

DEFINITIONS

1. In this Agreement, the following definitions apply:
 - a) **“Agreement”** means this Agreement between the Parties, incorporating these Terms and Conditions.
 - b) **“Buyer”** or **“You”** or **“Your”** or **“Customer”** means any person, firm, corporation, government, semi-government or local government department or authority, its successors, assignees, trustees, administrators or liquidators, to whom or to which Goods are provided, hired or sold to by the Company.
 - c) **“Carrier”** means the carrier delivering any Goods to the Buyer.
 - d) **“Company”** means GM Poles Pty Ltd (ACN 081 961 515) and GM Poles NSW Pty Ltd (ACN 610 790 068) and any of their subsidiaries, relevant other entities, its successors, assignees, trustees, administrators or liquidators, from whom the Goods are provided, hired or sold from.
 - e) **“Goods”** means any goods agreed in the Agreement to be supplied to the Buyer by the Company.
 - f) **“Order”** means an Order placed by the Buyer with the Company to purchase goods.
 - g) **“Parties”** means the Company and the Buyer.
 - h) **“PPSA”** means the Personal Property Securities Act 2009.
 - i) **“Price”** or **“Prices”** means the Price and/or Prices for the purchase of the Goods as listed from time to time in writing or by verbal advice from an authorised employee of the Company.
 - j) **“Secured Money”** means any monies secured by the Company by way of a security interest.
 - k) **“Terms and Conditions”** means these Terms and Conditions.

GENERAL PROVISIONS

2. **Applicability and Acceptance of these Terms and Conditions**
 - 2.1 By entering into this Agreement and/or purchasing Goods from the Company, the Buyer accepts and agrees to be bound by these Terms and Conditions.
 - 2.2 The Company may make changes to these Terms and Conditions from time to time to accommodate changes in law, business practice or the

introduction of new Goods without notice to the Buyer or by general notice via letter.

- 2.3 Subject to any variation under condition 2.5, these terms and conditions are the only terms and conditions upon which the Company is prepared to deal with the Buyer.
- 2.4 The Buyer will ensure that the terms of its Order and any applicable specification are complete and accurate.
- 2.5 Each request for Goods by the Buyer to the Company will be deemed to be an offer by the Buyer to buy the Goods subject to these terms and conditions and no such offer by the Buyer will be accepted until the Company accepts the offer, either expressly or impliedly by fulfilling the Buyer's order, in whole or in part.
- 2.6 Any quotation is given on the basis that no Agreement will come into existence until the Company accepts an offer or Order of the Buyer. Any quotation is valid for the shorter of 30 days from its date or the expiry date in the quotation, provided that the Company has not previously withdrawn it. The Company reserves the right to correct any error on a quotation on notice to the Buyer or to withdraw a quotation at any time.
- 2.7 These terms and conditions apply to all the Buyer's purchases and any variation to these terms and conditions shall have no effect unless expressly agreed in writing and signed by an authorised representative of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Agreement.

DESCRIPTION

3. **The Quantity and Description of Goods**
 - 3.1 The quantity and description of the Goods will be as set out in the quotation or order. All samples, drawings, descriptive matter, specifications, and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them.

SUPPLY AND DELIVERY OF GOODS

4. **Supply of Goods**
 - 4.1 The supply of Goods by the Company is subject to availability of the Goods.
 - 4.2 Any Order cancellation must be in writing and is subject to the Company's approval.
5. **Delivery of Goods**
 - 5.1 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery will not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.
 - 5.2 Subject to the other provisions of this Agreement, the Company will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor will any delay entitle the Buyer to terminate or rescind the Agreement unless such delay exceeds 180 days and in that event, termination will be the sole remedy of the Buyer.
 - 5.3 If for any reason the Buyer fails to accept delivery of any Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
 - a) Risk in the Goods will pass to the Buyer (including for loss or damage caused by the Company's negligence); and
 - b) The Company may store the Goods, and the Buyer will be liable for all related costs and expenses (including, without limitation, storage and insurance) (See Clause 20).
 - 5.4 The Buyer will provide at the delivery point and at its expense adequate and appropriate equipment and manual labour for unloading the Goods.
 - 5.5 The Company may deliver the Goods by separate instalments. Each separate instalment will be invoiced and paid for in accordance with the provisions of the Agreement.

