Claimant: NatSteel Australia Pty Ltd

Respondent: Covecorp Australia Pty Ltd

Adjudicator's Decision under the Building and Construction Industry Payments Act 2004

I, Chris Lenz, as the Adjudicator pursuant to the *Building and Construction Industry Payments Act 2004* (the "Act"), decide (with the reasons set out below) as follows:

1. The adjudicated amount of the adjudication application dated 4 May 2007 is **$525,172.28**.
2. The date on which the amount became payable is **30 March 2007**.
3. The applicable rate of interest payable on the adjudicated amount is **16.52%** simple interest.
4. The Claimant and Respondent are liable to equally pay the ANA's fees and the adjudicator's fees

Signed: …… Date:……

Chris Lenz Adjudicator

Table of Contents

Background

1. NatSteel Australia Pty Ltd (formerly EW Reinforcement Pty Ltd) ACN 087 961 135 (referred to in this adjudication as the "Claimant") was engaged by Covecorp Australia Pty Ltd ACN 106 924 252 (referred to in this adjudication as the "Respondent") to supply reinforcement steel and reinforcement products (the "supply of goods and services") to the Gabba Central Development (the "project") at Gibson Street, WOOLOONGABBA in Queensland (the "site").

2. The Claimant and Respondent entered into a supply contract for supplying the goods and services (the "contract") for the project in December 2004.

3. The supply commenced on or about 21 September 2005 through to 14 February 2007.

4. During this period the Claimant supplied steel reinforcing and ancillary reinforcing products to the project.

5. The Respondent claims that there were errors in delivery, defective material supplied and no proof of material having been supplied.

6. On 4 April 2007 the Claimant served a payment claim on the Respondent for $550,070.31 for the supply of goods and services.

7. In response to the payment claim the Respondent provided a payment schedules on 20 April 2007 in which it sated that it proposed to pay "Nil" as the scheduled amount.

8. The Claimant made a written application for adjudication on 4 May 2007 (the "application"), and the Respondent's solicitors provided an adjudication response on 14 May 2007 (the "response").

Material provided in the adjudication

9. In order for the parties to be satisfied that I have reviewed all their material, I list the Claimant's material and the Respondent's material below.

Claimant's Material

This material comprised the following in a lever arch folder:

i. The Adjudication Application in Form 1 dated 4 May 2007 in support of its payment claim for $550,070.31;
ii. The Respondent's purchase/works order number GRD 11508 dated 9 December 2004 and attached supply proposal from the Claimant dated 8 December 2004 (the "contract documents");
iii. The Claimant's submissions in support of the Adjudication Application (the "submissions") to which were attached
    a. Annexure A attaching a Customer Pricing Agreement;
    b. Annexure B attaching a Customer Pricing Agreement;
    c. Annexure C attaching some adjustment notes;
    d. Annexure D attaching EW Reinforcement's Terms and Conditions;
iv. The payment claim including attached tax invoices;
v. The Respondent's payment schedule.

Respondent's Material

The Respondent's material consisted of the adjudication response in one lever arch folder comprising the response submissions to which were attached Annexures as follows:

1. **Annexure 1** attaching a revised pricing proposal from the Claimant dated 8 December 2004;
2. **Annexure 2** attaching the Respondent's purchase/works order number GRD 11508 dated 9 December 2004 and attached supply proposal from the Claimant dated 8 December 2004 (the "contract documents");
3. **Annexure 3** attaching the respondent's payment schedule;
4. **Annexure 4** attaching a statutory declaration of John McLean dated 14 May 2007;
5. **Annexure 5** attaching a statutory declaration of Philip Lovett dated 14 May 2007;
6. **Annexure 6** attaching a statutory declaration of Debra Hardy dated 14 May 2007;
7. **Annexure 7** attaching a colour photograph of the project;
8. **Annexure 8** attaching a case *CE Heath Underwriting and Insurance (Australia) Pty Ltd and Another v Daraway Constructions Pty Ltd* - BC9503848*,* a decision of Batt J in the Supreme Court of Victoria ("*Daraway*");
9. **Annexure 9** attaching the case of *Austruc Constructions Ltd v ACA Developments Pty Ltd* [2004] NSWSC 131, a decision of McDougall J in the Supreme Court of NSW ("*Austruc*");
10. **Annexure 10** attaching the case of *Minister for Commerce (formally Public Works and Services) v Contrax Plumbing (NSW) Pty Ltd* [2005] NSWCA 142 ("*Contrax*");
11. **Annexure 10a** attaching calculations by the Respondent in relation to each specific invoice;
12. **Annexure 10b** attaching emails between the Respondent and the Claimant;
13. **Annexure 10c** correspondence between the Respondent and the Claimant in relation to the dispute;
14. **Annexure 11** attaching the case of *D Galambos & Son Pty Ltd v McIntyre* (1974) 5ACTR 10 ("*Galambos*");
15. **Annexure 12** attaching the case of *Coordinated Construction Co. Pty Ltd v JM Hargreaves (NSW) Pty Ltd and others* [2005] NSWCA 228 ("*Coordinated Construction*");
16. **Annexure 13** attaching copies of facsimiles from the Respondent to the Claimant;
17. **Annexure 14** attaching a calculation supporting the Respondent's summary of overhead costs;
18. **Annexure 15** attaching the case of *Isis Projects Pty Ltd v Clarence Street Ltd* [2004] NSWSC 222 ("*Isis*");

Jurisdiction

10. Prior to evaluating the material in detail, it is first necessary for me to establish that I have jurisdiction to adjudicate this dispute. s3 of the Act requires that the following matters be established:
    (1) the date of the *construction contract* (which can be written or oral, or partly written and partly oral) must be after 1 October 2004; and
    (2) that the *construction work* was carried out, or the related goods and services supplied for construction work carried out was in Queensland.

11. Schedule 2 of the Act defines a *construction contract* as follows:

> "***"construction contract"*** *means a contract, agreement or other arrangement under which one party undertakes to carry out construction work for, or to supply related goods and services to, another party."*

12. Construction work is defined in s10 of the Act as:

> *"(1)* ***Construction work*** *means any of the following work –*

(a) The construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of buildings or structures, whether permanent or not, forming, or to form, part of land;…"

13. I find that the project involved the construction of a building or structure, as can be seen from the photograph in Annexure 7 of the Respondent's material. It is also necessary to refer to *related goods and services in relation to construction work* because this dispute relates to the provision of reinforcing steel and other reinforcing materials.

14. The relevant provision dealing with related goods and services is as follows:

11 Meaning of related goods and services

*1. **Related goods and services**, in relation to construction work, means any of the following—*
(a) goods of the following kind—
i) materials and components to form part of any building, structure or work arising from construction work;
ii) plant or materials (whether supplied by sale, hire or otherwise) for use in connection with the carrying out of construction work;
(b) services of the following kind—
i) the provision of labour to carry out construction work;
ii) architectural, design, surveying or quantity surveying services relating to construction work;
iii) building, engineering, interior or exterior decoration or landscape advisory services relating to construction work;
iv) soil testing services relating to construction work;
(c) goods and services, in relation to construction work, of a kind prescribed under a regulation for this subsection.
2. In this Act, a reference to related goods and services includes a reference to related goods or services."

15. I find that the supply of reinforcing steel and other reinforcing products fall within the meaning of *goods* under s11(1)(a)(i) of the Act, because as a matter of commonsense (which neither party has controverted), reinforcing steel and other reinforcing products are used in reinforced concrete, which I find are materials forming part of a *building*. As I have already said, the photograph provided in Annexure 7 in the Respondent's material, shows that the Gabba Central Development is a building or structure.

16. I find that the contract documents identify an agreement that the Claimant supply reinforcing steel and other reinforcing products to the Respondent at the site, and the Respondent's purchase order in the contract documents was dated 9 December 2004, which was after 1 October 2004. It related to the *supply of related goods and services* for *construction work* in Wooloongabba, which I find is in Queensland.

17. There is no material provided by either party to suggest that the supply of these materials took place outside Queensland. I find that the Claimant's office address identified in the contract documents was 45 Holland Street, Northgate, and that Ben Hall was the Queensland production coordinator. This material establishes that the supply took place in Queensland, and this is confirmed by reference to any of the invoices provided in the payment claim identifying the delivery as "Local". I am therefore satisfied that the threshold jurisdictional issues have been established.

18. I find that none of the exceptions contained within s3(2) and s3(3) of the Act applies to disqualify the *construction work* from the application of the Act.

19. Consequently, I have jurisdiction to adjudicate this matter and now proceed to do so, being mindful of the constraints imposed by the Act in carrying out this function. I start by referring the parties to the scope of the adjudication.

Scope of the adjudication

20. s26(1) requires that I am to determine:
    1. The amount of the progress payment, if any, to be paid by the Respondent to the Claimant (the "**adjudicated amount**"); and
    2. The **date** on which any such amount became or becomes payable; and
    3. The **rate of interest** payable on any such amount.

21. s26(2) of the Act restricts the matters that I may consider in determining an adjudication application. s26(2) of the Act provides:

    "In deciding an adjudication application, the adjudicator is to consider the following matters only (my emphasis added)*:*

    (a) the provisions of this Act, and to the extent they are relevant, the provisions of the Queensland Building Services Authority Act 1991, part 4A;
    (b) the provisions of the construction contract from which the application arose;
    (c) the payment claim to which the application relates, together with all submissions, including relevant documentation, that have been properly made by the claimant in support of the claim;
    (d) the payment schedule, if any, to which the application relates, together with all submissions, including relevant documentation, that have been properly made by the respondent in support of the schedule;
    (e) the results of any inspection carried out by the adjudicator of any matter to which the claim relates."

22. I did not conduct any inspection of the project.

23. s35(3) also gives me the discretion to determine the proportion of the contribution to be made by the Claimant and by the Respondent to the ANA's fees and adjudicator's fees and expenses. I will exercise that discretion after dealing with the substantive issues.

Reference to an Authorised Nominating Authority and appointment of Adjudicator

24. The Claimant applied in writing to the Queensland Law Society ("QLS") on 4 May 2007 for adjudication. Subject to my finding jurisdiction, which is dealt with below, I find that the application in writing satisfies s21(3)(a) of the Act.

25. I find the application was to QLS, as an authorised nominating authority ("ANA"), with registration number N1061878, thereby satisfying s21(3)(b) of the Act so that there was a valid application to an ANA.

26. By letter dated 4 May 2007 QLS referred the adjudication application to me to determine, pursuant to s23(1) of the Act. I am registered as an adjudicator under the Act with registration number J622914 and I am not a party to the contract and I have no conflict of interest, which satisfies s22(2) and s22(3) of the Act.

27. I have been properly appointed under the Act as required by s23(2) of the Act and I accepted the nomination by facsimile dated 10 May 2007 sent to the Claimant and to the Respondent, and thereby became the appointed Adjudicator by virtue of s23(2) of the Act.

28. On 14 May 2007 I received the response from the Respondent.

Requirements of an adjudication decision

The express terms of the construction contract

29. I have already found that there was a *construction contract* to which the Act applies for jurisdiction to proceed with the adjudication. It is now necessary to consider the extent of the contract as it applies to the payment claim and the payment schedule.

30. Both the Claimant and Respondent attached the Respondent's Purchase/Works Order GRD 11508 dated 9 December 2004 and the EW Reinforcement Supply Proposal dated 8 December 2004 in their material.

31. The payment claim specifically identified these two documents as comprising the construction contract, and the Respondent did not deny this assertion. In fact paragraph B6 of the payment schedule stated:

"The manner in which the invoiced amount under the Contract is to be calculated is set out at pages 4, 5 and 6 of the EW Reinforcement Supply Proposal dated 8 December 2004, and the Respondent repeats and relies on these pages as if they were set out in full in this payment schedule."

32. Accordingly, I find that the express terms of the construction contract are contained within the contract documents viz. the Respondent's Purchase/Works Order GRD 11508 dated 9 December 2004 and the EW Reinforcement Supply Proposal dated 8 December 2004, hereinafter called the *contract*. I find that the contract was made on 9 December 2004 by the Respondent accepting the Applicant's proposal in its purchase order.

33. I accept the Respondent's response submissions 42 to 45, supported by Phil Lovett's statutory declaration at paragraph 8 that the "Terms and Conditions" identified in Attachment "D" to the application submissions were not provided. The Claimant had merely stated in submission 8, that these may be of assistance to me, and they were not sure that they were provided to the Respondent. I find that these "Terms and Conditions" were not provided and they have not been considered by me.

34. I next identify the relevant extracts from the express terms of the contract in relation to *delivery* and *damages* because these are two issues requiring resolution in this dispute.

