* (Cth); and
  - (ii) the engagement in sanctioned activities, including those activities prohibited under the UN Sanction Enforcement Laws or the Autonomous Sanctions Act 2011 (Cth).
- (b) The Customer and Liberty Primary must not deal with, or knowingly make any funds or assets available to a person or organisation on the consolidated list of designated persons and entities, created pursuant to the Charter of the United Nations Act 1945 and the Autonomous Sanctions Act 2011, and available at <https://www.dfat.gov.au/international-relations/security/sanctions> <https://www.dfat.gov.au/international-relations/security/sanctions>.
- (c) A party must not knowingly or recklessly do anything to put the other party in breach of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth), rules and other subordinate instruments.
- (d) A party must inform the other as soon as practical after it becomes aware of any actual or reasonably anticipated breach of this clause 28.
- (e) For the express purpose of clause 11 (Default), if a party fails to comply with this clause 28, or a party forms the opinion on reasonable grounds that the other party has breached or is reasonably anticipated to breach this clause 28, that party is in default of the Contract and the non-defaulting party shall have the rights set out in clause 11(b), exercisable immediately.
- (f) To the extent permitted by law, the defaulting party agrees to indemnify the non-defaulting party against any loss or damage arising in connection with a breach of this clause 28 above by the defaulting party.

## 29. Dispute resolution

- (a) The parties shall seek to resolve any dispute or claim arising out of or under a Contract by friendly discussion before submitting that dispute or claim to arbitration. Any party may notify the other party in writing of its desire to have a discussion to resolve a dispute or claim.
- (b) Any dispute or claim arising out of or under a Contract which remains unresolved after 1 month after the date on which notice is given under clause 29(a), shall subject to this clause be referred to and settled by arbitration under the UNCITRAL Rules. The appointing authority shall be the Australian Centre for International Commercial Arbitration.
- (c) The seat and place of any arbitration under a Contract is Sydney, New South Wales.