5.6 Each instalment will be a separate Agreement and no cancellation or termination of any one Agreement relating to an instalment will entitle the Buyer to repudiate or cancel any other Agreement or instalment.

6. Collection of Goods

6.1 The Buyer shall be responsible for all unloading of Goods when being delivered by the Company or its Agent.

6.2 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

7. Prices

7.1 Unless otherwise stated, all Prices quoted are exclusive of GST, duty, taxes or any other statutory charge or fee payable in connection with the hire of the Goods to the Buyer by the Company.

7.2 Unless otherwise agreed by the Company in writing, the price of the Goods will be the price set out in the Company's quotation, if one was given, and if not, the Company's price list as at the date of delivery.

8. Risk and Title

8.1 The risk of the Goods passes to the Buyer at the point of delivery. The Company accepts no responsibility for the Goods from the point of delivery

8.2 Delivery to the Buyer or where directed by the Buyer to deliver constitutes delivery.

8.3 The Buyer acknowledges that it is the Buyer's responsibility to ensure that all Goods are insured from point of delivery.

8.4 The title of the Goods remains with the Company until the purchase price of the goods is paid in full by the Buyer.

CREDIT ACCOUNT AND PAYMENT

9. Credit Limit Approval

9.1 Payment of all accounts shall be made on or before 30 days from End of Month from when the invoice was issued.

9.2 All invoices shall immediately become due and payable in the event of default on payment by the Buyer of any invoice

or account, regardless of whether or not some invoices may not otherwise have become due for payment.

9.3 The Buyer will make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

9.4 Every day from the time the Buyer submits an order for goods until all amounts payable to the Company by the Buyer under the Contract have been paid in full is a 'reference date' for the purposes of the Building Industry Fairness Act (Security of Payment) Act (2017) (BIF) and equivalent legislation in other States and Territories.

9.5 If the Buyer fails to pay the Company any sum due pursuant to this Agreement, the Buyer will be liable to pay interest to the Company on such sum from the due date for payment at the monthly rate of 2.5% until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under any law providing for interest on late payment.

10. Credit History

10.1 The Buyer hereby gives the Company authority to make enquiries as to the credit and financial responsibilities of the Buyer and/or the Buyer's Directors and/or Shareholders in order to suitably qualify the Buyer's capacity to incur debt and repay any amounts to the Company. These enquiries shall include but not be limited to obtaining reports from credit reporting agencies and references from current and/or past providers of credit to the Buyer

10.2 In accordance with section 18E(8) (c) of the *Privacy Act 1988* (Cth), You acknowledge that the Company has informed You that certain items of personal information about You contained in/or relating to Your Application for Credit, and permitted to be kept on a credit information file, might be disclosed to a credit reporting agency. Furthermore, You agree, in accordance with s18H(3), s18K(1)(b), s.18K(1)(c), s18K(1)(h) and s18N(1)(b) of the *Privacy Act 1988* that use by the Company of the relevant information

referred to in those sections may occur for the purpose of assessing Your credit application.

SECURITY AND CHARGES

11. Charges

11.1 As security for payment to the Company of all moneys payable by the Buyer and for the Buyer's obligations generally under this Agreement, the Buyer charges in favour of the Company the whole of your undertaking, property and assets (including without limitation all of your interests, both legal and beneficial, in freehold and leasehold land) both current and later acquired. You irrevocably appoint each officer as your attorney to do all things necessary to create and register each such charge.

