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| <p>1 Definitions and Interpretation</p> <p>Agreement this document and an Order or other contract documents.</p> <p>Buyer a buyer so identified in an Order or another who orders on their behalf.</p> <p>Design design work, drawings, sketches or the like.</p> <p>Goods goods supplied by the Seller to the Buyer, or as part of Services.</p> <p>Guarantor a person who guarantees obligations of the Buyer.</p> <p>IP Rights intellectual property rights of any kind.</p> <p>Normal Hours 8am to 4.30pm Monday to Friday excluding statutory or award public holidays.</p> <p>Order an order from the Buyer to the Seller for Goods or Services described in an Order Form, Quotation or as otherwise agreed.</p> <p>Order Form an order form or document describing Goods or Services to be supplied by the Seller.</p> <p>PPS Act the Personal Property Securities Act 2009 (Cth).</p> <p>PPS Law the PPS Act and associated legislation and regulations for the time being in effect.</p> <p>Price the price of Goods or Services agreed between the Seller and Buyer.</p> <p>Quotation a quote provided by the Seller to the Buyer for Goods or Services.</p> <p>Security Interest a Security Interest as defined in the PPS Act.</p> <p>Seller The Shotton Group Pty Ltd (ACN 005 550 747) trading as any one or more of Shotton Manufacturing, Shotton Lifts, Parmed, Shotton Material Handling or another trading name disclosed on an Order or other contract document and includes successors or assigns.</p> <p>Services services supplied by the Seller to the Buyer including, advice, recommendations, Design, or the supply of the Goods.</p> <p>2 Acceptance</p> <p>2.1 The Buyer is bound by the Agreement by: (a) placing an Order; (b) signing an Order Form; (c) accepting Goods or Services; or (d) any other means of contracting.</p> <p>2.2 Buyers will be jointly and severally liable.</p> <p>2.3 The Buyer must give the Seller 14 days notice of any proposed change in the Buyer's name, address, contact numbers, business practice or any other relevant details.</p> <p>3 Orders</p> <p>3.1 Goods or Services are as described in an Order.</p> <p>3.2 Supply is conditional on acceptance of an Order given to the Buyer.</p> <p>3.3 The Seller is not obliged to proceed with the production of any Goods until the Buyer has approved their design.</p> <p>3.4 The Seller may refuse to accept or supply any Order or part of an Order.</p> <p>4 Price and Payment</p> <p>4.1 The Price must be stated on an Order Form and match the price and conditions of supply quoted by the Seller either in writing or orally to the Buyer. A Quotation must be accepted by the Buyer within 30 days. Where a price has not been quoted or noted on an Order Form, the Buyer accepts that the Seller will commence work on a "do and charge basis" and determine the Price after work has been completed. The Buyer accepts the charges as determined by the Seller as fair as reasonable covering labour, material, overheads and profit.</p> <p>4.2 The Seller may by notice to the Buyer prior to delivery increase the Price to reflect any increase in the cost to the Seller beyond reasonable control, including changes to</p> | <p>the Goods or Services requested by the Buyer, delays caused by the Buyer, foreign exchange fluctuations, taxes, duties, the cost of labour, materials or manufacturing costs. The Buyer will have 3 business days from the notice to cancel the Order by notice to the Seller and the Buyer must pay the Seller a pro-rata portion of the Price representing work done to the date of cancellation. If the Buyer fails to cancel the Buyer must accept the Price increase.</p> <p>4.3 Time for payment is of the essence. It will be stated on the Order Form, tax invoice, Quotation or in any other contract document. If credit is granted payment will be as specified in the terms of the application for credit. If no time is stated payment is due on delivery, and in the case of delivery in instalments, payment is due on completion of each instalment. If there is more than one due date for payment the earliest date will prevail.</p> <p>4.4 The Seller may withhold delivery of the Goods or Services until payment is made or require payment on the date of the Agreement.</p> <p>4.5 Payment must be by cash, cheque, bank cheque, EFT or credit card (plus surcharges) or other agreed method.</p> <p>4.6 Unless specified to the contrary the Price is exclusive of GST and any other taxes or charges. Where a taxable supply is made, the Price is increased by the amount of any GST payable for the taxable supply and must be paid at the same time subject to a valid tax invoice being provided. The Buyer must also pay any other taxes or charges when paying the Price.</p> <p>5 Delivery</p> <p>5.1 Delivery of Goods will be made to the Buyer's address on the Order or to a third party nominated by the Buyer. The Buyer or third party must receive the Goods when delivered.