

**JAG POLY PTY LTD** ACN 111 462 376 (ABN 34 111 462376) care of 6 / 272 Lavarack Avenue, Pinkenba in the State of Queensland

## **1. PURPOSE**

- 1.1 The Supplier will supply Goods and Services to the Customer on the Terms and Conditions in this Agreement.

## **2. PAYMENT FOR GOODS AND SERVICES**

- 2.1 Our terms of payment are payment by:
  - 2.1.1 The Customer must pay the invoice in full by cash or cleared funds by the due date and shall not make any deduction for any reason; Or for account customers;
  - 2.1.2 The 25th calendar day of the month following the month in which we delivered the Goods to You if You are paying by cheque;
  - 2.1.3 The last calendar day of the month following the month in which We delivered the Goods to You if You are paying by bank transfer or cash You must pay the invoice in full by cash or cleared funds by the due date and shall not make any deduction for any reason.
  - 2.1.4 The Supplier reserves the right to terminate the Supply of Goods or Services until the Goods or Services have been paid in full.
  - 2.1.5 If You fail to make payment due to Us under the Contract by the due date for payment, We may charge You interest on any unpaid sums at the rate of 2% per annum above the cash rate published by the Reserve Bank of Australia from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment.
- 2.2 The Purchase Price is based on rates of freight, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, cartage, rate of wages, cost of materials and other charges affecting the cost of production on the date of any Quotation given by the Supplier or in the absence of any Quotation on the date of this Agreement. In the event of any increase in any of such prices or rates either before or after acceptance of a Quotation or this Agreement, the Purchase Price may increase.
- 2.3 Where the cost of the Goods or Services includes the installation of Goods underground, the cost of Goods or Services is based upon Site conditions as inspected by the Supplier. If during the course of installation of the Goods the Supplier encounters sub-surface conditions which increase the cost of installation, any additional cost shall be paid by the Customer in addition to the Purchase Price.
- 2.4 The Customer must not set off any money owing or alleged to be owing by the Supplier against money due by the Customer to the Supplier.

## **3. GST**

- 3.1 Unless otherwise stated the Purchase Price is exclusive of Goods and Services Tax (GST) as defined in A New Tax System (Goods and Services

## **4. TITLE**

- 4.1 Title remains with the Supplier until payment of all amounts owed by the Customer to the Supplier is received by the Supplier. Payment will not be taken to be made until any cheque in payment has been paid with cleared funds into the account of the Supplier.

- 4.2 If the Customer breaches any of the provisions of this Agreement the Supplier may in addition to any other right contained herein take possession of the Goods wherever the Goods are located and the Customer agrees that the representatives of the Supplier may enter upon the Customer's premises for that purpose.
- 4.3 The Customer may notwithstanding these provisions sell the Goods as fiduciary agent for the Supplier to a third party in the normal course of the Customer's business provided that where the Customer is paid by that third party the Customer holds the proceeds of the sale to the extent of the amount owing by the Customer to Supplier at the time of receipt of such proceeds on trust for the Supplier. The Customer must keep those proceeds separate and on trust for the Supplier and not mix those proceeds with any other monies.
- 4.4 If the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer must hold such part of the proceeds of such manufacturing or construction process as relates to the Goods on trust for the Supplier. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to the Supplier at the time of the receipt of such proceeds. The Customer must keep that part of the proceeds separate on trust for the Supplier and not mix those proceeds with any other monies.
- 4.5 Notwithstanding the above, the Customer is still required to pay the Supplier for any Goods already delivered and for Goods manufactured or ordered to specification and not yet delivered.
- 4.6 The Customer will pay all the legal costs and expenses incurred by the Supplier to recover any monies owed to the Supplier by the Customer on a full indemnity basis i.e. reimburse the full amount to the Supplier that the Supplier had to pay to its lawyer to recover the amount owing.
- 4.7 The Customer will if required deliver the Goods up to the Supplier.

#### **5. PERSONAL PROPERTIES SECURITY ACT 2009**

- 5.1 The Supplier has a Purchase Money Security Interest over the Goods (and amounts owing from the sale of the Goods).
- 5.2 For the avoidance of doubt, after the Registration Commencement Time, the Supplier may register its Purchase Money Security Interest and Security Interest on the PPS Register established by the PPSA and, where necessary, amend the registration. Tax Act 1999 and will be payable in addition to the Purchase Price.
- 5.3 The Customer must not grant any other person a Security Interest in respect of the Goods or their proceeds.
- 5.4 The Customer must not allow an Excluded Interest to exist over the Goods.
- 5.5 The Customer agrees to do anything (such as obtaining consents, signing and producing receipts and getting documents completed and signed) which the Supplier asks and considers necessary for the purpose of:
  - 5.5.1 ensuring that Security Interest created under this contract is enforceable, perfected and otherwise effective; or
  - 5.5.2 enabling the Supplier to apply for any registration, or give any notification, in connection with a Security Interest created under this contract so that the Security Interest has the priority required by the Supplier;

- 5.5.3 including anything the Supplier reasonably asks the Customer to do in connection with the PPSA.
- 5.6 To the extent permitted by law, if the PPSA applies, the Customer irrevocably waives any rights the Customer may have to.
  - 5.6.1 receive notices or statements under sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA;
  - 5.6.2 redeem the Goods under section 142 of the PPSA;
  - 5.6.3 reinstate this Agreement under section 143 of the PPSA; and
  - 5.6.4 receive a verification statement as defined in the PPSA.
- 5.7 Nothing in this clause prevents the Supplier from taking action against the Customer for the purchase price of the Goods.
- 5.8 from taking action against the Customer for the purchase price of the Goods.

## 6. CAVEAT

- 6.1 Notwithstanding Clause 4 and 5, as security for any amounts due to the Supplier from time to time, the Customer charges all of its legal and equitable interest both (present and future) of whatsoever nature held in any and all Real Property to the Supplier.
- 6.2 The Customer consents unconditionally to the Supplier lodging a caveat or caveats noting its interest in any Real Property. 6.3 The Supplier will be entitled to take a mortgage to secure the charge on terms set out in the Mortgage Memorandum, dealing number 703149459;
- 6.3 The Customer:
  - 6.3.1 irrevocably appoints the Supplier as the Customer's attorney to sign a mortgage to secure the amount owing under this Agreement and otherwise on terms set out in the Mortgage Memorandum, dealing number 703149459;
  - 6.3.2 agrees that the power of attorney is a "power of attorney given as security" in terms of section 10 of the Powers of Attorney Act 1998 and may:
    - 6.3.2.1 not be revoked by the Customer without the written consent of the Supplier;
    - 6.3.2.2 be exercised even if this involves a conflict of duty; and
    - 6.3.2.3 be exercised by the attorney even if the attorney has a personal interest in doing so.

## 7. CANCELLATION OF ORDER

- 7.1 The Customer may not alter or cancel an order for Goods or Services without the Supplier's prior written consent.
- 7.2 If the Supplier agrees to alter or cancel the order of the Goods, any loss, damage and expense incurred by the Supplier in relation to the alteration or cancellation of that order, including the cost of return freight, items purchased from third parties for inclusion in the Goods and all labour costs incurred by the Supplier in the execution or part execution of the supply of Goods or Services, shall be payable by the Customer.

## 8. RISK

- 8.1 The Goods, unless specifically noted are sold ex-factory and are

transported at the Customer's risk and expense.

- 8.2 The Supplier will provide the Customer with such assistance as may be necessary for the Customer to claim on a carrier provided the Customer:
- 8.2.1 has notified the Supplier and the carriers in writing immediately after loss or damage is discovered on receipt of Goods; and
  - 8.2.2 lodges a claim for compensation on the carrier within three (3) days of the date of receipt of the Goods.

