

**1 PRIMARY OBLIGATIONS**

- 1.1 Downer must supply the Product:
- (a) in the quantity ordered by the Customer;
  - (b) at the Price listed in the Price List;
  - (c) subject to clause 12.2, in accordance with the quality requirements set out in the Specification;
  - (d) by the Delivery Time required by the Customer.
- 1.2 The Customer must pay the Price for the Product by the time stipulated in this Agreement.

**2 ORDERING PROCESS**

- 2.1 The Customer may order Product from Downer by giving a Purchase Order to Downer compliant with clause 2.2.
- 2.2 The Customer's Purchase Order must:
- (a) state the quantity, grade and relevant rate from the Price List;
  - (b) nominate a proposed Delivery Time;
  - (c) specify whether the order is for Site Delivery or Ex-Gate Delivery;
  - (d) contain:
    - (i) a purchase order number;
    - (ii) the Customer's name, ABN and account number; and
  - (e) may be given in writing by email or orally by phone.
- 2.3 The Purchase Order must not attach any of the Customer's terms and conditions, or any variation or special conditions to this Agreement, and if it does, the Customer agrees that those terms and conditions will have no effect, and that the terms and conditions of this Agreement will prevail and take precedence.
- 2.4 Downer may reject any Purchase Order which does not comply with this clause 2, and will have no obligation to supply any Product to the Customer, in those circumstances.

**3 AGREED DELIVERY TIME**

- 3.1 Downer may reject the Delivery Time proposed by the Customer and specify another time.
- 3.2 The Customer may withdraw the Purchase Order if the new Delivery Time is not acceptable or negotiate with Downer to agree an acceptable Delivery Time.
- 3.3 Downer's determination as to the Delivery Time is final.

**4 ORDER CONFIRMATION**

- 4.1 If Downer accepts the Purchase Order, it will issue an Order Confirmation confirming the details of the order including:
- (i) the Delivery Time;
  - (ii) the quantity of Product;
  - (iii) the type of Product to be supplied; and
  - (iv) the applicable Price.
- 4.2 Where a Purchase Order has been given by:

- (a) email, the Order Confirmation will be issued by email; and
- (b) phone, the Order Confirmation may be given orally or by way of SMS text from Downer to the Customer. Where an Order Confirmation is given orally, it must be confirmed in an SMS text by Downer to the Customer prior to Delivery.

4.3 The agreement for the supply of Product will be evidenced by:

- (i) this Agreement;
- (ii) the Purchase Order; and
- (iii) the Order Confirmation,

**(Agreement Documents).**
**5 CANCELLATION OF PURCHASE ORDER**

- 5.1 The Customer may only cancel a Purchase Order by giving written notice to Downer not less than 2 hours prior to the Delivery Time.
- 5.2 If the Customer fails to give notice in accordance with clause 5.1, Downer may charge the Customer a cancellation fee of 10% of the Purchase Order value (**Cancellation Fee**).

**6 DELIVERY**

- 6.1 Downer must deliver the Product by the Delivery Time. Downer's obligations under this clause are suspended during any FM Event.
- 6.2 Downer may vary the Delivery Time by up to 24 hours by giving not less than 2 hours' notice prior to the expected Delivery Time.
- 6.3 Where the Purchase Order specifies:
- (a) Ex-Gate Delivery, the Customer or the Customer's Personnel must arrive and take Delivery of the Product at the Plant; or
  - (b) Site Delivery, the Customer (or the Customer's Personnel) must:
    - (A) give Downer and Downer's Personnel sufficient access to the Site; and
    - (B) direct Downer and Downer's Personnel to the location or area at Site as directed by the Customer's Personnel;

within the Delivery Window, unless otherwise expressly varied by Downer.