</p> <p>5.2 Delivery of Goods to a carrier named by the Buyer or, failing that, to a carrier selected by the Seller, is valid delivery.</p> <p>5.3 The Seller may deliver Goods or Services by instalments under an agreed delivery schedule. Where Goods are supplied "ex works", the Buyer is responsible for insuring the Goods in transit until delivered and the Price is paid.</p> <p>5.4 Late or failed delivery of Goods or Services does not entitle repudiation or constitute breach.</p> <p>5.5 The Seller is not liable for loss or damage for late or failed delivery of Goods or Services.</p> <p>5.6 Delivery and provision of Services will take place on the agreed dates and times.</p> <p>6 Risk and Insurance</p> <p>6.1 Risk for Goods passes to the Buyer on delivery by the Seller to the Buyer or the Buyer's courier or the Buyer's authorised representative.</p> <p>6.2 The Buyer must insure the Goods, against loss, damage, destruction and theft, and include the interest of the Seller in the insurance policy and provide proof of the insurance to the Seller from delivery until:</p> <p>(a) the Buyer has paid to the Seller all amounts owing for the Goods, the Buyer has met all of its other obligations to the Seller, and payment other than in cash is honoured, cleared or acknowledged; and</p> <p>(b) the Goods are discharged from any Security Interest held by the Seller.</p> <p>6.3 If Goods are damaged, destroyed or stolen before property passes to the Buyer or before the Goods are discharged from any Security Interest, the Seller is entitled to receive all insurance proceeds whether or not the Price is payable, without limiting any rights or remedies under the Agreement, including the right to require payment of the balance of the Price. Production of the Agreement by the Seller is sufficient evidence of the Seller's right to receive insurance proceeds without the need for further enquiries.</p> <p>7 Liability and representations</p> <p>7.1 The Buyer acknowledges making independent enquiries in deciding to purchase Goods or Services.</p> <p>7.2 The Buyer will not make representations about any</p> |
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- Goods, Services or the Seller to the Buyer's customers or any other third party without obtaining the prior consent of the Seller.
- 7.3 Where Services involve the provision of advice, recommendations, Design or information, the Buyer must make its own enquiries and review all Services to determine whether they are suitable for the Buyer.
- 7.4 Where Goods are designed to a specification, sketch or other design provided by the Buyer, the Seller will not take responsibility for the accuracy or suitability, functionality or performance of Goods so produced.
- 7.5 The Seller does not make any express or implied warranties in relation to any Goods or Services.
- 7.6 The Seller is not liable for any claim (whether in contract, tort, statute or otherwise) for any direct, special, incidental, indirect or consequential loss, damages or injury, loss of profits, contracts, revenue or data from the provision of the Goods (including Goods designed by the Seller and approved by the Buyer) or Services and whether as a result of any breach, default, negligence or otherwise by the Seller.
- 7.7 Subject to **clauses 7.8 and 7.9**, the maximum liability of the Seller for any claim is capped at the amount of the Price.
- 7.8 If the *Competition and Consumer Act 2010* (Cth) (or similar legislation) applies and permits limitation of liability to apply, the liability of the Seller is limited, at the option of the Seller, to:
- (a) in the case of Goods, any one or more of the following:
 - (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; or
 - (iv) the payment of the cost of having the Goods repaired; and
 - (b) in the case of Services:
 - (i) the supplying of the Services again; or
 - (ii) the payment of the cost of having the Services supplied again.
- 7.9 Any express or implied term or condition which limits or excludes any term, condition, warranty or liability of the Seller applies to the extent permitted by law and must not be construed as excluding, qualifying or limiting the Seller's statutory rights or remedies from breach of any express or implied term where the exclusion, qualification or limitation would be prohibited by legislation.
- 8 Defects or Returns**
- 8.1 Goods will be deemed to have been delivered in compliance with the Agreement unless the Buyer, within 7 days following delivery: (a) notifies the Seller of any defect, shortage in quantity, damage or non-compliance; and (b) gives the Seller opportunity to inspect the Goods within a reasonable time. The Seller's liability, in addition to any limitation under **clause 7** is limited at the Seller's discretion to replacing or repairing the Goods if the Goods are returned in accordance with procedures specified by the Seller and undamaged in the condition delivered with all packaging material, brochures and instruction material in as new condition as reasonable in the circumstances.