12. Lien

12.1 The Company reserves the following rights in relation to the Goods until all amounts owed by the Buyer to the Company are fully paid:

- Ownership of the Goods remains with the Company.
- The Buyer authorises an authorised agent or representative of the Company to enter the Buyer's premises (or the premises of any associated Company) where the Goods are located, without liability for trespass or any resulting damage, and retake possession of the Goods and the Buyer agrees that the Company has an irrevocable license to do so.
- The Buyer authorises the Company to keep or resell any Goods repossessed pursuant to Clause 12 of this Agreement.
- If the Goods are resold by the Buyer, the Buyer shall hold such part of the proceeds of any such sale as represents the invoice Price of the Goods sold in a separate identifiable account as the beneficial property of the Company and shall pay such amount to the Company upon demand.
- Notwithstanding the above, the Company shall be entitled to maintain an action against the Buyer for the invoice Price.
- In connection with the Goods, while they remain the property of the Company, the Buyer agrees that:

- I. The Buyer has no right or claim to any interest in the Goods to secure any liquidated or un-liquidated debt or obligation that the Company may owe the Buyer;
- II. The Buyer cannot claim any lien over the Goods;
- III. The Buyer warrants and undertakes that the Buyer will not create any absolute or defeasible interest in the Goods in relation to any third party except as may be authorized by the Company in writing; and
- IV. where the Buyer is in actual or constructive possession of the Goods:
12(a) The Buyer will not deliver them or any document of title to the Goods to any person except as directed by the Company; and
12(b) The Buyer is in possession of the Goods as a bailee of the Goods and owes the Company the duties and liabilities of a bailee.
- g) Pending payment in full for the Goods, the Buyer:
- I. must not supply any of the Goods to any person outside of its ordinary or usual course of business;
- II. must not allow any person to have or acquire any security interest in the Goods;
- III. must insure the Goods for their full insurable or replacement value (whichever is higher) with an insurer licensed or authorized to conduct the business of insurance in the place where the Buyer carries on business (See Clause 20).
- h) Despite the above provisions contained in Clause 8 of this Agreement, if the Buyer supplies any of the Goods to any person before all moneys payable by the Buyer have been paid to the Company (and have not been claimed or clawed back by any person standing in the place of or representing the Buyer), the Buyer agrees that:
- I. it holds the proceeds of re-supply of the Goods on trust for and as agent for the Company immediately when they are receivable or received;
- II. The Buyer must either pay the amount of the proceeds of re-supply to the Company immediately when they are received or pay those proceeds into an account with a bank or a financial institution or deposit taking institution as trustee for the Company.
- 13. Personal Property Securities Act 2009 (Cth)**
- 13.1 The Buyer acknowledges and agrees that any Security interest created by this Agreement, or any transaction contemplated by it, extends to, and acts as a Security Interest in respect of, any proceeds (including any account) derived from, or from a dealing with, the Goods and accession to the Goods.
- 13.2 The Buyer agrees to do anything which the Company may require from time to time to:
- 13.2.1 Enable the Buyer to register and file valid and effective financing statements or financing change statements with respect to any Security Interest over PPS Property created by these terms and conditions or any transaction contemplated by them; and
- 13.2.2 Ensure that any Security Interest which is purported to be reserved or created by these terms and conditions, or any transaction contemplated by them, is:
- I. A first ranking perfected Security Interest over all PS Property;
- II. Perfected by control to the extent possible under the PPSA; and
- III. If applicable, recorded as a purchase money security interest on the PPSA (PMSI).
- 13.3 The Buyer agrees:
- 13.3.1 Not to, without first providing at least fourteen (14) days written notice to the Company, change its name, ACN, ABN, address, email address, facsimile number or any other details that have been, or are required to be, recorded on the PPSR in connection with any Security Interest created by these terms and conditions or any transaction contemplated by them;
- 13.3.2 To pay all costs in connection with the registration, discharge or amendment of any financing statement or financing charge statement; and
- 13.3.3 Not to, without the prior written consent of the Company, lodge or serve a financing change statement or an amendment demand in relation to any Security Interest created by these terms and conditions or any transaction contemplated by them.
- 13.4 The Buyer acknowledges that the Goods are not intended, and shall not be used for personal, household or domestic purposes.
- 13.5 The Buyer irrevocably waives the right to receive from the Company any verification statement or notice in relation to a registration event in accordance with section 157(3)(b) of the PPSA.
- 13.6 The Buyer and the Company agree that, to the extent that section 115(1) of the PPSA allows them to be excluded, sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 138B(4), 142 and 143 are excluded from application to this Agreement.
- 13.7 To the extent that section 115(7) of the PPSA allows them to be excluded, sections 127, 129(2), 129(3), 132, 134(2), 135, 136(5) and 137 do not apply to this Agreement or to any enforcement by the Company of any Security Interest in the PPS Property.
- 13.8 Where the Company is unable to determine whether any Goods in respect to the Buyer's right to possession has terminated, the Buyer will be deemed to have sold all Goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.
- 13.9 On termination of the Agreement, howsoever caused, the Company's (but not the Buyer's) rights contained in this Clause 12 shall remain in effect.
- DEFAULT**
- 14. Default**
- 14.1 The Buyer must pay to the Company any costs, charges and expenses (including legal fees and costs on a full indemnity basis as a liquidated debt) incurred by the Company in connection with the entry into this Agreement, the exercise or attempted exercise of any power, right or remedy under these Terms and Conditions and/or the failure of the Buyer to comply with these Terms and Conditions.