## 9. DELIVERY

- 9.1 Any period or date for delivery of the Goods stated by the Supplier is an estimate only and the Supplier will not be liable for late delivery or non-delivery or late installation of Goods.
- 9.2 The Supplier will use its reasonable endeavours to meet any estimated dates for delivery or installation of the Goods but will not be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.
- 9.3 If the Supplier cannot complete supply the Services or Goods by any estimated date, it will endeavour to do so within a reasonable time.
- 9.4 The Supplier may in its discretion, have the Goods delivered to the Customer in a number of instalments.
- 9.5 Without limiting any other provision of the Agreement, failure by the Customer to pay for any instalment, or any other amount when due, will entitle the Supplier to withhold or delay delivery of any remaining Goods ordered.
- 9.6 If the Supplier delivers any of the Goods by instalments, and any one of those instalments is defective for any reason:
- 9.6.1 it is not a repudiation of the Agreement; and
  - 9.6.2 the defective instalment is a severable breach that gives rise only to a claim for compensation.
- 9.7 If the Customer fails to accept delivery of the Goods for any reason whatsoever, the Supplier shall be entitled to make arrangements for the storage of the Goods and to charge the Customer for any costs associated with same. The Customer shall become responsible for the risk of loss or damage to the Goods and for paying the Purchase Price as if the Goods had been delivered.

## 10. SHORTAGES

- 10.1 It is the responsibility of the Customer to ensure that sufficient Goods are purchased. The Supplier does not warrant continuous or future supply of any Goods.
- 10.2 It is the responsibility of the Customer to check all Goods on receipt. No claims will be investigated by the Supplier for shortages discovered by the Supplier after seven (7) days from receipt of the Goods.

## 11. PACKING

- 11.1 The cost of any packing which differs from that used in the normal course of the Suppliers business used in relation to the Goods are at the Customer's expense notwithstanding that such cost may have been omitted from any Quotation.

**12. INSTALLATION**

- 12.1 This clause applies if the Supplier is installing the Goods.
- 12.2 Unless otherwise agreed by the Supplier, the Customer will do both of the following:
  - 12.2.1 be solely responsible at its own expense to obtain any permits or authorities required to install the Goods at the Site; and
  - 12.2.2 prepare the Site in accordance with the specifications and requirements of the Supplier at the Customer's cost.
- 12.3 The Supplier shall not be liable in any way for costs associated with repairs, parts or actions supplied or undertaken by parties other than employees of, or agents acting on behalf of, the Supplier.

**13. SITE ACCESS**

- 13.1 The Customer must allow the Supplier access to the Site at all reasonable times for the purpose of supplying the Goods, or inspecting, maintaining, repairing, replacing or withdrawing the Goods.
- 13.2 Unless otherwise agreed, the Customer shall provide free of charge during installation, maintenance, servicing or removal of Goods, or ancillary services that the Supplier, its employees, sub-contractors and their vehicles may reasonably require. Such ancillary services include but are not limited to, provision of labour for unloading or loading Goods, electricity, water and materials for use during testing and commissioning.

**14. SPECIFICATIONS AND DRAWINGS**

- 14.1 All specifications, drawings, and particulars of weights and dimensions submitted to the Supplier are approximate only and any deviation from any of these things does not vitiate any contract with the Supplier or form grounds for any claim against the Supplier.
- 14.2 The descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter do not form part of the contract of sale of the Goods or of the description applied to the Goods.
- 14.3 Where specifications, drawings or other particulars are supplied by the Customer, the Supplier's Purchase Price is made on estimates of quantities required. If there are any adjustments in quantities above or below the quantities estimated by the Supplier and set out in a quotation, then any such increase or decrease are to be adjusted on a unit rate basis according to unit prices set out in this document or in the quotation.

**15. WARRANTY AND LIMITATION OF LIABILITY**

- 15.1 Nothing in this Agreement will affect any rights the Customer or any other person may have under the Consumer Legislation. However where the Goods or Services are not of a kind ordinarily acquired for personal, domestic or household use and consumption, then the liability of the Supplier to the Customer is limited in accordance with clause 15.2.
- 15.2 Except where any Consumer Legislation expressly requires otherwise, the Supplier's total liability under any contract and the Agreement shall not exceed the cost of the Goods or Services, provided however that this clause will not affect any written performance guarantee given to the Customer by the Supplier.