- 8.2 The Seller may accept undamaged Goods for a credit or return less any restocking fee and freight.
- 9 Warranty**
- 9.1 The Seller warrants that any defect in any workmanship of the Seller which becomes apparent and is notified to the Seller within the warranty period stipulated by the Seller or if none is stipulated within 12 months after delivery, the Seller will either repair or remedy the defect, subject to the conditions that:
- (a) the warranty does not cover any defect or damage from any:
 - (i) failure to properly maintain Goods;
 - (ii) failure to follow instructions or guidelines provided by the Seller;
 - (iii) use of Goods otherwise than for their proper purpose;
 - (iv) continued use of Goods after a defect becomes apparent or should be apparent to a prudent user; or
 - (v) fair wear and tear, any accident or anything beyond the reasonable control of the Seller;
- (b) the warranty will cease and the Seller is not liable under the warranty if Goods are repaired, altered or overhauled by the Buyer without the Seller's consent;
- (c) the Seller is not liable to compensate the Buyer for any warranty claim for delay by the Seller in replacing or repairing Goods or in properly assessing a claim; and
- (d) where a claim under warranty is approved by the Seller, any repairs will be carried out during Normal Hours or outside Normal Hours as the Seller agrees.
- 9.2 For Goods not manufactured by the Seller, any warranty is the warranty provided by the manufacturer or supplier to the Seller. The Seller is not bound by, or responsible for, any term, condition, representation or warranty given by the manufacturer or supplier.
- 10 Intellectual Property**
- 10.1 Where the Seller has designed or produced Goods as part of the Order, all IP Rights in the Design remain with the Seller, and may only be used by the Buyer in the discretion of or as specified by the Seller.
- 10.2 Where the Buyer has provided Design for Goods, the Buyer will retain the IP Rights in them except to the extent that the Seller is required to make any modification, enhancement or improvements.
- 10.3 The Buyer warrants that all Designs or instructions provided by the Buyer will not cause the Seller to infringe any IP Rights of a third party.
- 11 Default & Consequences Of Default**
- 11.1 Interest on overdue amounts owed by the Buyer to the Seller accrues daily from the date when payment becomes due until the date of payment at 2.5% compounding per calendar month or part month.
- 11.2 If the Buyer defaults in payment of any amount when due, the Buyer shall indemnify the Seller from and against all of the Seller's costs and disbursements arising from the default including legal costs on an indemnity basis, any late fees or administrative charges of the Seller and all of the Seller's costs of collection.
- 11.3 Without limiting any remedies of the Seller, if at any time the Buyer is in breach of any obligation (including payment) the Seller may suspend or terminate the supply of any Goods or Services or any of its other obligations. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers as a consequence.
- 11.4 If:
- (a) any money payable to the Seller becomes overdue, or if the Seller believes the Buyer will be unable to meet a payment;
 - (b) the Buyer becomes insolvent, convenes a meeting with creditors, proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of creditors; or
 - (c) a receiver, manager, administrator, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer then without limiting the Seller's other remedies at law:
 - (i) the Seller may cancel all or any part of any Order which remains unperformed; and
 - (ii) all amounts owing to the Seller, whether or not due for payment will, immediately become payable including interest.
- 12 Title to Goods**
- 12.1 Property in Goods does not pass from the Seller to the Buyer unless **clause 13** applies, or unless and until (a) the Buyer has paid to the Seller all amounts owing for the

- Goods, (b) the Buyer has met all of its other obligations to the Seller, and (c) payment other than in cash is honoured, cleared or acknowledged.
- 12.2 Where practicable the Buyer must keep the Goods stored separately from any other property until the Seller has received payment and all other obligations of the Buyer are met.
- 12.3 Until property in Goods passes to the Buyer:
- (a) the Seller may give notice in writing to the Buyer to return the Goods or any of them and the rights of the Buyer to obtain ownership or any other interest in the Goods shall immediately cease;
 - (b) the Seller may stop the Goods in transit whether or not delivery has been made;
 - (c) if the Buyer fails to return any Goods the Seller or its agent may enter any property to re-take possession;
 - (d) the Buyer is a bailee of the Goods, must hold any proceeds of sale or disposal on trust for the Seller and not deal with them in any way adverse to the Seller;
 - (e) the Buyer must not encumber, charge or give any interest in the Goods;
 - (f) the Seller may issue proceedings to recover the Price even where ownership has not passed to the Buyer; and
 - (g) if the Goods are converted or made part of any end product, the Seller will be the owner of the end product.
