

ABN 44 055 064 125

WEB ADDRESS: [www.wireind.com.au](http://www.wireind.com.au)

182 POWER STREET, GLENDENNING NSW 2761  
TEL: 02-8887 7777 FAX: 02-8887 7788 Email: [Sydney@wireind.com.au](mailto:Sydney@wireind.com.au)

126 MAIN BEACH ROAD, PINKENBA, BRISBANE QLD 4008  
TEL: 07-3622 6888 FAX: 07-3622 6800 Email: [Brisbane@wireind.com.au](mailto:Brisbane@wireind.com.au)

20-22 PERMAS WAY, TRUGANINA. VIC 3029  
TEL: 03-8348 9888 FAX: 03-8348 9800 Email: [Melbourne@wireind.com.au](mailto:Melbourne@wireind.com.au)



**CONFIDENTIAL**

**COMMERCIAL CREDIT APPLICATION**  
(PLEASE RETURN ORIGINAL FORM TO WIRE INDUSTRIES)

Applicant is:     Registered Company             Partnership             Sole Trader             Trust  
                          Govt. Body                             Other

Registered Name: ..... ABN: .....

Registered Address: ..... Postcode: .....

Trading Name: .....

Trading Address: ..... Postcode: .....

Postal Address: ..... Postcode: .....

Telephone: ..... Fax: ..... Mobile: .....

Email: ..... Website: .....

Full Names and address of all Directors (if Registered Company) or Partners: ..... Date of Birth

..... Driver Lic #..... / /

..... Driver Lic #..... / /

..... Driver Lic #..... / /

..... Driver Lic #..... / /

Date Business Established: ..... Total Paid up Capital: .....

Estimated Monthly Purchases: ..... Premises:     Owned             Leased             Rented

Your Accounts Payable Contact: .....

Accounts Payable Phone: ..... Accounts Payable Email: .....

| TRADE REFERENCES: | Telephone | Email/Fax |
|-------------------|-----------|-----------|
| 1.....            | .....     | .....     |
| 2.....            | .....     | .....     |
| 3.....            | .....     | .....     |
| 4.....            | .....     | .....     |

Should this application be accepted by Wire Industries Pty Ltd the Applicant agrees the credit account shall be subject to the terms of this application which includes Wire Industries Pty Ltd Terms and Conditions of contract Supply. Also available on our website.

The Applicant shall notify Wire Industries Pty Ltd of any change in the constitution or structure of the Applicant or the sale of the business operated by the Applicant and agrees that it shall continue to be liable to Wire Industries Pty Ltd for any sums outstanding on the account opened on behalf of the Applicant until:

- (a) Written notice is received from the Applicant that it has changed the constitution structure or the sale of the business, and
- (b) The account has been closed and full payment has been received by Wire Industries Pty Ltd.

NAME IN BLOCK LETTERS: ..... TITLE: .....

SIGNATURE: ..... DATE: .....

**OFFICE USE ONLY**

Customer No: ..... Credit Limit: ..... Sales Person Code: .....

Gen. Bus .Posting Group: NSW / QLD / VIC..... Customer Posting Group: .....

Approved: ..... Date: .....

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**PRIVACY PROTECTION INFORMATION**

**Acknowledgment & Consent**

To: **Wire Industries Pty Ltd. ABN 44 055 064 125**

**Notice and Acknowledgment that Credit Information May be given to a Credit Reporting Agency**

I/We understand that Section 18E(c) of the Privacy Act allows you to give a credit reporting agency certain personal information about me/us which I/we authorise you to do. The information which may be given is covered by Section 18E (1) of the Act.

**Authority to Obtain Credit Information**

I/We authorise you to obtain from a credit reporting agency;

- a credit report containing personal credit information about me/us for the purpose of assessing an application by me/us or my/our company/firm for commercial credit;
- other information relating to my/our commercial credit activities;
- a credit report containing personal information about me/us for the purpose of the collection of overdue payments in respect of commercial credit which you have provided to me/us or my/our company/firm;
- a credit report containing personal credit information about me/us for the purpose of assessing whether to accept me/us as a guarantor.

**Authority to Exchange Information with Other Credit Providers**

I/We authorise you to give to and obtain from:

- credit providers named in my/our credit application;
- any agent of yours that is deemed to be a credit provider pursuant to Section 11B (5) of the Act; and
- any credit provider that may be named in a personal or commercial credit report issued by a credit reporting agency or a commercial reporting agency respectively.
- Information about my/our personal or commercial credit arrangements which can include information about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Privacy Act, 1988 and the information may be given and used for purposes that include the following;
  - to assess an application by me/us for personal or commercial credit;
  - to assist me/us avoid defaulting on my/our credit obligations;
  - to notify other credit providers of a default by me/us;
  - to assess my/our credit worthiness; and
  - to assess my/our position if I/we fall into arrears.

Name and address of individual/s

Giving his/her consent .....

Position Held .....

Signature of individual/s

giving his/her consent .....