Delivery

35. Insofar as the *delivery* issue is concerned, at paragraph 9 of the payment schedule the Respondent said,

"Further, it was an express, or alternatively, an implied term of the Contract that the Claimant would provide the respondent with some form of proof of delivery with each tax invoice supplied."

36. The only express term in the contract regarding proof of *delivery* is contained within the first paragraph of the delivery clause, which provided:

*"**Delivery***

"Delivery will be free alongside site and Covecorp will be responsible for unloading unless otherwise agreed. Covecorp will be required to have an authorised representative to meet and sign for all deliveries. EWR may

refuse to accept a claim for materials left under the instructions of Covecorp where an authorised representative is not present to receive the delivery of materials."

37. There is reference to the Respondent's authorised representative signing for all deliveries. This connotes that the parties had agreed that delivery would take place with the Respondent's representative present.

38. Given that there is significant dispute about short delivery, non delivery and delivery of defective materials, it may be that the parties did not follow this agreed procedure, but it is not necessary to make a finding on this point at this stage.

39. The statutory declaration of Debra Hardy deals with the Respondent's allegations that there were:

    i. No delivery dockets were attached to invoices;
    ii. Missing invoices;
    iii. Incorrect delivery dockets;
    iv. Incorrect invoices;
    v. Delivery dockets not signed;
    vi. Incorrect pricing on invoices.

40. Suffice is it to say, that the requirement for someone to sign something for delivery at the site is one thing. However, to extend these express words to mean that when an invoice is rendered, there must be an accompanying *some form of proof of delivery* is not possible to find from these express words. I also could not find any such requirement under any other clause in the contract, so I find that there is no express term requiring *some form of proof of delivery* with each tax invoice supplied.

41. I will need to consider whether there was an implied term regarding *delivery* to see if it necessary to further have regard to the statutory declaration of Debra Hardy, and this will be discussed below.

Damages

42. The Respondent's claim for damages involves two issues for which it claims there are express terms in the payment schedule and in submissions 88 through to 140 in the response. The first is that there is a term requiring that the reinforcing materials comply with the contract, drawings and the Respondent's delivery schedules (called the "*supply* term"). The second issue raised by the Respondent in this adjudication is that the breach of the *supply* term allows the Respondent to claim loss or damage and additional costs and expenses from the Claimant, which I am calling the "*damages term*".

43. Turning to the submissions on the *supply* term, the Respondent at paragraph 16 of the payment schedule stated that:

    "It was an express, and/or an implied term of the Contract that the reinforcing materials supplied by the Claimant would comply with the terms of the contract, the agreed design drawings and/or specifications, and would be supplied in accordance with the delivery schedules agreed between the Claimant and the Respondent."

44. These are the submissions on the existence of an express *supply* term in the payment schedule, however, in paragraph 88 of the response submissions the Respondent argues that this term could also be implied as a matter of law to give business efficacy to the contract, to which I will have regard later.

45. With reference to the *damages term* the Respondent's submissions at paragraph 18 of the payment schedule stated that:

"It was a further express, and/or implied term of the Contract, that if the Claimant breached the express and/or implied terms discussed above at paragraph 16 of this payment schedule, it would be responsible for any loss or damage (including delay damages) and/or additional costs and expenses, incurred by the Respondent as a result of such breach."

46. In paragraph 100 of the response submissions the respondent called up the specific express term called the "Liquidated Damages Clause, which is the only one that I can find dealing with both the *supply* term and the *damages term*. The Respondent said: *"The express term is evidenced by the clause headed "Liquidated Damages" at page 7 of the supply agreement which specifically confirms that if the Claimant does not supply the materials in accordance with the Agreement it will pay the Respondent's reasonably incurred costs which are the direct result of the breach."*

47. The Liquidated Damages Clause provides:

*"**Liquidated damages***

If the supplier (being EW Reinforcing) fails:

a. *To supply reinforcing materials in reasonable compliance with proper design drawings as supplied by the customer;*
b. *To deliver reinforcing materials in reasonable accordance with delivery schedules as mutually agreed between the parties in writing;*
c. *To reasonably comply with advance site instructions'*

And on condition that the suppliers failure is not as a result of any actions whatsoever by the customer, its agents or employees, or its subcontractors, or any third party whatsoever, or events beyond the suppliers control, and

Any claim whatsoever made by the customer shall be received by the supplier within 48 hours of the identification of any alleged failure and shall be in writing, the supplier agrees, at its option only:

d. *To supply further reinforcing materials; and/or*
e. *To pay the reasonable costs for rectification on site, said costs to be determined in agreement by the supplier and contract, and/or*
f. *To pay the reasonable costs of a properly licensed subcontracts* (sic) *provided such costs are incurred as a direct consequence of the suppliers failure referred to in subparagraphs (i), (ii) and (iii) above."*

48. In construing the first paragraph of the Liquidated Damages Clause (subparagraphs a., b., and c.), I find that there is an express term requiring compliance with contract drawings, delivery schedules and advance site instructions. I do not find that the term embraces the notion that supply would comply with the terms of the contract and the specifications, so I would have to analyse whether these terms could be implied, to which I will turn later. Suffice is to say, however, that there is an express term relating to *supply*, even though it is not as wide as that suggested by the Respondent.

49. In relation to the Respondent's *damages term*, I cannot agree with the Respondent that the words, *"To pay the reasonable costs of a properly licensed subcontracts* (sic)*"* as meaning *"it will pay the Respondent's reasonably incurred costs which are the direct result of the breach."* The express term is qualified in that the Claimant, *at its option only*, is prepared to pay the reasonable costs of a properly licensed subcontracts (sic).

50. It is not necessary to for me to construe the clause to make sense of the confusing use of the word *subcontracts* in this context. Whatever the sentence should mean,

on any sensible interpretation of the contract, it cannot be interpreted to mean that the Claimant would pay the *Respondent's reasonably incurred costs which are the direct result of the breach*.

51. The Claimant has specifically reserved its options to elect under subparagraphs "d, e and/or f" to either supply further reinforcing materials, or pay reasonable costs of rectification or of a "properly licensed subcontracts". To suggest that this express term means that the Claimant unequivocally agreed to pay the Respondent's reasonable costs upon breach is, with the greatest respect, not possible in the face of the express option identified above. Accordingly, I find no such express term regarding agreement to pay these costs as *damages*. I will therefore have to turn to the possibility that the *damages term* could be implied, which is discussed below. Given that this term is crucial to the Respondent's claim, there has been some extensive review of the issue in the decision below.

52. I have not also not found the express terms suggested by the Respondent for *delivery* and will also need to consider whether it can be implied into the contract, because the Respondent further and alternatively argues for their implication. I will return to these issues after consideration of other preliminary matters that need to be established before the detailed evaluation of the dispute is carried out. Before I do so, I will discuss the clause relating to trading terms as this may govern the due date for payment and the reference date.

Trading terms

53. There is express term relating to the *trading terms* which provides:

> "***Trading terms***
>
> *Credit account – Unless otherwise agreed, full payment is required within 30 days of the end of the month in which the goods are delivered.*
>
> *Cash sale – Full payment is required 7 working days in advance prior to each delivery. Payment is required in accordance with the Subcontractors and Suppliers Security Act 1998.*
> *EW retains full ownership of all goods until paid in full in accordance with our credit account conditions."*

54. There were no credit account conditions provided in the material from either party, so it is open to find that payment is required within 30 days after the end of the month in which the goods were delivered.

Service of the payment claim

55. I find that the payment claim dated 4 April 2007 was served on the Respondent on that day because the Respondent's payment schedule stated that this was the date the payment claim was served on it.

Entitlement to progress payments

56. I must decide whether the Claimant has an entitlement to make a progress claim before considering the disputed issues. I have already found that the Claimant had a contract to provide reinforcing steel and other materials for *construction work* to the Respondent under the Act. s12 of the Act gives rights to progress payments as follows:

> "***12 Rights to progress payments***

From each reference date under a construction contract, a person is entitled to a progress payment if the person has undertaken to carry out construction work, or supply related goods and services, under the contract."

57. Therefore the right to progress payments is governed by the *reference date* for the progress claim and I need to find the *reference date* for this payment claim. Schedule 2 of the Act defines *reference date* as:

"(a) a date stated in, or worked out under, the contract as the date on which a claim for a progress payment may be made for construction work carried out or undertaken to be carried out, or related goods and services supplied or undertaken to be supplied, under the contract; or…"

58. The express trading terms identified in the contract above, referred to payment being required within 30 days of the end of the month in which the goods are delivered. However, the contract does not state when a progress claim may be made. I therefore refer to Schedule 2 on the basis that the contract does not provide for the matter, and find that the first reference date was the last day of the month in which reinforcing materials were first supplied [Schedule 2 paragraph (i)].

59. I find from the Claimant's Sales Register ("CSR") in the payment claim that this month was September 2005. Therefore, all subsequent reference dates were the last day of each later named month according to Schedule 2 paragraph (ii). I therefore find from the CSR that the *reference date* for this payment claim was 28 February 2007, as this was the last month in which the goods were supplied. The payment claim is dated 4 April 2007, which is after this reference date, and I find that this is **from** 28 February 2007, which satisfies s12 of the Act.

60. I have established the Claimant's prima facie entitlement to the payment claim. It is appropriate to now turn to the Respondent's objections in the payment schedule to the payment claim, so it useful to refer to both these documents in a bit of detail

Payment claim dated 4 April 2007

61. The payment claim identifies the construction contract, and I have found that this is the contract between the parties.

62. s17(2) of the Act provides:

"A payment claim-

(a) must identify the construction work or related goods and services to which the progress claim relates; and
*(b) must state the amount of the progress payment that the claimant claims to be payable (the **"claimed amount"**); and*
(c) must state that it is made under this Act."

63. The particulars of the related goods and services to which the progress claim related were provided in a sales register and copies of invoices relating to the respondent's purchase order GRD11508, with delivery to Gibbon Street, Wooloongabba, which I have found is the site.

64. Each invoice identified a "Sch No, item number, description, quantity, UOM, unit price and amount". The Respondent has not taken issue with the level of identification, and I am satisfied that s17(2)(a) of the Act has been complied with in that there is identification of the related goods and services for the progress claim.

65. The amount of the progress payment is identified, the **claimed amount**, thereby satisfying s17(2)(b) of the Act, and it carries the endorsement required by s17(2)(c) of the Act.

66. The payment schedule takes issue with the payment claim, but not in relation to the s17(2) of the Act requirements identified above.

Payment schedule dated 20 April 2007

67. The payment schedule is contained in the Claimant's material as the last document and in the Respondent's material in **Annexure 3** and mounts a series of challenges to the payment claim as issues in dispute, which I have characterised as *liability issues*.

68. I now identify and decide on each liability issue arising out of the payment claim and payment schedule, supported by the application and response respectively, before turning to quantum.

69. As a reminder to the parties in this dispute, the Claimant bears the legal and evidentiary onus to prove its claim and the legal onus always remains with the Claimant. However, if the evidentiary onus is discharged in supporting the legal onus, then the evidentiary onus shifts to the Respondent if it is disputing some point.

Liability issues

70. The payment schedule identifies the disputed issues as follows:
    i. Payment Claim not served in accordance with s17 of the Act;
    ii. Claim not made in accordance with the contract;
    iii. Claimed amount is overclaimed, unreasonable and not payable by the Respondent to the Claimant under the contract;
    iv. Set off for liquidated damages/defects/delay.

Payment Claim not served in accordance with s17 of the Act

71. The Respondent argues that s17 of the Act requires the Claimant to serve a payment claim, meaning that a solicitor cannot serve a payment claim. The Respondent has not provided any authority to suggest that a solicitor is unable to act as a Claimant's agent and serve a payment claim.

72. I found the case of *Emag Constructions Pty Ltd v Highrise Concrete Contractors (Aust) Pty Ltd* [2003] NSWC 903 ("Emag"), where Einstein J found that service of a Payment Claim on a solicitor was not considered good service under the NSW equivalent of the Act. His Honour said:

> *"58 There was neither actual authority in the Plaintiff's solicitors to receive a copy of the Adjudication Application, nor ostensible authority in that regard. And in relation to the submission, that the solicitors for Emag are presumed to have acted in the usual way by passing on the Adjudication Application to Emag, this is not now a circumstance in which such a presumption is available to be relied upon by the Defendant. The presumptions/inference for which the Defendant contended, which may in some circumstances be drawn, has now been resoundingly rebutted having been the subject of strict proof.*
>
> *59 In my view the character of the subject legislation is such that general principles of actual or ostensible authority in solicitors to receive service of copies of relevant notices must yield to the strictures of the strict service requirement to prove service".*

73. In Halsbury's Law of Australia, at paragraph 325-2015 relating to personal service of originating process, the learned authors stated:

> *"Where the exceptions to the requirements for personal service do not apply, the general rule is that all originating process must be served personally on each Defendant by the Plaintiff, or the Plaintiff's agent*" (my underlining).

