



Level 9, 92 Pitt Street, Sydney NSW 2000

## GENERAL TERMS & CONDITIONS

### Part 1 – Background & Interpretation

#### Agreement

- 1.1. The supply of any Product, Service or Transport Service by Breen to the Client is made on these terms and conditions which are to be read together with the details in the Purchase Order and if applicable, the terms and conditions of the Commercial Account Application.
- 1.2. These General Terms and Conditions consist of the following parts:
  - Part 1 – Background & Interpretation
  - Part 2 – Common Terms
  - Part 3 – Supply of Services
  - Part 4 – Supply of Product
  - Part 5 – Transport Services
  - Part 6 - General

#### 2. Definitions

In this General Terms, the following definitions apply:

"Agreement" means the agreement made between Breen and the Client for the supply of Products or Services or both on these General Terms, the Purchase Order and if applicable, the terms and conditions of the Commercial Account Application.

"Breen" means Breen Resources Pty Ltd ACN 615 045 497.

"Business Day" means a day on which trading banks are open for business in Sydney, except a Saturday, Sunday or public holiday.

"Chain of Responsibility Laws" means all applicable laws and standards relating directly or indirectly to the licensing and operation of heavy vehicles, mass, dimension and load restraint limits and requirements for heavy vehicles and driving rules (including laws and rules relating to fatigue management, driving under the influence of drugs or alcohol and speeding) for heavy vehicles, including Heavy Vehicle National Law (NSW).

"Classification Report" means a report from a suitably qualified environmental consultant or results that give suitable classification (in Breen's reasonable opinion) of the Material and which specifies the origin/source of the Material and its composition.

"Client" means and includes any person, company, sole trader, partnership, trustee or other entity that is a customer of Breen.

"Collection Point" means the agreed location for collection of Materials of Product as specified in a Purchase Order.

"Confidential information" means trade secrets, know how, scientific, technical, product, market or pricing information disclosed by Breen in connection with the Services, Products or Breen's business.

"Commercial Account" means the trade account for business Clients only, provided by Breen to approved applicants, as detailed in Part 2 of these terms and conditions.

"Consequential Loss" means loss of revenue, loss of profits, loss of anticipated savings or business, loss of data, loss of value of equipment, loss of use, loss of opportunity, enjoyment or expectation loss and any form of consequential, special, indirect, punitive or exemplary loss or damages.

"Delivery Documentation" means delivery tickets, weighbridge documentation and/or tax invoice.

"Delivery Point" means the agreed location for delivery of Product as specified in a Purchase Order.

"Environmental Law" means the *Protection of the Environment Operations Act 1997* (NSW) and the *Protection of the Environment Operations (Waste) Regulation 2014* (NSW), *Contaminated Land Management Act 1997* and any other law regulating or otherwise relating to the environment, including any land use planning, pollution of air or water, soil or ground water contamination, chemicals, waste, use of dangerous goods or any other aspect of protection of the environment of person or property.

"Force Majeure" means any circumstance not within the reasonable control of a party including without limiting the generality of the foregoing: acts of God; strikes; lockouts and other industrial disturbances; war; pandemic, epidemic or other public health emergencies; hostilities; or the threat or apprehension thereof or any interruption to the supply of materials or information or any accident or breakdown of machinery or the compliance with any valid order of any governmental or public authority.

"GST" means goods and services tax under the GST Law.

"GST Law" has the same meaning as in A New Tax System (Goods and Services) Act 1999.

"Guarantor" means each person named as a guarantor in the Commercial Account Application.

"Insolvency Event" means (i) the bankruptcy of the person concerned; (ii) the appointment of an official manager or administrator in respect of all or any part of the property of the person concerned; (iii) the entry by the person concerned into a scheme of arrangement or a composition with, or assignment for the benefit of, all or any class of its creditors, or a moratorium involving any of them; (iv) the person concerned being, or stating that it is, unable to pay its debts within the meaning of Part 5.4 Division 2 of the Corporations Act 2001; (v) the person concerned being or stating that it is unable to pay its debts when they fall due; (vi) the appointment of a receiver or receiver and manager in respect of the person concerned or any part of its property; (vii) the making of a winding up order, or the passing of or attempted passing of a resolution for winding up, in respect of the person concerned except for the purposes of reconstruction; (viii) an application being made (which is not dismissed within seven days) for an order, resolution being passed or proposed, a meeting being convened or any other action being taken to cause anything described above; or (ix) anything analogous to or of a similar effect to anything described above under the law or any relevant jurisdiction;

"Intellectual Property Right" means all registered and unregistered rights in relation to present and future copyright, trade marks, designs, know-how, patents, moral rights and all other intellectual property as defined in article 2 of the Convention establishing the World Intellectual Property Organization 1967.

"Loss" means any damage, loss, fine, penalty, liability, cost, charge, expense outgoing or payment (whether direct or Consequential Loss) however it arises (including as a result of negligence, or as a result of action by a government agency or regulator such as the Environmental Protection Authority and its successors).

