Terms and Conditions

TERMS AND CONDITIONS OF SUPPLY – Tremco CPG Australia Pty Ltd (Supplier)

These Terms and Conditions of Supply (**Terms**) apply (unless otherwise previously agreed in writing) to the Supply of Goods by Tremco CPG Australia Pty Ltd (**Tremco CPG**) to a Buyer from time to time. Any supply of Goods by Tremco CPG to the Buyer made after the date of acceptance of these Terms is a supply pursuant to the supply agreement constituted by these Terms and the relevant order accepted by Tremco CPG (**Agreement**) and any such supply does not give rise to a new separate agreement.

1. Interpretation

In these Terms, unless the contrary intention appears:

Buyer means the person to or for whom the Goods are to be supplied by Tremco CPG.

Consequential Loss means increased costs or expenses; loss of revenue; loss of profit or anticipated profit; loss of business; loss of business reputation; loss of opportunities; loss of anticipated savings; loss of goodwill; loss or expense resulting from a claim by a third party; special or indirect loss or damage of any nature whatsoever caused by Tremco CPG's failure to complete or delay in completing the order to deliver the Goods; and any other loss suffered by a party as a result of a breach of this Agreement that cannot reasonably be considered to arise directly and naturally from that breach.

Force Majeure Event means any event outside the reasonable control of Tremco CPG including acts of God, war, riots, strikes, lock outs, trade disputes, break downs, mechanical failures, interruptions of transport, government action, pandemic, epidemic or any other cause whatsoever, whether or not of a like nature to those specified herein.

Goods means the goods sold to the Buyer by Tremco CPG and includes any services provided by Tremco CPG to Buyer.

Intellectual Property Rights means all current and future registered and unregistered rights in respect of patents, copyright, designs, circuit layouts, trademarks, trade secrets, know-how, confidential information, invention and discoveries.

PPSA means:

(a) the Personal Property Securities Act 2009 (Cth) and any regulation made at any time under the PPS Act (each as amended from time to time); and
(b) any amendment made at any time to any other legislation as a consequence of the PPS Act.

Purchase Price means the list price for the goods as charged by Tremco CPG at the date of delivery or such other price as may be specified by Tremco CPG in a quotation provided to the Buyer.

2. Orders, Quotations and Price

2.1 Quotations made by Tremco CPG are not an offer or obligation to supply in accordance with the quotation. An order given to Tremco CPG is binding on Tremco CPG and the Buyer if:

(a) a written acceptance is signed for or on behalf of Tremco CPG; or
(b) the Goods are supplied by Tremco CPG in accordance with the order.

2.2 An acceptance of the order by Tremco CPG is then to be an acceptance of these Terms by Tremco CPG and the Buyer and these Terms will override any conditions contained in the Buyer's order. Tremco CPG reserves the right to accept a part only of any order by notifying the Buyer in writing or by delivering the Goods to the Buyer. No order is binding on Tremco CPG until accepted by it.

2.3 An order which has been accepted in whole or in part by Tremco CPG cannot be cancelled by the Buyer without obtaining the prior written approval of Tremco CPG, which it may refuse in its absolute discretion.

2.4 The supply of Goods is subject to availability. Tremco CPG reserves the right to suspend or discontinue the supply of Goods to the Buyer without any liability whatsoever. If Tremco CPG is unable to supply all of the Buyer's order these Terms continue to apply to any of the order supplied.

2.5 Subject to clause 2.6, where a written quotation has been given by Tremco CPG, the Purchase Price is the price specified in the quotation. In any other case, the Purchase Price is the price specified in Tremco CPG's price list as at the date of despatch of the Goods. Unless otherwise stated, the Purchase Price does not include GST.

2.6 Tremco CPG may at any time change a quoted price and its price list at any time to reflect, among other things, changes in exchange rates or the imposition of any duties, levies or other taxes and the Buyer is bound by those changes. The Buyer must accept any corrections to errors or omissions in invoicing and, where applicable, the Buyer must accept the amended pricing and pay the difference within the approved terms of trade.

