CONDITIONS OF SALE FOR SUPPLY, INSTALLATION AND SERVICE

1. General

1.1 Definitions

Suppler: Shall mean Elbowroom (Aust) Pty. Ltd, trading as Colby Storage Solutions Murarrie.

Purchaser: Shall mean the company, firm or persons for whom work under this contract is performed and shall include executors, administrators, successors and permitted assigns.

Work: Shall mean all goods and services supplied, delivered, performed or installed by Supplier.

Site: Shall mean only such place or places nominated in the offer where work is to be performed.

GST and Taxable Supply: Shall have the meaning given in *A New Tax System (Goods and Services Tax) Act 1999*

1.2 Conditions Part of Offer

These Conditions form part of the offer in which they are referred to or to which they are attached.

1.3 Precedence

If there is any inconsistency or variance between the provisions of the offer (including any special conditions) and these Conditions then the former shall prevail.

1.4 Variation of Conditions

Notwithstanding any acceptance by Supplier of any order from the Purchaser that may contain any provision inconsistent with or purporting to vary or reject any of these Conditions, any contract arising from any such acceptance shall be subject to these Conditions unless and to the extent only that Supplier expressly agrees in writing to any variation thereof.

1.5 Additional Documentation or Verbal Matter to be confirmed

No documentation, correspondence, verbal agreement or conversation shall form part of, affect or modify any aspect of the offer or contract unless otherwise accepted and confirmed by Supplier in writing.

1.6 Partial Invalidity

In the event of one or more clauses of these Conditions or anything included in Supplier's offer being held by a Court of Law to be legally invalid or unenforceable the remainder of such conditions shall be in no way affected.

1.7 Separable Portions

The provisions of these Conditions shall apply to any separable portion or portions of the Work.

1.8 Assignment

In the event of a change of ownership or the restructuring of Supplier, Supplier may by written notice, assign, transfer or novate the performance of any or all of its obligations or benefits under this agreement to a third party, without otherwise affecting the performance of those obligations under this Agreement.

2. Offer and Order

2.1 Acceptance and Order

Unless previously revoked by written notification to the Purchaser, Supplier's offer shall remain valid for the period as stated in the offer or, when no such period is stated, for thirty (30) days from the date thereof.

2.2 Extent of Offer

Supplier's offer includes only such work as is specified therein and unless otherwise stated, work will be performed within Supplier normal working times.

Normal working time per week is subject to the relevant Award (e.g. Metal Industry Award or Business Equipment Industry (Technical Service) Award), as prevailing from time to time for the particular location where Supplier personnel are employed. Working, travelling and/or waiting time outside the prescribed award times will attract the applicable penalty rates.

2.3 Variation in the Scope of Supply

The quoted price is based upon the scope referred to in the offer. Should there be any variation in the scope ordered from that offered; Supplier reserves the right to amend the price accordingly.

2.4 Cancellation, Variation or Suspension

A contract may be cancelled, varied or suspended only by notice in writing and only if such notice is accepted in writing by Supplier. In the event of such cancellation, variation or suspension the Purchaser shall compensate Supplier for any costs or loss incurred including but not limited to loss of profit.

3. Specifications and Drawings

3.1 Not Part of Contract

Unless expressly incorporated in the offer all descriptive and shipping specifications, drawings, dimensions and weights submitted with the offer are approximate only. In any event descriptions, illustrations and data contained in catalogues, price lists and other advertising matter are intended only to present a general idea of the work described therein and none of these shall form part of the contract.

3.2 Certified Drawings

After acceptance of an order Supplier shall provide on request such certified drawings as in Supplier's opinion are reasonable and necessary.

3.3 Confidential Information

All drawings, specifications and other written information, samples and the like provided by Supplier shall be regarded as confidential and shall not be disclosed to a third party except with the prior written consent of Supplier.

3.4 Information to be provided

The Purchaser shall, within seven (7) days from the date of order, furnish to Supplier sufficient information which, in the reasonable estimation of Supplier, will enable work to proceed forthwith and without interruption.

3.5 Approval of Drawings

Drawings or other information requiring the Purchaser's approval shall be approved, amended or rejected and returned to Supplier within seven (7) days from the date of receipt or other such period as may be agreed in writing. Any delay beyond this period shall constitute grounds for extension of the contract period under Clause 5.4.

3.6 Incorrect Information

The Purchaser shall be responsible for and bear the cost of any alteration to the work arising from any discrepancy, error or omission in any drawings, specification or other information supplied or approved by him.

3.7 Responsibility for approvals

In the absence of agreement to the contrary and subject to clause 16, it shall be the Purchaser's responsibility to obtain and provide any approvals, licences or permits as necessary for performance of the contract.