- 6.4 Any direction given by apparently authorised Customer's Personnel in connection with clause 6.3 will be binding on the Customer.
- 6.5 The Customer will be liable to pay any additional costs or charges associated with any waiting incurred by Downer or Downer's Personnel during Site Delivery.
- 6.6 If the Customer fails to take Delivery within Delivery Window, Downer may cancel the Purchase Order and the Cancellation Fee will be payable by the Customer in accordance with clause 5.2.

6.7 If Downer fails to make the Product available for the Customer:

- (a) in the quantity shown in the Order Confirmation;
- (b) to the quality required by clause 12 (provided that the Customer has complied with clause 7); or
- (c) within the Delivery Window,

**(Delay Event)**

the Customer may either:

- (c) take delivery of the reduced quantity of Product available, in which case it shall only be required to pay for what it has taken; or
- (d) cancel the Purchase Order.

6.8 Downer will have no liability to the Customer for a Delay Event including for any delay damages, breach of contract or Consequential Loss. The Customer's sole remedy for any Delay Event is as contained in clause 6.7.

**7 INSPECTION AND ACCEPTANCE**

- 7.1 The Customer may inspect the Product during the Delivery Window. The Customer may test or inspect of a small quantity sample of Product prior to Delivery of the full quantity of Product (**Inspection**).
- 7.2 Downer will provide a Delivery Docket and Batch Records for the Product prior to Delivery for approval by the Customer.
- 7.3 The Customer may reject the Product after Inspection if the information provided on the Delivery Docket is incorrect or if the quality of the Product does not comply with the warranties provided in clause 12, by giving immediate written notice to the Downer Representatives before taking Delivery.

7.4 If the Customer:

- (a) accepts the Product and takes Delivery;
- (b) does not Inspect the Product but takes Delivery;
- (c) does not reject the Product by notifying the Downer Representatives immediately after Inspection but before taking Delivery of the Product;
- (d) takes Delivery of the Product after the Inspection; or
- (e) signs the Delivery Docket and takes Delivery, then the Customer:
  - (f) shall be deemed to accept that the Product complies with the warranties given by Downer under this Agreement; and
  - (g) will release any Downer from any Quality Dispute in respect of the Product supplied.

**8 TITLE**

- 8.1 Title in any Product supplied under this Agreement will remain with Downer until payment is received in full for the Product from the Customer (**ROT Clause**).
- 8.2 Until title in the Product has passed to the Customer, the Customer:

- (a) holds the Product as fiduciary, agent and bailee of Downer;
- (b) it must not encumber or grant any security interest in the Product;
- (c) may sell the Product but only at arm's length, in the ordinary course of business, on market terms, and only as the fiduciary, agent and bailee of Downer; and
- (d) where it is paid for the Product by the third party, must receive all proceeds from the sale on trust for Downer, and must hold those proceeds on trust and in a separate account until the liability of Downer has been discharged and must account to Downer for the proceeds.

8.3 If the Customer fails to pay the Price or if the Customer is otherwise in breach of this Agreement, or Insolvent, Downer may retake possession of the Product.

## 9 RISK

- 9.1 Risk in the Product will pass to the Customer on Delivery.
- 9.2 The Customer and the Customer's Personnel enter the Plant at their own risk.
- 9.3 The Customer indemnifies Downer against any claim made by the Customer's Personnel or Downer's Personnel for personal injury, death or property damage that may occur during Delivery, whether due to an act or omission or negligence or any other cause of Downer, Downer's Personnel, the Customer or the Customer's Personnel, including:
  - (a) property damage to Downer's Plant or personal injury to Downer's Personnel;
  - (b) damage to the Customer's or the Customer's Personnel's trucks, tankers, augers, pumps tanks or any other associated transport vehicle during Delivery of the Product; and
  - (c) personal injury to the Customer's Personnel.

9.4 The Customer must hold and maintain public liability insurance, plant and equipment and motor vehicle insurance and produce evidence to Downer's satisfaction of those policies.

