

## Dulhunty Poles Terms and Conditions of Supply of Products

### 1. Definitions

The following definitions apply to these Terms and Conditions:

- (a) **"Agreement"** has the meaning given to that term in Clause 3(a) of these Terms and Conditions.
- (b) **"Australian Privacy Principles"** has the meaning given to that term in the *Privacy Act 1988* (Cth).
- (c) **"Business Day"** means a day which is not a Saturday, Sunday, public holiday or bank holiday in the State of Victoria.
- (d) **"Confidential Information"** means information or documents provided to, received by or produced by a Party in respect of the supply of the Products but excluding information that is generally available to the public or is known to a Party before the date of this Agreement.
- (e) **"Consumer Guarantees"** means the guarantees relating to the supply of goods and services contained in the Consumer Law.
- (f) **"Consumer Law"** means the Australian Consumer Law as set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth).
- (g) **"CPT"** means the Customer pays for the return carriage of the Products up to the destination and the Products are considered to be returned when the Products have been handed over to the Supplier and risk transfers to the Supplier upon delivery.
- (h) **"Customer"** means the party purchasing Products from the Supplier.
- (i) **"Customer Representative"** means the person that the Customer has nominated pursuant to Clause 6(d) to collect the Products from the Supplier's premises or another location agreed between the Supplier and the Customer. .
- (j) **"Date for Collection"** means the agreed date upon which the Customer must collect the Products from the Supplier's premises or another location agreed between the Supplier and the Customer in accordance with this Agreement.
- (k) **"Ex Works"** means the Supplier is deemed to have delivered the Products to the Customer when the Supplier places the Products at the disposal of the Customer at the Supplier's premises or another location agreed between the Supplier and the Customer.
- (l) **"Force Majeure Event"** means any of the following events:
  - (i) act of God including lightning, storm, natural flood, landslide or earthquake;
  - (ii) act of public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, or epidemic;
  - (iii) embargo, power shortage or water shortage;
  - (iv) any state-wide or nationwide industrial action affecting the construction or the delivery of the Products which is not caused or contributed to by the Party claiming relief ("Affected Party");
  - (v) an epidemic or pandemic, including, without limitation, COVID-19;
  - (vi) any government response or restriction in connection with an epidemic or pandemic;
  - (vii) a change in law;  
the consequences of which:
    - (viii) are beyond the control of the Affected Party; and
    - (ix) could not have been prevented, overcome or remedied by the exercise by the Affected Party of a standard of care and diligence consistent with that of a prudent and competent person under the circumstances (including the expenditure of reasonable sums of money).
- (m) **"GST"** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (n) **"Insolvency Event"** means in relation to a Party:
  - (i) a receiver, receiver and manager, trustee, administrator, other controller (as defined in the *Corporations Act 2001* (Cth)) or similar official is appointed over any of the assets or undertaking of that Party;
  - (ii) that Party suspends payment of debts generally;
  - (iii) that Party is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts or is presumed to be insolvent within the meaning of the *Corporations Act 2001* (Cth);
  - (iv) that Party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
  - (v) that Party ceases to carry on business or threatens to cease to carry on business;
  - (vi) a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint, an administrator; or
  - (vii) an application or order is made for the winding up or dissolution of that Party, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of that Party, otherwise than for the purpose of an amalgamation or reconstruction that has the prior written consent of the other Party.
- (o) **"Party"** means a Party to this Agreement and includes all assignees, employees, agents or sub-contractors.
- (p) **"Price"** means the amount charged by the Supplier to the Customer for the Products.
- (q) **"Products"** means the goods, items or products (as the case may be) supplied to the Customer by the Supplier.
- (r) **"Purchase Order"** means the written documents in a form agreed by the Supplier accepting the Quote and confirming detailing quantity ordered and, where applicable specifying the Products ordered and any specifications required;
- (s) **"Quote"** means the written quote provided by the Supplier to the Customer detailing the Products and Price and, if applicable, the quantity;
- (t) **"Special Order"** means any item of Product which has been specifically designed in accordance with a Customer's request or modified in any way, including any pole which has modified by drilling.
- (u) **"Supplier"** means Dulhunty Poles Pty Ltd (ACN 137 039 975).
- (v) **"Supply of the Products"** occurs when the Products are delivered to the Customer in accordance with Clause 6.
- (w) **"Tax Invoice"** means a fully itemised validly issued tax invoice for the Price.
- (x) **"Terms and Conditions"** means these Terms and Conditions of Supply.
- (y) **"Third Party"** means any other party who is not a party to this Agreement.