74. In Halsbury's Law of Australia at paragraph 250-450 the learned author's stated:

> *"In most cases the relationship between a lawyer and a client is established by a contract of retainer, which is a contract between the lawyer and the client, under which the client employs the lawyer to undertake certain work for the client and the lawyer agrees to carry out that work…In accordance with the ordinary law of principle and agent, a client may become a party to a contract of retainer with a lawyer, where another person passes instructions to the lawyer on behalf of the client, with the client's knowledge and assent. Where a lawyer starts an action without the client's authority, it is open to the client to ratify the act of the lawyer who started the action, to adopt the proceedings of proving past action and to authorise the lawyer to continue the action".*

75. In my view, the fact of the service of the payment claim by the Claimant's solicitors and the Claimant's application submission 1(d) that the Claimant authorised its solicitors, Robert Downey Lawyers, to affect service of the Payment Claim on the Respondent, demonstrates as a matter of fact that its solicitors acted as its agent in serving the payment claim.

76. In Emag, the issue was service of a payment claim on a solicitor, who it turned out, did not have authority to accept service. It was not a case of service by a solicitor. Furthermore, in Emag, the issue related to the importance of the service of the payment claim coming to the attention of the person liable to pay. This is different from this adjudication, where the agent served the payment claim is carrying out a mechanical step, about which nothing otherwise contentious arises.

77. Accordingly I find that the Claimant was entitled to authorise its solicitors to carry out the service of the payment claim and that such service was not in contravention of s17 of the Act, because I find that the solicitors were acting as the Claimant's agents. This means I reject the Respondent's submissions on this issue.

78. The Respondent's claim for set off amounts to $1,000,700.00, which exceeds the payment claim, so it is sensible to consider this issue next, because if the set off is justified, then whether or not the payment claim is made out, it would be extinguished by the set off.

Set off for liquidated damages/defects/delay

79. The Respondent asserted in paragraphs 16 through to 23 in the payment schedule and 88 through to 140 of the response submissions that it is entitled to set off for liquidated damages/defects/delay under express and/or implied terms of the contract. It identifies the quantum of this claim as delay costs of $987,500 and additional labour costs of $13,200, which amounts to $1,000,700.

80. I have already found that no express terms exist in relation to *delivery* (which will be discussed further under the heading "Claim not made in accordance with the contract") and the *damages term*. I did find an express term relating to *supply* in the requirements a., b., and c under the Liquidated Damages Clause on page 7 of the EW proposal, as identified above. Since there is essentially an absence of express terms asserted by the Respondent, I will therefore need to consider the submissions about implied terms, and the focus at present is on the *damages term*.

81. As I have said the Respondent refers to 2 terms to establish its right to damages. The first term relates to *supply* and the second to the *damages term*. The Respondent has provided the statutory declaration of John McLean, supported by that of Philip Lovett to support its assertion that the Claimant breached the term relating to *supply*, which the Respondent says allows its damages claim.

82. The Respondent also said that the Claimant verbally agreed, and accepted on a number of occasions, that it was liable for loss and damage (including delay damages) and/or additional costs incurred by the respondent for breaches of contract.

83. This assertion is found in paragraph 19 of the payment schedule, where the Respondent stated:

> *"This was also verbally agreed, and accepted, by representatives of the Claimant on a number of occasions, throughout the duration of the Contract."*

84. In the statutory declaration of Philip Lovett at paragraph 6, he stated that at meeting, which had been referred to earlier, "*Mr. Jeff Smith of EW agreed that they would accept costs from Covecorp for delays to the project.*" I call this the "*alleged verbal damages agreement*".

85. This assertion by the Respondent raises the issue as to whether the contract was varied to include such a term, or whether a fresh contract regarding these damages was made after the contract was entered into. The Respondent did not assert that the *alleged verbal damages agreement* took place at the time of entry into the contract, so as a matter of commonsense I find that it would have to have taken place afterwards.

86. The timing surrounding the *alleged verbal damages agreement* appears to be that Mr. Smith, at least at meetings on 9 March 2006, 12 April 2006 and 29 September 2006 (according to Mr. Lovett's statutory declaration paragraph 5) verbally agreed that the Claimant would accept costs for delays. This is some 18 months after the contract was entered into on 9 December 2004; so as a matter of logic, for it to be enforceable, it would either have had to either vary the contract or been a fresh contract in its own right.

87. The Respondent did not make submissions in relation to a variation or a fresh agreement and I must not consider issues that have not been raised by the parties, without giving them the opportunity to provide submissions on the point. The Respondent is asserting its right to set off for its damages claim, and it bears the onus of establishing its rights to do so.

88. The Respondent has identified the *alleged verbal damages agreement* in the payment schedule, but has chosen to not provide submissions to assist me to find such an agreement. In my opinion, I should not be required to ask for submissions on an issue that I believe has arisen from the Respondent's case, but which the Respondent does not address on that basis. This leaves the claim for *the alleged verbal damages agreement* in limbo because it did not arise at the time of entry into the contract, and there is nothing from the Respondent to identify any other basis for this agreement to be taken into account. Accordingly, I find that there was no *alleged verbal damages agreement* because the Respondent has not satisfied its onus.

89. The Respondent has provided significant details about alleged breaches of contract by the Claimant in relation to delivery of defective materials, delivery of materials, which did not comply with the terms of the contract, and materials that were not supplied in accordance with delivery schedules. In attachment 10c the Respondent provides half a lever-arch file of documents supporting its claim that such breaches

had occurred. It now becomes necessary to consider the implication of a *damages term*.

Implied damages term

90. I have already said that the Respondent, at paragraph 88 of the response submissions, has argued that there is an implied term in relation to *supply* arising as a matter of law in order to give business efficacy to the contract. In all the other submissions made by the Respondent regarding the implication of terms, including the *damages term*, it has not asserted upon basis on which an alleged term can be implied. For example, paragraph 99 of the response submissions merely asserts that such a term should be implied.

91. I will focus on the implication of the *damages term* because if it does not exist, then it does not matter how much documentary material the Respondent provides demonstrating a breach of the *supply* term, it will have no recourse to its damages by way of set off under the contract.

92. It must be recognised that an adjudicator values construction work under the contract, and is constrained to have regard to only specific matters listed in s26(2) of the Act. In deciding the amount of the progress payment, s13 of the Act requires an adjudicator to calculate this amount under the contract. In principle, a Respondent may have a right to set off, but in my view, only if it arises under the contract. In this event the adjudicator needs to consider set off in calculating the amount of the progress payment. If, however, there is no right of set off under the contract, then it is beyond the power of an adjudicator to allow it.

93. The Claimant is fairly brief in its reference to the Respondent's assertions in the payment schedule to set off for damages. At paragraph 6(f) of the application submissions, it merely says that such damages cannot be claimed under the Act, and that a claim for delay damages is not a sufficient reason to refuse to pay a payment claim.

94. However, earlier is its application submissions, in response to the payment schedule's assertions of implying a term relating to what I have termed *delivery*, the Claimant in its adjudication submission 2(c), submitted, quite correctly in my respectful opinion, that terms could be implied into a contract:

    i. by law, or
    ii. alternatively read into a contract by a court because of past dealings between the parties;
    iii. because of custom or trade usage;
    iv. or to give business efficacy to a contract.

`

95. The Respondent has not provided in its submissions, the basis upon which such a term could be implied, and this may be why the Claimant did not touch upon the matter.

96. Somewhat unusually, I am left with a live issue that has the most bearing on the adjudication quantum, with very little assistance from either party. Nevertheless, I feel it incumbent upon me because of the importance as to whether such a term exists, to consider the various possibilities of implying a term into the contract because the Claimant has identified the rules upon which such a term could be implied.

97. If it is found that a term could be implied on whatever basis, I may then ask for additional submissions from the Claimant and the Respondent, but that would only be necessary, if I find that the foundation for such a term can be found. The Respondent

chose to not provide me with any specific foundation to investigate, and on this point the Claimant merely denied the right to claim damages under the Act.

98. Considering whether a term could be implied on the basis of business efficacy, requires the satisfaction of five conditions as identified in the case of *Codelfa Constructions Pty Ltd v State Rail Authority of NSW* (1982) 149 CLR337 ("*Codelfa*") and these conditions are:

- The term must be reasonable and equitable;
- The term must be necessary to give business efficacy to the contract, so that no term will be implied if that contract is effective without it;
- The term must be so obvious that 'it goes without saying';
- The term must be capable of clear expression;
- The term must not contradict any expressed terms of the contract.

99. The Respondent has provided no evidence in support of any one of these five conditions for the *damages term*, so I am unable to consider an implication of a term based on business efficacy, and this basis is rejected.

100. A term can be implied from a previous consistent course of dealings: Willmot, Lindy; Sharon Christensen and Des Butler (2005), *Contract Law*, Oxford University Press, South Melbourne, Second Edition ("*Contract Law*"), at paragraph 8.5.2, p265.

101. There is no evidence from the Respondent to suggest that there has been a previous consistent course of dealings between the Claimant and Respondent in relation to the *damages term*. The Respondent has provided material that Mr. Jeff Smith had allegedly agreed to the *alleged verbal damages agreement*, but I have rejected the existence of this agreement. The Respondent, in Philip Lovett's statutory declaration paragraphs 11 and 12, refers to the Claimant complying with *requirements in the past*, but this relates to the *delivery* term. I find no basis for implying a term from a previous consistent course of dealings.

102. Another basis of implying a term is from custom or usage: *Contract Law*, paragraph 8.5.3 p270. There is some evidence in paragraphs 11 and 12 in Philip Lovett's statutory declaration of usage, but I have already sad that this relates to the *delivery* term, not the *damages term.* Again, there is no evidence from the Respondent to suggest that the *damages term* could be implied on this basis and it is therefore rejected.

103. As to the possibility of a term being implied as a legal incident of a particular class of contract: *Contract Law*, paragraph 8, p273. As the learned authors said under this heading that here, "the terms are implied by the court, not to reflect the presumed intention of the parties, but because the courts have taken the view, on policy grounds, that such terms should be implied: *Codelfa Constructions Pty Ltd v State Rail Authority of NSW* (1982) 149 CLR 337 at 345-346".

104. The Respondent has provided no material in which to suggest that the contract for the supply of reinforcing materials contains within it, as a matter of law that a Claimant would agree to pay the Respondent's reasonably incurred costs as a direct result of a breach of the supply agreement.

105. However, the Respondent's submissions in paragraph 103 of the response, state that if a contract does not preclude a right of set off, then such a right of set off exists both at law and equity, and can be validly raised in response to a progress/payment claim. It refers to *Galambos* for the proposition that the right of set off exists both at law and equity. Woodward J was considering a construction case and found in the context of the above proposition, on page 1 of Attachment 11, that:

i. *"Claims for moneys due under a contract and damages for the breach of the same contract may be set off against each other where the equity of the case requires it to be so; and*
ii. *Even where one of the claims is not in terms based upon the contract, but it flows out of and is directly connected with it, a court may be prepared to recognise an equitable set off."*

106. In *Galambos*, his Honour referred to a significant number of authorities, particularly in England, and distinguished cases in Australia to arrive at these propositions. However, upon close consideration of the case, it emerged that His Honour's principles appeared to be founded on the fact that the principles of common law and equity had merged since the Judicature Acts, so that an earlier equitable right of set off was now available at law.

107. His Honour (at page 20 of the report, and page 9 of Attachment 11) distinguished *McDonnell & East v McGregor* (1936) 56 CLR 50 ("*McDonnell & East*"), and said that this High Court case, *"…cannot be regarded as an authority on the question of equitable set off."* His Honour had said Dixon J (at page 62 of *McDonnell & East*) had said that, *a liquidated cross-demand cannot be pleaded as an answer in whole or in part to a cause of action sounding in damages or vice versa. Such cross-demands must be pleaded by way of counter-claim not set-off."* I am therefore of the view that the *Galambos* principles of set off being allowed in a construction case, are based in equity to do justice to the case.

108. There is nothing in the Act that allows an adjudicator to consider equitable principles in deciding an amount of a progress payment, or to do justice to the case. The adjudicator's functions are confined by s26(2) of the Act, and equity plays no part in the exercise of those functions. I must therefore also reject the Respondent's submission 104 in this regard because it refers to an equitable right of set off, which I find is not available in adjudication.