(all partners, directors & shareholders to sign)

**GUARANTEE**

TO: Wire Industries Pty Ltd (hereinafter called "the Supplier"). In consideration of the Supplier agreeing to supply and/or continuing to supply to [insert Account Name & ABN]

Account Name: .....

ABN/ACN: .....  
(hereinafter called "the applicant")

with goods and/or services from time to time, I/we the undersigned **HEREBY JOINTLY AND SEVERALLY** agree with as follows;

1. To be answerable to the Supplier for the due payment by the applicant of all monies now or from time to time hereafter owing to the Supplier on any account or any manner whatsoever by the applicant either directly or indirectly and either alone or jointly with any other person firm and/or corporation, and including but without limiting the generality of the foregoing any interest accruing on any monies owing or unpaid and any legal costs and disbursements incurred by the Supplier in enforcing payment by the applicant of any such monies.
2. This Guarantee shall constitute a continuing guarantee to the Supplier for all monies which are now or may from time to time be owing or remain unpaid.
3. This Guarantee shall not be avoided, released or effected by the Supplier making any variation or alteration in the terms of any agreement made with or to be made with the applicant.
4. The Supplier may without effecting this Guarantee grant time or other indulgence to or compound or compromise with or release the applicant or any co-guarantor of this Guarantee or any other person or corporation whatsoever or release, abandon, vary, relinquish or renew in whole or in part any security asset or right held by the Supplier.
5. Any payment made to the Supplier and later avoided by the application of any Statutory Provisions shall be deemed not to discharge the guarantor's liability and, that in such event, the parties hereto are to be restored to the rights which each respectively would have had if the payment had not been made.
6. This Guarantee shall be revocable at any time as to further transactions by one months' notice in writing given to the Supplier or the Supplier's duly authorised agent by the guarantor or in the case of death by the guarantor's personal representative.
7. It is expressly declared that notwithstanding the fact that this Guarantee may be intended or expressed to be executed and given by more than one person the same shall in fact be a valid and effectual guarantee binding against such person or persons as shall execute the same forthwith upon their execution and shall continue to be binding as against such person or persons notwithstanding the fact that any proposed or contemplated party shall not in fact subsequently execute the same.
8. This Guarantee and the construction and interpretation of it shall be governed by the laws of the State of New South Wales in force for the time being and from time to time, and the parties to this Guarantee irrevocably submit generally and unconditionally to the jurisdiction of the Courts of New South Wales in respect of all claims, proceedings and matters arising out of or in respect of this Guarantee.
9. To charge with payment of any indebtedness due herein to the Supplier all beneficial interest (freehold and leasehold) in land and personal property held now or in the future by me/us. I/we agree that if demand is made by the Supplier, upon receiving such a demand I/we will immediately execute a mortgage or other instrument of security, or consent to a caveat, as required, and against the event that I/we fail to do so within a reasonable time of being so requested, I/we hereby irrevocably and by way of security, appoint any credit manager or solicitor engaged by the Supplier to be my/our true and lawful attorney to execute and register such instruments. Notwithstanding any other provision in this clause and in addition thereto the Supplier may lodge a caveat noting the interest given by this charge on the title of any property of mine/ours whenever it so wishes.
10. Service of any notice, demands, proceedings, summonses, suits or actions (collectively called "process") upon any guarantor herein may be effected by the Supplier or its solicitors sending such process by prepaid post to the guarantor's address as disclosed herein or to the last disclosed address of the guarantor in any company search or business name search. Service shall be deemed to have been effected two business days after the posting of the process,

DATED THIS    day of    201

Signature of Guarantor..... Signature of Guarantor.....

Full Name..... Full Name.....

Address..... Address.....

Signature of Witness..... Signature of Witness.....

Full Name..... Full Name.....

Address ..... Address.....

**WIRE INDUSTRIES**  
**TERMS AND CONDITIONS OF CONTRACT SUPPLY OF GOODS AND SERVICES**  
as at 1 Mar 2019

These Terms and Conditions replace and supersede all previous versions of Wire Industries Terms and Conditions issued prior to 1 Mar 2019

**General**

All Goods are supplied and Services provided, to Purchasers on these Terms and Conditions. No person employed by or acting otherwise as agent of Wire Industries, or purporting to do so, has authority to accept orders and supply goods or provide services on any other terms and conditions or to vary these Terms and Conditions in any way whatsoever unless the person has been authorised to do so by Wire Industries.