4. Performance & Tests

4.1 Performance

Any performance figures given by Supplier are based on Supplier's experience and are such as Supplier expects to obtain on test. Subject to recognized tolerances applicable to such figures, Supplier shall be under no liability for damages for failure to attain such figures unless Supplier specifically guaranteed them in writing. Where Supplier has agreed to performance figures but fails to achieve such figures, Supplier shall make good such failure as provided for in clause 14 hereof and Supplier liability shall be subject to clause 15 hereof.

4.2 Inspection and Tests

Where inspection and tests are performed, they will be in accordance with Supplier's standard practice and will be carried out at the place of manufacture or installation or at some other place at Supplier's option. The cost of these tests and any other test specified in the offer are to be borne by Supplier. Any further tests or witnessed tests required by the Purchaser will be carried out at Purchaser's expense subject to Supplier's consent to perform these further tests. After seven days from the date of notification that Supplier is ready to carry out any witnessed tests required, such tests may proceed in the absence of the Purchaser or his representative and shall be deemed to have been made in their presence.

Supplier shall not be responsible for expenses incurred by the Purchaser in respect of his presence or that of his representative at witnessed tests. If in any such tests, work shall be found defective due to faulty design, material or workmanship or found not be in accordance with the contract, Supplier shall make good such defect or failure as provided for in clause 14 hereof.

5. Time/Date for Delivery, Installation or Completion

5.1 Base date

All times offered for delivery, installation or completion shall be calculated from the date Supplier accepts an order and is in receipt of sufficient information in accordance with clause 3.4, and in the case of installation is also given access to site.

5.2 Offered Time

Any delivery, installation or completion date or period offered is a bona fide estimate only and is not to be construed as a fixed time unless expressly incorporated in the offer.

5.3 Delay

In the event of delay caused by reasons other than those covered in clause 5.4 hereof and if as a result of such delay the Purchaser suffers loss, the Purchaser is entitled for each complete week of delay to a refund of the consideration payable at the rate of 0.5% per week, but not more in aggregate than a total of 5% of the contract price of that portion of the Work which in consequence of such delay cannot be commercially and effectively used. Such payment shall be in full satisfaction of loss suffered by the Purchaser due to any such delay and shall be in lieu of any other right the Purchaser may have against Supplier.

5.4 Extension of Time

The delivery, installation or completion period shall be extended in respect of any delay caused by the Purchaser, by industrial dispute including strikes and lockouts, circumstances such as fire, war, mobilisation, requisition, embargo, currency restrictions, insurrection, import restrictions, shortage of transport, general shortage of materials, restrictions in the use of power, an important item of work being rejected during the process of manufacture, by any cause beyond the reasonable control of either Supplier or one of Supplier's subcontractors or as provided for in these Conditions.

5.5 Storage

If after a period of fourteen (14) days from the date of notification that the work is ready for delivery to site, delivery is delayed for any reasons beyond Supplier's reasonable control Supplier shall be entitled at Supplier's option to arrange suitable storage at Supplier's premises or elsewhere and shall take reasonable measures to protect the Purchaser's interest in the Work. The Purchaser shall accept all costs of storage, insurance, demurrage, handling and other charges as set out in invoices for payment in accordance with clause 13.

5.6 Partial Deliveries

Supplier reserves the right to make partial deliveries against an order and to separately invoice same unless otherwise agreed in writing. Payment thereof will fall due in accordance with clause 13.

6. Packing, Freight, Marine Insurance

6.1 Packing

Work to be delivered will be packed in accordance with Supplier's customary standard of packing, and the cost thereof will be included in the price(s). Any special packing, either required by the Purchaser or necessary due to work on site or delivery of work to site being delayed or interrupted for reasons as defined under clause 5.4, will be charged to the Purchaser at cost.

6.2 Freight

Unless otherwise stated in the offer work will be delivered to site by land transport.

6.3 Marine Insurance

Work to be delivered will be insured in accordance with Supplier's standard practice. Any special or additional insurance required by the Purchaser will be charged to the Purchasers account at actuals.

7. Purchaser's Responsibility

7.1 Prior to the commencement of work at the site, the Purchaser shall, at his own expense, take all necessary measures to ensure that Supplier's personnel are able to commence work immediately upon their arrival at the Site and to further ensure that work proceeds in an uninterrupted manner. All preparatory work including materials and equipment, the responsibility of either the Purchaser or of others, is to be sufficiently complete and/or available to permit Supplier's personnel to perform the work concerned. The Site and adjacent areas are to be clear so as to permit unimpeded and unrestricted access. All necessary roads and other access ways suitable to accommodate the movement of heavy and/or special equipment to and on the site are to be readily available. The Purchaser shall supply all necessary information with regard to the location of underground power cables, gas and water pipes together with static data for structures.