15. Termination

- 15.1 The Company is entitled to terminate a Contract with immediate effect by giving written notice to the Buyer if:
- The Buyer fails to pay any amount due under these terms and conditions on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment.
 - The Buyer commits a material breach of its obligations under these terms and conditions and (if such breach is remediable) fails to remedy that breach within a period of 10 days after receipt of notice in writing requiring it to do so; or
 - The Buyer commits a series of persistent minor breaches which when taken together amount to a material breach; or
 - The Buyer suspends or threatens to suspend payment of its debts or is, or is deemed to be, insolvent or enters receivership, voluntary administration, administration, liquidation, has a trustee in bankruptcy or liquidator or receiver appointed.
 - The Buyer ceases, or threatens to cease, to carry on all or substantially the whole of its business; or
 - There is a change of control of the Buyer (as defined in the Corporations Act 2001 (Cth)).
- 15.2 Termination of this Agreement shall not prejudice any of the parties' rights and remedies which have accrued as at termination.
- 15.3 On termination of these terms and conditions the Buyer will promptly:
- Return to the Company all equipment, materials and property belonging to the Company;
 - Return to the Company all documents and materials (and any copies) containing the Company's Confidential Information;
 - Erase all the Company's Confidential Information from its computer systems (to the extent possible); and
 - On request, certify in writing to the Company that it has complied with the requirements of this condition.

16. Force Majeure

- 16.1 The Company reserves the right to defer the date of delivery or to cancel the Agreement or reduce the

volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on if its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, the Buyer will be entitled to give notice in writing to the Company to terminate the Agreement.

MISCELLANEOUS

17. The Director's Guarantee

- 17.1 In consideration of the Company agreeing to provide credit and/or Goods to the Buyer, the Buyer will make available its Directors so to execute a personal guarantee which ensures the Company the due and punctual payment of all monies due and payable as a result of this Agreement.

18. Limitation of Liability

- 18.1 The Company shall not be liable for any contingent, consequential, direct/indirect or punitive damages or loss arising, in relation to the Ownership or use of the Goods, whatsoever. The customer acknowledges this express limit or liability and agrees to limit any claim accordingly.
- 18.2 The Company will not be held liable for any loss or damage incurred due to a Force Majeure as defined in clause 16 of this Agreement.
- 18.3 The Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement will be limited to the Agreement price.
- 18.4 The Company accepts no liability or responsibility for any drawings, design or specification and submission or such does not constitute any warranty, guarantee, representation or opinion

of the practicability of construction or the efficacy, safety or otherwise of Goods to be supplied by the Company in accordance therewith and the Company will not be responsible for the cost of any additional work caused by defects in such drawings, designs or specifications.

- 18.5 In no case shall the Company be liable for any consequential loss or damage caused directly or indirectly by any defect or otherwise howsoever.