"Material" means all waste material that is not Prohibited Material.

"Personnel" means the officers, employees, agents, contracts, sub-contractors, and representatives of a party.

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

"PPSR" means the Personal Property and Securities Register (including any register that may supercede or replace it).

"Pricing Assumptions" means the assumptions Breen relies on when preparing a Sales Quote in respect of any Services or Products. In respect of Waste Materials, these assumptions are based on information supplied by the Client at the time of preparing the Sales Quote about the assumed physical and chemical composition of the material (including its moisture content). In respect of the Products, these

assumptions are based on any levies, fees or charges imposed by a government agency, as well as the anticipated physical and chemical composition of the Products.

"Products" means the recycled Material products listed in a Purchase Order, and any additional Products that may be requested from time to time by the Client and agreed to be supplied by Breen in writing.

'Prohibited Material' means any material (including without limitation: hazardous and/or liquid, putrescible waste, green waste, or asbestos containing materials) that Breen is not licensed or otherwise authorised (such as by way of exemption) to receive at that premises.

"Purchase Order" means a purchase order for Services, Products, and/or Transport Services, which is made once the Sales Quote provided by Breen is accepted by the Client either in writing or by email.

"Resource Recovery Exemption" means a resource recovery exemption under Part 9 of the *Protection of the Environment Operations (Waste) Regulation 2014* (NSW).

"Resource Recovery Order" means a resource recovery order under the *Protection of the Environment Operations (Waste) Regulation 2014* (NSW).

"Sales Quote" means the sales quote prepared by Breen and provided to the Client which includes details about the Services and or Products offered to the Client.

"Standards" means the standards (as published by Standards Australia Limited and its successors) for quality for specific Products supplied by Breen being:

- AS4419-2018 - soils for landscaping and garden use; and
- AS44554-2012 - composts, soil conditioners and mulches.

"Services" includes Waste Services and Transport Services (as the context requires).

"Tolerance Range" means a variation of plus or minus 5% above or below a given quantity of Product.

"Transport Services" means a carriage service for the transport of Materials or Products to or from a Client provided by Breen or a logistics agent on Breen's behalf.

"Waste Services" means the provision of facilities for waste recycling and waste disposal, and other incidental services in connection with such facilities to be provided by Breen.

### 3. Interpretation

In this Agreement, unless the context otherwise requires:

- 3.1. words importing:
  - 3.1.1. the singular include the plural and vice versa;
  - 3.1.2. any gender include the other genders;
- 3.2. an obligation of two (2) or more parties shall bind them jointly and severally;
- 3.3. if a word or phrase is defined, cognate words and phrases have corresponding definitions;
- 3.4. a reference to:
  - 3.4.1. a person includes a corporation and bodies politic;
  - 3.4.2. a person includes the legal personal representatives, successors and assigns of that person; and
  - 3.4.3. a statute, ordinance, code or other law includes regulations and other statutory instruments under it (including orders or directions made under such instruments) and consolidations, amendments, re-enactments or replacements of any of them made by any legislative authority.

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## Part 2 –Common Provisions

### 4. Payment

- 4.1. The Client may request Services, Products, or Transport

Services by requesting a Sales Quote from Breen.

- 4.2. The Client must pay to Breen the amounts set out in a Purchase Order as well as any government levies or transport fees that Breen may incur in connection with the supply of Products, Services, and or Transport Services.
- 4.3. The Client must pay Breen on demand all government charges, costs, duties and expenses payable in respect of this Agreement or the provision of the Services or Products..
- 4.4. All payments must be made to Breen by the Client by EFTPOS or another manner acceptable to Breen. If a payment is dishonoured then the payment is taken not to have been made.
- 4.5. Subject to clause 4.6, all payments must be made on or prior to the Client using the Services and/or Transport Services, or collecting or receiving the Products. .
- 4.6. Clients who have been approved for a Commercial Account are required to make payments in accordance with the Commercial Account terms.
- 4.7. To the fullest extent permitted by law, the Client must make all payments free of all deductions and without set-off.
- 4.8. The Client must pay all costs and expenses which Breen incurs in exercising any of Breen's rights under this Agreement, including any amount paid to remedy a breach of your obligations under this Agreement (e.g. providing materials to Breen which contain Prohibited Materials).
- 4.9. Unless otherwise stated, all amounts under this Agreement are payable by the Client on demand.

### 5. Clients Obligations

- 5.1. The Client must:
  - 5.1.1. ensure that it has made all reasonable inquiries of the content or makeup of any Materials to be provided to Breen;
  - 5.1.2. promptly inform Breen of all material matters (including contamination or other hazards) concerning Materials to be provided to Breen, or which come to the Client's attention; and
  - 5.1.3. take out and maintain those policies of insurance that are required by law, and such other policies as would be held by a reasonably prudent person in the position of the Client including a policy of product liability insurance and public liability insurance.
- 5.2. The Client must **not**:
  - 5.2.1. mix, comingle, or otherwise contaminate any Materials to be provided to Breen with any Prohibited Materials;
  - 5.2.2. incur any liability or accept any obligation on behalf of Breen;
  - 5.2.3. do anything which might adversely affect the reputation of any of the Services, Products or of Breen.