109. I need to still consider whether, apart from the *Galambos* principles, there is still an implied *damages term.* I have already said that the Respondent has provided no assistance by way of submissions, for such a term to be implied, apart from reference to the *Galambos* principles, which I have rejected in this context.

110. To my mind, the ordinary legal principles should follow that if the Claimant is in breach of contract, then the Respondent may be in a position to claim for damages from breach of contract as a result of that breach, but to elevate such a right into a term of a contract through the implied mechanism is simply not supportable in this case. Accordingly, I am unable to find that under any head of the law in relation to implied terms that there was an implied *damages term.* As a consequence there is no need for me to ask the Claimant for submissions on this point, with the requisite response from the Respondent.

111. If I am incorrect in this conclusion and there is some residual basis that a *damages term* can be implied from the Respondent's submissions, the only other basis contained within the Respondent's submissions is that the Respondent argues that a claim for payment of monies similar to damages were claimable under the contract in *Coordinated Construction*. This was a case where a claimant was entitled to claim for damages under the provisions of the contract, when the contractual mechanism provided for such an eventuality.

112. In *Coordinated Construction*, at paragraph 52 Hodgson JA said that, *"the Adjudicator's duty is to come to a view as to what is properly payable, on what the*

Adjudicator considers to be the true construction of the contract and the Act and the true merits of the claim".

113. Hodgson JA had earlier said, at paragraph 41:

> *"41 In my opinion, the circumstances that a particular amount may be characterised by a contract as "damages" or "interest" cannot be conclusive as to whether or not such an amount is for construction work carried out, or for related goods and services supplied. Rather, any amount that a construction contract requires to be paid as part of the total price of construction work is generally, in my opinion, an amount due for that construction work, even if the contract labels it as "damages" or "interest"; while on the other hand, any amount which is truly payable as damages for breach of contract is generally not an amount due for that construction work.*
>
> *42 Under the contract in this case, delay damages are payable only if an EOT is for a compensable cause, that is, in general some act or omission of the head contractor, or the superintendent, or the subcontract superintendent; but nevertheless, they are not of their nature damages for breach, but rather are additional amounts which may become due and payable under the contract (clause 34.9) and which are then to be included in progress payments (clause 37.1)".*

114. In my view *Coordinated Construction* cannot be used to bolster the Respondent's right to damages in this case. The right to damages under the contract must exist, and only then one may argue that *Coordinated Construction* allows for damages in adjudication. I have found that no such right exists.

115. I do, however accept that liquidated damages claimable by the Respondent may be considered when calculating an amount due, if the contract so provides. *In ACN 060 559 971 Pty Ltd v O'Brien and Sea Slip Marinas* [2007] QSC 91 ("*Sea Slip*"), Mullins J, at paragraphs 57 and 58 recognised that a claim for liquidated damages by a respondent should be considered by an adjudicator. Earlier at paragraph 34, Her Honour said that,

> *"The right under clause 35.6 of the contract for the applicant to claim liquidated damages at the rate stated in Annexure Part A of the contract is not referable to any particular item of construction work under the contract, but affects the calculation of the amount due by the principal to the contractor (or the amount due by the contractor to the principal). Under clauses 35.6 and 42.1 of the contract liquidated damages can be deducted from any payment otherwise due by the principal to the contractor. Relevantly, clause 42.1 of the contract treats an amount due by the contractor to the principal, such as a deduction for liquidated damages, as distinct from the value of work carried out by the contractor in the performance of the contract. The claim by the applicant to liquidated damages on the adjudication application before Mr Uher was relevant to the entitlement of SSM to the quantum of the progress payment that was determined by Mr Uher, but not to the value of any construction work carried out under the contract that was determined by Mr Uher."*

116. *Sea Slip* therefore allows an adjudicator to consider liquidated damages in calculating an amount due under the contract. Liquidated damages are characterised as a genuine pre-estimate of loss and damage: DJ Cremean, BA Shnookal and MH Whitten (2004)): *Brooking on Building Contracts*, LexisNexis Butterworths, Australia ("*Brooking*") at paragraph 6.3, page 78.

117. The damages claimed by the Respondent are not liquidated damages as they require detailed evaluation of the effect of delays, overheads etc, as demonstrated in Attachment 14 to the Respondent's submissions. The Respondent has quantified these damages at $25,000 a day, and in one case at $30,000 in correspondence based on its calculation of its losses.

118. I have already found that the Respondent cannot establish as a matter of law, that the evidence in the statutory declarations, suggesting that the Claimant had agreed to pay damages. The Respondent did not establish that the contract was varied, or a fresh contract entered into, for an agreement to pay $25,000 a day. I therefore find that there are no liquidated damages allowable.

119. Having established that the claim is not for liquidated damages, the Respondent's claim can only be for unliquidated damages, which, even if it could be implied (which I have rejected), is not permitted under the Act. It requires an adjudicator to consider matters of the Respondent's overheads, manpower, insurance etc.; none of which an adjudicator has power to consider under the Act.

120. Therefore, I am unable to allow the Respondent's claim to set off for damages because I have found that:

    i. there is no express *damages term* under the contract;
    ii. there is no implied *damages term* under the contract;
    iii. set off for damages is only allowed in equity to do justice between the parties, and adjudication does not involve consideration of equitable principles and doing justice between the parties;
    iv. the Respondent's claim for set off is not for liquidated damages, but unliquidated damages, which is outside the power of an adjudicator to consider.

121. I have found that there is no *damages term* so that all the material provided by the Respondent in Attachment 10c in relation to the breach of the supply term sounding in damages is not relevant in this adjudication. This means that I reject the respondent's submissions 88 through to 140.

122. However, what still remains alive is the issue as to whether a term relating to *delivery* can be implied into the contract under the head of the Claim not being made in accordance which the contract, to which I will now turn.

Claim not made in accordance with the contract

Erroneous charging rates

123. The Respondent argued in paragraph 7 of the payment schedule that the Claimant has not used the agreed contract rates or prices in calculating the invoice totals. Accordingly, the Respondent argues that the payment claim was not made in accordance with the contract.

124. The Respondent argues that in each of the invoices the incorrect rates or prices have been used, and I have had to review the invoices and the contract to find the appropriate rates. The Claimant in paragraph 2(a) of its submissions, attached Annexures A and B referring to a Customer Pricing Agreement, and said that they were provided to the Respondent after the contract was entered into. The rates contained within these Annexures appeared to have been used for some of the items in the invoices. For example, Item RB16 in schedule no 28/085 on invoice 2507 referred to *REID BAR 16MM PROCESSED (FRICTION CUTTING* and was priced at $2,450.00. I find that there is no such item referring to friction cutting identified in the contract, and that this price is found in Annexure A.

125. The Respondent in its submission 46 said that these Annexures do not form part of the contract and refers to paragraph 9 of Philip Lovett's statutory declaration, which said that these documents were not provided to the Respondent. Apart from its submissions, there is nothing from the Claimant to support its assertion that these documents were delivered. I find therefore that these Customer Pricing Agreement lists were not provided to the Respondent and, as such, do not form part of the contract. This means that the rates and prices for the reinforcing items are confined to those specified in the contract. However, some items in the contract called, "Reinforcing Accessories" refer to items *"@ Current List Prices less* (either) *30%* (or) *40% discount."* These few items, where they have arisen have been allocated prices from Annexure A, on the basis that I find that there is a list price provided in one of the columns. They do not amount to a significant sum of money.

126. I have listed rates used by the Claimant in Annexure 1 to the adjudication for the parties' benefit, and advise that those in bold which refer to annexure A rates by the Claimant. The parties can see what rates were used for my calculations, and they are confined to the contract rates agreed in the contract (called the *proposal rates*), apart from those reinforcing accessories that I can identify and referred to above.

127. The Claimant argues in paragraph 2(b) of its submissions that the Respondent has failed to identify which tax invoices have not been prepared in accordance with the said charging rates. The Respondent's response at paragraph 60 was that it was referring to all tax invoices.

128. I am not prepared to accept the Claimant's assertions that it could not make specific submissions about the Respondent's general allegation. It had in paragraph 2(a)of its application submissions referred to charging rates from the proposal and from Annexures A and B, and it would have been possible for it to identify which rates came from the proposal and which from the Annexures A and B.

129. Of the 179 invoices that I have had to look at, it appears that 53 invoices applied rates that were not in the proposal. I refer the parties to Annexure 2 in this adjudication for a table of the invoice details that I have used to determine the amount of the progress claim payable. In the column headed "Amount Due" I have highlighted in bold the amount for invoices which are calculated in accordance with the proposal rates in the contract, and not the incorrect rates used by the Claimant.

130. In my opinion, the payment schedule should have prompted the Claimant to be on alert to review the invoices. I accept that not all invoices have applied Annexure A or B rates, instead of the proposal rates as asserted by the Respondent, but in my opinion the task was not particularly onerous and could have been done, and then formed part of any further submissions in the application, if necessary.

131. I will now turn to the important issue of proof of delivery, because this is a basis upon which the Respondent says that the Claimant is not entitled to be paid.

Proof of delivery

132. The Respondent argued in paragraph 9 of the payment schedule that there was a term that *some sort of proof of delivery* was required to be provided with each tax invoice supplied. I have already found that no such express term existed, so it is necessary for the Respondent to establish that there is an implied term.

133. The Respondent, at paragraph 88 of the response submissions, argued that there is an implied term in relation to *supply* arising as a matter of law in order to give business efficacy to the contract, but this submission was not made in relation to *delivery*. In relation to *delivery*, the Respondent at paragraph 57 submitted that there was an implied term that, *"…the Claimant would provide the Respondent with proof of*

delivery in the form of a schedule and signed delivery docket prior to payment being made by the Respondent. The basis of implication was not provided, however, as I mentioned previously, the Claimant in paragraph 2(c) of its submissions had joined issue on the basis of how terms can be implied.

134. The Respondent has further particularised its assertions regarding delivery from, *"some proof of delivery"* in paragraph 9 of the payment schedule to *"proof of delivery in the form of a schedule and signed delivery docket prior to payment being made by the Respondent"* in paragraph 57 of the submissions.

135. The Claimant did not have the opportunity to make submissions on whether proof of delivery actually requires *a schedule and signed delivery docket*, rather than the more generic submission of *some sort of proof of delivery* unless I ask for submissions under s25(4)(a) of the Act. In my view it is not appropriate that an adjudicator be compelled to ask for submissions unless the Respondent has made a legitimate submission to which the adjudicator must have regard.

136. In my opinion I am unable to consider the more particularised reference to proof of delivery requiring a *schedule and signed delivery docket*, as I find that it is advancing a reason for non payment not provided in the payment schedule, and this is prohibited by s24(4) of the Act. I am therefore only considering whether there can be a term implied that some *sort of proof of delivery* is required, to which the Claimant has made submissions.

137. The Respondent has not argued that this term is required to give business efficacy into the contract in line with *Codelfa*, and the Claimant dismisses the business efficacy rule in this dispute. I agree that the term cannot be implied on this basis because one condition in *Codelfa* is that it must be capable of clear expression, and *some sort of proof of delivery* does not to my mind fall within the appropriate level of clear expression required.

138. In paragraph 11 of Philip Lovett's statutory declaration he swears to the issue by saying that it was term of the contract that both schedules and delivery docket were required. I do not accept this is evidence of such a term, because there was no express term to that effect. He does, however, refer to fact that the Claimant had complied with this requirement in the past. I do not understand what he means by the *past*. Does it mean on previous projects, or earlier in this project?

139. In paragraph 30 of the Respondent's submissions, the Respondent said that, *"Further, as is evidenced by the statutory declaration of Phil Lovett, the Respondent* (sic) *has, in the past provided all such documentation in relation to all tax invoices which have been paid by the Respondent."* Whether or not the Claimant provided schedules and delivery dockets in the past does not of itself make them a contractual requirement, so I am not satisfied that conduct of the Claimant after the entry into the contract means that it was obliged to follow this conduct.

140. The dispute has arisen because the Respondent is arguing that the Claimant has breached this *delivery* term, so it is not in my view appropriate to point to some vague allegation in paragraph 12 of Philip Lovett's statutory declaration that, *"Subject to the items the subject of this claim, the Claimant has complied with this requirement in the past"* as demonstrating unequivocally that the Claimant's past conduct means that it accepts that the Respondent's version of the *delivery* term is correct. Accordingly, I cannot accept the Respondent's paragraph 31 submission that the fact that the Claimant was aware of the requirement for delivery dockets and schedule, means that it was a contractual requirement.

141. Philip Lovett then also refers to Debra Hardy's statutory declaration as support for the proposition that this term existed. Her statutory declaration in paragraphs 3 and 5 only referred to delivery dockets and invoices, and the only reference to a schedule was in paragraph 8.