3. Delivery

3.1 Unless otherwise agreed in writing by Tremco CPG, delivery is at Tremco's CPG premises. All freight from Tremco CPG's premises to the Buyer is at the Buyer's expense. If Tremco CPG arranges the carriage of the Goods for delivery to the Buyer, Tremco CPG will be deemed to contract as agent for the Buyer, and the Buyer will bear all risks with respect to the Goods during carriage and will likewise be responsible for affecting any insurance of the Goods during carriage. Tremco CPG may charge a reasonable handling fee for all Goods delivered to the Buyer. The Buyer indemnifies Tremco CPG for the cost of all transport arranged by Tremco CPG on the Buyer's behalf.

3.2 Times quoted for delivery are estimates only and Tremco CPG accepts no liability for failure or delay in delivery of Goods. The Buyer is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. Goods may be delivered by instalments at Tremco CPG's discretion.

4. Inspection, Acceptance and Returns

4.1 The Buyer must inspect the Goods immediately following delivery or completion of the services (as the case may be).

4.2 To the extent permitted by law:

(a) the Buyer may only return goods with the prior approval of Tremco CPG and within 30 days of the date of delivery in resaleable condition and, where appropriate, in the original packaging; and
(b) no change of mind returns will be accepted for any custom product (customised by colour, quantity, or any other non-standard attribute).

4.3 A reasonable handling fee for any returned Goods may be charged to the Buyer.

4.4 To the maximum extent permitted by law, any claim that the Goods are not in accordance with these Terms (including if they are defective, damaged during delivery, are short delivered or not as per the Agreement) must be made at the time of delivery of the Goods, or in writing to Tremco CPG within 48 hours after delivery of the Goods or where the Goods are services on completion of the services, otherwise they will be deemed to have been accepted.

5. Payment

5.1 Unless otherwise agreed, if the Buyer has an approved credit account with Tremco CPG, the Buyer must pay for Goods ordered by the Buyer, and any administrative charge under this clause, within 30 days from end of month, or earlier if the approved credit limit is exceeded. Where the Buyer does not have a credit account with Tremco CPG, all Goods and any administrative charge under this clause are to be paid for at or before the time of delivery. Tremco CPG may charge an administration fee for any payments by credit card. Time is of the essence in respect of the Buyer's obligation to make payment for goods or services supplied by Tremco CPG to the Buyer. All amounts payable by the Buyer under these Terms must be paid without set off or counter claim of any kind.

5.2 If the Buyer does not make any payment by the due date, exceeds its credit limit at any time, commits any other material breach of these terms and conditions, or an insolvency event in respect of the Buyer arises or is reasonably suspected by Tremco CPG, Tremco CPG may (without limiting any other right or claim it may have against the Buyer) do any or all of the following:

(a) charge the Buyer an administration fee of 10% of the outstanding invoice or such other reasonable administration fee;
(b) charge the Buyer interest calculated on a daily basis on any portion of the Buyer's account that is overdue at the rate of 10% per annum calculated from the date the payment was due until the date payment is made (both dates inclusive);
(c) vary or withdraw any approved credit limit and/or terms of trade including cancelling any rebate, discount or allowance due or payable by Tremco CPG as at the date of the event;
(d) cancel or suspend any unfilled orders or cease providing Goods;
(e) terminate any contracts between the Tremco CPG and the Buyer and demand immediate payment of any moneys due and outstanding under those contracts;
(f) enter (at any time) any premises in which the Tremco CPG's Goods (including any merchandising materials) are stored, to enable Tremco CPG to inspect the Goods and to reclaim possession of the Goods without liability for the tort of trespass, negligence or payment of any compensation to the Buyer whatsoever; or
(g) institute any recovery process as Tremco CPG in its discretion decides, at the Buyer's cost and expense on a full indemnity basis.

5.3 The Buyer acknowledges and agrees that all payments will be applied by Tremco CPG as follows:

(a) firstly, in payment of any and all collection costs and legal costs in accordance with clause 5;
(b) secondly, in payment of any interest and administration fee incurred in accordance with clause 5; and (c) thirdly, in payment of the outstanding invoice(s).

5.4 If any part of an invoice is in dispute, the balance will remain payable and must be paid when due.

6. Building and Construction Industry Security of Payment Legislation

6.1 The Buyer acknowledges and agrees that:

(a) Tremco CPG may, from time to time, serve payment claims in accordance with the Building and Construction Industry Security of Payment Act 1999 (NSW)(BCISPA) on the Buyer for goods and services supplied in New South Wales;
(b) Tremco CPG may, from time to time, serve payment claims on the Buyer for goods and services supplied outside of New South Wales, in accordance with the relevant Building and Construction Industry Payment Act of the State or Territory in which they were supplied; and
(c) each invoice issued by the Supplier gives rise to a separate construction contract.