### 6. Warranties

- 6.1. The Client represents and warrants that:
  - 6.1.1. all information given by the Client to Breen is correct and is not misleading in any material respect;
  - 6.1.2. it and its Personnel have all necessary authorisations to enter into this Agreement;
  - 6.1.3. it is not suffering nor to the best of its knowledge is likely to suffer an Insolvency Event;
  - 6.1.4. it will not provide to Breen any Prohibited Materials;
  - 6.1.5. it will only use or store any Products in accordance with any applicable Environmental Law. The Client acknowledges it must comply

with any resource recovery exemptions issued by a regulator under an Environmental Law;

- 6.1.6. in requesting Products and or Services from Breen it is not in breach of any Environmental Law;

and the Client repeats these warranties each time it orders Products and/or Services (as the case requires).

- 6.2. Breen represents and warrants to the Client that it holds all relevant licences and authorisations in respect of the Services and Products.

## 7. Indemnity

The Client indemnifies and will keep Breen and its Personnel indemnified against any liability or Loss (including legal costs on an indemnity basis) incurred or suffered by them which arises directly or indirectly by the Client's breach of this Agreement or the negligent, unlawful or wrongful act or omission of the Client or its Personnel in connection with the Services or resupply of any Product. The indemnity is reduced to the extent Breen has caused or contributed to such Loss

## 8. Limitation of Liability

- 8.1. All implied terms, conditions and warranties not expressly set out in this Agreement are to the fullest extent permissible by law excluded.
- 8.2. If any Products and/or Services supplied under this Agreement are supplied to the Client as a "consumer" of goods or services within the meaning of that term in Australian Consumer Law (ACL) or relevant state legislation, the Client will have the benefit of certain non-excludable rights and remedies in respect of the goods or services. Nothing in these terms and conditions excludes or restricts or modifies any condition, warranty, right or remedy which pursuant to the ACL or similar legislation is so conferred.
- 8.3. Subject to clause 8.2, Breen limits its liability under this Agreement to, at Breen's option
- 8.3.1. in the case of goods:
- the replacement of the goods or the supply of equivalent goods;
  - the payment of the cost of replacing the goods or of acquiring equivalent goods; and
- 8.3.2. in the case of services:
- the supply of the services again; or
  - the payment of the cost of having the services supplied again.
- 8.4. The Client acknowledges that Breen has not made any representations to the Client with respect to the Products and/or Services or their supply unless they are expressly stated in this Agreement. Nothing in this clause is intended to exclude liability for fraud or other representations that cannot be excluded at law.
- 8.5. Except as provided otherwise in this Agreement, to the fullest extent permitted by law neither party shall be liable to the other party for any Consequential Loss incurred directly or indirectly in connection with the Products and/or Services and howsoever caused, even if the party is informed of the possibility that such damages may occur.
- 8.6. To the extent permitted by law, the liability of Breen under this Agreement in aggregate, will not exceed the fees received by Breen from the Client during the period of 12 months immediately before the occurrence of the relevant event.

## 9. Termination:

- 9.1. Breen may terminate this Agreement with immediate effect by giving written notice to the Client if:
- the Client fails to pay any amounts due and payable under this Agreement; or
  - the Client is or becomes subject to an order or decision of a court or government authority

prohibiting the Client from disposing waste at any waste or recycling facility in New South Wales; or

- 9.1.3. the Client has provided false or misleading information to Breen.

- 9.2. A party may terminate this Agreement if:

- the other party breaches any of its obligations under this Agreement and does not rectify the failure (where the failure is capable of being rectified) within 14 days of notice; or
- the other party suffers an Insolvency Event.

- 9.3. Either party may terminate the Agreement at any time without cause, by providing at least 10 Business Days written notice to the other party.

- 9.4. On the termination of the Agreement, Breen's right to recover any money Breen is owed under this Agreement or its rights to enforce any right or claim that arises on or before termination remain unaffected.

- 9.5. If any Products remain unpaid for on termination, the Client must give permission to Breen (including its employees, agents and assigns) to access and enter the Client's premises (or any premises the Client controls), or otherwise must procure Breen access, to the premises where any Products are located so that Breen may repossess the Products without using unreasonable force or causing damage. This clause survives termination of this Agreement.

- 9.6. Despite any other provision of the Agreement, on termination of the Agreement all Purchase Orders will not be valid from the time of termination.

- 9.7. All obligations of the parties which expressly or by their nature survive the expiration or termination of this Agreement will continue in full force and effect notwithstanding such expiration or termination.

