



TERMS AND CONDITIONS FOR SALE OF GOODS & SERVICES

By signing this Document and/or purchasing goods or services by cash or on credit from Multotec, you as the customer ('you'; 'Customer') hereby acknowledge that you are entering into a binding contract with Multotec Pty Ltd ('Multotec') and agree to be legally bound by the following terms and conditions:

1. DEFINITIONS

Cancellation Fee means the aggregate of all expenses, costs, fees, charges and liabilities of Multotec under the Contract up to the date of termination plus the amount equivalent to fifteen percent (15%) of the Price under the Contract. Where non-standard items apply, the cancellation fee shall be calculated at 25% of the Price under the Contract.

Associated Businesses means any and all Associated Entities, Related Entities

Associated Entities has the same meaning as in the Corporations Act.

Claim means any claim, action, proceeding or demand, howsoever arising and whether present, future, fixed, unascertained, actual or contingent.

Consequential Loss means loss of 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 or potential extent of the loss or damage was known or foreseeable, and whether arising from a claim under indemnity, contract, tort (including negligence), statute or otherwise.

Contract means the contract for the supply of Goods or Services formed between Multotec and the Customer, including (without limitation) the Purchase Order(s), these Terms and Conditions and any other document which is attached to or incorporated by reference in it, to the Purchase Order or the Terms and Conditions.

Corporations Act means the *Corporations Act 2001 (Cth)*.

Customer means the party making this application for credit.

Goods means any and all goods supplied by Multotec including, but not limited to, mining and mineral processing equipment, and all related or ancillary goods or services.

Guaranteed Money means all money which:

- (a) at any time; and
- (b) for any reason or circumstance whatsoever;
- (c) whether at law, in equity, under statute or otherwise;
- (d) whether or not of a type within the contemplation of Multotec or Guarantor at the date of this Contract,

Customer is or may become actually or contingently liable to pay to Multotec, whether alone or jointly with another person, including all money payable by Customer in connection the Credit Conditions or the Supply Conditions (each as defined in the Credit Account Application in which this Deed appears).

Insolvency Event means, for the Customer, as applicable, being in

liquidation or provisional liquidation, bankruptcy or under administration, having a controller (as defined in the *Corporations Act 2001 (Cth)*) ('**Corporations Act**') or analogous person appointed to the Customer or any of the Customer's property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay the Customer's debts as and when they fall due, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing the Customer's own affairs for any reason, taking any step that could result in the Company becoming an insolvent under administration (as defined in section 9 of the Corporations Act), entering into a compromise or arrangement with, or assignment for the benefit of, any of the Customer's members or creditors, or any analogous event.

Loss means any expense, cost or damage of any kind and includes Consequential Loss and a fine or penalty imposed by a statutory or other authority.

Multotec means **Multotec Pty Ltd** ACN 110 065 686 of 2-12 Sirett Street, Berrinba, 4117 in the State of Queensland and its Associated Businesses.

Object or Objection means to object generally and includes (without limitation) to:-

- (a) Avoid or attempt to avoid this Contract;
- (b) Refuse to accept the Goods or Services upon delivery;
- (c) Object to a variation, change or substitution;
- (d) Seek an injunction;
- (e) Require Multotec to carry out any works or tasks or specific performance;
- (f) Delay any other contractual obligations;
- (g) Seek to Claim any compensation of any nature;
- (h) Pursue Multotec by any means;
- (i) Seek any reduction of or attempt to retain any part of the Price.

PPSA means the Personal Property Securities Act 2009 (Cth).

PPSR means the Personal Property Securities Register.

Price means the amount set out in the quotation or Purchase Order as being payable by the Customer for the supply of Goods or Services supplied in accordance with the Contract.

Purchase Order means the written order, quotation, purchase document or otherwise with all nominated attachments, prepared and submitted to the Customer by Multotec for the supply of Goods or Services, which is subject to these Terms and Conditions or any other form of written communication from the Customer, including fax or email pursuant to which Customer expresses an acceptance of a quote and / or an intention to acquire Goods or Services.

Related Entity has the same meaning as in the Corporations Act.

Security Agreement, Grantor, Secured Party, Commingled Goods, Financing Statement, Financing Change Statement, Collateral, Notice of Objection, Personal Property, Protected Security Interest, Purchase Money Security Interest, Registration, Security Interest and Verification Statement have the meanings prescribed to them in the PPSA.

Services supplied by Multotec including, but not limited to, mining and mineral processing equipment, and all related or ancillary goods or services.

Security Interest has the meaning given to it by the PPSA.



Site means the site, address, premises or location given by the Customer in the particulars of the Contract as their address, principal place of business or address for delivery or as otherwise may be notified to Multotec in writing from time to time.

Terms and Conditions means the terms and conditions set out in the Purchase Order (if any) and those that are set out herein.

You means the Customer.

2. INTERPRETATION

Unless the contrary intention appears:-

- (a) the singular includes the plural, and vice versa;
- (b) reference to a gender includes any gender;
- (c) other forms of defined words have corresponding meanings;
- (d) if an obligation is imposed on two or more parties, each is liable for the obligation individually and together with any other party;
- (e) a representation or warranty in favour of two or more persons is for the benefit of them jointly and separately;
- (f) a reference to a person includes any other entity or association;
- (g) reference to a party includes that party's person representatives, successors and assigns;
- (h) reference to a document includes any variation or replacement of it;
- (i) reference to something which comprises more than one part or aspect includes a reference to each or any part or aspect;
- (j) reference to a group of persons includes a reference to all of them collectively, any two or more of them collectively, and each of them individually;
- (k) when these Terms and Conditions require anything not to be done, this includes not allowing or permitting the thing to be done;
- (l) a reference to money is to Australian dollars, unless otherwise stated;
- (m) a provision of these Terms and Conditions must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of these Terms and Conditions or the inclusion of any provision in it;
- (n) a party which is a trustee is bound both personally and in its capacity as a trustee;
- (o) headings are inserted for convenience and do not affect the interpretation;
- (p) "including" and similar expressions are not words of limitation; and
- (q) a reference to legislation includes an amendment of or substitution and a regulation or statutory instrument issued under it.

3. PURCHASE ORDERS

- 3.1 From time to time, the Customer may request a quotation from Multotec for the supply of particular Goods or Services, which may be accepted by Multotec in its absolute discretion.
- 3.2 Unless the express terms of a quotation provide otherwise, any quotation issued by Multotec does not constitute an offer to supply the Goods or Services referred to in the quotation but is an invitation to Customer to submit a Purchase Order for those Goods or Services.
- 3.3 Purchase Orders must be in writing although Multotec reserves the right, in its sole discretion, to accept oral orders.

3.4 Multotec may vary any aspect of a quotation issued by it at any time prior to providing its acceptance of a Purchase Order submitted by Customer in respect of those Goods or Services.

3.5 By submitting a Purchase Order to Multotec for the supply of Goods or Services (as the case may be), the Customer agrees it is making an offer to purchase the Goods or Services referred to in the Purchase Order on these Terms and Conditions.

3.6 The Contract for the supply of Goods or Services on these Terms and Conditions is formed between Customer and Multotec at the time Multotec provides its acceptance of a Purchase Order submitted by the Customer for such supply.

3.7 Once accepted, Purchase Orders may not be cancelled or withdrawn unless Multotec has agreed in writing thereto and strictly subject to the Customer paying the Cancellation Fee and any other reasonable costs or damages incurred by Multotec as at the time of cancellation.

3.8 Unless otherwise agreed by Multotec in writing, forward Purchase Orders will be priced at the ruling price as at date of dispatch of the Goods or Services and are subject to:-

- (a) The availability of necessary stock, equipment, production and design capacity, manpower and materials;
- (b) Acceptance by Multotec, which need not necessarily be in writing; and
- (c) The approval by the Customer, if applicable, of the proofs referred to in clause 3.8.

3.9 Where the Customer places a Purchase Order for custom-manufactured Goods:-

- (a) It is the sole responsibility of the Customer to provide all of the necessary details, specifications, and dimensions in relation to such Goods.
- (b) The Customer must approve any proofs, samples, specimens, sketches, renderings, technical drawings and the like materials in relation to such goods.
- (c) Such approval shall be binding upon the Customer and Multotec shall not be held responsible for any errors contained in or as a consequence of the above, which may manifest itself in the Goods.
- (d) The Customer shall pay for all costs resulting from any amendments requested by the Customer to such materials or to the Goods themselves, save in the event that such amendments are necessitated to correct any manifest error made by Multotec in producing same.
- (e) The Customer shall pay for the cost of all materials produced by Multotec for it, even in the event that the Customer declines to proceed with the manufacture thereof or unreasonably withholds its approval of such materials.
- (f) Ownership in and of the materials referred to herein shall vest in Multotec.

3.10 Unless specifically quoted upon by Multotec in writing, the Contract price does not include the cost of installation or commissioning or call outs, all of which Services will be charged for separately.

4. CREDIT TERMS

4.1 These Terms and Conditions apply where Multotec accepts any Purchase Order for Goods or Services or both from the Customer, whether for cash or on credit.