- 12.4 The Seller must supply the Goods free from encumbrances including any Security Interest, subject to **clause 13**.
- 13 Personal Property Securities Law**
- 13.1 If the Seller elects that property in Goods will pass from the Seller to the Buyer before (a) the Buyer has paid to the Seller all amounts owing for the Goods, (b) the Buyer has met all of its other obligations to the Seller, or (c) payment other than in cash is honoured, cleared or acknowledged, the Buyer acknowledges that the Agreement constitutes a Security Interest for the purposes of the PPS Law in the Goods.
- 13.2 Any payments received by the Seller will be allocated by it as it decides and they may be allocated to Goods encumbered by a Security Interest after payments for other purposes.
- 13.3 Where the Seller holds a Security Interest over Goods, the Buyer:
- (a) must not grant another Security Interest to a third party in the same Goods;
 - (b) waives any right to receive a verification statement or financing change statement concerning the Security Interest;
 - (c) indemnifies and on demand must reimburse the Seller for all expenses incurred in registering a verification statement or financing change statement on the PPS Register or releasing the Goods from a Security Interest; and
 - (d) must not register a financing change statement.
- 14 Unpaid Seller's Rights To Dispose Of Goods**
- If the Seller retains or regains possession or control of the Goods, payment is due to the Seller, the Seller has demanded payment, and the Seller has not received payment then, whether property and the Goods has passed to the Buyer or not, the Seller may dispose of the Goods and may claim from the Buyer the loss to the Seller on disposal.
- 15 Cancellation**
- The Seller may without liability terminate the Agreement or cancel delivery of Goods or Services at any time before the Goods or Services are delivered by giving notice to the Buyer.
- 16 Guarantee**
- The Buyer shall upon request provide a guarantee and indemnity in favour of the Seller.
- 17 Credit reporting**
- The Buyer agrees to, and shall upon request sign or produce any consents or other forms required by the Seller to:
- (a) obtain credit information, credit reports or exchanging credit information about the Buyer or any Guarantor;
 - (b) obtain credit-reporting agency reports containing personal credit information about the Buyer or any Guarantor;
 - (c) exchange information about the Buyer or any Guarantor with credit providers to assess any credit application by the Buyer, to notify other credit providers of a default by the Buyer, to exchange information with other credit providers where the Buyer or any Guarantor is in default with them, or to assess the credit worthiness of the Buyer or any Guarantor;
 - (d) enable the Seller to be given a consumer credit report to collect overdue payment on commercial credit; or
 - (e) personal data being provided and used or retained by the Seller for its purposes including the provision of Goods or Services, their marketing, the Buyer's credit, processing payment instructions, direct debit or credit facilities, operation of the Buyer's account, collections, or providing information to potential Guarantors, the Seller giving information about the Buyer or any Guarantor to a credit reporting agency to obtain a consumer credit report about the Buyer or any Guarantor and allowing the Seller to create or maintain credit information about them.
- 18 Security of Payment**
- If the Building and Construction Industry Security of Payment Act 2002 (Vic) or similar legislation in another jurisdiction (**Act**) applies:
- (a) the Buyer and Seller must ensure that within 24 hours a copy of any notice given or received under the Act is provided to the other; and
 - (b) any authorised nominating authority or the like under the Act shall be a person authorised by the relevant authority under the Act to nominate adjudicators.
- 19 General**
- 19.1 Invalid, void, illegal or unenforceable terms will be severed.
- 19.2 The laws and jurisdiction of the Courts of Victoria apply exclusively.
- 19.3 The Buyer shall not set off against the Price amounts due from the Seller to the Buyer.
- 19.4 The Seller may licence or sub-contract any obligations without the Buyer's consent.
- 19.5 The Seller may review the terms and conditions of the Agreement at any time, and if there is to be any change, the change will take effect upon notice to the Buyer.
- 19.6 Neither party shall be liable for any default (other than payment) due to anything beyond its reasonable control.
- 19.7 Any notice, consent, agreement, waiver or the like must be in writing to be effective.
- 19.8 The Agreement supersedes all prior representations, arrangements and agreements about its subject matter and forms the entire agreement between the parties.
- 19.9 Any provision of the Agreement capable of having effect after termination does not merge survives termination.