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## Part 3 – Supply of Services

### 10. Services

- 10.1. Breen may from time to time agree to provide Services to the Client for any Materials.
- 10.2. Breen in its absolute discretion is not required to provide the Services if:
- It is a day on which Breen's business is not normally open (such as public holidays);
  - It would be a breach of any law, or a breach of any licence that Breen holds;
  - Breen reasonably suspects that the Materials to be provided by the Client contain any Prohibited Materials;
  - Breen's facilities are at capacity, or otherwise the depositing of the Materials at Breen's premises would cause any safety or capacity issues; or
  - Breen is prevented from providing the Services due to a Force Majeure.
- 10.3. Breen is entitled to charge a minimum amount for its Services irrespective of the amount of Materials provided by a Client.
- 10.4. The Client must comply with all signs, directions, and safety instructions by Breen (including its employees and agents) when at Breen's facilities. Breen is not liable for any Loss or damage suffered by the Client for the Client's failure to follow such directions and instructions.
- 10.5. Where a Client who is not using a Transport Service, delivers any Materials to Breen's facilities, the Materials must be inspected by Breen's Personnel in accordance with the Breen's Procedures.
- 10.6. Breen in its absolute discretion may accept or reject any Materials delivered to it by a Client. Where Breen rejects the Materials, the Client must promptly, at its own cost,

remove such Materials (including any Prohibited Materials it may have provided) from Breen's premises.

#### 11. Services – Pricing variation

- 11.1. If the Pricing Assumptions in respect of Waste Services to be provided by Breen change, Breen may vary the price of any of such Waste Services by providing the Client with a revised Sales Quote or a variation to the relevant Sales Quote, by email (**Revised Sales Quote**).
- 11.2. A revised Sales Quote under this clause 11 is deemed to be accepted by the Client unless the Client notifies Breen in writing or by email to the contrary within 2 hours of being notified of the price variation.

#### 12. No Prohibited Materials

- 12.1. The Client shall not provide to Breen (either directly, or indirectly through a third party carriage service) any Prohibited Materials (regardless of whether they are comingled with other Materials or not).
- 12.2. The Client agrees and acknowledges that it has had an opportunity to read, and will at all times comply with, Breen's procedures. The Client acknowledges that the Breen's Procedures may be updated from time to time and following such updates on Breen's website, the Client is responsible for informing itself of any changes.
- 12.3. The Client must immediately notify Breen upon becoming aware of any Prohibited Materials (whether actual or suspected) in any materials that have been delivered to Breen's waste facilities by the Client (either directly or indirectly through a third party carriage service).

#### 13. Transport Services

- 13.1. Any Transport Services requested by the Client are to be provided in accordance with Part 5 of these terms.

#### 14. Risk and Title to Materials

- 14.1. Subject to clause 14.2, once any Material provided by the Client has either:
  - 14.1.1. (where the Client delivers the Material to Breen's facilities): been inspected and accepted by Breen at its facilities; or
  - 14.1.2. (where the Client elects to use the Transport Services): undergone a satisfactory preliminary inspection prior to being loaded into the Transport Service's vehicles, and then undergone a formal inspection at Breen's facilities and accepted by Breen,then the risk and title in the Material shall pass to Breen.

- 14.2. Risk and title to all Prohibited Material remains with the Client at all times, and the Client agrees to indemnify, defend and hold harmless Breen against all liabilities, Loss and damage (including Consequential Loss) arising out of a breach of clause 12.1. Any Prohibited Materials provided to Breen may incur additional Fees, and Breen may refuse to handle any Prohibited Material or remove such material at Breen's discretion and at the client's cost.

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## Part 4 – Supply of Products

The following provisions in Part 4 apply whenever Breen has been requested to supply Products.

#### 15. Products - Price variation

- 15.1. If the Pricing Assumptions change in respect of any Products, or the Client requests supply of Products on terms that are not in accordance with the Pricing Assumptions, Breen may vary the price of any of the Products by providing the Client with a revised Sales Quote.
- 15.2. A revised Sales Quote under this clause 15 is deemed to be accepted by the Client unless the Client notifies Breen to the contrary in writing within 14 days of being notified of the price variation.
- 15.3. Breen may vary its standard pricing for its Products on giving an existing Client 14 days' prior written notice. The

new price for a Product will then be effective for any Purchase Order placed after that 14 day notice period.

#### 16. Tolerance

- 16.1. The Client agrees that any Purchase Order for Products are subject to a Tolerance Range. On delivery or collection, where the specified quantity, volume or weight (as the case may be) of the Products in a Purchase Order is within the Tolerance Range the Client is deemed to accept the Products despite any shortfall or excess in the amount of Products being provided and despite any clause to the contrary in this Agreement.
- 16.2. The Client agrees and acknowledges that this clause 16 is reasonable in the circumstances as the amount of Product to be supplied may be affected by factors such as loading accuracy, weather conditions, transport constraints (including but not limited to truck weight or capacity).