**1. DEFINITIONS**

- a. In these Terms and Conditions:
  - i. **Amount Payable** means, at any time, all amounts payable by the Purchaser to Wire Industries at that time (whether or not those amounts have become due for payment under any provision of these Terms and Conditions) in connection with goods, services and/or a contract, (including without limitation any invoiced amount, interest, fees, costs or expenses);
  - ii. **Contract** means the Contract created in accordance with clause 4;
  - iii. **Delivery Offer** means the delivery offer, which sets out the terms and conditions on which Wire Industries delivers goods, and are included in Wire Industries' quotation;
  - iv. **Goods** means goods, products and materials (and any related Services) supplied by Wire Industries under a Contract;
  - v. **Processed Goods** means Goods which after delivery become part of a product or mass by being manufactured, processed, assembled, commingled or otherwise dealt with in such a way that their identity is lost in the product or mass;
  - vi. **Purchaser** means the person, firm or company that agrees to purchase the Goods and/or Services;
  - vii. **Quotation** means the quote for Goods and/or Services issued to the Purchaser by Wire Industries;
  - viii. **Wire Industries** means Wire Industries Pty Ltd ABN 44 055 064 125;
  - ix. **Working Documents** means architectural drawings, structural drawings, constructions drawings, specifications and reinforcement schedules or other documents together with any variation or site instruction;
  - x. **Service** means any labour performed and/or services provided by Wire Industries under the Contract (whether or not a fee is charged for such labour and/or services), including by not limited to estimating, scheduling, re-scheduling, detailing, re-detailing, design, re-design, prefabrication, project management, steel fixing and administrative services; and
  - xi. **Writing** means hard copy, signed by a person authorized in writing, or electronically transmitted by a person authorized in writing.

**2. QUOTATIONS AND PRICING**

- a. Wire Industries may at any time and at its absolute discretion accept or reject in whole any request from the Purchaser for a Quotation.
- b. A Quotation is valid for a period of 30 days from the date of the Quotation, unless Wire Industries specifies otherwise in writing. Any Quotation may be withdrawn earlier by notice from Wire Industries at its absolute discretion.
- c. Wire Industries reserves the right to withdraw, change or re-issue a Quotation if supply of the quoted Goods and/or Works does not start within 30 days after the date of the Quotation.
- d. Wire Industries reserves the right to change the pricing in the Contract for the whole or any part of the contract if:
  - i. Supply of the quoted Goods and/or Works does not proceed in accordance with the construction program indicated at the time the order is accepted;
  - ii. supply under the Contract is stopped or suspended for more than 30 days; or
  - iii. supply under the Contract is changed in any way before, during or after commencement of supply, including but not limited to re-design of the project, the start date of supply, the completion date of supply and the agreed rate of supply of the Goods and/or Services; or
  - iv. supply under the Contract has not been completed within twelve months of the date of the Quotation.
- e. The price quoted is subject to the Purchaser ordering the whole quantity of the Goods and Services described in the Quotation. If the Purchaser orders less the whole quantity of Goods and Services specified in the Quotation, then Wire Industries reserves the right to revise the pricing for such Goods and/or Services.
- f. Unless otherwise agreed in writing, the price charged for the Goods and Services is the price applying at the date of despatch. Any price indications or price lists are subject to alteration in accordance with these Terms and Conditions.
- g. All amounts shown in Wire Industries quotations and invoices may be rounded up or down to the nearest multiple of 10 cents.

**3. ESCALATION AND PRICE VARIATION**

- a. In addition to its rights in clause 2 or any rights under the Contract, Wire Industries may increase or decrease the Contract price or Goods and/or Services during the term of the Contract where it incurs and increase or decrease in its costs (including any transaction or other taxes) of supplying the Goods and/or Services.
- b. The Purchaser may terminate the Contract for convenience (or part thereof) within 7 days of Wire Industries providing a notice increasing the price in accordance with clause 3.a.

**4. THE CONTRACT**

- a. An order or offer to purchase Goods and/or Services can be made by the Purchaser in writing or verbally.
- b. An order or offer made by the Purchaser does not constitute a binding contract until Wire Industries has accepted such order or offer in accordance with these Terms and Conditions.
- c. An order or offer made by a Purchaser is accepted by Wire Industries only if Wire Industries:
  - i. Formally accepts the order by written acknowledgement; or
  - ii. Delivers the ordered Goods and/or Services described in the order or offer, whichever occurs first.
- d. Wire Industries may at any time and at its absolute discretion accept or reject part or all of any order or offer made by the Purchaser.
- e. The Purchaser is not entitled to cancel or change part or all of any order or offer accepted by Wire Industries, unless Wire Industries consents in writing.
- f. The Contract, when created is wholly documented by (in descending order of precedence):
  - i. any specific terms agreed by the parties in accordance with clause 6;
  - ii. the Quotation (if applicable);
  - iii. these Terms and Conditions;
  - iv. the relevant Working Documents
  - v. the applicable Delivery Offer;
  - vi. the credit terms applying to the Purchaser (if applicable).
- g. Previous dealings between Wire Industries and the Purchaser have no effect on the Contract.
- h. Trade custom and/or trade usage is superseded by the Contract and is not applicable in interpretation of the Contract.
- i. The Contract constitutes the entire agreement between Wire Industries and the Purchaser with respect to the Goods supplied or Services provided under the Contract and all prior negotiations, proposals and correspondence are superseded by that Contract.
- j. Unless agreed otherwise in writing, Wire Industries may, by written notice, terminate the Contract 12 months after the date of first delivery of the Goods and/or Services.

**5. QUANTITIES**

- a. Generally the steel mass of steel reinforcing Goods supplied will be within the tolerances permitted by Australian Standards AS/NZS4671, AS3600, AS5100, AS2870, AS2327 and AS/NZS1100.
- b. When calculating the mass of the steel reinforcing Goods, Wire Industries will make calculations on a per metre basis in accordance with AS/NZS4671 plus an allowance of manufacturing tolerances as detailed in paragraph 7.3 of AS/NZ4671.
- c. Calculations with respect to the length of steel reinforcing will be made in accordance with AS/NZS1100 Part 501.

- d. Unless the Quotation states the price is a lump sum, the price in the Quotation is based on indicative quantities of Goods and Services as applicable and, unless the price is a lump sum, the Purchaser is liable to pay for the actual quantity of Goods supplied and the quantum of the Services necessary for Wire Industries to perform its obligations. Other than with a lump sum price, any adjustment in the actual price compared to the quoted price will reflect the increase or decrease of the Goods and/or Services actually supplied or provided.
- e. Quantities included in quotations, other than for a lump sum price, are indicative only and are not guaranteed by Wire Industries irrespective of their source.
- f. Any goods supplied at the Purchaser's request (whether verbally or in writing) that are not listed on a Quotation, whether verbal or in writing, will be invoiced at Wire Industries prevailing list rates.

## 6. VARIATIONS

- a. No variation of the Contract is effective unless it is agreed to by both parties in writing.

## 7. WARRANTIES AND LIMITATION OF LIABILITY

- a. To the extent permitted by law, all implied conditions and warranties are excluded. To the extent that any implied conditions and warranties cannot be excluded, the Purchaser's sole and exclusive remedy for any loss or damage (whether direct, indirect, liquidated, special or consequential and including loss or damage arising as a result of death or personal injury to the Purchaser or any other person) however arising (including by reason of any breach of contract, condition or warranty in Contract (whether express or implied)) is, where permitted at law, limited to any one of the following as determined by Wire Industries:
  - i. in the case of any Goods supplied by Wire Industries pursuant to the Contract:
    - 1. the replacement of the relevant Goods or Supply of equivalent Goods; or
    - 2. the repair of the Goods; or
    - 3. after prior agreement between Wire Industries and the Purchaser, payment of the cost of replacing or repairing or having the Goods replaced or repaired; or
    - 4. reimbursement of some or all amounts paid by the Purchaser in respect of the Goods.
  - ii. In the case of any Services supplied by Wire Industries pursuant to the Contract:
    - 1. the provision of the Services again; or
    - 2. payment of the cost of having the relevant Services provided again; or
    - 3. reimbursement of some or all amounts paid by the Purchaser in respect of the Services.
- b. Goods which are not manufactured by Wire Industries are subject solely to the warranties (if any) specified by the manufacturers or the third party suppliers to Wire Industries and the Purchaser acknowledges that, to the extent permitted by law, Wire Industries gives no warranties beyond such manufacturer's or suppliers' warranties.
- c. The Purchaser acknowledges that Wire Industries makes no representations or warranties as to the fitness or suitability for any purpose of any of the Goods or Services described in the Quotation or contract.
- d. Except as required by law, Wire Industries is not obliged to accept Goods returned for any reason.
- e. Wire Industries is not liable for the design, lifting and/or position of any pre-fabricated elements at the Purchaser's Site, including but not limited to manually tied and/or welded components.
- f. Subject to clause 7.1 and Part VA of the *Trade Practices Act 1974 (Cth)*, The Supplier is not liable to the Purchaser for any loss or damage, whether direct, indirect, liquidated, special or consequential and including loss or damage arising as a result of death or personal injury, however caused (including negligent or reckless conduct or omission) which the Purchaser or any other person may suffer or incur and which may, without limiting the generality of the foregoing, arise directly or indirectly in respect of the Goods and/or Services, any defects in the Goods and/or Services or in respect of any failure or omission by Wire Industries or any of its officers, agents or employees to comply with the Contract or any obligation imposed by law.

## 8. INVOICING AND PAYMENT

- a. Where the Purchaser has an established and approved commercial credit account with Wire Industries, the Purchaser must comply with the terms and conditions of that commercial credit account. Wire Industries reserves the right to charge an administration fee as determined from time to time to cover credit card merchant fees and Wire Industries associated overhead charges.
- b. If the Purchaser has a commercial credit account with Wire Industries then, unless otherwise agreed in writing:
  - i. Wire Industries may issue invoices for Goods and Services either:
    - 1. on despatch of such Goods and/or Services; or
    - 2. when such Goods and/or Services are delivered; or
    - 3. when such Goods and/or Services are deemed delivered in accordance with clause 12; and
  - ii. the Purchaser must pay all invoices in full and without set-off by the last business day of the month following the month in which the invoice was issued.
- c. If the purchaser does not have a commercial credit account with Wire Industries then the Purchaser must pay Wire Industries for the Goods and/or Services at the time it places an order for such Goods and/or Services with Wire Industries.
- d. Wire Industries reserves the right to charge additional administration fees (such as commercial credit account keeping fees) as determined by Wire Industries from time to time.
- e. If Wire Industries delivers only part of an order, then it may invoice, and the Purchaser must pay for, that part of the Goods and/or Services delivered, unless otherwise agreed in writing between the parties.
- f. The Purchaser is not entitled to, and must not demand or hold, any sum on account of retention for completion of the contract to be performed by Wire Industries or against any pending or unsecured claim against Wire Industries. If the Purchaser withholds any money as retention money, Wire Industries reserves the right to withhold further supply under the Contract or any other contract between Wire Industries and the Purchaser.
- g. The granting of credit does not oblige Wire Industries to extend any particular amount of credit to the Purchaser and Wire Industries may withdraw, refuse, suspend or limit credit to the Purchaser at any time, in its absolute discretion, without notice or providing any reason.
- h. The Purchaser must notify Wire Industries in writing if there is any change in the shareholding or ownership of the Purchaser or any change in the Purchaser's financial position.

## 9. DEFAULT AND TERMINATION

- a. If:
  - i. the Purchaser refuses or fails to pay any amounts when due under the Contract; or
  - ii. the Purchaser defaults in performing any of its obligations under the Contract; or
  - iii. in Wire Industries reasonable opinion, the Purchaser is insolvent or suffering from financial issues including but not limited to, if the Purchaser is an individual, the Purchaser commits an act of bankruptcy, or, if the Purchaser is a company, it becomes an externally-administered body corporate or passes a resolution to wind up; or
  - iv. the Purchaser is in breach of contract,
 then in addition to and without prejudice to any other rights it has by law, Wire Industries:
  - v. is entitled to treat the whole of the contract as repudiated;
  - vi. may refuse to supply the Goods or provide the Services to the Purchaser;
  - vii. is entitled to treat any other contract between Wire Industries and the Purchaser as repudiated; and
  - viii. is entitled to claim return of any Goods in possession of the Purchaser where title has not passed to the Purchaser.
- b. The purchaser is not entitled to terminate suspend or cancel part or all of the contract for any reason (including for convenience) except if Wire Industries has failed to remedy its breach of the Contract within a reasonable period after the Purchaser gives it written notice of such breach. If the Purchaser purports to wrongly terminate or rescind part or the entire Contract or refuses to take delivery of any Goods delivered in accordance with the Contract, Wire Industries may recover from the Purchaser the total amount of the order placed on Wire Industries, less any amounts already paid by the Purchaser.

## 10. Money Owing

- a. A statement in writing as to any amount owing under the Contract by the Purchaser on the date mentioned in such statement is prima facie evidence that such amount is owing.

#### 11. TAX

- a. Unless otherwise agreed in writing or required by law, all amounts stated in a Quotation or payable under the Contract are calculated or expressed exclusive of GST. If GST is payable, the amount of GST will be specified separately in the relevant documentation.
- b. If GST is or becomes payable by a supplier in relation to a supply under the Contract, the recipient of that supply must pay to that supplier an amount equal to the GST. An amount payable under this clause 11 must be paid:
  - i. at the same time as the payment of the amount in respect of that supply is due; and
  - ii. in addition to the amount payable under the Contract.
- c. The Purchaser is not obliged to pay any GST unless a valid tax invoice has been issued.
- d. If the Purchaser fails to pay such GST when due, Wire Industries may recover it from the Purchaser as debt under the Contract.
- e. Any party that becomes aware of the occurrence of any adjustment event in connection with the Contract must notify the other party as soon as possible. The parties must then take whatever steps are necessary and make whatever adjustments are required to ensure that any additional GST or refund of GST, on that supply is paid no later than 20 business days after the parties first become aware of the adjustment event.
- f. For the purposes of this clause 11, terms used in this clause 11 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* have the meaning given to them in the Act.

#### 12. DELIVERY

- a. Delivery of Goods will be in accordance with the applicable Delivery Offer. It is the obligation of the Purchaser to ensure that it is familiar with and observes the Delivery Offer. Wire Industries may deliver the Goods in any number of instalments.
- b. If Wire Industries quotes the price as "ex works", the Purchaser must collect the Goods from Wire Industries nominated premises at the time notified by Wire Industries to the Purchaser.
- c. If Wire Industries quotes the price as "Delivered", it will deliver the Goods to the Purchaser's nominated site and the Purchaser must:
  - i. nominate the site for delivery in writing to Wire Industries prior to the delivery;
  - ii. ensure that a receiving area is available which complies with all applicable occupational health, safety and welfare legislation; and
  - iii. ensure that its representative is available at the time of delivery to acknowledge delivery by signing a delivery receipt.
- d. If Wire Industries obligation is to deliver the goods and the Purchaser or its representative is not in attendance when the Goods are delivered at the Purchaser's nominated site, wire Industries reserves the right to unload the Goods.
- e. Where the Purchaser does not accept delivery of Goods or allow performance of the Services which it has ordered from Wire Industries when such Goods and/or Services are ready for delivery or performance, the Purchaser is liable for any additional charges that Wire Industries may incur for storage and/or double handling, at Wire Industries then current rates.
- f. If Goods are to be despatched "ex works" they are deemed delivered at the premises of Wire Industries when Wire Industries notifies the Purchaser that the Goods are ready for collection.
- g. If Goods are to be delivered by Wire Industries, they are deemed to be delivered:
  - i. if the parties agree that the Purchaser or the Purchaser's representative will unload the Goods, when Wire Industries delivers the Goods on a truck to a site adjacent to the Purchaser's nominated site; or
  - ii. when Wire Industries has unloaded the Goods at or adjacent to the Purchaser's site to a flat, ground level area.
- h. If Goods are to be delivered by Wire Industries then, unless otherwise agreed in the Contract or unless otherwise provided in the Delivery Offer, the Purchaser must at its cost unload the Goods.
- i. Wire Industries will make all reasonable efforts to have the Goods delivered to the Customer as agreed between the parties but Wire Industries is not liable for:
  - i. any failure or delay in delivery of part or all of the Contract for any reason; or
  - ii. any damage or loss due to unloading or packaging; or
  - iii. damage to property cause upon entering premises to deliver the Goods.

#### 13. RISK

- a. Risk in the Goods passes to the Purchaser on:
  - i. delivery of the Goods to the Purchaser; or
  - ii. deemed delivery of the Goods to the Purchaser in accordance with clause 12, whichever occurs first.
- b. Wire Industries will not be responsible for any claim from the Purchaser arising from or in any way relating to the unloading of the Goods.
- c. If Wire Industries officers, agents or employees enter upon any property at the actual or implied request of the Purchaser, Wire Industries accepts no responsibility for any damage suffered by the Purchaser or the Purchaser's officers, agents or employees or to the Purchaser's property as a result of or in connection with Wire Industries officers, agents or employees entering such property.
- d. If a vehicle engaged in the delivery of Goods to the Purchaser's property is disabled or damaged due to the condition of the Purchaser's property, the Purchaser is liable for the cost of salvage of, or repair to the vehicle. The Purchaser indemnifies Wire Industries and keeps Wire Industries indemnified against any loss or damage suffered by Wire Industries, or as a consequence of Wire Industries becoming liable to any third party, directly or indirectly as a result of Wire Industries officers, agents or employees entering any property at the actual or implied request of the Purchaser or unloading the Goods.

#### 14. LEGAL TITLE AND RELATED MATTERS

- a. The legal and equitable title to the Goods will only be transferred from Wire Industries to the Purchaser when the Amount Payable has been reduced to zero.
- b. Until the Amount Payable has been reduced to zero:
  - i. the Purchaser holds the Goods as bailee for Wire Industries and that a fiduciary relationship exists between the Purchaser and Wire Industries.
  - ii. The Purchaser must keep the Goods separate and in good condition as a fiduciary of Wire Industries, clearly showing Wire Industries ownership of the Goods, and must keep books recording Wire Industries ownership of the Goods and the Purchaser's sale or otherwise of them in accordance with clauses 14.5 and 14.6. The Purchaser, if required, must deliver up the Goods to Wire Industries.
- c. If the Purchaser defaults, in addition to Wire Industries rights under clause 9, Wire Industries may take possession of the Goods wherever the Goods are located and the Purchaser agrees that representatives of Wire Industries may enter upon the Purchaser's premises for that purpose.
- d. Despite clause 14.1 but subject to clause 15, the Purchaser may sell as fiduciary agent for Wire Industries the Goods to a third party in the normal course of the Purchaser's business provided that where the Purchaser is paid by that third party, the Purchaser holds the proceeds of sale, to the extend the Amount Payable on trust for Wire Industries. The Purchaser must keep those proceeds separate on trust for Wire Industries and not mix those proceeds with any other monies.
- e. Unless expressly agreed in writing, Wire Industries will allocate and apply amounts received from the Purchaser in the following order:
  - iii. in or towards payment of any part of the Amount Payable which is not part of the purchase price of any Goods, in the order in which those amounts were incurred;
  - iv. secondly, in or towards payment of the purchase price of Goods in the order in which those Goods were invoiced.This order of allocation and application will apply notwithstanding any instruction, request or appropriation of the Purchaser as to the way in which a payment made by it should be applied by Wire Industries, or any condition attached by the Purchaser to any payment made by it.
- f. If the Purchaser uses the Goods in some manufacturing or construction process of its own or some third party, then the Purchaser holds such part of the proceeds of such manufacturing or construction processes as related to the Goods on trust for Wire Industries. Such part is deemed to equal in dollar terms the amount owing by the Purchaser to Wire Industries at the time of the receipt of such

proceeds. The Purchaser must keep that part of the proceeds separate on trust for Wire Industries and not mix those proceeds with any other monies. Notwithstanding the above, the purchaser is still required to pay Wire Industries for Goods already delivered and for the Goods manufactured or ordered to specification and not yet delivered.

**15. CHARGE**

- a. The Purchaser hereby charges with payment of any indebtedness to the Supplier all beneficial interest (freehold and leasehold) in land and personal property held now or in the future by the Purchaser. The Purchaser agrees that if demand is made by the Supplier, the Purchaser receiving such a demand will immediately execute a mortgage or other instrument of security, or consent to a caveat, as required, and against the event that the Purchaser fails to do so within a reasonable time of being so requested, the Purchaser hereby irrevocably and by way of security, appoints any credit manager or solicitor engaged by the Supplier to be its true and lawful attorney to execute and register such instruments. Notwithstanding any other provision in this clause and in addition thereto the Supplier may lodge a caveat noting the interest given by this charge on the title of any property of the Purchaser whenever it so wishes.

**16. REALES**

- a. The Purchaser agrees that it will not re-supply the Goods supplied to it by The Supplier without The Supplier's prior written consent which The Supplier may withhold at its absolute discretion.

**17. FORCE MAJEURE**

- a. If Wire Industries is prevented (directly or indirectly) from supplying the Goods or providing the Services or any part thereof by reason of acts of God, strikes, lockouts, trade disputes, fire, floods, breakdowns, delay in the manufacture of the Goods for any reason whatsoever, interruption of transport, government action, non-delivery of raw material or products, refusal or failure of Wire Industries own suppliers to deliver to Wire Industries any Goods or components of Goods, or any other cause whatsoever outside its control (whether or not of a like nature to those specified above), Wire Industries is under no liability whatsoever to the Purchaser and is entitled, at its discretion to give notice to the Purchaser, either to cancel the Contract or to extend the time for its performance.

**18. SHORTAGES, DEFECTS AND INACCURACIES, FAILURE OF, OR DELAY IN, SUPPLY**

- a. The Purchaser hereby agrees to check all Goods received immediately upon unloading at the destination and all Services immediately upon completion. No claim by the Purchaser for shortages or improper or defective or damaged Goods, or defective or improper Services, will be recognised by Wire Industries unless notified to Wire Industries within forty-eight (48) hours of delivery or performance. Claims will only be recognized if the Purchaser advises the Delivery Docket Number/Schedule Number and Bar Mark in the case of processed steel.
- b. Wire Industries will endeavour to rectify inaccuracies or short supply with forty-eight (48) hours of notification but will not be responsible for any loss or damage (including consequential loss) however caused arising out of or resulting from such inaccuracies or short supply.
- c. If, due to any cause whatsoever, Wire Industries is unable to supply any part of the Contract by the nominated delivery date or at all, it is entitled, at its option:
  - i. to supply to the Purchaser similar Goods and/or Services which in the opinion of Wire Industries are an appropriate substitute without prior reference to the Purchaser; or
  - ii. not to supply part or all of the Goods and/or Services; or
  - iii. delay supply of part or all of the Goods and/or Services.

**19. DISPUTE RESOLUTION**

- a. If there is a dispute or disagreement between Wire Industries and the Purchaser arising in any way from or in relation to the Contract, then Wire Industries and the Purchaser must use all reasonable endeavours and reasonably appropriate alternative dispute resolution procedures as soon as possible before resorting to litigation.
- b. Nothing in this clause 19 prevents a party seeking urgent interlocutory relief from a court or requires that party to participate in informal resolution processes for longer than 30 days after a dispute has arisen.

**20. CONFIDENTIALITY**

- a. Wire Industries and the Purchaser agree that a Contract and any other information furnished by one party to the other pursuant to the Contract is and remains confidential between the parties and the parties must not disclose the same, or permit or cause the same to be disclosed, either directly or indirectly, to any third party unless:
  - i. prior approval in writing has been obtained from the other party;
  - ii. disclosure is required by law or;
  - iii. the information is in the public domain prior to the disclosure by the party.
- b. The expression "any third party" does not include the financial or legal advisers of a party or a related body corporate of a party.

**21. EXTRAS**

- a. Unless noted in the Quotation, the price quoted does not include items such as: tie wire; bar chairs; threading and/or screwing; saw cutting; mechanical splices; welding of any nature; blacksmithing; press work; butt welding; assembly of goods; supply and location of lifting hooks, slings and cradles; supply of bars exceeding lengths of ten metres or exceeding diameter of 36mm; delivery of oversized loads or provision of vehicle escorts; brickwork reinforcing and holding down bolts; galvanizing; on-site scheduling; product containers; steel fixing; on-site accommodation; provision of traffic control; or such other items as specified in the Quotation as being excluded.
- b. Where the Quotation states that prefabricated elements such as reinforcing elements or cages, engineered manufactured items and steel fixing are included unless expressly stated otherwise the quoted price does not include the cost of or associated with lifting or lowering positions on site; site scaffolding; supply and welding of lifting points; or site welding.
- c. The purchaser is responsible for the design and location of any required lifting and/or support items at the Purchaser's site.