7.2 Where work is to be performed in enclosed areas, such areas shall have windows, doors or other openings of sufficient size to permit entry of large items.

7.3 The Purchaser shall supply free of charge all auxiliary services required by Supplier including but not limited to the following:

- All excavation, foundation, building, scaffolding, painting and cleaning work together with necessary tools, equipment and materials.
- Adequate lighting of all work areas.
- Suitable dry lockable storage space for the storage of machinery, equipment, materials and tools.
- Suitable rooms adjacent to the site with adequate lighting, washing, toilet and drinking water facilities for use by Supplier's personnel. Under extreme climatic conditions, site facilities are to be either heated or air-conditioned.
- Adequate telephone/communication facilities.
- 240 volt, 50 cycle single phase power at 3 pin general purpose outlets at suitable locations.
- Main and auxiliary electrical power necessary for the operation of all equipment, capable of being isolated either by isolating switches, removal of fuses or other means to the satisfaction and approval of Supplier's Engineer.

7.4 Where the Purchaser does not either provide or fulfil the above required obligations to the satisfaction of Supplier, Supplier shall be entitled to carry out work or procure the necessary item(s) or personnel at the expense of the Purchaser provided the Purchaser has been informed of the non-compliance and such reminder has gone unheeded.

7.5 The Purchaser shall not employ Supplier's personnel for any work not covered under this offer or any contract arising there-from without first having obtained Supplier's written approval. If such approval is given Supplier's personnel will work under the orders and instructions of the Purchaser and the Purchaser accepts responsibility and all risks for such work and the safety of the personnel employed. The Purchaser shall indemnify Supplier against any claim arising from such work. Any such work will be charged in accordance with Supplier's rates ruling at the time the work is performed.

7.6 Supplier shall be given a minimum of one month written notice of the date on which access to the Site is available.

8. Purchaser's Representative

The name, postal address and telephone number of a qualified person authorised to represent the Purchaser must be notified to Supplier not later than two weeks prior to the date on which Supplier's personnel are required on site.

9. Control of Personnel

Supplier shall have the right to replace any or all of Supplier's personnel with other personnel of equal ability at Supplier's own expense and discretion at any time.

10. Risks

10.1 From the date of commencement of Work to the date of transfer of risk to the Purchaser pursuant to this clause, Supplier shall bear the risk for the works except where a loss or damage results from an Excepted Risk as defined below. Any loss or damage resulting from an Excepted Risk shall be borne by the Purchaser.

10.2 Property in and risk of accidental damage to or loss of equipment and material of any kind provided by the Purchaser shall at all times remain with the Purchaser except where such damage or loss has resulted from negligence by Supplier.

10.3 Should Work be delayed or interrupted for any reason as defined within clause 5.4 for a period exceeding fourteen days, risk in the Work shall pass to the Purchaser and the Purchaser shall immediately pay Supplier for the value of the Work carried out.

10.4 Risk in the Work shall transfer to the Purchaser upon the date when the Work is complete except for minor defects and omissions and when all specified tests have been carried out, or when the Work is put into use by the Purchaser, whichever occurs earlier.

10.5 Excepted Risks include

any act or omission of the Purchaser or of anyone for whose acts or omission the Purchaser is responsible, or other contractors working on the site other than the Supplier's subcontractors or

- natural catastrophes such as fire, flood, earthquake, cyclones and the like
- war, warlike acts, riots and the like
- nuclear fission or radioactivity from any cause
- any event or occurrence beyond the control of the Supplier.

11. Title

11.1 Notwithstanding that the risk in the work sold shall pass to the Purchaser as provided for in Clause 10 hereof title and property in the work sold shall remain with Supplier until such time as full payment is made to Supplier for all amounts owing by the Purchaser and so that the Purchaser's total indebtedness to Supplier under the terms and conditions of sale is discharged.

11.2 In the event that the Purchaser fails to make payment for the work in accordance with the terms of this contract then Supplier shall have the right or recover from the Purchaser the work and for that purpose the servants or agents of Supplier may enter upon the Purchaser's premises in order to effect recovery and use any reasonable means of force in order to effect recovery. Supplier shall have the right to resell or otherwise dispose of the work so recovered without reference to the Purchaser.