- 15.3 Other than is provided for in clause 15.1 and 15.2 the Supplier undertakes at its option, to repair or replace parts of the Goods which fail (wear and tear excluded) as a result of a defect in the Supplier's materials or workmanship arising within 12 months ("**Warranty Period**") of the supply of the Goods to the Customer provided that:
- 15.3.1 the Customer notifies the Supplier promptly with details of any alleged defect or malfunction of the Goods;
  - 15.3.2 the Goods have not received maltreatment, inattention or interference;
  - 15.3.3 the Goods have not been repaired, tampered with, modified or altered by anyone other than the Supplier or its authorised agents;
  - 15.3.4 accessories of any kind used by the Customer are manufactured by or approved by Supplier; and
  - 15.3.5 the defective parts are promptly returned free of cost to the Supplier.
- 15.4 In the case that the Goods are not of its own manufacture, the Supplier's responsibility shall be limited to the passing on to the Customer the benefit of any guarantee or warranty given to the Supplier by the manufacturer of such goods.
- 15.5 The Supplier is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the Goods or arising out of the Supplier's negligence or in any way whatsoever.
- 15.6 Subject to clause 15.1, to the extent permitted by law, all other representations, warranties, descriptions and conditions, whether express or implied by law, oral or written, as to the state, quality or fitness of the Goods and the standard of the Services are expressly excluded.

## 16. FORCE MAJEURE

- 16.1 The Supplier is not liable to perform its obligations under this Agreement to the extent that and for so long as its performance is prevented or delayed without substantial fault or negligence by the Supplier because of circumstances outside the Supplier's control, failure of the Supplier's machinery, or failure of a supplier to the Supplier, provided that the Supplier gives notice to the Customer and takes reasonable steps to remedy the cause of the delay.

## 17. QUALITY OF WATER SUPPLY

- 17.1 Where equipment is supplied for connection to the Customer's water supply the Customer warrants that unless otherwise specified in the Contract Schedule, the water supply is clean and free from impurities and the Customer agrees to indemnify and keep indemnified the Supplier in the event that the warranty/representation referred to in this clause is not accurate.

## 18. GOVERNING LAW

- 18.1 The Agreement shall be governed by and construed in accordance with the laws in force in the State of Queensland and each party irrevocably submits to the jurisdiction of the Courts of Queensland.

**19. SEVERABILITY**

- 19.1 If any part of this Agreement is found by the Courts of Queensland to be invalid, illegal or unenforceable then such part will be severed from the remainder of this Agreement, which will continue to be valid and enforceable to the fullest extent permitted by law.

**20. DEFINITIONS AND INTERPRETATIONS**

- 20.1 In this Agreement unless the context requires otherwise:
- 20.1.1 **"Agreement"** means this agreement, the Quotation and any variation in writing signed by the Supplier.
  - 20.1.2 **"Consumer Legislation"** means the Competition and Consumer Act 2010 (Cth).
  - 20.1.3 **"Goods"** means the goods supplied by the Supplier to the Customer.
  - 20.1.4 **"Purchase Price"** means cost payable by the Customer to the Supplier for supplying Goods or Services.
  - 20.1.5 **"Purchase Money Security Interest" has the same meaning as** under the Personal Properties Securities Act 2009 ("the PPSA").
  - 20.1.6 **"Quotation"** means any quotation issued by the Supplier in respect of the supply of Goods or Services to the Customer.
  - 20.1.7 **"Registration Commencement Time"** has the same meaning as under PPSA.
  - 20.1.8 **"Security interest"** has the same meaning under the PPSA
  - 20.1.9 **"Site"** means any land, facility, plant or premises occupied by the Customer or any other place, including any delivery point, to which the Supplier requires access for the supply of the Goods.
  - 20.1.10 **"Services"** means services supplied by the Supplier to the Customer, and may include installation or delivery of the Goods.