142. However, Philip Lovett did say that a schedule and a delivery docket was standard industry practice. This is one basis of implying a term, as identified by the Claimant in paragraph 2(c)(ii) of its submissions, that a term could be implied by *trade usage*. The Claimant submitted that the contract in this adjudication did not fall within the class of implied terms for trade usage to apply. I cannot agree with this submission because as a matter of commonsense some sort of proof of delivery should be required in such cases.

143. As the Respondent submits in paragraph 34 of the response submissions, the contract expressly required that the Respondent to be present to sign for delivery. Furthermore, the contract provided that if there were problems then the clause dealing with Rectification (page 7 of 8 of the supply proposal) required advice in writing within 48 hours of supply and delivery.

144. In my view, as a matter of common sense in the construction industry, it would be necessary to demonstrate to a customer that delivery of steel has taken place when you invoice them, because the people to whom the invoices are given may not necessarily be on the particular construction site, and they need to be satisfied that delivery has been achieved. The fact that the Respondent was required to be present to sign for delivery, and advise within 48 hours of any problems with delivery, points to delivery being crucial to the contract.

145. To that end therefore, I am prepared to accept that standard industry practice, as identified by Mr. Lovett, requires that *some sort of proof of delivery* is required at the time of invoicing. However, I am only prepared to find that proof of delivery by delivery docket is required, and not that a schedule was required to be provided. Debra Hardy required proof of delivery as identified in her emails attached in Attachment 10b. It is evident from this material that the Claimant did provide schedules on occasions, so it may have been prudent for it to do so, but I do not find that this was a requirement in order to be paid.

146. It is important at this point to pause to discuss the Respondent's number of submissions in the response under the "**Preliminary**" heading that the Claimant has failed to provide sworn evidence to support its application, and that I should therefore give greater weight to its statutory declarations provided by the Respondent's personnel, when different versions of facts are evaluated.

147. There is no requirement under the Act for parties to provide sworn evidence of facts, and adjudication is a speedy process where the adjudicator is not receiving evidence as would an arbitrator. However, it is open for me to evaluate all material provided and provide it whatever weight is considered appropriate. *Daraway* is a case where sworn evidence was required in a court proceeding dealing with allegations of fraud, so it is expected that a Court would give no weight to an alleged statement of someone who was not called to give evidence.

148. Given that adjudication does not require reception of evidence, I do not feel that I am constrained by the principles in *Daraway*, and will carry out my own evaluation of all relevant material, and the weight of evidence is a question of fact: JD Heydon (2004): *Cross on Evidence*, LexisNexis Butterworths, Australia, 7th ed, para 1585, page 115 ("*Cross*").

149. This means that I am not prepared to find that in order to prove that the goods were delivered by the Claimant, it is necessary for the Claimant to provide a statutory declaration to this effect. I am satisfied that the delivery of an invoice discharges the evidentiary onus that the goods were delivered. To require every Claimant to put a statutory declaration in an adjudication application deposing to proof of delivery is not a requirement of the Act. This means that I reject the Respondent's submissions in paragraphs 26 to 28 on this point, as well as paragraph 41 that the lack of evidence from the Claimant means that I cannot find any amount due and owing from the respondent to the Claimant.

150. The evidentiary onus then shifted to the Respondent to demonstrate that delivery was not made, and I have found that in certain cases delivery was not established by the respondent's material.

151. Furthermore, I also reject the Respondent's submission that it is required for the Claimant to provide a statutory declaration or otherwise in relation to delays and/or defects. I find that this is also not required by the Act. In any event I have found that there is no *damages term*, so there was no necessity in adjudication for the Claimant to answer claims of breaches of contract, which have no bearing on the amount of the progress payment.

152. This means that I am not prepared to accept the Respondent's submission in paragraph 41 that there is no evidence on which I can determine that the sum claimed by the Claimant is due and owing.

153. Before departing from the respondent's submissions on sworn evidence, it is important for me to point out that I have not had regard to Attachment 10a, which is a schedule, in the response submissions. This schedule was referred to in the response submissions at paragraphs 62 and 80. This is a schedule that Debra Hardy said at paragraph 7 of her statutory declaration that she carried out after review *"of each of the tax invoices being claimed by the Claimant in this adjudication application…setting out which monies are not due and payable to the Claimant and why."* She did not swear that she had provided a similar schedule to the Claimant prior to the 14th May 2007.

154. However, the Respondent at paragraph 81 of the response (dealing with the next liability issue) submitted that a *similar schedule* to that developed by Debra Hardy in attachment 10a, was provided by the Respondent to the Claimant at a meeting with Jeff Smith of the Claimant on 29/09/06 (which dealt with matters as at 28/09/06). Mr. McLean, at paragraph 13 of his statutory declaration could have sworn that such a schedule was provided at the meeting he attended on 29/09/06, and yet he did not do so. Nowhere in his statutory declaration did he swear that such a *similar schedule* had been provided. Mr. Lovett also did not swear that a *similar schedule* had been provided to Mr Smith at the meeting he attended on 29/09/06.

155. I cannot be satisfied that as a matter of fact the *similar schedule* had been provided to Mr. Smith on 29 September 2006. If it had been provided, I draw the inference that it could have been provided in the payment schedule, because it could have been easily updated to accommodate the additional 31 invoices that were dated after 28 September 2006. No *similar schedule* was provided in the payment schedule nor an updated schedule similar to that in Attachment 10a.

156. The only schedule provided was that in attachment A of the payment schedule, to which I had regard, but this did not descend into the detail of *"setting out which monies are not due and payable to the Claimant and why".* This Attachment A really focussed on the number of days that the Respondent was delayed by the Claimant's

alleged breaches of contract. I find therefore that a *similar schedule* was not provided to the Claimant on 29 September 2006 as alleged in the respondent's submissions.

157. Accordingly, I am of the view that the reasons why monies were not due and payable identified by Debra Hardy in attachment 10a are not reasons that were included in the payment schedule. This means that s24(4) of the Act prevents me from having regard to those calculations and reasons in this adjudication. Furthermore, to allow these calculations and reasons into the adjudication, in circumstances where I have found that a *similar schedule* had not been provided to the Claimant, would breach the requirement of natural justice.

158. I am faced with whether I should have regard to the correspondence and documentation in Attachment 10b because this is correspondence with the Claimant, of which it ought to have been aware at the time of the adjudication. To this end I have highlighted the invoices in Attachment 2 that were challenged by Debra Hardy in relation to proof of delivery.

159. The challenge to these specific invoices was not made in the payment schedule, which merely complained in general about the lack of proof of delivery, and this troubles me because this challenge could have been made in the payment schedule. I will look at the documents in Attachment 10b before making a decision on whether I they should be considered in influencing the amount of the payment claim.

160. In Debra Hardy's email to Karen Bechly dated 16 February 2006, where she was asking for proof of delivery of September 2005 invoices, she referred to invoices 2455, 2457 and 2468, which were not the subject of the payment claim, so they have been ignored.

161. On 16 February 2006 she asked the Claimant for proof of delivery for the balance of the invoice numbers that I have highlighted in attachment 2 and then on 24 February 2006 she asked the Claimant in two emails for copies of schedules. I have found that schedules were not a requirement under the contract, so I have not considered these as proof of non delivery.

162. On 3 July 2006 she wrote an internal email to Phil Lovett complaining about proof of delivery and stating that the Respondent did not owe anywhere near $500,000.

163. In an email from Jeff Smith to Phil Lovett dated 27 September 2006, the Claimant stated that information from Karen Bechly to Debra Hardy had been provided (but the Claimant had was not identified what information had been provided). It added that Debra Hardy had not had time to go through the information provided, but that sufficient time had now elapsed for this to happen. At this time, the Claimant was claiming a total due of $758,889.77, and there were references to a stopping of supply because of no payment and this theme continues through by email until 16 February 2007, when the Claimant stopped supply.

164. With reference to further correspondence in Annexure 10b, it appeared that on 5 February 2007 the Claimant was still asking what further information was required but there was no correspondence from the Respondent to explain what was still missing. The Respondent 's return email on 6 February 2007 made reference to the fact that the claim for delays should have been looked at months ago.

165. The material included 2 payment schedules dated 6 November 2006, which included a reference to costs incurred by the Respondent to rectify incorrect items supplied and its effect on other trade works. It therefore appears as if the parties had been aware, at least since November 2006 that non payment by the Respondent was based on more than proof of non delivery.

166. The list of invoices that Debra Hardy had challenged, highlighted in Annexure 2, amounts to $116,531.98. I am of the view that such a significant challenge to specific invoices not having proof of delivery in February 2006, in circumstances where it is evident from the later correspondence that this dispute was looming, and where there were allegations of delay damages, should have resulted in the Respondent placing this material in the payment schedule, or at least referring to the invoices that were being challenged.

167. The failure by the Respondent to do so in the payment schedule, and merely making general allegations about lack of proof of delivery, results in the Claimant not being in a position to provide submissions or documents in the application.

168. I am not prepared to accept that the allegations contained in Debra Hardy's emails are proof of non delivery in May 2007. In fact the material in Attachment 10b suggests that in September 2006 (in Jeff Smith's email to Phil Lovett) the material may have been provided by the Claimant by Karen Bechly. This is over 2 months after Debra Hardy's internal email to Phil Lovett complaining about lack of proof of deliveries.

169. It is possible that at least by November 2006, the reason for non payment was the delays to the Respondent's work caused by the Claimant's alleged breaches of contract. A claim that $116,531.98 of invoices did not have substantiating proof of delivery is only part way to reducing a claim for $758,889.77. However, it is not necessary to make a finding on this point. Suffice is it to say that the Respondent has not discharged its evidentiary onus in relation to these *non delivery* invoices. If it had discharged this onus, I would have been obliged to ask the Claimant for submissions on this issue under s25(4) of the Act, because I do not believe that the Claimant was sufficiently apprised of the particularity of what invoices still needed proof of delivery.

170. This means that the invoices in the payment claim which had the correct prices in the contract are to my mind payable. There are some invoices which I have had to adjust so as to only allow prices in the contract, but apart from those I cannot see any reason why they are not payable because they reflect the amount payable under the contract as required by s13(a) of the Act. To this end, I reject the Respondent's submissions 67 to 69 that a failure to provide proof of delivery has been made out. There is no material upon which I can make such a finding, since I am unable to have regard to Attachment 10a, and the information in Attachment 10b did not discharge this onus.

171. I cannot therefore make a finding that the Claimant's failure to provide proof of delivery therefore applies to all the invoices the subject of the payment claim. Later on, I have dealt with the documents associated with Attachment A to the payment schedule, and there has been a further reduction of the payment claim, but those amounts were not able to be referred to particular invoices, so they form part of a separate deduction.

172. The Respondent has not provided any material in the adjudication of the estimated costs of rectifying any allegedly defective goods that were delivered as may be considered under s14(2)(b)(iv) of the Act.

173. Furthermore, neither party provided me with submissions that any of the reinforcing materials had not become the property of the Respondent, so I have not had to have regard in valuing the related goods and services to s14(3) of the Act.

Comments on prices used or not used

174. I wish to reiterate that I allowed the Claimant slab on ground spacers in the progress payment because the contract referred to "*Bar chairs @ current list prices less 40%*

discount." As a matter of commonsense I find that a bar chair connotes a slab on ground spacer. I have used attachment A in the Claimant's application to find out these prices because they were specifically referred to in the contract, and to my mind there is nothing in the contact that required the list prices to have been given to the Respondent.

175. I will also have regard to the documents provided in Attachment 10(c) where they deal with delivery deficiencies, in order to determine the appropriate amount of the progress payment, but I will discuss the next liability issue first.

Claimed amount is overclaimed, unreasonable and not payable by the Respondent to the Claimant under the contract

176. I note that the Respondent's submissions on this point overlap the previous liability heading to some degree. I have already found that I may not have regard to Attachment 10a for the reasons stated above.

177. I have also found that it is not required that the Claimant provide sworn evidence that the goods were delivered,

178. I agree with the Claimant's submission at paragraph 5(c) that the contract does not provide for the amounts claimed for the invoices to be reasonable. Valuation is to be made under the contract, whether it is reasonable or not.

179. In response to paragraph 70 of the respondent's submissions, I have already identified that I will value the claim under the contract using the rates and prices that were agreed by the parties in the contract, which disposes of submission 70(a).

180. As to the Respondent's submission 70(b) regarding defective, and non compliant reinforcing materials, and not delivered in accordance with the agreed delivery schedules, I refer to the finding that even if there is a breach of what I have termed the *supply* term, such breach founds in damages for breach of contract to which I have said I cannot give consideration.