11.3 Notwithstanding the provisions of the terms and in particular clause 13 hereof payment shall become due immediately upon the Purchaser (being a natural person) committing any act of bankruptcy or if the Purchaser (being a company) commits any act which entitles any person to apply to wind up the Purchaser or if a liquidator, administrator, controller, mortgagee in possession, receiver or like officer is appointed over part or all of the Purchaser's assets.

11.4 The Purchaser acknowledges that until his total indebtedness to Supplier is discharged he holds the Work or parts thereof as bailee of Supplier and that a fiduciary relationship exists between Supplier and the Purchaser.

12. Prices and Contract Price Adjustment

12.1 Price basis

Unless otherwise stated in the offer, price offered is based on the costs of material, labour, freight, insurance, exchange, duty and other costs and charges as are applicable on the date of the Supplier's offer.

12.2 GST

The prices offered are exclusive of GST. Should GST become applicable the Purchaser shall pay those amounts in addition to the prices offered in accordance with Clause 13.

If GST is payable in relation to a Taxable Supply the amount payable for that Taxable Supply will be the amount payable in accordance with this agreement plus GST.

12.3 Cost of Delay or Variation

If Work is delayed (including delays as defined under clause 7.4) or if work is varied by any act or omission of the Purchaser, his agent, or contractor for whom the Purchaser is responsible, Supplier shall notify the Purchaser of any additional costs which may be incurred as a result of such delay or variation. All additional costs arising from delays or interruptions as defined in clause 5.4 Extension of time and/or clause 10.5 Excepted Risks shall be added to the contract price. Without affecting the generality of this clause such costs shall include expenditure resulting from personnel being idle or standing by, retrenchment or re-employment of personnel, additional journeys, fixed site expenditure and any other costs resulting directly or indirectly there-from.

12.4 Cost of Complying with Regulations

If after the date of the Supplier's offer, the cost to Supplier of performing its obligations under the contract is varied by reason of the making or amendment of any Law or of any order, regulation or by-Law having the force of Law, the amount of such variation shall be added to or deducted from the contract price, whichever the case may be.

13. Payment

13.1 Valuation of Invoice

Supplier shall invoice the Purchaser for the contract price. Each invoice amount will be calculated as follows:

(i) Deposit
An invoice will be raised upon acceptance of Suppliers Proposal for 20% of the contract price

(ii) value prior to delivery on site.
An invoice will be raised on delivery Ex Works and the amount of such invoice will be based upon the percentage of work completed as determined by Supplier.

(iii) Value on delivery to site
On delivery to site an invoice will be raised for actual costs associated with the delivery

(iv) Work on Site
An invoice will be raised at the end of the fortnight during which work is performed or completion of works (whichever the sooner) and will be calculated as follows:
Where the contract price is a Lump Sum, the invoice will be based upon the percentage of work completed as determined by Supplier, plus any variations, additions and omissions in accordance with these conditions. Where the nature of the offer is a schedule of rates, the invoice will be based upon Supplier's work records or such other documents which have been agreed between the Purchaser and Supplier, plus any variations, additions and omissions in accordance with these conditions.

Where any amount otherwise payable to Supplier pursuant to some other provisions of these Conditions or the offer or the contract arising there-from can be taken into account in any invoice, Supplier shall invoice such amounts as and when they occur.

13.2 Certification of hours worked

Where the nature of the offer is a schedule of rates, or where these Conditions or some other provisions of the offer provide for actual hours worked to be charged the Purchaser shall, at least fortnightly, certify the number of hours worked by Supplier's personnel as shown on Supplier's work records or other documents as provided for. Should the Purchaser fail to give such certification without reasonable cause, Supplier will invoice on the basis of such uncertified records and the Purchaser shall be liable accordingly

13.3 Payment due

Unless otherwise stated in the offer, the price offered is strictly Nett. Any payment due to Supplier shall be made in full not later than fourteen (14) days from date of invoice(s). The extension of credit facilities is in any case at the discretion of Supplier and is subject to confirmation on the receipt of an order, however, in any event Supplier retains the right to withdraw credit facilities at any time prior to delivery or completion of work without further notification

13.4 Delay or Default in Payment

Should the Purchaser delay in respect of any payment due to Supplier then Supplier shall have the right, in addition to all other rights to which Supplier is entitled at law, to charge interest on the overdue amount at the rate of 3% per annum in excess of the interest rate prescribed by the Westpac Indicator Lending Rate for Overdrafts above $100,000.00 calculated from the date of invoice to the actual date of full and final payment.

Supplier may defer manufacture or delivery or cancel any outstanding balance of the order.

