



TERMS AND CONDITIONS FOR SALE OF GOODS & SERVICES

By signing this Contract 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 (as indicated in the Purchase Order), 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.

Background IP means Multotec's Intellectual Property Rights (other than Project IP) which are in existence at the date of this Contract or come into existence after the date of this Contract otherwise than in connection with this Contract.

Claim means any demand, proceeding, all manner of actions, suits, causes of action, arbitration, debts, dues, costs, claims, demands, interest verdicts, including (without limitation) any claim, demand, action, proceeding, arbitration or suit seeking the payment of money, relief from liquidated damages or any costs, expenses, Loss, compensation or damages on any ground whatsoever pursuant to the Contract and judgments whatsoever both at law, or in equity or arising under the provisions of statute, whether known or unknown and any claim for direct or consequential loss (including loss of profit, loss of production, loss of property or loss of income).

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.

Defects Liability Period means:

- a) the period specified in any Purchase Order; or
- b) if no defects liability period is stated in the relevant Purchase Order, a period of six (6) weeks,

such period commencing from the date of delivery of the Goods to the Customer. To avoid doubt, there is no defects liability period in respect of the Services.

Goods means any and all goods supplied by Multotec under any Purchase Order(s) 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,

the 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 the Customer in connection with 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.

Intellectual Property and Intellectual Property Rights means all present and future rights conferred by law in or in relation to any copyright, trade-marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and confidential information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether or not registrable, registered or patentable and includes Background IP and Project IP.

Loss means any loss, cost, expense, damage, injury to person, death or liability (including any fine or penalty) whether direct or indirect or consequential (including Consequential Loss), present or future, fixed or unascertained, actual or contingent and whether arising under the Contract (including any breach of the Contract), in equity (including breach of an equitable duty, breach of confidentiality or breach of fiduciary duty), under statute (including breach of statutory duty to the maximum extent possible), in tort (including for negligence or negligent misrepresentation) or otherwise (including in restitution).

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 of the Goods or Services to be supplied under any Purchase Order(s);
- (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; or
- (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.

Project IP means all Intellectual Property Rights created, discovered or coming into existence as a result of, for the purpose of or in connection with the supply of the Goods and/or provision of the Services or this agreement (including all Intellectual Property Rights developed by the Supplier in supplying the Goods and/or providing the Services and all improvements to Background IP developed in connection with this agreement, supply of the Goods or provision of the Services).

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 under any Purchase Order(s) 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.

Warranty Period means:

- a) the warranty period specified in any Purchase Order; or
- b) if no warranty period is stated in the relevant Purchase Order, a period of six (6) weeks,

such period commencing from the date of delivery of the Goods to the Customer or the date the Services are completed, as the case may be.
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 the 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 the 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. The Customer acknowledges the Terms and Conditions referred to herein take precedence over any Customer terms and conditions provided with a subsequent Purchase Order. The Supplier irrevocably agrees to the Terms and Conditions contained herein.
- 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. For the purposes of this subclause, the Customer agrees that the Cancellation Fee represents a fair and reasonable amount to compensate Multotec for any cancelled Purchase Order.

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 3.9.

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, plans, specifications, and dimensions in relation to such Goods.
- (b) The Customer must carefully review and notify Multotec of any defects or omissions in any proofs, samples, specimens, sketches, renderings, technical drawings and the like;
- (c) Prior to manufacture, the Customer must approve any proofs, samples, specimens, sketches, renderings, technical drawings and the like in relation to such Goods. 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; and
- (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 Price does not include the cost of installation of the Goods or Services, or commissioning or call outs, all of which Services will be charged for separately.

3.11 The provisions of this clause survive completion or termination of this Contract.

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; and
- (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 the Customer under this Contract.

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 the 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 21 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 the 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 or financial institution acceptable to Multotec.

5.6 The provisions of this clause survive completion or termination of this Contract.

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 The Customer is liable for any Loss caused in accessing Multotec's premises when collecting the Goods, without limitation, any damage to buildings, pathways, driveways and concreted, paved or grassed areas. This subclause survives completion or termination of this Contract.
- 6.3 The Customer must, when accessing Multotec's premises or facilities, comply with all reasonable directions of Multotec and all procedures and policies of Multotec.
- 6.4 Multotec may at any time and in its absolute discretion remove from Multotec's premises any person employed or subcontracted by the Customer to collect the Goods who refuse or fail to comply with the reasonable directions of Multotec, its authorised officers, employees, agents, subcontractors or the safety requirements or guidelines pertaining to Multotec's premises.
- 6.5 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.
- 6.6 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.
- 6.7 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.
- 6.8 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.
- 6.9 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 either at its premises or with a third party storage provider whereby Multotec shall be entitled to charge the Customer a reasonable amount for storage costs and to cover any increase to any insurances held by Multotec or that must be taken out as a consequence of such storage. This subclause survives completion or termination of this Contract.
- 6.10 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.
- 6.11 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. This subclause survives completion or termination of this Contract.