19. Quality

- 19.1 The Company warrants that (subject to the other provisions of these conditions) on delivery, the Goods will meet the specification published for those Goods by the Company.
- 19.2 If any of the Goods do not conform with the warranty in Clause 17.1 the Company will at its option repair or replace such Goods (or the defective part) at the pro rata Agreement rate provided that, if the Company so requests, the Buyer will, at the Company's expense, return the Goods or the part of such Goods which is Defective to the Company.

20. Insurance

- 20.1 During the Agreement and for One (1) year afterwards, the Buyer must maintain in force the following insurance policies with reputable insurance companies:
- Public liability insurance with a limit of at least the amount per claim and per series of claims in a calendar year reasonably determined and notified by the Company or in the absence of such notification, \$20 million per claim.
 - The insurance policies the Buyer is required to maintain under this condition must note the Company as an insured party and must waive any express or implied rights of subrogation by insurers against the Company to the extent necessary to provide coverage for the liabilities assumed by the Buyer under the Agreement.

21. Confidentiality

- 21.1 Each party undertakes that it shall not at any time disclose to any person any confidential information disclosed to it by the other party concerning the business or affairs of the other party, including but not limited to information

relating to anything contained in this Agreement or the parties dealings with each other (Confidential Information), with the exception of informing employees of any Confidential Information to necessitate the conduct of business between the parties or as required by law.

22. Intellectual Property Rights

- 22.1 All Intellectual Property Rights are the sole and exclusive property of the Company, as and when they are created and to the extent necessary to give effect to this, the Buyer assigns and agrees to assign all Intellectual Property Rights arising from the supply of the Goods to the Buyer, to the Company, free of all encumbrances.
- 22.2 The Company grants the Buyer a non-exclusive, non-assignable, non sub licensable, royalty free licence in Australia to use the Intellectual Property Rights encapsulated in the Goods solely for the purpose of using the Goods for their intended purpose.

23. Assignment

- 23.1 The Company may assign the Agreement or any part of it to any person, firm or company.
- 23.2 The Buyer will not be entitled to assign the Agreement or any part of it without the prior written consent of the Company.

24. Invalid Contract Provisions

- 24.1 If any provision of the Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it will to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Agreement and the remainder of such provision will continue in full force and effect.

25. Communications

- 25.1 Communication in Writing
All communications between the parties about the Contract will be in writing and delivered by hand or sent by pre-paid first class post or sent by email to accounts@gmpoles.com.au:

- a) (in the case of communications to the Company) to its registered office or such changed address as will be notified to the Buyer by the Company; or
 - b) (in the case of communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as will be notified to the Company by the Buyer.
- 25.2 Receipt of Communication
Communications will be deemed to have been received:
- a) If sent by pre-paid post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
 - b) If delivered by hand, on the day of delivery.
- 25.3 Communication with Company
Communications addressed to the Company will be marked for the attention of the General Manager.

26. Jurisdiction

- 26.1 This Agreement is deemed to have been entered into in the State that this Agreement was entered into.
- 26.2 Any legal action arising out of, or in respect of this Agreement and/ or its interpretation must be brought in that jurisdiction and if it is deemed appropriate by the Company.

ACKNOWLEDGMENT

27. Acknowledgment

- 27.1 You acknowledge that you have carefully read, fully understood and agreed to be bound by all the provisions of this Agreement.
- 27.2 The Company will not be liable for any loss and/or damages suffered whatsoever, whether directly and/or indirectly, from your failure to obtain independent legal advice in relation to this Agreement.

I/We the undersigned declare that all information provided to the Company for the purposes of assessing your suitability for credit, purchase and rental is true and correct in every particular.

I/We the undersigned further acknowledge that I/we have read understand and agree to the terms of this Agreement.

The Agreement may be entered into by and becomes binding on the parties named in the Agreement upon one party signing the Agreement that has been signed by the other (or a photocopy or facsimile copy of that Agreement) and transmitting a facsimile copy of it to the other party.

COMPANY NAME

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TRADING NAME

.....

PRINT NAME

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TITLE

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SIGNATURE

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DATE

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