7. Risk and Title

7.1 Goods supplied by Tremco CPG to the Buyer are at the Buyer's risk immediately on the earlier of:

(a) delivery to the Buyer; or
(b) delivery into the Buyer's custody, including its carrier or forwarder.

7.2 The Buyer must insure the Goods at its cost from delivery of the Goods until they are paid for in full against such risks as are usual or common to insure against in a business of a similar nature to the Buyer.

7.3 Title in the Goods supplied by Tremco CPG to the Buyer does not pass to the Buyer until all Goods have been paid for in full. In the meantime, the Buyer takes custody of the goods and retains them only as fiduciary agent and bailee of Tremco CPG. Until all goods have been paid for in full:

(a) to the extent possible, the Buyer must store the Goods in a manner that shows clearly, they are the property of Tremco CPG, maintain records relating to the Goods, secure the goods from risk, damage and theft and ensure that the Goods are kept in good and serviceable condition;
(b) the Buyer may sell the Goods, in the ordinary course of its business, but only as fiduciary agent of Tremco CPG. The Buyer must not represent to any third party that the Buyer is acting in any capacity for or on behalf of Tremco CPG and the Buyer has no authority to bind Tremco CPG to any contract or otherwise assume any liability for or on behalf of Tremco CPG. The Buyer receives all proceeds (including any proceeds from insurance claims) in trust for the Supplier and must keep the proceeds in a separate bank account until all liability to the Supplier is discharged; and
(c) if the Buyer uses the goods in some manufacturing process of its own or of a third party, the Buyer must hold in trust for Tremco CPG that part of the proceeds of the manufacturing process as is equal to the amount owing by the Buyer to Tremco CPG at the time of receipt of the proceeds.

8. PPSA

Security for Goods Supplied

8.1 The Buyer acknowledges and agrees that these Terms constitute a security agreement for the purposes of the PPSA (**Security Agreement**) and create a security interest in the Goods supplied by Tremco CPG from time to time and any proceeds of the sale or supply of the Goods to secure payment for the Goods supplied (**Security Interest**).

8.2 Each sale or supply of Goods by Tremco CPG under these Terms is subject to the Security Agreement for the purposes of the PPSA.

8.3 Tremco CPG may lodge a financing statement on the Personal Property Securities Register (**PPSR**) in respect of the Security Interest in the Goods and the proceeds of the sale or supply of the Goods, including as a purchase money security interest (as that term is defined in the PPSA) (**PMSI**), pursuant to these Terms.

General Security Agreement for Services Supplied

8.4 For the purpose of any general security agreement (**General Security Agreement**), **Collateral** means all the Buyer's present and after-acquired personal property, including circulating and non-circulating assets. Collateral includes any personal property in respect of which the Buyer has at any time, or may in the future have at any time, a sufficient legal or equitable right, title, interest or power to grant a security interest either in the Buyer's own right or as trustee of a trust.

8.5 The Buyer acknowledges and agrees that:

(a) In addition to any other Security Interest created by these Terms, these Terms also constitute a General Security Agreement for the purposes of the PPSA and create a security interest in the Buyer's Collateral to secure payment for the Services supplied (**Security Interest**);
(b) Each supply of Services by Tremco CPG under these Terms is subject to the General Security Agreement for the purposes of the PPSA; and
(c) Tremco CPG may lodge a financing statement on the PPSR in respect of the Security Interest in the Collateral pursuant to these Terms.

Assurances

8.6 The Buyer must do all things, provide all information and sign all documents that are necessary and reasonably required to enable Tremco CPG to acquire a perfected Security Interest in the Goods and/or Services (as the case may be) including for the purposes of:

(a) Ensuring that any Security Interest created under, or provided for, by these Terms:
(i) Attaches to the Goods and/or Collateral that is intended to be covered by that Security Interest; and
(ii) Is enforceable, perfected and otherwise effective; and
(iii) Has the priority required by Tremco CPG.
(b) Enabling Tremco CPG to prepare and register a financing statement or financing change statement;
(c) Enabling Tremco CPG to register a PMSI pursuant to the PPSA (where applicable);
(d) Enabling Tremco CPG to register an ALLPAAP pursuant to the PPSA (where applicable); and
(e) Enabling Tremco CPG to exercise and maintain any of Our rights or powers in connection with any such Security Interest.