181. As to the Respondent's submission 70(c) I have already said that it is not for an adjudicator to consider what is a reasonable sum for the reinforcing supplied, but for the amount to be calculated under the contract.

182. In relation to the Respondent submission 76, I accept having carried out a review of the material that the only way that the respondent could identify defects etc, was by reference to the date of delivery, and that Attachment A to the payment schedule could have been reviewed by the Claimant.

183. I note the Respondent's submission 84 in the response that the schedule developed by Debra Hardy in Attachment 10a, identified that reinforcing material amounting to $231,736.31 was supplied by the Claimant in accordance with the contract. This calculation identifies that this is the amount that the Respondent accepts is calculated for the current payment claim, from which it then deducted the set off for delay costs.

184. Attachment A to the payment schedule did provide details of short delivery, incorrect delivery or missing materials, on particular dates. It was possible to then refer to the relevant GRD document, which was found in Attachment 10c of the submissions to determine what was in issue. Sometimes it appeared possible to cross reference with an invoice, but this exercise appeared to me to not be of much assistance, as these complaints did not relate to invoices. I note that there was some duplication of the documents provided in Attachment 10c, and I was not prepared to consider

documents that were not called up in attachment A to the payment schedule, but provided in Attachment 10c. I therefore accept the Respondent's submission 98.

185. However, it then became a very difficult task for me to discern precisely what I should deduct from the invoice for materials not supplied or incorrectly supplied or were defective (a "disputed delivery"). I refer to Annexure 3 to this adjudication headed "Payment Schedule Complaints" in which I was sometimes able to determine how much should be deducted for missing or defective items.

186. However, in most cases this was not possible, as I was not provided with the weight of the material relating to disputed delivery. The parties will note that in this event, I have stated "cannot calculate" in Annexure 3. If the weight was provided, I multiplied this weight by the appropriate rate per tonne of steel, to yield an amount that could be deducted from the payment claim. If I could not make a valuation from the Respondent's material, it is because it bears the evidentiary onus to provide me with a basis for valuation and has not done so.

187. Therefore, where I find that there has been a disputed delivery as outlined in correspondence between the Respondent and Claimant, AND there has been a weight of steel identified, I have been prepared to find the fact of a disputed delivery AND have calculated the amount that should be deducted from the payment claim.

188. Whilst the payment schedule's Annexure A did not go this far, it did call up the relevant correspondence associated with these complaints, such that I find that the Claimant must have been aware of the problems specifically identified because it was the recipient of the correspondence, and could have addressed them in the adjudication application. In fact in relation to some disputed delivery, I find that the Claimant did provide a number of "Adjustment notes" in Annexure C of its submissions. The Respondent did not dispute these Adjustment notes. These related to cases where the Respondent had disputed an amount contained in a tax invoice, and the Respondent's representations were accepted, and credits were then provided. The Claimant was therefore aware of disputed delivery.

189. I am not prepared to accept that the only means that the Respondent could dispute delivery was by reference to a tax invoice, since the express term in the contract relating to Rectification referred to earlier, merely required that the Claimant be notified immediately, and also had to be advised in writing within 48 hours of errors or faults.

190. The Claimant did not argue in its application that the Annexure A to the payment schedule, which contained references to documents regarding disputed delivery, had not been provided in accordance with this clause. Accordingly, I find that the Respondent's notifications of disputed delivery identified in the payment schedule complied with the contract and, if they can allow calculation of the amount due under the contract, then I have considered them.

191. I therefore find that the Claimant agreed to provide credit for disputed delivery, and for some reason it did not engage the Respondent on the allegations in Annexure A of the payment schedule. I therefore find that if such disputed delivery can be quantified, my duty is to calculate the amount under the contract, taking into account any disputed delivery that can be valued.

192. I refer to Annexure 3 for further details. The amounts calculated are relatively small; $16,643.23 in fact, and significant time was spent trying to unravel details and trying to cross reference the disputed delivery with other documents. Given that the Respondent raised the problems in Annexure A, I would have expected it to provide an easier means of cross referencing, so that the amount it disputed could be

calculated. I also would have expected that the Claimant would have engaged the Respondent on the documents referenced in Annexure A.

193. I now summarise the quantum of the claim.

Quantum of the claim

194. Adjudication essentially requires an objective determination of the amount of debt arising from work done under a construction contract, since s26(1)(a) requires a decision to be made on the amount of the progress payment. s13 of the Act, deals with the *amount of the progress payment* and in my view s13(a) applies in this for the *amount to be calculated under the contract*.

195. I am prepared to find that the Respondent has paid $188,579.99 so far for reinforcing materials delivered under the contract. This amount is the difference between the amount of all the invoices of $738,928.30 in the amount column of the Sales Register identified in the payment claim, and the amount due column of $550,070.31. The Respondent did not dispute this amount.

196. In Annexure 2 I refer to all the invoices in this payment claim. In my calculations, if an item was not in the proposal rates in the contract, I have not been prepared to allow this item, because no rate was agreed under the contract, and there is a notation NRA, which means "No Rate Agreed". This is apart from the bar chair rate referred to earlier.

197. I find that if an item has not been supplied, or it is defective, then the Claimant is not entitled to be paid for it. I have deducted the amount that can be calculated for the supply of that item. Unfortunately, the calculation was not simple, and some deductions could not relate to specific invoices, because the parties had not carried out cross-referencing.

198. It may have been possible for me to find this cross referencing by more investigation, but in my opinion, the marginal benefit to the parties in me carrying out such an exercise, was far outweighed by the costs of such an exercise. This adjudication has included enough important complexities that required time for me to consider, before reaching a decision; such that further time to cross-reference seemed inappropriate.

199. I summarise the amount of the payment claim as follows:

Adjusted invoice amounts	**$730,395.50**
Less disputed delivery items	**$ 16,643.23**
Less amount previously paid	**$188,579.99**
Adjudicated amount	**$525,172.28**

Due date for payment

200. I found that the *reference date* for this adjudication is 28 February 2007. I have also found that the *trading terms* identified in the contract, provides the due date for payment as 30 days after 28 February 2007, which is 30 March 2007, which accords with s15(1)(a) of the Act.

201. There is nothing to suggest that the provision is void under s16 of the Act or under ss67U or 67W of the *Queensland Building Services Authority Act 1991.*

202. **The due date for payment is 30 March 2007**

Entitlement to interest

203. s15(2)(a) applies because there is no rate of interest under the contract according to the Claimant. The Supreme Court rate of 10% prescribed under s48(1) of the *Supreme Court Act 1995* as regulated by Regulation 4 of the *Supreme Court Regulations*, so I find interest at 10% in accordance with s15(2)(a) of the Act, but this is subject to s15(3) of the Act that may apply.

204. Neither party identifies the interest that is payable, but I must consider whether the contract is a *building contract* to which s67P of the QBSA Act applies as provided by s15(3) of the Act. This provision is in Part 4A of the QBSA Act to which I need to have regard according to s26(2)(a) of the Act. S67P of the QBSA Act deals with building contracts other than *domestic building contracts*. A *domestic building contract* is defined in Schedule 2 of the QBSA Act as having the meaning in the *Domestic Building Contracts Act 2000.*

205. s7(1)(a) of the *Domestic Building Contracts Act 2000* ("DBCA") provides that a *domestic building contract* is a contract to carry out *domestic building work*. *Domestic building work* is defined in s8 of the DBCA as *the erection or construction of a detached dwelling*. A *detached dwelling* is defined in Schedule 2 of the DBCA a single detached dwelling or a duplex, and I find that the Gabba Central Project is neither. This means that it is not a *domestic building contract* and s67P of the BSAA may apply.

206. s67P of the QBSA Act provides for interest of late progress payments in relation to a *building contract*. *Building contract* is defined in s67A of the QBSA Act as a contract or other arrangement, other than a *domestic building contract*, for carrying out building work in Queensland. *Building work* is defined in Schedule 2 of the QBSA Act as the *erection or construction of a building*, and I find that the Gabba Central Project is a *building* and I have already found that the contract is other than a *domestic building contract*.

207. s67P(2) provides that interest at a *penalty rate* is payable for unpaid progress payments, and the penalty rate is defined in s67P(3) as 10% per year plus the annual rate of 90 day bank bills published by the Reserve Bank of Australia. I referred to the Reserve Bank online at http://www.rba.gov.au/Statistics/Bulletin/index.html, and the link to Interest Rates and Yields – Money Market Daily – F1, which provided 6.52% on 30 March 2007 for 90 day bank bills.

208. Accordingly, the interest rate that applies is 10% + 6.52% = $16.52%

209. **I find the rate of interest is 16.52% simple interest payable on the adjudication amount.**

Authorised Nominating Authority and Adjudicator's fees

210. s34 and 35 refer to equal contributions from both parties for both these fees unless I decide otherwise. I have found that the Claimant has substantially succeeded in the quantum of its claim. A significant component of the Respondent's defence was based on its argument in relation to set off, for which I had to carry out quite some detailed analysis. I was unable to find that a set off was allowed in this adjudication

211. Furthermore, the documents identified in the payment schedule required review in some detail to determine, what if any, was not payable for disputed delivery. To my mind, the Respondent could have provided me with more submissions in relation to the implied *damages term*, as this could have reduced the time for the analysis.

212. However, I could also have obtained assistance from both parties about the documents referred to in Attachment A in the payment schedule and the Claimant's could have provided further submissions in response to the payment schedule to assist me in reducing the time for analysis. Furthermore, 53 invoices had not applied the proposal rates in the contract, out of 173 submitted, and this supported the Respondent's submissions that the rates claimed were not under the contract.

213. In the circumstances, and having regard to the above, I find that on balance the parties should share equally in the ANA's fees and my fees.

Chris Lenz
Adjudicator

28 May 2007

ANNEXURE "1" RATES USED BY ADJUDICATOR $/tonne or item

ROUND BAR GRADE 250R – 10MM	1070/t
DEFORMED BAR GRADE 500N–12MM –36MM	1070/t
REID BAR 16MM & 12MM PROCESSED (FRICTION CUTTING) – GIVEN THE PROCESSED PRICE (PLUS END TREATMENT)	2150/t
REID BAR NAIL PLATE 16MM & 12MM	0.59 ea
REID BAR NAIL PLATE 20 & 25MM	0.59 ea
REID BAR COUPLER 16MM	9.10 ea
REID BAR COUPLER 20MM	9.10 ea
REID BAR THREADED INSERT 12MM	5.40 ea
REID BAR THREADED INSERT 16MM	7.90 ea
RND BAR 10MM R250N PROCESSED	1070/t
DBAR 12-36MM D500N PROCESSED	1070/t
DBAR 12-16MM D500N 6M STOCK	1070/t
DBAR 12MM D500N 3 DIMENSIONAL BENDING	1070/t
NON STD DOWELS/REID BAR END TREATMENT SAW CUT	1.30 ea
ROUND DOWEL FRICTION CUT 20MM 450 LONG	1.30
ROUND DOWEL FRICTION CUT 20MM 600 LONG	1.30
ROUND DOWEL FRICTION CUT 24MM 350 LONG	1.30
MESH RECT 6 X 2.4M 8MM X 8MM 100 X 200	90
MESH SQR 6 X 2.4M 7MM 200 X 200	45
MESH SQR 6 X 2.4M 9MM 200 X 200	71
GALVANISING (TONNE)	1100/t
D500 9.5MM RIB WIRE	**1070**
BUILDING FILM BLACK 50X4M 200UM	**74.70**
CORK JOINT DOWEL SLEEVE – 300MM INC NAIL	**1.93**
CORK JOINT DOWEL SLEEVE – 250MM INC NAIL	**1.86**
PLASTIC BAR SPACERS 4-16MM CLIP ON 20/25MM	**9.72**
PLASTIC BAR SPACERS 4-16MM CLIP ON 40MM	**14.52**
PLASTIC DECK SPACERS 25/30MM (100/PK)	**10.50**
SLAB ON GROUND SPACERS 75/90MM (100/PK)	**23.16**
SLAB ON GROUND SPACERS 25/40MM (100/PK)	**15.72**
SLAB ON GROUND SPACERS 125/130MM (100/PK)	**40.62**