- 19.10 The Buyer and the Seller at its expense must at the request of the other promptly do all things reasonably necessary to give effect to this Agreement and everything contemplated by it, including all dealings in connexion with any Security Interest.

20 Lifts and Miscellaneous Product Service

- 20.1 Where the Agreement includes the supply of a lift or any miscellaneous product service the following terms and conditions apply.
- 20.2 The term of the Agreement will be the length of time stated in the Agreement, and if it continues thereafter, 30 days notice from one party to the other.
- 20.3 If the Agreement continues beyond 12 months, in the absence of anything stated to the contrary the price will increase per year by the amount of the Australian CPI (Consumer Prices Index for Melbourne) or by the amount the Seller determines fair and reasonable and is accepted by the Buyer.
- 20.4 The Seller's only responsibility apart from those expressly stated in the Agreement is to service and maintain the Goods as stated on the Quote.
- 20.5 In relation to lifts, the Seller is not responsible, amongst other things, for car superstructure (including removable door panels, plenum chambers, ceilings, light diffusers, hand rails, floor coverings, internal surfaces), structural lift well enclosures (including beams, landing door frames, architraves, finishes, sills, car door sills, machine rooms), ventilation equipment servicing motor or machine room, any equipment used for the removal of water from lift pits or machinery areas, electrical mains on the supply side of the lift main switchboard in its machine room, lighting tubes, globes or fittings for machine rooms, lift cars and escalator balustrades, car fascia plates, enclosures, push button or indicator panels, telephone, audio, communication or security equipment or any wiring associated which is external to any machine or lift well enclosures, or buried piping, cylinders, caissons of hydraulic lifts (except for wearing parts and seals where access to them is practicable) or lift equipment which has been misused, vandalised or maliciously damaged.
- 20.6 The Seller is not obliged to provide any Goods or Services other than those described in the Agreement except at the request and expense of the Buyer. The Seller shall at the expense of the Buyer attend amongst other things to the following:
- (a) install new attachments;
 - (b) attend to structural or other alterations; and
 - (c) carry out repairs, renewals or replacements, necessitated or caused by reasons beyond the reasonable control of the Seller and attend to the replacement of parts or components of a different make or design resulting from the direction of any statutory authority or at the direction of the Buyer or other interested party which after the commencement of the Agreement become necessary provided that the fee structure applicable to those Services are agreed between the Seller and the Buyer. Where at the Buyer's request Services are to be carried out outside Normal Hours the Buyer must pay the cost of those Services at the Seller's normal overtime rates and the Seller will not be obliged to commence the Services until agreement is reached on the cost of the Services and the time and method of payment.
- 20.7 The Seller will maintain a similar performance standard in respect of equipment in existence at the date of commencement of the Agreement or at another standard agreed between the parties.
- 20.8 The Seller will attend for due maintenance to perform any works quoted for the term of the Agreement, during times to be agreed with the Buyer, but not outside Normal Hours unless agreed or if the Seller so elects. Any request for work outside Normal Hours will be charged at the Seller's normal overtime rates.
- 20.9 Any repairs for breakdowns outside of the scope of the Agreement or warranty period will be quoted and the Buyer must agree in writing prior, or as agreed between the parties, to any works being carried out. Alternatively, if the Buyer agrees, the works may be carried out charging the current hourly rate for the time taken to complete the work, and charges for any required used parts.
- 20.10 The Seller and the Buyer must notify each other of any event or circumstance concerning the state of repair of the equipment or its capacity to function adequately if it is likely to adversely affect the safe and efficient functioning of the equipment.
- 20.11 Where phone support is part of the Agreement, the Seller shall supply appropriately skilled lift technicians who are readily available to offer basic advice for repairs to the equipment by phone 24 hours, 7 days per week. Where phone support service advice is not successful, the Seller will satisfy the request by attending the owner's premises charging for travel time and hours based on current rates and conditions for Normal Hours or outside Normal Hours; whichever is applicable. Any parts required will be charged at a current rate of the day. If attendances are required outside Normal Hours all time including travel will be charged at the Seller's normal overtime rates. Any works carried out after Normal Hours will have only temporary repairs or adjustments effected as are within the capacity of the attending employee and the balance of any work will be carried out during Normal Hours.
- 20.12 Repairs for breakdowns outside any warranty period will be quoted by the Seller and agreed by the Buyer before any work is carried out.