- 4.2 The Customer has no entitlement to credit unless in its sole discretion, Multotec extends credit to the Customer.
- 4.3 If in any particular instance, Multotec gives the Customer credit, Multotec reserves the right at any time and for any reason in Multotec's sole discretion to refuse to supply any further Goods or Services to the Customer and to refuse to supply any Goods or Services or both to the Customer on credit terms. If Multotec does decline to give the Customer further credit then that decision does not affect the credit terms which apply to any amounts the Customer then owes to Multotec.
- 4.4 Clause 5.5 of these Terms and Conditions may, at Multotec's option, be a pre-requisite to any entitlement to credit for any Purchase Order.

5. PAYMENT TERMS

- 5.1 The Customer agrees that it must:
- (a) pay, without any Objection, deduction or setoff, the Price charged by Multotec for Goods or Services supplied to the Customer under the Contract:-
 - (i) on delivery or performance, unless specified elsewhere in the Purchase Order; or
 - (ii) if credit terms are offered in writing by Multotec, within 30 days following the end of the month during which the Goods or Services were supplied or provided, unless stated elsewhere in the Purchase Order;
 - (b) pay, any stamp duty assessed on this Contract or fee to register or maintain any Security Interest held by Multotec in respect of Goods or Services supplied to the Customer;
- 5.2 Time is of the essence with respect to all amounts payable by Customer.
- 5.3 Multotec has the right to charge an additional amount to the Customer compared to the amount stipulated in the applicable Purchase Order accepted by Multotec:
- (a) if Multotec complies with a request by the Customer, made after the date of acceptance of the Purchase Order, for the delivery of Goods or Equipment, or the provision of Services, outside Multotec's normal working hours;
 - (b) if Multotec complies with a request by Customer, made after the date of acceptance of the Purchase Order, for a variation to the Purchase Order, or to any delivery arrangements in respect of the Goods, or the provision of Services; or
 - (c) if and to the extent that there is any change in the cost to Multotec of labour, materials or transport relating to the supply of Goods or Services.
- 5.4 If the Customer disputes any amount included in a tax invoice provided by Multotec, the Customer must nevertheless pay the full amount set out in the tax invoice. After the dispute is resolved in accordance with clause 10 of these Terms and Conditions, if it is agreed or determined that Multotec has been paid more than Multotec was entitled to be paid, the amount of any overpayment must be refunded by Multotec to Customer within 30 days after the date the dispute is resolved.
- 5.5 At Multotec's option, Multotec may require that the payment by Customer of all amounts which may be payable by Customer to Multotec under these conditions be guaranteed by a bank guarantee:
- (a) for an amount equal to the Credit Limit (if any) or such other amount as Multotec requests;

- (b) in a form and substance acceptable to Multotec; and
- (c) from a bank acceptable to Multotec.

6. DELIVERY

- 6.1 Unless stated otherwise in the applicable Purchase Order, the Customer is responsible for collecting any Goods from Multotec's premises and delivering them to the Site or the address set out on the Purchase Order.
- 6.2 Where Multotec has agreed to deliver the Goods to the Customer's Premises, unless the Purchase Order provides otherwise, the Customer is responsible for the cost of delivery from Multotec's premises to the Site, including the cost of loading and unloading the Goods or Equipment and the cost of transport insurance.
- 6.3 Where goods are delivered by a third party, such third party shall be deemed to be the agent of the Customer. It is the Customer's responsibility to obtain proof of delivery from such third party.
- 6.4 Any delivery dates or performance times given or agreed to by Multotec, if any, are merely estimates and Multotec shall not be held responsible, and shall incur no liability to the Customer, in the event of failing to deliver or to perform on the agreed date or within the agreed period.
- 6.5 Multotec shall be entitled, in its sole discretion, to split the delivery of Goods ordered in the quantities and on the dates that it decides. However, Multotec shall notify the Customer in writing should it be necessary or reasonable that this occur.
- 6.6 The Customer warrants that on the estimated date for delivery it will ensure that it has appropriate personnel available on Site to receive delivery and unload the Goods. In the event that:-
- (a) The Customer breaches this warranty; or
 - (b) Where the company has tendered the goods and the customer has not accepted delivery thereof or arranged for the collection thereof,
- Multotec may, without prejudice to its rights, store the Goods on behalf of the Customer, and where the goods are stored on Multotec's own premises, it shall be entitled to charge a reasonable amount as would fairly be allowable in the ordinary course of business if the goods were stored by a third party warehouseman, after notifying the customer thereof, in writing, including any increase to any insurances held by Multotec or that must be taken out as a consequence of such storage.
- 6.7 The Customer is responsible for examining the Goods collected by or delivered to it to ensure that the Goods are as described in the Purchase Order. Any claim relating to Goods collected by or delivered to the Customer must be made to Multotec within 7 days after such collection or delivery (as applicable), and confirmed in writing to Multotec within 7 days.
- 6.8 The Customer will, at its own cost, be responsible for and indemnify Multotec on a full indemnity basis in respect of all Site conditions on, above and below the surface, including all environmental matters as may be applicable to the Site, which shall include (without limitation) the state and condition of all roads entrances and exits and points of access leading to and from the Site and all Site conditions, compositions, materials, drainage, saturations, densities. No statements, representations or warranties are made by Multotec in respect of the suitability, lawfulness or otherwise of anything sold pursuant to this Contract for any site or location (all of which are expressly negated) and the Customer is deemed to have relied on its own pre-contractual and/or post-contractual enquiries regarding such matters.
- 6.9 The Customer will warrants that Multotec will have sufficient



access to the Site as required to do all things required to be done under the Contract.