8.7 If the Buyer disposes of the Goods or the Collateral, the Buyer must:

(a) Immediately pay any proceeds to Tremco CPG in reduction of all amounts owing by the Buyer to Tremco CPG, which Tremco CPG may apply towards amounts owing by the Buyer to Tremco CPG in such order as specified by subsection 14(6)(c) of the PPSA, unless otherwise specified by Tremco CPG in writing; and
(b) Not allow any other charge or security interest to exist over those proceeds without Tremco CPG written consent if that security interest could rank ahead of Our Security Interest.

8.8 If a higher-priority security interest does arise in the Goods, the Collateral and/or their proceeds of sale despite the Buyer's obligations under this section, the Buyer must:

(a) Ensure that the Buyer receive cash proceeds for the Goods and/or Collateral of at least equal to the market value of the Goods and/or Collateral; and
(b) Immediately pay those proceeds to Tremco CPG in reduction of all amounts owing by the Buyer to Tremco CPG, which Tremco CPG may apply towards amounts owing by the Buyer to Tremco CPG in such order as Tremco CPG sees fit.

8.9 The Buyer must not change the Buyer's name, structure, status or partnership, or assign or sell the Buyer's business to another party, or initiate any change to any registered documentation, or act in any other manner which would impact on Tremco CPG's registered Security Interest without Tremco CPG's prior written consent. The Buyer agrees that the Buyer's liability under these Terms is not affected by such an event until a new application for credit in the Buyer's new entity name as restructured or changed is made and approved by Tremco CPG in writing.

Exclusion of Notices and Other Obligations

8.10 To the extent permitted by law and for the purposes of sections 115(1) and 115(7) of the PPSA:

- **(a)** Tremco CPG does not need to comply with sections 95, 118, 121(4), 125, 129(2), 129(3), 130, 132(3)(d) or 132(4); and
- **(b)** Sections 142 and 143 are excluded;
- **(c)** For the purposes of section 115(7) of the PPSA, Tremco CPG does not need to comply with sections 132 and 137(3).

8.11 To the extent permitted by law, the Buyer agrees to waive:

- **(a)** The Buyer's rights to receive any notice that is required by any provision of the PPSA (including a notice of a verification statement) or any other law before a secured party or a receiver exercises a right, power or remedy; and
- **(b)** Any time period that must otherwise lapse under any law before a secured party or a receiver exercises a right, power or remedy.

8.12 If the law that requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).

Provision of Information

8.13 The Buyer agrees not to exercise the Buyer's rights to make any request of Tremco CPG under section 275(6) of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.

8.14 The parties must not disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances where:

- **(a)** Disclosure is required by sections 275(7)(b) to (e) of the PPSA; and/or
- **(b)** Tremco CPG discloses information of a kind mentioned in section 275(1) of the PPSA to the extent that Tremco CPG is not doing so in response to a request made by an "interested person" (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.

8.15 Notwithstanding the obligations of this section, the Buyer shall only authorise the disclosure of information for the purposes of section 275(7)(c) of the PPSA, or request information under section 275(7)(d) of the PPSA, if Tremco CPG approve such disclosure or request for information in writing.

8.16 Nothing in this part prevents any disclosure of information by Tremco CPG that Tremco CPG believe is reasonably necessary to comply with any other obligations that Tremco CPG may have under the PPSA.

Other

8.17 If the Buyer defaults in the timely performance of any obligation owed to Tremco CPG, Tremco CPG may enforce the Security Interest by exercising all or any of Our rights under these Terms, the general law and the PPSA.

8.18 Nothing in this part limits or is limited by any other provision of these Terms or any other agreement between the parties.

9. Formulations, Specifications and Instructions

9.1 Tremco CPG will retain ownership of all Intellectual Property Rights in relation to all formulations and specifications prepared by it for or on behalf of the Buyer, despite any payment made in accordance with these terms of sale.

9.2 If required, the Buyer agrees to assign all Intellectual Property Rights in any formulations and specifications to Tremco CPG or its nominated entity. The Buyer also agrees to ensure that its employees and contractors execute all documents and do all things necessary to give effect to this clause 9.2.