14. Warranty

14.1 Defects liability

Supplier shall make good by repair or at Supplier's option by replacement within a reasonable time after notification by the Purchaser, defects caused by Supplier's failure to comply with the contract, or which appear in the work arising from faulty design, material or workmanship provided always that:

- such work has been properly handled and used and has been operated and maintained in accordance with instructions, if any, issued by Supplier; and
- such defects are not caused by incorrect operating procedures, faulty work by others not being employed by the Supplier, unsuitable site conditions and other influences which have not been specifically allowed for in the contract; and
- such defects (whether apparent or not) occur within a period of twelve (12) months after risk has been transferred to the Purchaser in accordance with clause 10; and
- Supplier is notified in writing within seven (7) days of the alleged defect occurring; and the Purchaser has fulfilled his contractual obligations.

14.2 Repair or replacement

The removal of the defective part and the installation of any repaired or replacement part shall be performed by the Supplier unless otherwise agreed. Where any defective part(s) has been replaced such part(s) shall become the property of Supplier.

14.3 Limitation of Liability

Supplier shall not be liable for defective parts where any unauthorised repair or alteration to the repaired equipment has been performed by or on behalf of the Purchaser. Furthermore Supplier's warranty shall not extend to cover the quality and suitability of equipment and/or material supplied by the Purchaser provided such faulty workmanship did not result from incorrect instructions of Supplier.

14.4 Exclusions and 'consumer' rights

This express warranty is in lieu of any other rights that would otherwise be conferred on the purchaser under any law save that this express warranty does not exclude any conditions or warranties implied into this contract by the provisions of the Trade Practices Act 1974 or by any other Federal or State laws to the extent that such condition or warranties may not be excluded by express agreement.

15. Liability of Supplier

15.1 Limitation of Liability

Subject to clauses 5.3, 14, 15.2 and 16 Supplier shall not be under any liability whether in contract, tort or otherwise from any cause whatsoever, whether occasioned by negligence or otherwise, for any injury, damage or loss, including consequential damage or the works delivered or installed pursuant hereto including any defects therein or anything connected therewith or any other work related thereto.

15.2 When Purchaser is a Consumer

If the basis of a contract is such that the Purchaser is a consumer as defined in the Trade Practices Act or in any other Law of the Commonwealth (or of any State or Territory) of Australia, the Purchaser's rights shall be governed by the provisions of the said Act or any such Law to the extent that such liability may not be excluded by express agreement.

16. Patents and Design Rights

In the event of any claim or claims in respect of any infringement of a Registered Design, Trademark or Copyright or Letters Patent, the specification of which is published prior to the date of the offer relating to any part of the work supplied by Supplier (other than a part based on a design specified by the Purchaser) Supplier will at their own expense either replace or modify such part with a non infringing part or procure for the Purchaser the right to use such a part provided that Supplier is given full opportunity to conduct all negotiations in respect of such claim and such claim shall not be accepted by the Purchaser without the prior written consent of Supplier. In no event shall Supplier incur any liability for losses arising from the use or non-use of any infringing part. The Purchaser warrants that any design or instructions furnished or given by him shall not be such to cause Supplier to infringe any Letters Patent, Registered Design, Trademark or Copyright in the execution of the order. The patent and design rights held by Supplier and relating to work offered or supplied by Supplier shall remain the absolute property of Supplier and such designs and drawings shall not be reproduced or disclosed without Supplier's written consent. The Purchaser will not, without Supplier's previous written consent, copy or allow others to copy any drawings, equipment or part thereof supplied by Supplier.

17. Bankruptcy, Liquidation

If the Purchaser

(I) being a person, dies or commits an act of bankruptcy

(ii) being a company, takes or shall have taken against it any action for the winding up of the company or the placing of the company under official management or receivership other than for purposes of reconstruction

then Supplier, at Supplier's option and without prejudice to any other rights Supplier may have under the contract or at law, shall give notice in writing to the Purchaser and after fourteen (14) days from such notice may, unless otherwise provided by law,

(a) terminate the contract or suspend manufacture, delivery or installation of any equipment outstanding

(b) retain any security given or monies paid by the Purchaser and apply this against the assessed loss and damages incurred by Supplier in the performance of the contract.

18. Service of Notices

For the purpose of service of any document or notice in connection with the offer or contract it shall be sufficient for either party to forward such document or notice by ordinary mail if within Australia or air mail beyond Australia, with appropriate postage prepaid, or by telex, facsimile transmission, telegram or cable to the last known address of the other party.

19. Legal Construction

In the absence of agreement to the contrary, the contract shall be construed and operate in conformity with the laws of the Australian State of Queensland which is hereby deemed to be the proper Law of the contract.