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### 2. Interpretation

Interpretations in this Agreement, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) if something is to be done on a day which is not a Business Day then that thing must be done on the next or following Business Day;
- (c) the words "in writing" include any communication sent by letter or email;
- (d) nothing in these Terms and Conditions is to be read or implied so as to exclude, restrict or modify any condition, warranty, guarantee, right or remedy implied by law and which by law cannot be excluded, restricted or modified;
- (e) the Customer acknowledges that this Agreement consists of these Terms and Conditions and any documentation expressly incorporated as part of the Agreement; and
- (f) the Customer agrees that it has read and understood the Terms and Conditions before executing the Agreement.

### 3. Supply of Products

- (a) The Supplier agrees to sell and the Customer agrees to buy the Products on and subject to the Terms and Conditions, the Quote and the Purchase Order ("the Agreement").
- (b) The Customer will be deemed to have entered into the Agreement providing a Purchase Order to the Supplier in writing.
- (c) The Supplier will provide the Customer with reasonable notice as to whether the Purchase Order provided by the Customer is accepted or rejected.
- (d) Where any variation to the Quote is specified in the Purchaser Order, the Supplier will not be deemed to have accepted such Purchaser Order until such time as the Supplier notifies the Purchaser that such variation is accepted.
- (e) Unless otherwise stated by the Supplier in writing, the Parties acknowledge and agree that this Agreement, the Quote and the Purchase Order constitutes the entire agreement and supersedes any other agreement or understanding between the Parties.

### 4. Offers and Quotes

- (a) Without limiting Clause 5(c) and unless otherwise stated by the Supplier in writing, all Quotes and offers remain valid for a period of 30 days from the date of the Quote or offer.
- (b) Any and all offers or Quotes are to be held in strict confidence and in the absence of a Purchase Orders from the Customer, the Customer undertakes to return all specifications and documents provided by the Supplier.

### 5. Payment

- (a) Unless otherwise specified by the Supplier, all Prices are given in Australian Dollars.
- (b) The Supplier will issue the Tax Invoice to the Customer which is payable within 30 days.
- (c) The Supplier reserves the right to revise the Price for Products not yet delivered if the Supplier reasonably incurs additional costs as a result of labour, materials or exchange rate fluctuations. Where the Supplier does revise the Price, a written notice will be sent to the Customer as soon as reasonably practicable.
- (d) Except where a Customer's Purchase Order has been accepted in accordance with Clause 3(c), the Supplier may, at its absolute discretion, charge additional fees for

quantities ordered that deviate from standard package orders offered by the Supplier.

- (e) Except where a Customer's Purchase Order has been accepted in accordance with Clause 3(c), the Supplier may, at its absolute discretion, charge additional fees for Special Orders which may include, but are not limited to:
  - (i) set-up charges;
  - (ii) tooling charges;
  - (iii) minimum quantity charges; and
  - (iv) miscellaneous fabrication charges.
- (f) All amounts due under this Agreement, including the Price, must be paid in full to the Supplier without any set-off, withholding or deduction.
- (g) If the Customer does not make any payment under this Agreement in full by the due date, the Supplier may charge:
  - (i) interest of two percent (2%) per annum more than the rate from time to time fixed by the *Penalty Interest Rates Act 1983* (Vic) on the amount outstanding from the due date until the date of payment; and
  - (ii) any costs and expenses (including any commission payable to any commercial or mercantile agents and legal costs) incurred by Supplier in recovering any unpaid amounts under this Agreement.
- (h) The Supplier may, in its absolute discretion, grant an extension for payment of a Tax Invoice, however any extension, delay or other indulgence shall not be construed as waiving the Supplier's rights under this Agreement or at law.
- (i) If a Customer does not notify the Supplier of any alleged discrepancy in a Tax Invoice within 20 Business Days of the issue of a Tax Invoice, that Tax Invoice is deemed to be a true and accurate record of the Customer's account.

### 6. Delivery of Products

- (a) Unless otherwise stated by the Supplier in writing, all Products will be delivered to the Customer in accordance with Ex Works as contained in the Incoterms® 2010.
- (b) The Supplier shall not be liable for delay in delivery arising from any cause whatsoever.
- (c) The Supplier reserves the right to deliver in instalments and any failure to deliver in instalments does not entitle the Customer to terminate this Agreement.
- (d) Where the Products will be collected by the Customer Representative, the Customer must give written notice to the Supplier at least two (2) Business Days before the Date for Collection, setting out the full name, address and telephone number of the Customer Representative.
- (e) The Customer acknowledges and agrees that the Supplier or the Supplier's representative:
  - (i) may require the Customer Representative to present proof of identity, to the reasonable satisfaction of the Supplier or the Supplier's representative;
  - (ii) where the Customer does not notify the Supplier pursuant to Clause 6(d), or the Customer Representative does not present proof of identity in accordance with Clause 6(e)(i), the Supplier or the Supplier's representative may refuse to release the Products to the Customer Representative; and
  - (iii) the Customer releases the Supplier from all losses and claims it incurs or may incur in connection with a determination by the Supplier or the Supplier's representative pursuant to Clause 6(e)(ii)(d) to not

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release the Products to the Customer Representative.

(B) must be of current design, non-obsolete and in good reusable condition,

### 7. Cancellation

- (a) Any cancellation request of a previously accepted order, in part or in full, must be made to the Supplier in writing.
- (b) Acceptance of cancellation requests are at the Supplier's sole discretion.
- (c) Cancellation of standard or commonly stocked Products will be subject to a minimum cancellation fee of 25% of the Price.
- (d) The Customer acknowledges and agrees that the cancellation fee contained in Clause 7(c) applies any time after an order has been placed.
- (e) The Customer may, at the Supplier's sole discretion, be liable for additional cancellation fees based on the accumulated value of orders in-process.
- (f) No cancellations are accepted for Special Orders.

### 8. Defects

The Customer is responsible for ascertaining the condition of the Products within 7 Business Days from the date of delivery of the Products. If Customer or the Customer Representative (as the case may be) discovers that the Products are not of merchantable quality, do not confirm to the agreed specification, are damaged and/or defective, the Customer or the Customer Representative must notify the Supplier at the time of inspection. If the Customer or the Customer Representative does not notify the Supplier within that time period, the Products will be deemed to have been supplied in good order and condition in accordance with this Agreement.

### 9. Return of Products

- (a) Return requests of a previously delivered Product must be made to the Supplier in writing.
- (b) Products can only be returned with the prior written consent of the Supplier, which is provided at the Supplier's sole discretion.
- (c) The Supplier may, in its sole discretion, offer the Customer a cash refund or credit for returns accepted in accordance with this Clause 9.
- (d) Where the Supplier has consented to a return, the Supplier will issue a Return Material Authorisation ("RMA") and the following shall apply
  - (i) the returned Products must be accompanied by the RMA issued by the Supplier in accordance with Clause 9(d);
  - (ii) the Products must be returned to the Supplier in accordance with CPT as contained in the Incoterms® 2010;
  - (iii) the Supplier may, in its sole discretion, charge the Customer:
    - (A) a return fee of 25% of the Price, or \$500 per Product type, whichever is greater; and
    - (B) any additional fees incurred by the Supplier resulting from the returned Product(s), including costs of reworking or repackaging goods as a result of their return.
  - (iv) All returned Products:
    - (A) are subject to an incoming inspection by the Supplier or a representative at the Supplier's store; and

(v) If, in the reasonable opinion of the Seller or a representative at the Seller's store, the returned Products do not comply with Clauses 9(d)(iv), the Seller or a representative at the Seller's store reserves the right to refuse the return.

- (e) No returns are accepted for Special Orders.
- (f) Failure of the Customer to comply with this Clause 9 will result in the Supplier returning the returned Products to the Customer at the cost of the Customer.

### 10. Retention of Title

- (a) The Supplier retains legal and equitable title in any Product supplied to the Customer until the Customer has fulfilled its obligations to the Supplier in respect of the Products under this Agreement.
- (b) Notwithstanding that title in the Products remains with the Supplier until payment of the Price has been received in full, the Customer may use the Products in the ordinary course of the Customer's business. As between the Customer and the purchaser of any amount of the Products, the Customer sells as principal and not as agent of the Supplier. The proceeds of sale of each item of Products must be held by the Customer in a separate fund on trust for the Supplier and the Customer is under a duty to account to the Supplier 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 the Supplier for Products supplied.
- (c) This reservation of title and ownership is effective whether or not the Products have been altered from their supplied form, or commingled with other goods.

### 11. Security Interest

- (a) The Customer grants a purchase money Security Interest (**PMSI**) in favour of the Supplier in respect of all Products where the Price is not paid in full prior to Supply of the Products. The PSMI includes all proceeds of any kind.
- (b) The Customer grants in favour of the Supplier a Security Interest in all of the Customer's present and after acquired property (**AIIPAAP**), to secure payment of amounts due to the Supplier under this Agreement. The AIIPAAP Security Interest includes all proceeds of any kind.
- (c) The Customer must immediately, if requested by the Supplier, sign any documents, provide all necessary information and do anything else required by the Supplier to ensure that the Supplier's Security Interests under clauses 11(a) and/or 11(b) is a Perfected Security Interest.
- (d) 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 Products or any proceeds from the sale of the Products until the Supplier has perfected its Security Interest.
- (e) 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 Products.
- (f) For the purposes of this Clause 11, "PPSA" means the *Personal Property Securities Act 2009* (Cth).
- (g) Expressions defined in the PPSA including "Perfected Security Interest", "Security Agreement" and "Security Interest" have the same meaning in this Clause 11 and references to sections are to sections of the PPSA.