#### 17. Placing purchase orders

- 17.1. All purchase orders for the Products must be in writing, in a form acceptable to Breen and sent by email to Breen.
- 17.2. A purchase order must specify:
  - 17.2.1. the volume and type of Product required;
  - 17.2.2. the Delivery Point;
  - 17.2.3. the requested delivery date;
  - 17.2.4. if Transport Services are required, the price for these services; and
  - 17.2.5. the unit price for the Products as determined by Breen and agreed to by the Client at the time of ordering.
  - 17.2.6. the Client's intended use for any Products.
- 17.3. A Purchase Order must not without Breen's consent be made for less than the minimum quantity required by Breen to be placed for that Product as notified by Breen from time to time.
- 17.4. A purchase order must be placed at least 5 Business Days before the delivery date specified in the purchase order.

#### 18. Acceptance & Cancellations

- 18.1. A Sales Quote provided by Breen to a Client is valid for 14 days from the date of its issue.
- 18.2. Breen may accept a Purchase Order in full or partially.
- 18.3. Breen may refuse to accept a Purchase Order, or part of a purchase order, placed by the Client without giving reasons.
- 18.4. The Client may not vary or cancel a Purchase Order after it has been accepted, without Breen's consent. The Client indemnifies Breen against any costs that it incurs as a result of variation or cancellation of a purchase order after it has been accepted.

#### 19. Client's Use of Products

- 19.1. The Client acknowledges it relies on its own knowledge and expertise in selecting the Products for any purpose and any advice or assistance given by Breen or on behalf of Breen is accepted at the Client's risk and will not be taken to have been given as an expert or adviser nor to have been relied upon.
- 19.2. While Breen will use its best endeavours to ensure that the Products do not contain any contaminated materials, including by its use of the Breen's procedures, because the Products are made up of recycled materials provided by third parties, the Client acknowledges that to the extent permitted by law Breen is not responsible for any Loss caused by a defect in the Products due to materials supplied by third parties.

#### 20. Client's Obligations

- 20.1. The Client must:
  - 20.1.1. promptly notify Breen if it becomes aware of any

defect in any of the Products (including any contamination or other hazard);

20.1.2. provide all relevant information to Breen, including the Client's current details, all specifications relating to the Product, details relating to the Project and Delivery Point, and any other information reasonably required by Breen under this Agreement;

20.1.3. keep Breen advised of any changes to its future requirements of Products as far as is practically possible in advance of such changes;

20.1.4. observe all applicable laws relating to its use or sale of the Products and carrying out its obligations under this Agreement including, but not limited to, obtaining and maintaining all necessary permits, licences and registrations;

20.1.5. not sell any of the Products which are not in good condition or which do not comply with any express or implied warranty given in relation to the Products; and

20.1.6. comply with and provide all necessary assistance to Breen or any government agency in respect of any Product recall program.

20.2. The Client must not:

20.2.1. incur or accept any liability or obligation on behalf of Breen;

20.2.2. alter, obscure, remove, conceal or otherwise interfere with any marking or label on the Products (or its packaging or containers) including, but not limited to, any marking or label indicating the source or origin of the Products;

20.2.3. make any representation, or give any warranty in relation to the Products not expressly authorised in writing by Breen.

## 21. Product Warranty & Indemnity

21.1. Breen warrants that at the time the Products are supplied to the Customer, the Products comply with the conditions required to meet the exemptions under the relevant Resource Recovery Exemption or orders under a Resource Recovery Order.

21.2. Breen will indemnify the Client for any fines, penalties, or Loss (excluding Consequential Loss) that results of Breen's breach of the warranty in clause 21.1.

## 22. Collection and access

22.1. Where the Client is to collect or arrange for the collection of the Products from Breen's facilities:

22.1.1. Breen will notify the Client of the date, time and place for collection of the Product; and provide or procure that the Client's Personnel has access to the premises for the purpose of collecting the Product at the specified date and time; and

22.1.2. the Client must ensure its Personnel comply with Breen's reasonable directions in relation to the loading and collection of the Product and their presence on the premises including that they complete and comply with any site induction required by Breen.

22.2. Where the Client requires Breen to deliver the Product, the terms in Part 5 – Transport Services apply.

## 23. Risk and title

23.1. The risk in the Products passes to the Client when:

23.1.1. If the Client collects the Products, the Products are loaded onto the Client's or its Personnel's vehicles at the Breen facilities; or

23.1.2. the Products are delivered by Breen or its agents or contractors to the Delivery Point.

23.2. Title to the Products passes to the Client on payment of all amounts owing in respect of an invoice for those Products.

## 24. Personal Property Securities Act 2009 (Cth) (PPSA)

24.1. Breen's interest in the Products and all proceeds is a Security Interest and this Agreement is a Security Agreement for the purposes of the PPSA.

24.2. The Client agrees that Breen may register any such Security Interest on the PPSR in any way it sees fit and on request by Breen the Client must do anything that will assist Breen with registering its interest on the PPSR or perfecting it as Breen requires.