9.3 Tremco CPG is not responsible for the accuracy, performance, or suitability for purpose of any formulation, specification, information or instruction provided by the Buyer. The Buyer is responsible for the accuracy of any formulation, specification, information or instruction provided for use by Tremco CPG. Where Tremco CPG has followed any formulation, specification, information or instruction furnished by or on behalf of the Buyer, the Buyer indemnifies and will keep Tremco CPG indemnified against all claims, damages, losses, penalties, costs and expenses to which Tremco CPG may become liable by reason of using or following the formulation, specification, information or instruction, including any infringement of any patent, registered design, trademark, copyright or any other right of a third party, including moral rights.

9.4 This clause survives termination or expiration of this Agreement.

10. Limitation of Liability

10.1 To the extent permitted by law, all other warranties whether implied or otherwise, not set out in these Terms or in another warranty document given by Tremco CPG are excluded and Tremco CPG is not liable in contract, tort (including without limitation, negligence or breach of statutory duty) or otherwise to compensate the Buyer for:

- **(a)** any increased costs or expenses;
- **(b)** any loss of profit, revenue, business, contracts or anticipated savings;
- **(c)** any loss or expense resulting from a claim by a third party; or
- **(d)** any special, indirect, or Consequential Loss or damage of any nature whatsoever caused by Tremco CPG's failure to complete or delay in completing the order to deliver the Goods.

10.2 Where legislation implies in these Terms any condition or warranty that cannot be excluded or modified, to the extent permitted by law the liability of Tremco CPG for a breach of any such condition or warranty is limited at Tremco CPG's option to any one or more of the following:

(a) In the case of Goods:
(i) replacement of the goods or the supply of equivalent goods;
(ii) the repair of goods;
(iii) the payment of the cost of replacing the goods or acquiring equivalent goods; or
(iv) the payment of the cost of having the goods repaired.

(b) Where the Goods are services:
(i) the supply of service again; or
(ii) the payment of the cost of having the services supplied again.

11. Force Majeure

11.1 Tremco CPG will not be liable for the consequences of any failure or delay in performing any of its obligations under these Terms to the extent that such failure or delay is due directly or indirectly to any Force Majeure Event.

11.2 If a Force Majeure Event arises, Tremco CPG will notify the Buyer in writing of the Force Majeure Event and the likely impact it will have on Tremco's performance under these Terms. If the Force Majeure Event affects the capacity of Tremco CPG to complete its material obligations under these terms in a timely manner, Tremco CPG may by notice to the Buyer terminate this Agreement without any liability whatsoever on its part arising from that termination.

12. Indemnity

To the full extent permitted by law, Buyer will indemnify Tremco CPG and keep Tremco CPG indemnified from and against any liability and any loss or damage Tremco CPG may sustain, as a result of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any of these Terms Buyer or its representatives

13. Trustee Capacity

If Buyer is the trustee of a trust (whether disclosed to Tremco CPG or not), Buyer warrants to Tremco CPG that:

(a) Buyer enters into this Agreement in both its capacity as trustee and in its personal capacity;
(b) Buyer has the right to be indemnified out of trust assets;
(c) Buyer has the power under the trust deed to enter into this Agreement; and
(d) Buyer will not retire as trustee of the trust or appoint any new or additional trustee without first advising Tremco CPG.

14. Other Terms

14.1 Neither party excludes or limits the application of any statute (including but limited to the Competition and Consumer Act (Cth) as amended from time to time and its schedule 2, the Australian Consumer Law) where to do so would contravene that statute or cause a provision of these Terms to be void. Any states exclusion or limitation in these Terms is only to the full extent permitted by law.

14.2 This Agreement contains the entire understanding of the parties as to its subject matter. There is no other understanding, agreement, warranty or representation whether express or implied in any way defining or extending or otherwise relating to these provisions or binding on the parties with respect to the goods of their operation. The application of the United Nations Convention on Contracts for the International Sale of Goods (known as the Vienna Sales Convention 1980) is excluded. If any provision of these terms or conditions is unenforceable, illegal or void, that provision is severed and the other provisions remain in force.

14.3 Tremco CPG may amend or vary these terms and conditions by notifying the Buyer in writing of the amendment or variation.

14.4 No waiver of these Terms or failure to exercise a right or remedy by Tremco CPG will be considered to imply or constitute a further waiver by Tremco CPG of the same or any other term, condition, right or remedy.

14.5 The laws of New South Wales, Australia apply to these terms and conditions. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales.