



4<sup>th</sup> August 2017

## TERMS AND CONDITIONS OF SALE

### 1. General

In consideration of Mapei agreeing to supply goods and/or services to the Customer (at its request), the Customer adopts, accepts and agrees that these terms and conditions of sale (**Terms**) apply to the supply of any goods and/or services now or in the future by Mapei to the Customer to the exclusion of any conditions of sale of the Customer and supersede and replace any existing supply agreement between Mapei and the Customer.

### 2. Ownership of goods

a) Risk in all goods supplied will pass to the Customer on delivery. Title in and to all goods supplied will remain with Mapei and not pass to the Customer until the Customer has paid: I) the purchase price in full for those goods; and II) any other amount due and payable for any other goods supplied by Mapei. The Customer acknowledges that it holds the goods solely as bailee for Mapei until title in and to the goods passes to the Customer in accordance with this clause.

b) The Customer must maintain sufficient insurance for the benefit of Mapei and the Customer to cover Mapei's rights and the Customer's obligations under these Terms until title in and to the goods passes to the Customer in accordance with clause 2a). The Customer may sell or otherwise deal with the goods or items incorporating the goods before title in and to the goods has passed to the Customer, but only in the ordinary course of its business and if it does so, the Customer must hold the proceeds of that sale or dealing on trust for Mapei in a separate account.

c) Until such time as the Customer becomes the owner of the goods it will store them at its premises separately where practicable from its own property or the property of any other person and in a manner which makes the goods clearly identifiable as the property of Mapei.

d) If title in and to the goods has not passed to the Customer in accordance with clause 2a), the Customer's right to possession of the goods will cease immediately if: (I) the Customer makes default in any payment or is unable to pay its debts as they fall due; (II) an individual, the Customer is bankrupt or an insolvent under administration (as defined in the *Corporations Act 2001* (Cth) (**Corporations Act**)); or (III) a company, it is under administration, provisional liquidation, liquidation or a controller (as defined in the *Corporations Act*) has been appointed to it. Mapei may for the purpose of recovery of its goods, except where the Customer is an individual, without notice to the Customer and without liability to the Customer (unless caused by Mapei's negligence when entering the premises) enter upon any premises where they are stored or where they are reasonably thought to be stored and repossess them.

e) Following delivery, the Customer agrees that it is not entitled to return goods other than as set out in clause 3c).

f) The Customer acknowledges that Mapei has a security interest (under the *Personal Property Securities Act 2009* (**PPSA**)) in the Goods and any proceeds described in clause 2b) until title passes to the Customer in accordance with clause 2a).

g) The Customer acknowledges that each security interest over the goods (and any proceeds) arising under these Terms is a purchase money security interest to the extent that it secures payment of the amounts owing in relation to those goods. The security interests arising under these Terms attach to the goods when the Customer obtains possession of the goods.

h) The Customer agrees, at its cost in all things, to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which Mapei asks and considers required for the purposes of: (I) ensuring that any security interest is enforceable, perfected and otherwise effective, including if applicable, as a purchase money security interest; (II) enabling Mapei to apply for any registration, complete any financing statement or give any notification, in connection with the security interest so that Mapei has the priority it requires; or (III) enabling Mapei to exercise rights in connection with the security interest.

i) The Customer agrees to pay or reimburse the reasonable costs of Mapei in connection with anything required to be done under this clause 2.

j) The Customer waives the right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and the requirement to give it cannot be excluded.

k) The parties are not required to disclose any information of the kind referred to in section 275(1) of the PPSA and the Customer waives any right it has under section 275(7)(c) of the PPSA to authorise disclosure of such information.

l) The parties contract out of the application of sections 95, 118, 121(4), 125, 129, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA and Division 6 of Part 4.3 of the PPSA.

m) Terms used but not defined in this clause 2 have the same meaning as in the PPSA.

### 3. Delivery and exchange

- a) A normal delivery charge prescribed by Mapei from time to time, and published in their price list, will apply to all deliveries of goods, unless otherwise agreed in writing.
- b) The Customer is solely responsible for acceptance of orders of goods and may not make a claim for loss or damage in respect of orders where goods are, by arrangement with the Customer, delivered to or left at unattended sites.
- c)(I) Subject only to clause 3c)(II), goods may be exchanged for other goods of equivalent value if returned promptly and in any event, within fourteen (14) days of delivery, but the returned goods must be fit for resale (in Mapei's opinion, acting reasonably) and accompanied by the corresponding invoice/delivery docket. However, monies will not be refunded in respect of any exchange and an administration fee of the lesser of: (A) Mapei's reasonable costs incurred by it in facilitating the exchange of goods; and (B) 15% of the purchase price of the goods returned for exchange, will apply (as applicable), unless waived in writing by Mapei.
- c)(II) Powdered product, non-standard specially ordered goods or special size goods cannot be exchanged or returned.

### 4. Price

Unless otherwise agreed in writing, the price of the goods or services will be that price charged by Mapei (as set out in its price list from time to time provided to the Customer) on the date of order, plus (as applicable) any reasonable transportation, freight, postage, packaging, handling, insurance costs and expenses, taxes and duties, including GST in relation to the supply of the goods or services.

### 5. Terms of Payment

- a) **Non-credit Customers only:** Unless clause 5b) applies, payment for materials, goods and services is due in full prior to delivery of the materials and/or goods or provision of the services (as applicable) in the amount set out in Mapei's pro-forma invoice and is payable in cash or other immediately available funds.
- b) **Credit Customers only:** Payment for materials, goods and services is due in full 30 days following the end of the month from the date of invoice for those materials, goods and/or services.
- c) Interest will accrue and be payable on any amounts due and unpaid at the rate of 10% p.a. from the due date under clause 5a) or clause 5b) (as applicable) until all amounts are paid in full.
- d) If any amount due remains outstanding for a period of 15 days after the due date, then Mapei may immediately suspend the supply of materials, goods or services and proceed by appropriate court action to recover damages.

### 6. Change in Ownership

The Customer must promptly advise Mapei in writing of any change in status, ownership or its composition including, without limitation, any change of name, any ABN allocated to it or any change to that ABN or if it becomes trustee of a trust or a partner in a partnership, not stated in the application for credit facilities.

### 7. Privacy Act 1988 (Cth) (Privacy Act)

- a) Mapei may collect personal information from the Customer either directly or indirectly. Mapei will use, disclose and make accessible the Customer's personal information in accordance with its Privacy Policy (contained on Mapei's website), the Privacy Act and the Australian Privacy Principles.
- b) The Customer authorises Mapei to: (I) give and seek personal information about the Customer's credit arrangements or obtain a consumer or commercial credit report containing information about the Customer from any credit reporting body; (II) use the credit report, or obtain a further credit report, for the purposes of collecting overdue payments relating to credit owed by the Customer; and (III) give and seek credit reports and other information about the Customer's credit arrangements from: (i) any credit providers named in any application submitted by the Customer; and (ii) any credit providers that may be named in a credit report issued by a credit reporting body.
- c) The Customer's authorisation in clause 7(b) entitles Mapei to exchange information about the Customer's credit worthiness, credit standing, credit history and credit capacity.
- d) Credit reports and other personal information Mapei obtains about the Customer's credit arrangements from a credit reporting body or a credit provider may be used by Mapei for the following purposes: (I) to assess any application submitted by the Customer; (II) to collect payments that are overdue; (III) to notify a credit provider if the Customer breaches any obligations the Customer may have under the Terms; (IV) to exchange personal information with other credit providers as to the status of the Customer's account where the Customer is in breach of a contract with a credit provider; (V) to assess the Customer's credit worthiness; (VI) to administer the Customer's account; (VII) to monitor the Customer's performance or compliance under any agreement for sale or supply of goods or services connected to provision of credit by Mapei; and (VIII) any other purpose permitted or required by law.
- e) The Customer authorises Mapei to exchange personal information about the Customer with: (I) any person or organisation named by the Customer in an application submitted by the Customer or provided from time to time; (II) the Customer's proposed guarantors, insurance providers, consultants, brokers or any supplier of goods and services; (III) Mapei's collection agents or unrelated debt recovery organisation if the Customer is in breach of the Terms; or (IV) Mapei's related companies and organisation which service the Customer's account and the Terms.
- f) The Customer also authorises government authorities which hold the customer's driver's licence to confirm the Customer's address details to Mapei or Mapei's authorised agents.
- g) Mapei will not disclose personal information to overseas recipients.
- h) If the Customer does not provide the information requested or does not give authority for the use of the information Mapei may decline any application submitted by the Customer.

- i) If the Customer believes the privacy of their personal information has been compromised, the Customer is entitled to complain to Mapei. Mapei's Privacy Policy contains information about how the Customer can make a complaint.
- j) This clause also applies to directors of the Customer and the Guarantors (if any) and the Guarantors and where the Customer is one or more individuals or a partnership, each and every individual or partner give the same consents as given by the Customer under this clause 7.

#### **8. Limitation of Liability**

a) Subject only to clause 8b), the Customer acknowledges that:

I) no warranty, condition, description or representation in relation to goods supplied is given by Mapei, expressly or implied;

II) all warranties terms and conditions in relation to the sale, quality of fitness of the goods and of every other kind whether implied by use, statute or otherwise are excluded;

III) Mapei will not be liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply of the goods unless that injury, loss or damage is caused by Mapei's negligence in connection with the supply of the goods;

IV) To the extent permitted by section 64A of the Australian Consumer Law (**ACL**) (being schedule 2 of the *Competition & Consumer Act 2010* (Cth)), Mapei's liability for failure to comply with a guarantee under Division 1 of Part 3-2 of the ACL (other than sections 51, 52 or 53 of the ACL) is limited to one or more of the following as elected by Mapei:

(A) in the case of goods: (i) the replacement of the goods or the supply of equivalent goods; (ii) the repair of the goods; (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; (iv) the payment of the cost of having the goods repaired; or

B) in the case of services: (i) the supplying of the services again; (II) the payment of the cost of having the services supplied again.

b) Nothing in these Terms is intended to exclude, restrict or modify any condition, warranty, guarantee, right or remedy implied by law (including under the ACL) and which cannot be lawfully excluded, restricted or modified.

#### **9. General**

a) A provision of these Terms that is illegal, invalid or unenforceable in a jurisdiction is ineffective in that jurisdiction to the extent of the illegality, invalidity or unenforceability. This does not affect the validity or enforceability of that provision in any other jurisdiction, nor the remainder of the Terms in any jurisdiction.

b) Queensland law governs the Terms and the parties submit to the exclusive jurisdiction of the Queensland courts.