24.3. Breen's Security Interest in the Product extends to all replacements and additions to the Product. The Client must ensure that the Products, all replacements and additions are free of any third party interests, including Security Interests.

24.4. The Client and Breen agree that nothing in sections 125, 130(1)(a), 142 and 143 of the PPSA shall apply to this Agreement or the Security Interest under this Agreement and the Client waives its rights to receive any notice (including notice of a verification statement) or statement of account under the PPSA unless it is required by the PPSA and cannot be excluded.

24.5. The Client and Breen agree that this Agreement and all related information and document(s) are confidential (Confidential Information) and will not be disclosed to unauthorised representatives or third parties, except to the extent disclosure is permitted by this Agreement or required by law. The Client and Breen agree that Breen will not disclose the Confidential Information pursuant to a request under section 275(1) of the PPSA.

24.6. In this clause 24, capitalised terms have the same meaning as those defined in the PPSA.

24.7. Any reasonable costs incurred by Breen associated with the registration, perfection, and or enforcement of Breen's Security Interest (including legal fees on a full indemnity basis) will be payable by the Client.

## 25. Defects and shortages

25.1. The Client must at or as soon as possible after delivery, inspect the Products to ensure it is satisfied with the Products and they have no defects or shortages.

25.2. The Client agrees that it must give Breen written notice of any defect or shortage it has identified before 5pm on the day of delivery, such a notice must include all relevant details including how the defect or shortage was identified or calculated, what specification (if any) in the Standards has not been met, and attach any supporting evidence. If a delivery is made after 4pm, the notice must be given on the next day before midday (regardless of whether it is a Business Day).

25.3. Breen is not responsible to make good any shortage unless the Client notifies Breen of the shortage under clause 25.2.

25.4. If the Client notifies Breen of a defect under clause 25.2 it must at its own cost:

25.4.1. preserve the Products in the state in which they were delivered for 10 Business Days after it notifies Breen; and

25.4.2. during that period, allow Breen access (or procure Breen access) to the Client's premises to inspect the Products.

25.5. Breen will, at its option, provide a replacement, or pay for the cost of replacement, for the defective portion of the Products where:

25.5.1. the Client has complied with this clause and a defect in the Product has been found on Breen's inspection; and

25.5.2. if Breen elects to have the Products returned, the Products are returned to Breen in the same condition as when first delivered to the Client.

25.6. Breen will not be liable for any shortage or defect in the Products caused or contributed by your or a third party's actions or omissions, including where the Products become commingled with other materials not provided by

Breen. To the extent permitted by law, Breen excludes any liability or Loss for any Hazardous Materials identified in any Products where such Products have been comingled with material provided by a third party.

## 26. Return of Products

- 26.1. Products may only be returned to Breen if Breen requests the return of a defective Product or consents in writing to the return.
- 26.2. Before agreeing to the return of Products, Breen will inspect the Products the Client wishes to return and the Client must make such Products available for inspection by Breen as soon as reasonably possible.
- 26.3. For any agreed returns, Breen will charge the Client for the return freight charges unless the return was due to an error by Breen. Any cost incurred by Breen to return Products in original condition of supply will be charged to the Client.
- 26.4. Returns must originate from the original Client account number and agreed returns will be credited at the original price paid as indicated on the Purchase Order for the Products.
- 26.5. Not all Products are capable of physical return. Before any products will be considered for return, a Breen representative will need to inspect the returning products. For those agreed returns not involving a Breen error, a reasonable restocking fee will apply and Breen will notify the Client of this fee prior to the return taking place.. .

## Part 5 - TRANSPORT SERVICES

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The following provisions in this part apply where the Client has made a Purchase Order that includes Transport Services.

### 27. Pre-Conditions

- 27.1. Despite Breen arranging any Transport Services and invoicing for any Transport Services, Breen does not act as agent for the Client when doing this.
- 27.2. The third party provider of the Transport Services will act as an independent contractor on your behalf with respect to collecting, transporting of Material with such relationship to be governed by the third party's terms and conditions of transport.
- 27.3. Prior to collection and transport of any Product or Materials:
  - 27.3.1. any Materials or Products to be transported will be subject to Breen's Procedures, and any procedures that may be required by a third party carriage service or government authority; and
  - 27.3.2. the Client must provide a Classification Report for any Materials which is satisfactory to Breen.

### 28. Risk and Title

- 28.1. Risk and title in any Materials being provided to Breen is governed by clause 14 of this agreement.
- 28.2. Risk and title in any Products being provided to the Client is governed by clause 23 of this agreement.

### 29. Service

- 29.1. The Client agrees and acknowledges that in requesting Transport Services, Breen may engage a third party carriage service to provide the transport on its behalf.
- 29.2. Breen will use reasonable commercial efforts to arrange for collection or delivery of the requested Materials and/or Products:
  - 29.2.1. within the timeframe requested by the Client in writing;
  - 29.2.2. to the Delivery Point nominated by the Client in writing subject to any Chain of Responsibility Laws.
- 29.3. Breen will notify the Client as soon as reasonably possible where the Transport Services are unable to conform to the Client's requested timetable.

29.4. The Client acknowledges and agrees that any times quoted for collection and delivery of Material or delivery of Product are estimates only and Breen and any third party carriage service are not be liable for any Loss or damage suffered by the Client as a result of Material not being collected or delivered or Product not being delivered within estimated collection/delivery times.

29.5. Breen may use any competent and qualified personnel to supply the Transport Services.

### 30. Price variations

30.1. Breen reserves the right to amend the price of the Transport Services should the collection or Delivery Point be changed, or at the time of collection from the Client, the Materials, differ from the description, sample or Classification Report provided by the Client at the time of quotation or a Purchase Order being made.

### 31. Collection & delivery

- 31.1. The Client must pay for any additional costs incurred by Breen arising from any delay or failure in the collection of the Material or delivery of the Products (including due to a change of Delivery Point) caused by the Client.
- 31.2. Breen or its agents or contractors will collect the Material from the Collection Point after conducting a preliminary inspection of the Materials (to Breen's satisfaction) and receiving the Classification Report.
- 31.3. Breen or its agents or contractors will deliver the Products to the nominated Delivery Point.
- 31.4. The Client must ensure that the Delivery Point is accessible by Breen and its Representatives or a third party contractor providing Transport Services, that all private roads and surfaces within the control of the Client on the way to the Delivery Point are safe and otherwise suitable for heavy vehicles.
- 31.5. The Client indemnifies Breen and its Representatives for any Loss or damage Breen or its Representatives (including personal injury to Breen's employees, or their vehicles) howsoever arising in connection with clause 31.4 above (including legal fees on a full indemnity basis).
- 31.6. If Breen is unable to deliver any Product to the Delivery Point for any reason, and after Breen has taken reasonable steps to notify the Client of any issues preventing delivery, Breen may store the Product in such manner as it may in its discretion determine, and charge the Client reasonable fees for transport to the storage location and any storage fees, until a new delivery date and time or Delivery Point has been agreed with the Client.
- 31.7. On delivery at the Delivery Point, Breen or its agents or contractors will permit the Client to undertake a reasonable inspection of the Product on the same day before 5pm. Following this inspection, the Client may accept the Products by signing an acceptance receipt.
- 31.8. If the Client does not accept the Products it must notify Breen of any defects in accordance with clause 25.
- 31.9. The Client will be liable for any additional costs incurred by Breen arising from any delay in the delivery of the Product caused by the Client.

### 32. Prohibited Materials & Collection/Delivery

32.1. If Breen is provided with any Prohibited Materials (which were otherwise not rejected prior to transport to Breen's facilities), Breen may dispose of this Prohibited Material to a facility which can lawfully accept it. The Client must indemnify Breen against all Loss and damage (including Consequential Loss) and pay for all additional costs incurred by Breen arising from the management and disposal of any Prohibited Material provided by the Client. In this clause without limitation, such indemnified losses may include fines, penalties, opportunity costs for reallocating vehicles and staff, administrative fees and tolls, legal fees on a solicitor client basis, loss of

income as a result of vehicles being unavailable for other customer's orders.

### 33. Licence to Access Delivery Point

33.1. The Client must grant (or must procure the grant of) a licence to Breen (and its agents) to allow Breen (or its agents) to access the Delivery Point for the purposes of delivering and/or collecting the Products. This the grant of this licence must be for a period equal to the term of this Agreement.

### 34. Insurance

34.1. The Client is responsible for any risk in the Materials and Products as set out in clause 23.

### 35. The Client is responsible for arranging its own insurance to insure against any risk it deems relevant. Transport Indemnity

35.1. Where the Client requests that Breen arrange a third party carriage service to transport Products and or Materials to or from the Client, to the fullest extent permitted by law, the Client indemnifies and shall keep Breen indemnified against any liability, Loss or damage (including legal costs on an indemnity basis) incurred or suffered by Breen arising in connection with such carriage services or the actions of any third party, including where such Products and or Materials become contaminated by Prohibited Materials during transit.

### 36. Personnel and Access

36.1. The Client acknowledges that the provisions in clause 22 of this Agreement apply to the Transport Services.

36.2. Further to clause 22.1.2, the Client must also ensure its Personnel comply with any reasonable directions given by a third party carriage service with respect to the loading, transporting and unloading of any Materials or Product.

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## Part 6 – GENERAL

### 37. Settlement of Disputes

37.1. If a dispute arises between the parties as to the construction of this Agreement or as to any other matter of any nature arising under or in connection with this Agreement, then a party must give prompt notice of that dispute to the other party. Within 7 days of the service of that notice, the parties must meet and in good faith attempt to resolve the dispute. If they do not resolve the dispute within 14 days of their initial meeting, then either party may refer the dispute to litigation or other dispute resolution mechanism agreed between the parties.

37.2. Notwithstanding the existence of a dispute, both parties will continue to perform their respective obligations under this Agreement.

37.3. Notwithstanding anything else in this Clause 37, a party may commence court proceedings relating to any dispute arising out of this Agreement at any time where that party seeks urgent interlocutory relief.

### 38. Force Majeure

38.1. If a party (Affected Party) is unable to perform any of its obligations under this Agreement (other than an obligation to pay money) by reason of Force Majeure and the Affected Party:

38.1.1. gives the other party prompt notice of the Force Majeure with reasonable details of the circumstances and an estimate of the extent and duration of its inability to perform; and

38.1.2. takes all reasonable steps to remove or mitigate the Force Majeure or its effects as quickly as possible (provided such as capable of mitigation or removal),

then, that obligation is suspended insofar as it is affected by, and during the continuance of, the Force Majeure.

### 39. Trust

39.1. If the Client is a trustee of any Trust then the Client warrants that:

39.1.1. it is a proper exercise of the Client's authority and power under the trust instrument and at law to enter into this Agreement;

39.1.2. It has provided to Breen a true and correct copy of the trust instrument (including any variations or amendments, appointments or resignations); and

39.1.3. where the trust has been allocated an ABN, it has provided this to Breen on or prior to the date of this Agreement

### 40. Intellectual Property & Confidentiality

40.1. The Client may only use the Confidential Information to use or sell Products supplied under this Agreement and must not otherwise use or disclose any Confidential Information without the written consent of Breen, except where such Confidential Information:

40.1.1. is in or becomes part of the public domain (not due to a breach of this Agreement by the Client);

40.1.2. was already known to the Client by legal means prior to the Client's entry into this Agreement;

40.1.3. was lawfully received by the Client from some other person who had an unrestricted legal right to disclosure that information without being bound by confidentiality; or

40.1.4. is required to be disclosed by law or to a law enforcement body.

40.2. All Intellectual Property Rights (including ideas, suggestions and feedback), including any developed during the course of this Agreement, vest in and/or remain the sole property of Breen. No licence, right or other interest of any kind in respect of such Intellectual Property Rights is granted, created or transferred to the Client.

40.3. Breen warrants that to the best of its knowledge, that none of the Confidential Information nor the Services or Products infringe any Intellectual Property Rights of a third party, and Breen indemnifies the Client against any direct loss or damage as a result of a breach of this clause by Breen.

40.4. On termination of this Agreement, the Client must immediately:

40.4.1. deliver to the Client (or if in electronic form, erase or destroy and deliver evidence of erasure or destruction) all documents and other materials containing, recording or referring to Confidential Information which are in its possession, power or control; and

40.4.2. ensure that any person who receives the Confidential Information by the Client's authority returns the Confidential Information to in any form in which it is held (or if it is in electronic form, erases or destroys it and gives evidence of its erasure or destruction to Breen).

### 41. GST

41.1. Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with the Agreement are exclusive of GST.

41.2. If any GST is, or becomes chargeable in respect of anything Breen does or anything the GST Law deems Breen to have done under or in connection with this Agreement, the Client must pay Breen (in addition to any other amounts payable under this Agreement) the amount of Breen's GST liability. This amount must be paid at the same time and in the same manner as payment for the supply to which the GST relates is to be made.

### 42. Variation:

42.1. Any variation of a term of this Agreement must be in

writing and signed by Breen and the Client.

- 42.2. Despite clause 42.1, Breen may unilaterally vary a Purchase Order under this Agreement in accordance with clauses 11, 15 or 30 (as the case requires).

#### **43. Notices**

- 43.1. All notices to be served under this Agreement to Breen are to be made in writing by post or email unless otherwise stipulated in this Agreement.

- 43.2. Notices to Breen are to be made to:

**Post:** Level 9, 92 Pitt Street, Sydney NSW 2000

**Email:** info@breen.com.au

**Attn:** Financial department

- 43.3. Notices to the Client and Guarantors are to be made to the relevant party's details set out in a Purchase Order.

#### **44. Severance**

In the event that any provision (or part thereof) contained in this Agreement is rendered void, invalid, or unenforceable, then such provision or part thereof shall be severed from this Agreement without affecting the remaining provisions..

#### **45. Law of Contract and Jurisdiction**

This Agreement shall be governed by and construed by the laws of the State of New South Wales. The Client submits to the non-exclusive jurisdiction of the courts of State of New South Wales and courts of appeal from them and wavier any right to object to any proceedings being brought in those courts.

#### **46. Privacy Statement**

- 46.1. From time to time, in connection with this Agreement (including when receiving a Credit Account Application), Breen may, collect, used and disclose personal information of the Client's Personnel and any Guarantor, for the purposes of entering into and the performance of this Agreement, as well as conducting any relevant credit or background checks that Breen may require.

- 46.2. Breen's collection, use and disclosure of this information will be in accordance with its Privacy Policy located online at: [www.breen.com.au](http://www.breen.com.au)