- 6.10 The Customer further warrants that prior to Multotec being under any obligation to effect delivery, the Customer will provide the safest delivery or access route to the Site.
- 6.11 The Customer warrants that it assumes all risk and full responsibility for the suitability of transporting the Building and any Accessories on all roads.

7. RETENTION OF TITLE & PPSA

- 7.1 Multotec retains legal and equitable title in any and all Goods supplied to the Customer until payment in full for or in connection with the supply of the relevant Goods has been received by Multotec. Until payment in full has been received, the following terms apply.
- 7.2 Notwithstanding that title in the Goods remains with Multotec until payment has been received in full, the Customer may sell such goods in the ordinary course of the Customer's business.
- 7.3 As between the Customer and the purchaser of any item of the Goods, the Customer sells as principal and not as agent of Multotec. The proceeds of sale of each item of Goods must be held by the Customer in a separate fund on trust for Multotec and the Customer is under a duty to account to Multotec for such proceeds. The creation of, or any failure of, any such trust shall not in any way limit the obligation of the Customer to pay an amount to Multotec for Goods supplied.
- 7.4 Until Goods are sold, the Customer must keep the Goods safe and free from deterioration, destruction, loss or harm, clearly designate the Goods as the property of Multotec, store them in such a way they are clearly identified as the property of Multotec and keep full and complete records, firstly, of the physical location of the Goods and, secondly, the ownership of the Goods by Multotec.
- 7.5 Multotec is irrevocably entitled at any time and from time to time before sale of any item of Goods by the Customer to inspect or to recover and retake possession of such Goods and otherwise exercise in relation to the Goods any of its rights whether those rights are as owner and/or unpaid Seller or otherwise and whether those rights are conferred by common law, contract, statute or in any other way.
- 7.6 In order to exercise the entitlement given rise to by the above, Multotec and its agents are irrevocably authorised by the Customer to enter any of the Customer's premises or vehicles or those of any third party. The Customer agrees to obtain the consent of any such third party to such entry by Multotec and to indemnify Multotec and its agents for any liability arising from any entry upon such third parties' premises or vehicles. Multotec and its agents agree to take all reasonable care in removing the Goods from such premises or vehicles but, to the extent this liability may be disclaimed by law, are not liable for any damage or injury to such premises caused by the removal of the Goods.
- 7.7 This reservation of title and ownership as established by this clause 8 is effective whether or not the Goods have been altered from their supplied form, or commingled with other goods.

8. SECURITY INTEREST

- 8.1 The retention of title arrangement described in clause 8 of these Terms and Conditions constitutes the grant of a Purchase Money Security Interest ('PMSI') by the Customer as grantor in favour of Multotec as the Secured Party in respect of all Goods supplied to the Customer by Multotec, provided that they have not been paid for in full by the Customer ('ROT Goods').
- 8.2 The Customer must immediately, if requested by Multotec, sign [Rev. 2021]

any documents, provide all necessary information and do anything else required by Multotec to ensure that Multotec's PMSI is a perfected Security Interest by registration of that interest on the PPSR.

- 8.3 The Customer will not enter into any Security Agreement that permits any other person to have or to register any security interest in respect of the ROT Goods or any proceeds from the sale of the ROT Goods.
- 8.4 For any Goods supplied that are not goods that are used predominately for personal, domestic or household purposes, the parties agree to contract out of the application of ss 95, 118, 121(4), 130,132(4),135, 142 or 143 of the PPSA in relation to the Goods.
- 8.5 In addition to the PMSI in the Goods, the Customer acknowledges that this Document constitute a Security Agreement which creates a Security Interest in favour of Multotec in all present and after acquired property of the Customer to secure the payment owing from the Customer from time to time and at a time, including future advances.
- 8.6 The Customer accepts, acknowledges and agrees that:
- (a) Multotec can, without notice to the Customer, seek and obtain Registration of its Security Interests on the PPSR; and
 - (b) pursuant to section 275(6) of the PPSA, the Customer agrees that Multotec is not required to disclose to an interested person information pertaining to Multotec's Security Interests unless required to do so pursuant to the PPSA or at law generally.
- 8.7 The Customer agrees to:
- (a) sign any further documents and/or provide any further information (which information the Customer warrants to be complete, accurate and up-to-date in all respects) which Multotec may reasonably require to enable perfection of its Security Interest or registration of a Financing Statement or Financing Change Statement on the PPSR;
 - (b) give Multotec not less than 14 days written notice of any proposed change in their name and/or any other changes in their details (including but not limited to, changes in their address, facsimile number, email address, trading name or business practice);
 - (c) indemnify Multotec against any costs it incurs in perfecting and maintaining its perfected Security Interests constituted by this Document and any costs Multotec may incur in the course of enforcing any of its rights under this Agreement, the PPSA or at law generally;
 - (d) procure from any persons considered by Multotec to be relevant to its security position, such agreement and waivers as Multotec may at any time reasonably require;
 - (e) the extent permitted by the PPSA the Customer waives its rights to:
 - (i) receive a notice under any of subsections 95(1), 121(4), 129(2) and 130(1) and sections 135 and 157 of the PPSA;
 - (ii) receive a statement that includes the information referred to in paragraph 132 (3)(d) of the PPSA ;
 - (iii) receive a statement under subsection 132(4) of the PPSA;



- (iv) redeem Collateral after default under section 142 of the PPSA unless the lessor agrees in writing to such redemption;
- (v) reinstate the Security Agreement under section 143 of the PPSA ; and
- (vi) give a Notice of Objection under section 137 of the PPSA.
- (vii) receive any notices the Customer would otherwise be entitled to receive under ss 95, 118, 121, 130, 132 or 135;
- (viii) apply to a Court for an order concerning the removal of an accession under section 97;
- (ix) object to a proposal of the Customer to purchase or retain any collateral under ss 130 and 135; and
- (x) receive a copy of a Verification Statement confirming registration of a Financing Statement, or a Financing Change Statement, relating to any security interest Multotec may have in Goods supplied to the Customer from time to time.

9. MORTGAGE, CHARGE AND POWER OF ATTORNEY

- 9.1 The Customer hereby charges in favour of Multotec all of its estate and interest in all real property in which it now or in the future may have as security for any and all monies owing to Multotec.
- 9.2 The Customer irrevocably appoints as its duly constituted attorney Multotec's company secretary from time to time to execute in the Customer's name and as the Customer's act and deed any real property mortgage, bill of sale or consent to any caveat Multotec may choose to lodge against real property that the Applicant may own in any Land Titles Office in any state or territory of Australia, even though the Customer may or may not (as the case may be) have defaulted in carrying out its obligations hereunder.

10. RISK

- 10.1 Risk in relation to any Goods passes to the Customer on delivery of the Goods.
- 10.2 Delivery of Goods will be at Multotec's premises on collection of the Goods by the Customer, its employees, agent or contractors.
- 10.3 If Multotec has expressly agreed to ship the Goods, risk in the Goods passes immediately on delivery of the Goods to the Customer's designated place of delivery by Multotec or its agent.

11. EXCLUSION OF IMPLIED TERMS

The Customer may have the benefit of consumer guarantees under the Australian Consumer Law. Otherwise, to the maximum extent permitted by law, all terms, conditions or warranties that would be implied into this Document or in connection with the supply of any Goods or Services by Multotec under law or statute or custom or international convention are expressly excluded.

12. WARRANTY

- 12.1 Unless a longer period is specified in the Purchase Order, Multotec warrants that the goods or services supplied by it will ordinarily conform to the specifications and requirements agreed to by it in writing and be free from defective materials and workmanship for a warranty period of 18 (eighteen) months from date of delivery or 12 (twelve) months from date of commissioning, whichever is the earlier, fair wear and tear excepted.

12.2 If the Customer wishes to return the Goods, the Customer must:-

- (a) Give written notice of the defect, reasonably described,

[Rev. 2021]

Multotec within seven (7) days of the time when the Customer discovers or ought to have discovered the defect;

- (b) Give Multotec a reasonable opportunity after receiving the notice to examine such Goods and the Customer (if requested to do so by Multotec) returns such Goods to Multotec's place of business for the examination to take place there or affords Multotec the opportunity to attend the Site to conduct a physical inspection of the Goods.

12.3 Where, after inspection by Multotec, it is determined that there is no breach of the warranty set out above, the Customer will be liable for the costs of returning the Goods to Multotec, as well as any subsequent collection or storage costs and will further pay Multotec's reasonable costs of performing any on-site inspection where it is established that the warranty has not been breached.

12.4 Multotec shall not be liable for a breach of the warranty if:

- (a) The Customer makes any further use of such Goods after giving such notice or becoming aware of such defect;
- (b) the defect arises because the Customer failed to follow Seller's oral or written instructions or recommendations as to the storage, installation, commissioning, use or maintenance of the Goods.

13. LIMITATION OF LIABILITY

13.1 To the maximum extent permitted by law and subject to clauses 13 to 15, Multotec's total liability arising out of or in connection with its performance of its obligations pursuant to this Document, or arising out of or in connection with the supply of specific Goods (including pursuant to or for breach of this Document or repudiation thereof, under statute, in equity or for tort, including negligent acts or omissions) is limited as follows:

- (a) Multotec shall have no liability to the Customer for any Consequential Loss;
- (b) Multotec's total aggregate liability for Loss, however arising, shall not exceed the GST exclusive aggregate price paid by the Customer to Multotec for the specific Goods or Services that gave rise to the Loss in question. The limitations and exclusions in this sub-clause 9(b) do not apply to the extent that any Loss is directly attributable to:
 - (i) the personal injury or death caused by Multotec's default, breach of this Document or negligence; or
 - (ii) fraud by Multotec.

13.2 Each party must take reasonable steps to mitigate any Loss it suffers or incurs.

14. LIMITATION OF LIABILITY UNDER AUSTRALIAN CONSUMER LAW GUARANTEES

14.1 To the extent that Goods supplied by Multotec are not goods of a kind ordinarily acquired for personal, domestic or household use and the Customer is deemed to be a consumer for the purposes of section 64A of the Australian Consumer Law, the Customer agrees that the Multotec's liability for a failure to comply with a consumer guarantee that the Customer may have a benefit under the Australian Consumer Law (other than a guarantee under ss 51 (title), 52 (undisturbed possession) and 53 (undisclosed securities), is limited to, at the option of Multotec, one or more of the following:

- (i) replacement of the Goods or the supply of equivalent Goods;
- (ii) the repair of the Goods;
- (iii) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or



- (iv) equivalent goods; or
- (v) the payment of the cost of having the goods repaired.

14.2 To the extent that Services supplied by Multotec are services other than services of a kind ordinarily acquired for personal, domestic or household use or consumption, Multotec's liability for failure to comply with a consumer guarantee that the Customer may have the benefit of is limited to, at the option of Multotec:

- (i) the supply of the Services again; or
- (ii) the payment of the cost of having the Services supplied again.

15. FORCE MAJEURE

15.1 If there is any delay or failure in the supply or delivery of Goods or Services by Multotec due to weather, fire, labour dispute, strike or any other cause whatsoever beyond Multotec's reasonable control:

- (a) Multotec is not in breach of these conditions by reason of that delay or failure;
- (b) Multotec obligation to supply or deliver the Goods or the Services is suspended for the period of that delay or failure;
- (c) if the delay or failure continues for in excess of 7 days, Multotec may terminate the relevant Contract by notice in writing to Customer; and (iv) Multotec is not liable for any Loss, Claim, damage, cost or expense incurred by Customer, who may not Object to such suspension or termination.

15.2 Unless Multotec has given the Customer written notice of the termination of the relevant Contract in accordance with clause 16(c) of these Terms and Conditions, a delay or failure does not relieve Customer of the obligation to pay the applicable Price when due.

16. GST

If Multotec has any liability to pay Goods and Services Tax (GST) on the supply of any Goods or Services to the Customer, the Customer must pay to Multotec an amount equivalent to the GST liability of Multotec at the same time as the consideration is paid for the Goods or Services (unless the consideration for that supply is expressed specifically to be GST inclusive).

17. PRIVACY DISCLOSURE AND CONSENT

17.1 The Customer authorises Multotec Pty Ltd to:

- (a) obtain credit information about its personal, consumer and commercial credit worthiness from any bank or trade referee disclosed in this document and from any other credit provider or credit reporting agency for the purpose of assessing this application for credit, or in connection with any guarantee given by the Customer;
- (b) use, disclose or exchange with other credit providers about the Customer's credit arrangements in order to assess this application for credit, monitor credit worthiness and collect overdue accounts; and
- (c) disclose the contents of any credit report on the Customer to Multotec, and any of their solicitors and mercantile agents

17.2 If the Customer does not provide the information requested in this Document, Multotec may be unable to process the application. Multotec complies with the privacy principles imposed by law in relation to the collection and disclosure of information regarding individuals. For further information on the way Multotec Pty Ltd manage personal information, please call on (07) 3442 0100.