ANNEXURE 2 – INVOICE TOTAL AMOUNTS

Date	Invoice Number	Amount on Inv	Amount Due (- GST)	GST	TOTAL DUE	Amt PAID
21/09/2005	00002507	$1314.12	**$1160.55**	$116.06	**$1,276.61**	
23/09/2005	00002532	$97.20	**NO RATE AGGREED ("NRA") = $0.00**	$0.00	**$0.00**	
29/09/2005	00002603	$463.02	**$105.93**	$10.59	**$116.52**	
30/09/2005	00002621	$19,705.94	**$17,781.19**	$1,778.12	**$19,559.31**	
13/10/2005	00002748	$10,807.00	$10,807.00	$1,080.70	**$11,887.70**	
14/10/2005	00002765	$563.26	**$449.35**	$44.94	**$494.29**	
27/10/2005	00002887	$4,001.80	**$3,556**	$355.60	**$3,891.60**	
28/10/2005	00002897	$3,141.47	**$2,826.38**	$282.64	**$3,109.02**	
31/10/2005	00002927	$385.19	**$324.56**	$32.46	**$357.02**	
4/11/2005	00003002	$318.01	**$253.70**	$25.37	**$279.07**	
11/11/2005	00003073	$2,426.73	**$1,979.52**	$197.95	**$2177.47**	
11/11/2005	00003074	$337.04	**$214.10**	$21.41	**$235.51**	
11/11/2005	00003080	$56.71	$56.71	$5.67	**$62.38**	
23/11/2005	00003229	$2,770.13	**$2,364.10**	$236.41	**$2,600.51**	
14/11/2005	00003107	$161.57	$161.57	$16.16	**$177.73**	
14/11/2005	00003108	$721.66	**$508.35**	$50.84	**$559.19**	
18/11/2005	00003152	$2,438.30	**$2,364.10**	$236.41	**$2,600.51**	
21/11/2005	00003162	$25,533.41	$25,533.41	$2,553.34	**$28,086.75**	
22/11/2005	00003183	$214.49	**$182.59**	$18.26	**$200.85**	
1/12/2005	00003105	$217.74	$217.74	$21.77	**$239.51**	
6/12/2005	00003336	$30,513.24	**$27,648.59**	$2764.86	**$30,413.45**	
7/12/2005	00003348	$13,603.98	$13,603.98	$1,360.40	**$14,964.38**	
8/12/2005	00003364	$3,194.24	**$2,795.95**	$279.60	**$3,075.55**	
8/12/2005	00003365	$3,075.00	$3,075.00	$307.50	**$3,382.50**	
8/12/2005	00003368	$324.08	**$153.52**	$15.35	**$168.87**	
14/12/2005	00003423	$3,481.52	$3,481.52	$348.15	**$3,829.67**	
14/12/2005	00003429	$516.81	$516.81	$51.68	**$568.49**	
19/12/2005	00003459	$14,378.66	$14,378.66	$1,437.87	**$15,816.53**	
22/12/2005	00003496	$3,662.56	**$3,125.20**	$312.52	**$3,437.72**	
22/12/2005	00003498	$679.14	**$541.80**	$54.18	**$595.98**	

11/01/2006	00003535	$14,835.94	**$13,307.82**	$1,330.78	**$14,638.60**	
12/01/2006	00003544	$17,864.18	**$15,830.44**	$1,583.04	**$17,413.48**	
13/01/2006	00003572	$57.78	$57.78	$5.78	**$63.56**	
16/01/2006	00003585	$72.76	$72.76	$7.28	**$80.04**	
17/01/2006	00003598	$2,708.53	**$2,398.10**	$239.81	**$2,637.91**	
25/01/2006	00003682	$447.26	$447.26	$44.73	**$491.99**	
30/01/2006	00003707	$52.43	$52.43	$5.24	**$57.67**	
3/02/2006	00003759	$14,835.55	$14,835.55	$1,483.56	**$16,319.11**	
3/02/2006	00003760	$369.15	$369.15	$36.92	**$406.07**	
6/02/2006	00003779	$14,386.15	$14,386.15	$1,438.62	**$15,824.77**	
7/02/2006	00003786	$38.52	$38.52	$3.85	**$42.37**	
8/02/2006	00003797	$21.40	$21.40	$2.14	**$23.54**	
8/02/2006	00003799	$5,736.01	**$4,905.25**	$490.53	**$5,395.78**	
8/02/2006	00003801	$127.78	**NRA $0.00**	$0.00	**$0.00**	
10/02/2006	00003831	$2,024.66	**$1,793.20**	$179.32	**$1,972.52**	
13/02/2006	00003851	$565.95	**$451.50**	$45.15	**$496.65**	
21/02/2006	00003917	$26,385.30	$26,385.30	$2,638.53	**$29,023.83**	
24/02/2006	00003962	$610.97	$610.97	$61.10	**$672.07**	
28/02/2006	00003984	$77.04	$77.04	$7.70	**$84.74**	
2/03/2006	00004006	$170.13	$170.13	$17.01	**$187.14**	
7/03/2006	00004037	$622.74	$622.74	$62.27	**$685.01**	
8/03/2006	00004043	$170.13	$170.13	$17.01	**$187.14**	
8/03/2006	00004049	$574.59	$574.59	$57.46	**$632.05**	
9/03/2006	00004064	$116.63	$116.63	$11.66	**$128.29**	
13/03/2006	00004084	$14,897.61	$14,897.61	$1,489.76	**$16,387.37**	
14/03/2006	00004108	$2,394.79	$2,394.79	$239.48	**$2,634.27**	
14/03/2006	00004112	$389.48	$389.48	$38.95	**$428.43**	
15/03/2006	00004129	$71.69	$71.69	$7.17	**$78.86**	
17/03/2006	00004149	$679.45	$679.45	$67.95	**$747.49**	
17/03/2006	00004156	$172.27	$172.27	$17.23	**$189.50**	
22/03/2006	00004219	$1,576.11	$1,576.11	$157.61	**$1,733.72**	
22/03/2006	00004220	$654.84	$654.84	$65.48	**$720. 32**	
27/03/2006	00004255	$773.61	$773.61	$77.36	**$850.97**	
28/03/2006	00004258	$103.79	$103.79	$10.38	**$114.17**	

30/03/2006	00004286	$583.15	$583.15	$58.32	**$641.47**	
30/03/2006	00004295	$106.92	**NRA $0.00**	$0.00	**$0.00**	
30/03/2006	00004297	$7,862.96	$7,862.96	$786.30	**$8,649.26**	
5/04/2006	00004358	$805.81	**$642.85**	$64.29	**$707.14**	
6/04/2006	00004373	$37.45	$37.45	$3.75	**$41.20**	
6/04/2006	00004374	$568.17	$568.17	$56.82	**$624.99**	
13/04/2005	00004448	$1,517.26	$1,517.26	$151.73	**$1,668.99**	
28/04/2006	00004568	$1,330.73	**$1,065.00**	$106.50	**$1,171.50**	
28/04/2006	00004569	$110.21	$110.21	$11.02	**$121.23**	
5/05/2006	00004651	$225.23	**$97.5**	$9.75	**$107.25**	
5/05/2006	00004653	$185.92	**NRA $0.00**	$0.00	**$0.00**	
9/05/2006	00004674	$5,549.02	$5,549.02	$554.90	**$6,103.92**	
10/05/2006	00004704	$579.43	**$462.25**	$46.23	**$508.48**	
11/05/2006	00004729	$11,743.25	$11,743.25	$1,174.33	**$12,917.58**	
12/05/2006	00004739	$1,269.02	$1,269.02	$126.90	**$1,395.92**	
15/05/2006	00004769	$4,250.04	$4,250.04	$425.00	**$4,675.04**	
15/05/2006	00004770	$3,881.96	$3,881.96	$388.20	**$4,270.16**	
16/05/2006	00004775	$4,718.70	$4,718.70	$471.87	**$5,190.57**	
16/05/2006	00004778	$531.02	$531.02	$53.10	**$584.12**	
17/05/2006	00004804	$145.52	$145.52	$14.55	**$160.07**	
18/05/2006	00004813	$160.50	$160.50	$16.05	**$176.55**	
19/05/2006	00004849	$5,316.83	$5,316.83	$531.68	**$5,848.51**	
19/05/2006	00004850	$75.97	$75.97	$7.60	**$83.57**	
22/05/2006	00004854	$2,630.06	$2,630.06	$263.01	**$2,893.07**	
22/05/2006	00004857	$1752.66	$1752.66	$175.27	**$1,927.93**	
24/05/2006	00004886	$3,849.86	$3,849.86	$384.99	**$4,234.85**	
24/05/2006	00004887	$19,232.18	$19,232.18	$1,923.22	**$21,155.40**	
24/05/2006	00004890	$497.00	$497.00	$49.70	**$546.70**	
25/05/2006	00004906	$186.16	$186.16	$18.62	**$204.80**	
26/05/2006	00004926	$3,325.78	$3,325.78	$332.58	**$3,658.36**	
26/05/2006	00004930	$127.33	$127.33	$12.73	**$140.06**	
26/05/2006	00004931	$407.67	$407.67	$40.77	**$448.44**	
29/05/2006	00004964	$1,370.67	$1,370.67	$137.07	**$1,507.74**	
30/05/2006	00004959	$29,885.15	**$27,014.28**	$2,701.43	**$29,715.71**	

30/05/2006	00004974	$4,660.39	**$4,236.72**	$423.67	**$4,660.39**	
30/05/2006	00004975	$532.86	$532.86	$53.29	**$586.15**	
30/05/2006	00004980	$900.00	$900.00	$90.00	**$990.00**	
31/05/2006	00005004	$2,485.61	$2,485.61	$248.56	**$2,734.17**	
31/05/2006	00005008	$2,466.35	$2,466.35	$246.64	**$2,712.99**	
31/05/2006	00005027	$4,275.72	$4,275.72	$427.57	**$4,703.29**	
5/06/2006	00005062	$7,682.60	$7,682.60	$768.26	**$8,450.86**	
5/06/2006	00005065	$178.86	**$150.00**	$15.00	**$165.00**	
5/06/2006	00005067	$2,130.00	$2,130.00	$213.00	**$2,343.00**	
6/06/2006	00005089	$5,597.53	**$4,736.63**	$473.66	**$5,210.29**	
7/06/2006	00005101	$1,522.68	**$1,214.75**	$121.48	**$1336.23**	
7/06/2006	00005110	$1,420.00	$1,420.00	$142.00	**$1,562.00**	
8/06/2006	00005118	$5,463.42	$5,463.42	$546.34	**$6,009.76**	
8/06/2006	00005124	$3,550.00	$3,550.00	$355.00	**$3,905.00**	
8/06/2006	00005127	$2,472.77	$2,472.77	$247.28	**$2,720.05**	
9/06/2006	00005141	$406.60	$406.60	$40.66	**$447.26**	
9/06/2006	00005143	$44.66	**$26.00**	2.60	**$28.60**	
15/06/2006	00005200	$1,374.95	$1,374.95	$137.50	**$1,512.45**	
16/06/2006	00005220	$2,499.52	$2,499.52	$249.95	**$2,749.47**	
16/06/2006	00005222	$271.78	$271.78	$27.18	**$298.96**	
16/06/2006	00005225	$42.48	$42.48	$4.25	**$46.73**	
16/06/2006	00005239	$7,814.43	$7,814.43	$781.44	**$8,595.87**	
20/06/2006	00005273	$12,045.20	**$10,852.38**	$1,085.24	**$11,937.62**	
21/06/2006	00005292	$7,805.52	$7,805.52	$780.55	**$8,586.07**	
22/06/2006	00005309	$4,066.94	$4,066.94	$406.69	**$4,473.63**	
23/06/2006	00005347	$3,244.70	$3,244.70	$324.47	**$3,569.17**	
24/06/2006	00005350	$13,672.12	$13,672.12	$1367.21	**$15,093.33**	
26/06/2006	00005359	$331.70	$331.70	$33.17	**$364.87**	
28/06/2006	00005425	$497.55	$497.55	$49.76	**$547.31**	
28/06/2006	00005426	$5,085.71	$5,085.71	$508.57	**$5,594.28**	
29/06/2006	00005455	$8,294.03	$8,294.03	$829.40	**$9,123.43**	
29/06/2006	00005470	$1,995.55	$1,995.55	$199.56	**$2,195.11**	
29/06/2006	00005471	$2,196.71	$2,196.71	$219.67	**$2,416.38**	
30/06/2006	00005486	$5,494.91	$5,494.91	$549.49	**$6,044.40**	