**22. SERVICES**

- a. Unless expressly stated in a Quotation, the prices, fees or rates quoted do not include any Services.
- b. Wire Industries reserves the right to charge for any or all Services provided.
- c. Where Wire Industries has agreed to provide Services, the Purchaser must pay Wire Industries fees for such Services, if applicable, when such Services have been performed.
- d. Wire Industries will use all reasonable endeavours to perform Services in a competent, proper and workmanlike manner and exercising a reasonable standard of skill and diligence, but is not liable for any inaccuracy, error or omission arising from performance of the Services.
- e. Where a Quotation expressly includes steelfixing and/or prefabrication as part of the Services, the Purchaser must give Wire Industries sufficient notice to arrange such steelfixing and/or prefabrication and meet associated health and safety requirements.

**23. WORKING DOCUMENTS**

- a. Wire Industries accepts no responsibility for the correctness of Working Documents prepared by the Purchaser or third party.
- b. Unless otherwise agreed, the Purchaser must deliver all Working documents without charge to Wire Industries prior to commencement of the Services..
- c. Where the Purchaser submits electronic copies of Working Documents to Wire Industries, then Wire Industries reserves the right to charge for the printing costs associated with those Working Documents.
- d. Should errors occur as a result of Working Documents prepared by the Purchaser or a third party, the purchaser is liable for the cost of rectification.
- e. All Working Documents will remain in the custody and control of Wire Industries.
- f. A Quotation does not include any fee for design, re-design, detailing, re-detailing, scheduling or re-scheduling of Working Documents to be prepared by Wire Industries unless stated in the Quotation. The purchaser must pay Wire Industries fees for such Services, if applicable, when such Working Documents are prepared.
- g. Wire Industries will provide only two copies of material processing supply schedules and associated installation location plans.
- h. Wire Industries reserves the right to supply distribution steel:

- i. as detailed in the Working Documents; or
- ii. in stock lengths where not detailed in the Working Documents; or
- iii. as otherwise agreed in writing.
- i. Unless authorised in writing, neither the Purchaser nor any third party is authorised to reproduce, adapt or use in any manner whether part or whole any Working Documents prepared by Wire Industries (whether prepared on a fee paying basis or not). Any unauthorised reproduction, adaptation or use may be, among other things, a breach of Copyright and actionable by Wire Industries.
- j. The purchaser indemnifies Wire Industries against all claims and all costs, liabilities and expenses incurred by Wire Industries as a result of or related to:
  - i. any inaccuracy, omission or error in the Working Documents prepared by the Purchaser or a third party; or
  - ii. Working Documents, or any other documents provided by the Purchaser to Wire Industries for the purposes of or in the course of the supply of Goods or performance of Services, breaching a third Party's intellectual property rights.
 and this clause survives termination or expiry of the Contract.
- k. The Customer may not use any trade mark or other intellectual property of Wire Industries, unless it receives the prior written consent of Wire Industries (which consent may be given, withheld or withdrawn, or given subject to conditions, at Wire Industries discretion).

#### **24. COSTS**

- a. The Purchaser must pay Wire Industries all costs and expenses incurred by Wire Industries in connection with the Contract including legal expenses (on a full indemnity basis), stamp duty (including fines and penalties) and costs incurred and payable by Wire Industries in connection with registering, maintaining or releasing any security interest, charge, mortgage or caveat in connection with a Contract, or the recovery of the Amount Payable or in otherwise enforcing Wire Industries rights against the Purchaser under a Contract.

#### **25. DEFAULT INTEREST**

- a. Wire Industries may charge interest on any overdue amount at a rate equivalent to 2.0% p.a. above the business overdraft interest rate of its principal banker, as determined and calculated by Wire Industries. Such interest will be payable on demand by Wire Industries and for so long as it remains unpaid will compound on a monthly basis.

#### **26. MISCELLANEOUS**

- a. A notice under the Contract can only be in writing and can only be given to a party:
  - i. personally;
  - ii. by registered post to the last known place of business or residence or registered office. Such notice is deemed to be received at the time at which the letter is delivered in the ordinary course of post;
  - iii. by facsimile transmission to the last known facsimile number. Such notice is deemed to be received when the sending machine confirms notice has been sent; and
  - iv. by electronic transmission to the last known email address. Such notice is deemed to be received when the sending machine confirms notice has been sent.
- b. The Contract is governed by the laws in the State of New South Wales and the courts of that jurisdiction have exclusive jurisdiction in connection with the Contract.
- c. A party must not assign its benefits or obligations under the Contract without the prior consent in writing of the other party and such other party must not unreasonably withhold its consent to an assignment.
- d. A party waives a right under the Contract only by written notice that it waives that right.
- e. If a provision of the Contract would be for this clause 23.5, be unenforceable:
  - i. the provision must be read down to the extent necessary to avoid that result; and
  - ii. if the provision cannot be read down to that extent, it must be severed without affecting the validity and enforceability of the remainder of the Contract.

#### **27. PRIVACY**

- a. Wire Industries Privacy Policy is available from Wire Industries and [www.wireind.com.au](http://www.wireind.com.au).