18. WARRANTIES

18.1 The Customer warrants that:

- (a) It will install and use the Goods in accordance with all guidelines, specifications or other material provided to the Customer by Multotec, and Customer indemnifies Multotec and holds it harmless against any and all Loss suffered or incurred in connection with Customer or any other person not installing or using the Goods in accordance with any guidelines, specifications or other material provided to Customer.
- (b) It has satisfied itself that the Goods, Services or Equipment (as the case may be) are suitable for the Customer's purposes;
- (c) It has not entered into these conditions in reliance upon any warranty or representation given by Multotec in relation to the Goods or the Services;
- (d) It has had sufficient time and opportunity to consider the Contract and, obtain legal, financial and other professional advice in relation to same and otherwise satisfy itself as to the suitability of this arrangement for itself; and
- (e) The person signing this Document on behalf of the Customer to does so for and on behalf of the Customer and hereby covenants with the Multotec that he or she has the authority of the Customer to make this Agreement on the Customer's behalf and is empowered by the Customer to bind the Customer to this Document and hereby indemnifies Multotec against all losses, costs and claims incurred by Multotec arising out of the person so signing this Document not in fact having such power and/or authority.
- (f) It is not aware of any information, notice or court proceedings that may result in the appointment of a trustee in bankruptcy, administrator, controller or managing controller, receiver or receiver manager or liquidator to it or any of its property;
- (g) Customer does not intend to enter into any scheme of arrangement with creditors either formally through a court or otherwise;
- (h) None of its officers (if it is a company or other body corporate), partners (if it is a partnership) or it (if it is a sole trader) has been a director of a company which has been placed in liquidation or has been declared bankrupt or has entered into an arrangement under the *Bankruptcy Act 1966 (Cth)* (as amended).
- (i) Customer agrees to notify Multotec in writing as soon as practicable and in any event within 3 days of the occurrence of:-
 - (i) a change in the legal status, ownership or control of Customer;
 - (ii) (b) a change in the directors (if it is a company or other body corporate) or partners (if it is a partnership) of Customer;
 - (iii) (c) the appointment of a liquidator, administrator or receiver, or the liquidation, administration, arrangement,
 - (iv) receivership or bankruptcy of Customer; or
 - (v) (d) any step being taken to sell an asset or assets of Customer with a value of 20% or more of the gross assets of
 - (vi) Customer, or sell, transfer, encumber or otherwise dispose of 20% or more of the shares (if it is a company



or

(vii) other body corporate) of Customer.

- (j) On the occurrence of such an event, Multotec may reduce, suspend until further notice, or terminate the provision of credit to Customer and/or may require Customer to make a new application for credit.
- (k) Multotec may at any time set off amounts payable by the Multotec to Customer from the amounts payable by Customer to the Multotec.

19. DEFAULT AND TERMINATION

19.1 In the event that the Customer:-

- (a) Fails to pay any amount due under this Contract, whether notice is given by Multotec or not; or
- (b) Fails to comply with any obligation under this Contract;
- (c) Is affected by an Insolvency Event;

19.2 Then an **Event of Default** will be deemed to have occurred under this Contract.

19.3 Upon the occurrence of an Event of Default and without limiting any other rights at law, in equity or elsewhere, Multotec may (but is not obliged to):-

- (a) Suspend performance of or terminate this Contract, by notice in writing to the Customer;
- (b) Declare the balance of the Price or any outstanding balance if credit facilities are extended, immediately due and payable by the Customer;
- (c) Make a demand for and pursue all steps necessary to receive security in accordance with clause 8 or 9 of these Terms and Conditions or clauses 6 – 9 of the Guarantee and Indemnity;
- (d) Retake possession of the Goods and remove same from the Site, at the Customer's expense; or
- (e) Remedy any default committed by the Customer under this Contract, at the Customer's expense.

19.4 In the event that Multotec terminates this Contract due to breach, the Customer will be no longer entitled to possession of the Goods and the Customer:-

- (a) Irrevocably grants to Multotec the licence and authority to enter upon the Site where the Goods are located and use such reasonable force as may be necessary for the purpose of removal of any Goods to the Customer, together with any property in, on or attached to the Goods (regardless of whom such property may belong to) at the Customer's sole cost and expense; and
- (b) Must immediately return the Goods to Multotec (at the Customer's cost and expense) and nothing in this Contract gives the Customer any express or implied right or entitlement to sell, hire, lease, encumber, or grant any right or interest whatsoever in the Building, nor any right to set off, deduct, withhold or counterclaim against any amounts that may be due and owing to Multotec.

19.5 If Multotec repossesses the Goods from any Site and retains, sells or otherwise disposes of the Building or any items within the Building, then the Customer hereby releases and indemnifies Multotec for all claims, costs, Liabilities, Consequential Loss and any other matters arising there from, including in respect of any legal costs, on a full indemnity and solicitor Customer basis.

19.6 Multotec will have all rights and remedies set out in this Contract in addition to those otherwise available at law. All such rights and remedies are cumulative. The Customer must pay all costs and expenses paid or incurred by Multotec in enforcing its rights under or in connection with this Contract, the supply and installation (if applicable) of the Building including, without limitation, legal fees and court costs on a full indemnity and solicitor Customer basis.