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### 12. Variations

This Agreement may only be varied unilaterally by the Supplier or by written agreement between the parties .

### 13. Limitation of Liability

- (a) Subject to Clause 13(c), and except as expressly provided to the contrary in this Agreement, all guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to this Agreement or its subject matter are excluded to the maximum extent permitted by law.
- (b) Nothing in this Agreement excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the Consumer Guarantees.
- (c) Where the Supplier is not able to exclude a guarantee, term, condition, warranty, undertaking, inducement or representation imposed by legislation in relation to this Agreement, ("**Non-Excludable Provision**"), and the Supplier is able to limit the Customer's remedy for a breach of the Non-Excludable Provision, then the Supplier's liability for breach of the Non-Excludable Provision is limited to (at the Supplier's election):
  - (i) the repair of the Products;
  - (ii) the replacement of the Products; or
  - (iii) the supply of substitute goods (or the cost of doing so).
- (d) Subject to the Supplier's obligations under the Non-Excludable Provisions and to the maximum extent permitted by law, the Supplier's maximum aggregate liability for all claims under or relating to this Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, or under an indemnity, is limited to an amount equal to the Price paid by the Customer under this Agreement.
- (e) Subject to Clauses 13(b) and 13(c), the Supplier will not be liable to the Customer for any consequential, indirect or special loss or damage, loss of actual or anticipated profits or revenue, loss of business, business interruption, wasted costs the Customer has incurred, or amounts that the Customer is liable to pay its customers.

### 14. GST

The Price is exclusive of GST, unless stated otherwise. Any applicable GST will be added to the Purchase Price in the Tax Invoice and must be paid by the Customer.

### 15. Termination

- (a) Either Party may terminate the Agreement immediately by written notice to the other Party if:
  - (i) the other Party breaches any material obligations in this Agreement and does not remedy the breach within fourteen (14) Business Days of being notified in writing of the breach; or
  - (ii) to the maximum extent permitted by law, an Insolvency Event occurs in relation to the other Party.
- (b) From the date of termination of the Agreement, the Customer shall be required to make all payments:
  - (i) Which are due under the Agreement prior to the date of termination;
  - (ii) for Products supplied prior to the date of termination; and

- (iii) for any Special Orders where the order has been placed with the Supplier and the Supplier has commenced manufacturing the Products.

- (c) Termination under this Clause 15 will be without prejudice to any other rights which have accrued to a Party before the date of termination or remedies to which either Party may be entitled.

### 16. Confidentiality

The Parties, and any employees, agents or sub-contractors of the Parties, must not disclose Confidential Information belonging to the other Party without the other's prior written consent unless the disclosure is to:

- (a) a Third Party, to the extent necessary required for the supply of the Products;
- (b) the insurers or legal advisors of a Party;
- (c) required by law or a regulatory authority.

This Clause 12 shall survive termination of the Agreement.

### 17. Privacy

- (a) The Customer authorises the Supplier to:
  - (i) 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;
  - (ii) 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
  - (iii) disclose the contents of any credit report on the Customer to its solicitors and mercantile agents.
- (b) The Customer acknowledges that the Supplier is required and permitted to collect Personal Information (as defined in the *Privacy Act 1988* (Cth)) from the Customer in connection with the supply of the Products.
- (c) The Supplier will comply with the legal requirements of the *Privacy Act 1988* (Cth), including the Australian Privacy Principles.

### 18. Force Majeure

Neither Party will be responsible for any delays in the Supply of the Products due to a Force Majeure Event.

### 19. General Matters

- (a) Variation

These terms and conditions may only be varied by written agreement, as mutually agreed by the parties.
- (b) Assignment

Neither Party may assign any interest in this Agreement without the written consent of the other Party.
- (c) Severance
  - (i) If a provision of these Terms and Conditions is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
  - (ii) If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in these Terms and Conditions.

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(d) **Governing Law and Jurisdiction**

This Agreement is governed by the law in force in the State of Victoria and the Parties submit to the non-exclusive

jurisdiction of the courts of that State in respect of any proceedings in connection with this Agreement.