9.5 Downer may refuse entry to the Plant to the Customer's Personnel if they do not have the relevant inductions or current insurances.

9.6 Any direction given under this clause will not be a Delay Event, but may constitute a breach by the Customer of its obligation to take Delivery within the Delivery Window, and may be subject to the Cancellation Fee payable by the Customer.

## 10 PAYMENT TERMS

- 10.1 Downer will give the Customer a Tax Invoice for the Product after Delivery.
- 10.2 The Customer must pay the Tax Invoice within 30 days of the date of the Tax Invoice.

## 11 DISPUTED INVOICES

11.1 If the Customer disputes any part of the Tax Invoice (**Payment Dispute**) it must give Downer written notice within 3 days of the date of the Tax Invoice containing sufficient particulars of the dispute to enable Downer to make assessment of the dispute.

11.2 If the Customer raises a Payment Dispute, Downer may, by giving written notice to the Customer, require the Customer to:

- (a) pay an amount equal to the disputed amount into Court or Downer's solicitor's trust account;
- (b) provide additional financial security in accordance with clause or
- (c) provide a personal guarantee and indemnity from a director or other third party in respect of the Payment Dispute.

11.3 If the Customer:

- (a) does not give notice of its Payment Dispute within the time stipulated; or
- (b) fails to comply with any conditions imposed by Downer in accordance with clause 11.2, it will be deemed to:
- (c) not to have any Payment Dispute in respect of any aspect of the Tax Invoice;
- (d) accept the validity of the Tax Invoice; and
- (e) be absolutely barred from bringing any further Payment Dispute, claim for set-off or deduction in relation to the amount outstanding, the quantities or the rates applied in the Tax Invoice.

11.4 The Customer must pay the non-disputed amount of the Tax Invoice by the due date for payment, notwithstanding the existence of the Payment Dispute.

11.5 If the Customer has received payment from its Client for any amount included in the Payment Dispute or otherwise included in a Tax Invoice, the Customer hereby assigns that amount directly to Downer.

## 12 PRODUCT AND ADVICE WARRANTIES

12.1 Downer warrants that the Product will comply with the Specification at the time of Delivery.

12.2 The Customer acknowledges that:

- (a) the Product may contain Minor Defects at the time of Inspection or Delivery;
- (b) the Customer has no right to refuse Delivery of the Product as a result of the Product containing Minor Defects; and
- (c) Downer has no liability to the Customer, whether under this Agreement, at law or otherwise in relation to Minor Defects.

12.3 To the maximum extent permitted by law, any other warranties imposed or implied by law in relation to the Product are excluded.

12.4 Downer gives no warranty about fitness for purpose of the Product for any application. Any Advice provided by Downer is indicative only. The Customer acknowledges and agrees that any decision the Customer has made in relation to the Product, including but not limited to the selection of the Product for its purposes, has been its own and it has not relied on any Advice provided by Downer.

12.5 The Customer acknowledges that Downer has no control over:

- (a) the weather conditions at or around the Site;
- (b) the Customer's workmanship when placing the Product at Site, including compaction and temperature;
- (c) the Client or End User's requirements, the pavement design or any other requirement,

and in the circumstances, Downer has no liability for and the Customer releases Downer against any claim for any loss or damage in relation to any:

- (a) fitness for purpose warranty;
- (b) any defect or issue in the final pavement in which the Product was placed;
- (c) failure of the Product to meet the Customer's requirements, including any contractual specification, pavement design or other criteria of the End User or the Client.

12.6 The Customer agrees that Downer's sole responsibility is to ensure that the Product meets the Specification at the time of Delivery. The Customer therefore agrees that the sole and decisive evidence of whether Downer has complied with the Specification will be the Batch Records.

12.7 The Customer acknowledges that a statutory declaration or affidavit signed or sworn by the Plant's manager:

- (a) attaching the Batch Records; and
- (b) stating that the Product was compliant to Specification at the time of Delivery,

will be the determinative evidence in deciding any Quality Dispute about the Product supplied by Downer.