19.7 Multotec may also set off any amounts owing by Multotec to the Customer as against any amounts owing by the Customer to Multotec and make a demand upon the Customer for security and any legal or other costs incurred by Multotec shall be recoverable by Multotec as against the Customer on a full indemnity and solicitor Customer basis.

19.8 Any amount not paid by the due date will incur interest at a rate of 5% above the Reserve Bank of Australia Cash Rate calculated daily and compounded monthly but in no circumstances will the interest charged exceed 20% per annum.

19.9 The Customer agrees to pay all costs and expenses (including legal costs on an indemnity basis) incurred by Multotec in connection with the recovery of overdue amounts.

19.10 Multotec may terminate any Contract:

- (a) immediately on written notice to Customer, if Customer breaches any of these conditions;
- (b) pursuant to clause 15.1(c) of these Terms and Conditions; or
- (c) for any reason in its absolute discretion on giving 14 days' written notice to Customer.

19.11 Multotec is not liable for any Loss incurred by Customer or any other person by reason of the termination of any Contract in accordance with clause 19.1 of these Terms and Conditions.

19.12 The Customer may only terminate or vary a Contract with Multotec's prior written consent.

19.13 If a Contract is terminated by Customer, the Cancellation Fee in clause 3.7 applies.

20 DISPUTE RESOLUTION

20.1 If a dispute arises between Multotec and the Customer in connection with any Contract (Dispute), except where urgent interlocutory relief is sought, the party who reasonably believes that there is a Dispute must give written notice to the other party setting out the nature of the Dispute (Dispute Notice).

20.2 Within 14 days after the date of the Dispute Notice, a representative nominated by each party must meet together and use their reasonable endeavours to resolve the Dispute.

20.3 If the Dispute has not been resolved within 30 days of the date on which the representatives of the parties first convened under clause 20.2 of these Terms and Conditions, either party may refer the Dispute to mediation by giving written notice to the other party.

20.4 The parties agree that any mediation commenced pursuant to clause 20.3 of these Terms Conditions will be conducted by a person agreed between the parties or, if the parties are unable to agree on the identity of that person, by a person nominated by the President of the Queensland Law Society.

20.5 Multotec has the right to suspend performance of its obligations under a Purchase Order from the date of the Dispute Notice until the Dispute is settled in accordance with this clause.

21 GENERAL



- 21.1 This Contract does not create or evidence a partnership, joint venture, agency or relationship of employer and employee between the parties.
- 21.2 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing.
- 21.3 This Contract is the entire agreement and understanding between the parties on everything connected with the subject matter of this Contract and supersedes any prior agreement or understanding on anything connected with that subject matter. To the extent permitted by law,
- 21.4 Each party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this Contract.
- 21.5 If the Customer instructs Multotec in writing or Multotec considers any instruction from the Customer, whether verbal or written to be an instruction to perform a variation, then Multotec will perform the variation but only after the Customer has agreed to the price or cost of such variation, in writing. The agreed price of the variation will be added to or deducted from the Price and any extension estimates to any timeframes shall be given accordingly.
- 21.6 If anything in this Contract is unenforceable, illegal or void then it is severed and the rest of this Contract remains in force.
- 21.7 This Contract is enforceable even if there are details missing from the Purchase Order or elsewhere.
- 21.8 The liability of a party is not affected by the failure by any person to execute this Contract.
- 21.9 This Contract may be executed in counterparts exchanged electronically. All executed counterparts constitute one document.
- 21.10 The Customer is liable to pay all duty, interest and penalties in connection with this Contract and hereby releases and indemnifies Multotec in connection with same or any payments or receipts hereunder.
- 21.11 If any of the terms and conditions of this Contract are found to be void, voidable or unenforceable, then that part shall be severed from, and will not affect or derogate from, the validity and enforceability of the remaining provisions of, this Contract.
- 21.12 No amendment or variation of this Contract is valid or binding on a party unless made in writing and executed by the parties.
- 21.13 This Document is governed by the laws of the State or Territory in which the Goods are being sold or Services provided by Multotec. The parties submit to the non-exclusive jurisdiction of the courts of that State or Territory and of the Commonwealth of Australia.
- 21.14 This Contract contains the entire agreement between the parties and supersedes any and all prior agreement or negotiations between the parties. No other terms and conditions shall be binding upon Multotec unless agreed to in writing by Multotec after the date of this Contract.
- 21.15 Unless Multotec has given the Customer written notice of the termination of the relevant Contract in accordance with these

Terms and Conditions, a delay or failure does not relieve Customer of the obligation to pay the applicable Price when due.