6.12 Without limiting clause 6.11, the Customer acknowledges:

- 6.12.1 any estimates of output or productivity of the Goods specified in any Purchase Order are estimates only and based on anticipated site conditions;
- 6.12.2 the output or longevity of the Goods may differ if site conditions vary; and
- 6.12.3 Multotec do not accept any liability for any reduced output or longevity of the Goods as a result of changes in anticipated site conditions.

This subclause survives completion or termination of this Contract.

- 6.13 The Customer warrants and will ensure that Multotec will have sufficient access to the Site as required to do all things required to be done under the Contract.
- 6.14 The Customer further warrants and will ensure that prior to Multotec being under any obligation to effect delivery of the Goods, the Customer will provide the safest delivery or access route to the Site.
- 6.15 The Customer warrants that it assumes all risk and full responsibility for the suitability of transporting the Goods on all roads and for the loading and unloading the Goods. This subclause survives completion or termination of this Contract.

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 strict duty to account to Multotec for such proceeds when received. 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 the 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 7 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 7 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 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 Contract constitutes 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 Contract 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; and
- (e) to 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 Customer 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.
- 9.3 This provisions of this clause survive completion or termination of this Contract.

10. RISK AND INSURANCE

- 10.1 Risk in relation to any Goods passes to the Customer on delivery or collection of the Goods, as the case may be.



10.2 Unless otherwise agreed, delivery of the 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

11.1 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 Contract 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 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 during the Warranty Period.

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

- (a) Give written notice of the defect, reasonably described, to 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, return such Goods to Multotec's place of business or such other place it directs 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; or
- (b) the defect arises because the Customer failed to follow Multotec's oral or written instructions, guidelines or recommendations as to the storage and handling, installation, commissioning, use or maintenance of the Goods.
- (c) the defect arises due to fair wear and tear.

The provisions of this subclause survive completion or termination of this Contract.

13. LIMITATION OF LIABILITY

13.1 To the maximum extent permitted by law and subject to clauses 13 to 19, Multotec's total liability arising out of or in connection with its performance of its obligations pursuant to this Contract, or arising out of or in connection with the supply of specific Goods (including pursuant to or for breach of this Contract or repudiation thereof, under statute, in equity or for tort, including negligent acts or omissions) is limited as follows:

- (a) any defects in the Goods or Services that may be present or develop during the Defects Liability Period (excluding any fair wear and tear);
- (b) Multotec shall have no liability to the Customer for any

Consequential Loss;

(c) no liability whatsoever will attach to Multotec unless all payments required to be made by the Customer under this Contract have been made in full and without set-off; and

(d) Multotec's total aggregate liability for and Claims or 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 (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 Contract or negligence; or
- (ii) fraud by Multotec.

13.2 Notwithstanding any other provision of this Contract, Multotec's liability to the Customer under this Contract will terminate upon the expiration of the Warranty Period and the Customer irrevocably releases Multotec, its agents, employees, suppliers and subcontractors from any liability thereafter.

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

13.4 Every indemnity, exemption, limitation, defence, immunity or other benefit contained in this Contract to which Multotec is entitled will also be held by Multotec for the benefit of, and will extend to protect, each of Multotec's employees, agents, contractors and sub-contractors (excluding the Customer, the Customer's employees, agents, contractors and sub-contractors) and Multotec's related bodies corporate (as defined in the Corporations Act) and their employees, agents, contractors and subcontractors (excluding the Customer and the Customer's employees, agents, contractors and subcontractors).

13.5 Each indemnity in this Contract is a continuing obligation separate and independent from the Customer's other obligations and survives termination of this Contract.

13.6 It is not necessary for Multotec to incur expense or make payment before enforcing a right of indemnity conferred by this Contract.

13.7 The provisions of this clause survive completion or termination of this Contract.

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.

14.3 The provisions of this clause survive completion or termination of this Contract.

15. INTELLECTUAL PROPERTY AND PATENT PROTECTION

15.1 All Intellectual Property created under the Contract and relating to the Goods or Services is from the time of creation, owned by Multotec.

15.2 The Customer must not use, or allow any third party to use, any material protected by the Intellectual Property Rights of Multotec for any purpose other than the provision of the Goods and/or Services, unless it has obtained the prior written consent of Multotec, which may be withheld at its absolute discretion.

15.3 The Customer acknowledges it has no right, title or interest in the material protected by the Intellectual Property Rights of Multotec.

15.4 Multotec grants to the Customer a revocable, non-exclusive license to use all Intellectual Property Rights associated with the Goods and/or Services strictly for the purpose of the Customer performing its obligations under this Contract and enjoying the benefit of the Goods or Services supplied under this Contract.

15.5 The license granted under clause 15.4:

- (a) permits the Customer to use the Goods and/or Services and any documentation provided with the Goods and/or Services to effect the installation, use, support, repair or maintenance of the Goods and/or Services or to otherwise enjoy the benefit of this Contract; and
- (b) cannot be sub-licensed, assigned or transferred to any third party without Multotec's prior written consent which may be withheld at its absolute discretion.

15.6 The Customer indemnifies Multotec, its officers, employees and agents, from and against all Claims and Loss arising out of the infringement or alleged infringement of any Intellectual Property Rights, by reason of the purchase, possession or use of the Goods or the outcomes of the Services.

15.7 The Customer shall defend, protect, and hold harmless Multotec, its successors, assigns, customers and the users of its product by reason of the use of the Goods or Services hereby ordered, against all actions, or suits, at law or in equity and from all damages, claims and demands for actual or alleged infringement of any letters patent or trade-marks.

15.8 The provisions of this clause survive completion or termination of this Contract.

16. FORCE MAJEURE

16.1 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, any restrictions arising from COVID-19 in which State or Federal Governments place restrictions preventing Multotec from performing its obligations under the Contract, 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's 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 Purchase Order by notice in writing to the Customer; and Multotec is not liable for any Claim or Loss incurred by the Customer, and the Customer may not Object to such suspension or termination.

16.2 Unless Multotec has given the Customer written notice of the termination of the relevant Purchase Order in accordance with clause 16.1(c) of these Terms and Conditions, a delay or failure does not relieve Customer of the obligation to pay the applicable Price when due.

16.3 The provisions of this clause survive completion or termination of this Contract.

17. GST

17.1 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).

18. MODERN SLAVERY

18.1 In this clause 18, Modern Slavery has the meaning given in the Modern Slavery Act 2018 (Cth).

18.2 Multotec will take reasonable steps comply with its Modern Slavery obligations under the Modern Slavery Act.

19. PRIVACY DISCLOSURE AND CONSENT

19.1 The Customer authorises Multotec to:

- (a) obtain credit information about its personal, consumer and commercial credit worthiness from any bank or trade referee disclosed in this Contract 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

19.2 If the Customer does not provide the information requested in this Contract, 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.

20. CUSTOMER WARRANTIES

20.1 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 the Customer indemnifies Multotec and holds it harmless against any and all Loss suffered or incurred in connection with the 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 or Services (as the case may be) are suitable for the Customer's purposes;
- (c) It has not entered into this Contract or any Purchase Order 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;
- (e) The person signing this Contract on behalf of the Customer



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 Contract and hereby indemnifies Multotec against all Claims and Loss incurred by Multotec arising out of the person so signing this Contract 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) the Customer does not either at the time of this Contract or in future intend to enter into any scheme of arrangement with creditors either formally through a court or otherwise or know of any facts, matters or circumstances that would warrant such action;
- (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) The 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) a change in the directors (if it is a company or other body corporate) or partners (if it is a partnership) of Customer;
 - (iii) the appointment of a liquidator, administrator or receiver, or the liquidation, administration, arrangement;
 - (iv) receivership or bankruptcy of Customer; orany step being taken to sell an asset or assets of Customer with a value of 20% or more of the gross assets of the Customer, or sell, transfer, encumber or otherwise dispose of 20% or more of the shares (if it is a company or other body corporate) of the Customer.

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.

Multotec may at any time set off amounts payable by Multotec to the Customer from the amounts payable by the Customer to Multotec. The provisions of this subclause survive completion or termination of this Contract.

21. DEFAULT AND TERMINATION

21.1 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; or
- (c) Is affected by an Insolvency Event;

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

21.2 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 or any Purchase Order made under 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.

21.3 In the event that Multotec terminates this Contract under clause 20.2 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) when directed by Multotec, 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 Goods, nor any right to set off, deduct, withhold or counterclaim against any amounts that may be due and owing to Multotec.

21.4 If Multotec repossesses the Goods from any Site and retains, sells or otherwise disposes of the Goods, then the Customer hereby releases and indemnifies Multotec for all Claims and Loss including in respect of any legal costs, on a full indemnity basis.

21.5 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 Goods or Services including, without limitation, legal fees and court costs on a full indemnity basis.

21.6 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 basis.

21.7 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.

21.8 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.

21.9 Multotec may terminate this Contract or any Purchase Order:

- (a) immediately on written notice to the Customer, if the Customer breaches any of these conditions;
- (b) pursuant to clause 16.1(c) of these Terms and Conditions; or
- (c) for any reason in its absolute discretion on giving 14 days'



written notice to the Customer.

- 21.10 Multotec is not liable for any Loss incurred by the Customer or any other person by reason of the termination of this Contract or any Purchase Order in accordance with clause 20.1 of these Terms and Conditions.
- 21.11 The Customer may only terminate or vary this Contract or a Purchase Order with Multotec's prior written consent.
- 21.12 If a Purchase Order is terminated by the Customer, the Cancellation Fee in clause 3.7 applies.
- 21.13 The provisions of this clause survive termination of this Contract.

22. DISPUTE RESOLUTION

- 22.1 If a dispute arises between Multotec and the Customer in connection with any Purchase Order or this Contract generally (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).
- 22.2 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.
- 22.3 If the Dispute has not been resolved within 30 days of the date on which the representatives of the parties first convened under clause 21.2 of these Terms and Conditions, either party may refer the Dispute to mediation by giving written notice to the other party.
- 22.4 The parties agree that any mediation commenced pursuant to clause 21.3 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.
- 22.5 Multotec has the right to suspend performance of its obligations under a Purchase Order or this Contract from the date of the Dispute Notice until the Dispute is settled in accordance with this clause.

23. CONFIDENTIALITY

- 23.1 The Customer acknowledges that the information contained in this Contract and any Purchase Order or credit application and all data and information provided by Multotec during or in connection with the negotiation or performance of this Contract or any Purchase Order or credit application is confidential and must not be disclosed to any third party without the prior written consent of Multotec.
- 23.2 The Customer acknowledges that damages may not be an adequate remedy for any breach of its obligations under this clause 22.
- 23.3 Clause 22.1 does not apply to confidential information required to be disclosed by law or disclosed to legal or financial advisers, auditors, agents or employees of each party or its related bodies corporate in connection with this Contract.
- 23.4 The provisions of this clause survive completion or termination of this Contract.

24. ASSIGNMENT AND SUBCONTRACTING

- 24.1 The Customer must not, without the consent in writing of Multotec, assign its rights under the Contract or subcontract any part of the performance of the Contract.
- 24.2 Multotec may at any time assign its rights under the Contract.

25. NOTICES

- 25.1 A notice, in connection with this Contract or any Purchase Order:

- (a) must be in writing;
- (b) must be marked for the attention of the person described in the Purchase Order; and
- (c) must be addressed to the receiving party using the details set out in the Purchase Order (or any alternative details specified by the receiving party by notice to the sending party).

25.2 A notice is regarded as given and received:

- (a) if delivered by hand – upon delivery to the relevant address;
- (b) if sent by post – upon delivery to the relevant address; or
- (c) if transmitted electronically – upon the message entering the addressee's information system.

26. GENERAL

- 26.1 This Contract does not create or evidence a partnership, joint venture, agency or relationship of employer and employee between the parties.
- 26.2 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.
- 26.3 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.
- 26.4 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.
- 26.5 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.
- 26.6 This Contract is enforceable even if there are details missing from the Purchase Order or elsewhere.
- 26.7 The liability of a party is not affected by the failure by any person to execute this Contract.
- 26.8 This Contract may be executed in counterparts exchanged electronically. All executed counterparts constitute one document.
- 26.9 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.
- 26.10 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.
- 26.11 No amendment or variation of this Contract is valid or binding on a party unless made in writing and executed by the parties.
- 26.12 This Contract 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.
- 26.13 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.