12.8 To the fullest extent permitted by law:

- (a) Downer disclaims all warranties express or implied and accepts no liability for and the Customer releases and indemnifies Downer in respect of any claim howsoever arising in connection with the provision of Advice by Downer or any claim made by any third party in connection with Advice given by Downer in relation to Product supplied under this Agreement; and
- (b) the Customer hereby releases and indemnifies Downer in respect of any claim howsoever arising in

connection with the use of the Product by the Customer or any claim made by any third party in connection with Product supplied under this Agreement.

12.9 The releases given by the Customer in clauses 12.5 and 12.8 may be pleaded by Downer as a complete defence to any claim, counter-claim, defence, set-off or deduction made by the Customer in respect of:

- (a) the Product supplied by Downer; or
- (b) Any Advice.

The Customer must pay Downer's legal costs on a solicitor-own client basis in connection with any proceedings where the Customer makes a claim, counter-claim, defence, or set-off in respect of:

- (c) the quality of the Product where Downer has produced the statutory declaration and supporting evidence stipulated in clause 12.7 that the Product met Specification at the time of Delivery; or
- (d) the accuracy, adequacy or completeness or otherwise of the Advice.

**13 LIMITATION OF LIABILITY**

13.1 Downer has no liability to the Customer where it has been established that Downer has complied with its obligations under clause 12.1.

13.2 Where Downer is in breach of clause 12.1, the sole remedy and entitlement for the Customer is cost of replacement or repair of the Product supplied.

13.3 Downer has no liability to the Customer for any Consequential Loss.

13.4 Notwithstanding any other clause of this Agreement or any legislation, legal or equitable principle, or any other circumstance, Downer's liability to the Customer shall in no circumstances exceed the value of the non-compliant Product Delivered under a Purchase Order.

13.5 This clause does not exclude any terms or remedies implied under statute.

**14 DISPUTE RESOLUTION**

14.1 Downer may commence debt recovery proceedings or enforce any other action or right it may have under this Agreement without the requirement to comply with any contractual dispute resolution procedure.

14.2 The Customer must give Downer written notice within 7 days of becoming aware of any grounds which may give rise to a Quality Dispute.

14.3 As a condition precedent to commencing any Quality Dispute proceedings, the Customer must pay all amounts outstanding to Downer. If the dispute process resolves that Downer is at fault, an appropriate refund, adjustment or credit note may be issued by Downer.

14.4 Within 30 days of giving the initial notice, the Customer must provide a detailed further notice which must:

- (a) be written and addressed to the Downer Dispute Representative;
- (b) provide full and proper particulars of all the facts and circumstances giving rise to the Quality Dispute;
- (c) provide pictures, written statements or any other evidence that supports the Quality Dispute; and
- (d) be supported by a signed report from an independent registered engineer with relevant industry experience recognised by the state or territory industry body, or AAPA, supporting the Customer's position.

**(Dispute Notice).**

- 14.5 If the Customer:
- (a) does not give notice of its Quality Dispute within the time stipulated;
  - (b) fails to serve a compliant Dispute Notice within the time stipulated; or
  - (c) fails to pay all outstanding amounts in accordance with clause 14.3, it will be deemed to:
  - (c) not to have any Quality Dispute in respect of any aspect of the Product supplied;
  - (d) accept the quality of the Product; and
  - (e) be absolutely barred from bringing any further claim, proceedings or action in relation to the same facts and circumstances giving rise to the Quality Dispute.

- 14.6 On receipt of the Dispute Notice, Downer may elect to either:
- (a) nominate a good faith negotiation of the parties' Dispute Representatives by giving notice to that effect to the Customer (**Negotiation**);
  - (b) refer the matter to Expert Determination in accordance with clause 14.10 below; or
  - (c) determine that it has no liability in respect of the Quality Dispute.

14.7 If the Customer raises a Quality Dispute or Payment Dispute after Downer commences debt recovery proceedings, the Customer must immediately pay Downer the amount outstanding as a liquidated debt and follow the Payment Dispute and Quality Dispute resolution procedures under this Agreement.

- 14.8 If Downer elects to hold a Negotiation:
- (a) the Dispute Representatives must meet at least once within 14 days of Downer's election notice to attempt to resolve the Quality Dispute in good faith;
  - (b) if, following the meeting, the Dispute Representatives cannot resolve the Quality Dispute, the Customer may elect to escalate the Quality Dispute to senior management of each party, provided that they meet within 30 days of the first meeting.

14.9 If either:

- (a) Downer exercises its discretion in clause 14.6(c); or
- (b) no resolution is reached during Negotiation pursuant to clause 14.8, the Customer may commence litigation.

14.10 If Downer elects Expert Determination the Expert shall be appointed:

- (a) by agreement between the parties; or
- (b) failing agreement, as selected by the chairman of the Australian Flexible Pavement Association (acting independently and in good faith).

14.11 The Expert must follow the IAMA Expert Determination Rules (**Expert Rules**) however, notwithstanding any provision of the IAMA Rules, the Expert may inform him or herself about any matter, fact or circumstance or may call for evidence or input from any party (including the Customer's End User or Client).

14.12 The Expert's determination of the Quality Dispute will be the final determination of the facts and issues arising out of the Quality Dispute, and the parties agree to be bound by the Expert's determination and not commence or pursue litigation in respect of the Expert's determination.

14.13 The only basis upon which a party may commence litigation in respect of the Expert's determination is if:

- (a) the Expert has not afforded one or both of the parties natural justice or has so grossly departed from the Expert Rules as to have denied a party due process; or
- (b) the Expert has made an gross error in law or a gross error of fact,

but in either case, neither party may introduce any new evidence, arguments or facts in litigation that differ from the evidence, arguments or facts introduced under the Expert Rules in the original Expert's determination.

14.14 Unless determined otherwise by the Expert, the parties will share the Expert's costs equally.

**15 TERMINATION**

- 15.1 If a party:
- (a) is Insolvent;
  - (b) commits a fundamental breach of this Agreement; or
  - (c) commits any other breach of this Agreement and fails to rectify it to the Innocent Party's reasonable satisfaction within 7 days of receipt of a notice to remedy the breach,

the Innocent Party may terminate this Agreement by giving written notice to the Defaulting Party.

**16 CUSTOMERS' TERMS AND CONDITIONS**

16.1 This Agreement constitutes the only agreement governing the supply of the Product to which it relates, and supersedes all previous and future communications, negotiations and agreements in connection with the supply of the Product.

- 16.2 This Agreement super-cedes any prior conduct between the parties, accepted industry practices, policies, procedures or any other earlier representations made prior to the Commencement Date.
- 16.3 Except to the extent the Parties agree otherwise under a separate written contract executed by both parties, any contract for the supply of Product between any Downer entity and any Customer entity during the Term will be governed by and subject to the terms and conditions of this Product Supply Agreement.
- 16.4 If there is any formal defect, irregularity, omission, handwritten amendments or if any of the Agreement Documents are incomplete, not signed by a party, or if there is any ambiguity or conflict between the Agreement Documents and any extrinsic documents or any written or verbal representations made by either party prior to the submission of a Purchase Order, the terms and conditions of this Product Supply Agreement will prevail and must be used to determine the issue.
- 16.5 A failure by Downer or the Customer to submit contract documents strictly in accordance with the processes outlined in this Agreement, including if Downer fails to submit an Order Confirmation or submits those documents after taking delivery of the Product, will not disentitle Downer from relying on the terms of this Agreement.
- 16.6 Downer will not be taken to have waived any of its rights under this Agreement unless the Downer Dispute Resolution Representative has given the the Customer Representative an express written notice to that effect.

## 17 GENERAL

### 17.1 Notices

A notice under this Agreement:

- (a) must be in writing;
- (b) must be addressed to the relevant party's Representative and may be signed for the party giving it by the party's authorised officer, attorney or solicitor; and
  - (i) may be:
  - (ii) sent by pre-paid post ; or
  - (iii) sent by email,
  - (iv) to the party's Representative in accordance with the contact details provided by each party for their Representatives from time to time.
- (c) A notice is taken as given by the sender and received by the intended recipient:
  - (A) if posted, 3 Business Days after posting; or
  - (B) if sent by email, at the time it is actually received into the recipient's email server and the sender may rely on a delivery receipt as evidence of delivery to the recipient.

- (d) A party giving notice of termination or of a Quality Dispute or Payment Dispute, must give notice by post or deliver it personally.

### 17.2 Assignment

The Customer must not transfer or assign any of its liabilities or rights under this Agreement to any other person without the prior written consent of Downer (which consent may be withheld at Downer's absolute discretion).

### 17.3 Waiver

No waiver of any breach, or failure to enforce any provision, of this Agreement at any time by either party will in any way limit or waive the right of such party to subsequently enforce and compel strict compliance with the provisions of this Agreement.

### 17.4 Amendments

No amendment to this Agreement will be valid unless recorded in writing and signed in by each party's Representative.

### 17.5 Severance

If any part of this Agreement is, or becomes illegal, invalid or unenforceable, the legality, validity or enforceability of the remainder of this Agreement will not be affected and shall be read as if that part had been severed.

## 18 PARTNERSHIP AND TRUSTS

- 18.1 If you are a partner in a partnership, each partner is jointly and severally liable under this Agreement.

- 18.2 If you enter this Agreement as a trustee, you represent and warrant in your own right and as trustee of the Trust, that as at the date of this Agreement and until such time as all your obligations under this Agreement are discharged:

- (a) you are the sole trustee of the Trust;
- (b) you have the requisite capacity and authority to enter this Agreement on behalf of, and to bind the beneficiaries of, that Trust and to perform all obligations under this Agreement pursuant to the documents governing that Trust; and
- (c) you have the right to be fully indemnified out of the assets of the Trust in relation to this Agreement and the assets of the Trust are sufficient to satisfy all obligations of the Trust under this Agreement.

## 19 DEFINITIONS

- 19.1 In this Agreement, capitalised words have the following meanings:

**Advice** means any information, recommendations, opinions or advice, whether oral or in writing, provided by Downer to the Customer in relation to the Product, including but not limited to its fitness for purpose and/or its placement at the Site.

**Agreement Documents** means the documents set out in clause 4.2.

**Agreement Year** means the 12 month period commencing on the date of this Agreement, or anniversary of the date of

this Agreement as applicable, in which the relevant Date of Delivery falls.

**Batch Records** means the Product test summary report produced by Downer, in respect of the relevant Product production lot.

**Business Day** means a day which is not a Saturday, Sunday or public holiday in the State or Territory in which the Plant is located.

**Cancellation Fee** has the meaning given in clause 5.2.

**Client** means the party the Customer may on-sell to or supply and lay Product for.

**Consequential Loss** means any special, indirect or consequential loss, and includes loss of profit or goodwill (or similar financial loss), any payment made or due to any third party and any loss or damage caused by delay in the supply of Product.

**Customer** means the person or organisation placing the Purchase Order.

**Customer's Personnel** means any employees, contractors, agents or other personnel engaged by the Customer in connection with the transport, delivery or placement of the Product, including any transport contractors, labour hire staff, crews, drivers or operators.

**Customer Representative** means the person identified as such in the Purchase Order or otherwise nominated by the Customer to Downer as being the Customer's representative from time to time. Where the Purchase Order does not identify the Customer's Representative and the Customer has not otherwise nominated someone for that role, the the Customer's Representative is deemed to be the person issuing the Purchase Order.

**Defaulting Party** means the party in breach of the relevant agreement.

**Delivery** means:

- (a) where the Customer collects the Product via Ex-Gate Delivery from the Plant, the point at which Product has commenced loading into the Customer's trucks;
- (b) where Downer agrees to Site Delivery, the point at which the Product is unloaded from the Downer truck at the Site as directed by the Customer,

and **Delivered** has a corresponding meaning.

**Delivery Docket** means a standard form document provided by Downer containing relevant information regarding the Product delivered, including:

- (a) the information contained in the Purchase Order or the Order Confirmation; and
- (b) Batch Records (if available at time of delivery); and
- (c) any other relevant information.

**Delivery Time** means:

- (a) where the Customer agrees to Ex-Gate Delivery, the Delivery Time contained in the Order Confirmation or as otherwise directed by Downer; or
- (b) where Downer agrees to Site Delivery, the allocated time slot by which the Customer must be at the front gate of the Site ready to collect the Product.

**Delivery Window** means a time which is no more than 15 minutes before or after the designated Delivery Time.

**Dispute Notice** has the meaning given in clause 14.4.

**Dispute Representative** means each party's representative nominated to deal with disputes under this Agreement, as advised by each party to the other from time to time.

**Downer's Personnel** means any employees, contractors, cartage contractors, agents or other personnel engaged by the Downer in connection with the manufacture, sale and delivery of Product at the Plant.

**Downer Representatives** means Downer's Scheduling Co-ordinator or Downer's Account Manager, as notified by Downer to the Customer from time to time.

**End User** means any party who indirectly receives the Product purchased by the the Customer under this Agreement through a chain of intermediaries.

**Ex-Gate Delivery** means collection by the Customer or its contractors directly from the Downer Plant.

**Expert** means the person appointed in accordance with clause 14.10.

**Expert Determination** means the process set out in clauses 14.10 to 14.14.

**Expert Rules** has the meaning given in clause 14.11.

**FM Event** means any event outside Downer's control and includes:

- (a) An unscheduled, unplanned or unexpected Plant breakdown;
- (b) unavailability of feedstock for the Plant;
- (c) a workplace health and safety incident at the Plant or effecting the Plant;
- (d) inclement weather events, including flood, rain, hail, cyclones, snow, fire, earthquake

**Innocent Party** means that party that is not the Defaulting Party under the relevant agreement.

**Insolvent** means where a party is a corporation, it becomes an externally administered body corporate under the *Corporations Act 2001* (Cth), or where it is an individual, a similar event occurs under the *Bankruptcy Act*.

**Inspection** has the meaning given in clause 7.1.

**Minor Defects** means a defect or non-conformance that is only minor in nature.

**Negotiation** has the meaning given in clauses 14.6(a) and 14.8.

**Order Confirmation** has the meaning given in clause 4.

**Payment Dispute** has the meaning given in clause 11.1.

**Plant** means the Product plant located at the address identified in the Purchase Order and Order Confirmation and the land, buildings, access roads, weigh bridges and any other infrastructure connected to the Plant or associated with the production of Product on the premises where the Plant is located.

**Price List** means the latest pricing published by Downer from time to time.

**Product** means the product identified in the Order Confirmation.

**Quality Dispute** means any claim, set-off, dispute or allegation relating to the quality or Specification of Product supplied by Downer.

**ROT Clause** has the meaning given in clause 8.1.

**Site** means the work site where the Customer intends to place the Product and as set out in the Order Confirmation.

**Site Delivery** means where Downer has agreed to deliver the Product to Site, rather than the Customer collecting it Ex-Gate Delivery.

**Specification** means AS1160 for bituminous emulsion.

**Tax Invoice** means a Downer issued tax invoice containing particulars of the Product supplied to the Customer.