7/07/2006	00005643	$300.30	**$91.00**	$9.10	**$100.10**	
12/07/2006	00005708	$2,618.29	$2,618.29	$261.83	**$2,880.12**	
14/07/2006	00005760	$228.34	**NRA $0.00**	$0.00	**$0.00**	
20/07/2006	00005878	$1,000.45	$1,000.45	$100.05	**$1,100.50**	
27/07/2006	00006021	$40.66	$40.66	$4.07	**$44.73**	
27/07/2006	00006022	$75.97	$75.97	$7.60	**$83.57**	
27/07/2006	00006023	$35.31	$35.31	$3.53	**$38.84**	
27/07/2006	00006024	$455.82	$455.82	$45.58	**$501.40**	
27/07/2006	00006026	$423.72	$423.72	$42.37	**$466.09**	
27/07/2006	00006028	$186.78	**NRA $0.00**	$0.00	**$0.00**	
7/08/2006	00006249	$5,919.21	**$5,306.10**	**$530.61**	**$5,836.71**	
15/08/2006	000A6360	$1,724.31	**$1,396.35**	**$139.64**	**$1,535.99**	
29/08/2006	00006700	$207.58	$207.58	$20.76	**$228.34**	
30/08/2006	00006716	$1,575.04	$1,575.04	$157.50	**$1,732.54**	
8/09/2006	00007027	$3,218.93	**$2,626.36**	**$262.64**	**$2,889.00**	
13/09/2006	00007070	$8,796.10	$8,796.10	$879.61	**$9,675.71**	
28/09/2006	00007409	$5,775.84	$5,775.84	$577.58	**$6,353.42**	
3/10/2006	00007535	$241.82	$241.82	$24.18	**$266.00**	
1/11/2006	000A6077	$405.53	$405.53	$40.55	**$446.08**	
1/11/2006	000A7321	$233.26	$233.26	$23.33	**$256.59**	
22/11/2006	00008844	$744.72	$744.72	$74.47	**$819.19**	
1/12/2006	000A6340	$2,485.00	$2,485.00	$248.50	**$2,733.50**	
4/12/2006	00009138	$568.17	$568.17	$56.82	**$624.99**	
4/12/2006	00009139	$4,116.78	$4,116.78	$411.68	**$4,528.46**	
5/12/2006	00009198	$897.73	$897.73	$89.77	**$987.50**	
5/12/2006	000A9198	$776.16	**$619.20**	**$61.92**	**$681.12**	
8/12/2006	00009273	$7,037.53	**$6,201.94**	**$620.19**	**$6,822.13**	
12/12/2006	00009348	$4,724.27	$4,724.27	$472.43	**$5,196.70**	
13/12/2006	00009383	$5,681.68	$5,681.68	$568.17	**$6,249.85**	
15/12/2006	00009479	$7,984.32	$7,984.32	$798.43	**$8,782.75**	
18/12/2006	00009510	$2,911.90	**$2,426.76**	**$242.68**	**$2,669.44**	
18/12/2006	00009521	$3,195.00	$3,195.00	$319.50	**$3,514.50**	
20/12/2006	00009552	$1,828.63	$1,828.63	$182.86	**$2,011.49**	
10/01/2007	00009627	$8,249.44	$8,249.44	$824.94	**$9,074.38**	

15/01/2007	00009712	$7,197.63	$7,197.63	$719.76	**$7,917.39**	
15/01/2007	00009713	$3,195.00	$3,195.00	$319.50	**$3,514.50**	
18/01/2007	00009787	$14,047.98	**$12,575.08**	**$1,257.51**	**$13,832.59**	
20/01/2007	00009841	$9,111.14	**$8,062.43**	**$806.24**	**$8,868.67**	
22/01/2007	00009855	$12.84	$12.84	$1.28	**$14.12**	
23/01/2007	00009879	$14,567.69	**$13,022.93**	**$1,302.29**	**$14,325.22**	
25/01/2007	00009940	$2,765.95	**$2,294.08**	**$229.41**	**$2,523.49**	
31/01/2007	00010063	$17,797.05	$17,797.05	$1779.71	**$19,576.76**	
1/02/2007	00010091	$2,870.81	$2,870.81	$287.08	**$3,157.89**	
3/02/2007	00010124	$6,745.00	$6,745.00	$674.50	**$7,419.50**	
7/02/2007	00010191	$16,854.07	**$14,834.65**	**$1,483.47**	**$16,318.12**	
8/02/2007	00010248	$3,656.17	$3,656.17	$365.62	**$4,021.79**	
9/02/3007	00010301	$306.02	$306.02	$30.60	**$336.62**	
14/02/2007	00010384	$116.63	$116.63	$11.66	**$128.29**	
				TOTAL	**$730,395.50**	**$188,579.99**
					Outstanding	**$547,256.42**

ANNEXURE 3 PAYMENT SCHEDULE COMPLAINTS

Date	Description	Ref	Schedule ref	Issue	TOTAL possible deduction
15/09/05	Fax JM to Claimant about supply problems	Fax		Note	Nil
20/09/05	Fax JM to Claimant about supply problems	Fax		Note	Nil
22/09/05	File note (F/N) short delivery (S/D)	Email		Note	
30/09/05	F/N S/D	6/10/05		S/D BI north capping beam	Nil, as Claimant would not know of F/N
3/10/05	F/N S/D	6/10/05		Delivery on RDO – truck loaded wrong	Nil, as Claimant would not know of F/N
5/10/05	F/N S/D	6/10/05		Late deliveries	Nil, as Claimant would not know of F/N
6/10/05	Site meeting	Meeting		Note	Nil
7/10/05	F/N on schedule		28/134	Note	Cannot calculate
7/10/05	Fax to Jason Lim	7/10/05		Various - No further details of weight (NFD)	Cannot calculate
17/10/05	Fax Respondent (R) to Claimant (C)	17/10/05	GRD14575	Out of shape ligs – NFD	Cannot calculate
17/10/05	Fax R to C	17/10/05		Problems NFD	Cannot calculate
3/11/05	Fax R to C	3/11/05	GRD14583	Late delivery NFD	Cannot calculate
7/11/05	Fax R to C	7/11/05	GRD13151	114/016 bars incorrectly bent 114/019 bars should be 24mm NFD	Cannot calculate
9/11/05	Fax R to C	9/11/05	GRD14588	Bars wrong length – costs for Claimant NFD	Cannot calculate
9/11/05	Fax R to C	9/11/05	GRD13153	Loading trucks and tangled bars NFD	Cannot calculate
12/11/05	Fax R to C	12/11/05	GRD13154	Check scheduling NFD	Cannot calculate
14/11/05	Fax R to C	14/11/05	GRD14589	Short delivery – costs for claimant NFD	Cannot calculate
16/11/05	Fax R to C	16/11/05		Incorrect reo – 6.731 tonnes	6.371 x $1,070 = $7202.17
16/11/05	Fax R to C	16/11/05	GRD14591	Incorrect bars NFD	Cannot calculate

18/11/05	Email R to C	18/1/05		Ligatures wrong, being rectified on site – cost to Claimant NFD	Cannot calculate
17/11/05	Fax R to C	17/11/05	GRD13207	Insufficient reo NFD	Cannot calculate
18/11/05	Fax R to C	18/11/05	GRD13209	Resupply column reo NFD	Cannot calculate
23/11/05	Fax R to steelfixer	23/11/05		Note NFD	Cannot calculate
25/11/05	Fax R to C	25/11/05	GRD13160	Reorder U pin NFD	Cannot calculate
2/12/05	Fax R to C	2/12/05	GRD14595	Incorrect delivery NFD	Cannot calculate
6/12/05	Fax R to C	6/12/05	GRD13219	Resupply and 1 extra NFD	Cannot calculate
8/12/05	Fax R to C	8/12/05	GRD13454	Short delivery of 0.08tonne	0.08 x $1070 = $85.60
8/12/05	Fax R to C	9/12/05	GRD13452	Short delivery – 80 required – NFD and B14's not delivered, which weighed 2.556tonne	2.556 x $1,070 = $2,734.92
9/12/05	No document provided				Cannot calculate
10/12/05	Fax R to C	10/12/05	GRD13455	Short delivery 1tonne	1 x $1,070 = $1,070.00
12/12/05	No document provided				Cannot calculate
16/12/05	Fax R to C	16/12/05	GRD13229	Defective delivery total 0.14tonne	0.14 x $1,070 = $144.45
16/12/05	Fax R to C	16/12/05	GRD13228	Resupply NFD	Cannot calculate
19/12/05	Fax R to C	19/12/05	GRD13173	Defective length, NFD	Cannot calculate
10/01/06	Fax R to C	10/01/06	GRD13458	Short delivery 0.64tonne	0.064 x $1,070 = $68.48
10/01/06	Fax R to C	10/01/06	GRD13459	Delayed delivery NFD	Cannot calculate
11/01/06	Fax R to C	11/01/06	GRD13460	Short delivery NFD	Cannot calculate
10/01/06	Fax R to C	10/01/06	GRD13179	Further supply reqd NFD	Cannot calculate
16/01/06	Fax R to C	16/01/06	GRD13461	Missing delivery GB7-L2 0.14tonne	0.14 x $1,070 = $149.80
16/01/06	Fax R to C	16/01/06	GRD13186	Incorrect delivery NFD	Cannot calculate
17/01/06	Fax R to C	17/01/06	GRD13187	Incorrect supply NFD	Cannot calculate
17/01/06	Fax R to C	17/01/06	GRD13235	Incorrect supply	Cannot calculate

				NFD	
20/01/06	Fax R to C	20/01/06	GRD13236	Request for supply NFD	Cannot calculate
21/01/06	Fax R to C	21/01/06	GRD13466	Missing reo 0.28tonne	0.28 X $1,070 = $302.81
25/01/06	Fax R to C	25/01/06	GRD13467	Incorrect supply GB10-L1V 0.034tonne	0.34 X $1,070 = $36.38
30/01/06	Fax R to C	30/01/06	GRD13468	Missing supply 0.049tonne	0.049 X $1,070 = $52.43
1/02/06	Fax R to C	1/02/06	GRD13471	Missing supply 0.056tonne	0.056 X $1,070 = $59.92
2/02/06	Fax R to C	2/02/06	GRD13472	Missing supply 0.256tonne	0.256 X $1,070 = $273.92
3/02/06	Fax R to C	3/02/06		No further payments to be forwarded	Cannot calculate
3/02/06	Fax R to C	3/02/06	GRD13473	Missing supply 0.036tonne	0.036 X $1,070 = $38.52
7/02/06	Fax R to C	7/02/06	GRD13475	Missing supply 0.102tonne	0.102 X $1,070 = $109.14
13/02/06	Fax R to C	13/02/06	GRD14605	Request for supply NFD	Cannot calculate
15/02/06	Fax R to C	15/02/06	GRD13482	Missing supply NFD	Cannot calculate
17/02/06	Fax R to C	17/02/06		Complaints	Cannot calculate
17/02/06	Fax R to C	17/02/06	GRD13483	Missing supply NFD	Cannot calculate
20/02/06	Fax R to C	20/02/06	GRD13485	Missing supply NFD	Cannot calculate
21/02/06	Fax R to C	21/02/06	GRD14612	Missing supply 26 of 68 @0.145tonne	0.06 x $1,070 = $59.32
21/02/06	Fax R to C	21/02/06	GRD14614	Incorrect supply 0.233Tonne	0.233 x $1,070 = $249.31
24/02/06	Fax R to C	24/02/06	GRD14618	Missing supply NFD	Cannot calculate
01/03/06	Fax R to C	01/03/06	GRD14621	Incorrect supply 0.159 Tonne	0.159 x $1,070 = $170.13
02/03/06	Fax R to C	02/03/06	GRD13497	Missing supply NFD	Cannot calculate
06/03/06	Fax R to C	06/03/06	GRD13499	Incorrect supply NFD	Cannot calculate
07/03/06	Fax R to C	07/03/06	GRD13251	Missing supply 0.159Tonne	0.159 x $1,070 = $170.13
08/03/06	Fax R to C	08/03/06	GRD13252	Missing supply 0.537Tonne	0.537 x $1,070 = $574.59
08/03/06	Fax R to C	08/03/06		Complaints	Cannot calculate
09/03/06	Fax R to C	09/03/06	GRD13253	Missing supply 0.109Tonne	0.109 x $1,070 = $116.63

14/03/06	Fax R to C	14/03/06	GRD13257	Missing supply 0.630tonne	0.630 x $1,070 = $674.10
14/03/06	Fax R to C	14/03/06	GRD13257	Missing supply 0.017Tonne	0.017 x $1,070 = $18.19
14/03/06	Fax R to C	14/03/06	GRD13258	Missing supply 0.120Tonne	0.120 x $1,070 = $128.40
15/03/06	Fax R to C	15/03/06		Complaints	Cannot calculate
15/03/06	Fax R to C	15/03/06	GRD14633	Missing supply NFD	Cannot calculate
15/03/06	Fax R to C	15/03/06	GR13259	Missing supply =0.021+0.076	0.1 x $1,070 = $103.79
16/03/06	Fax R to C	16/03/06	GRD14701	Missing supply 0.116+0.045	0.16 x $1,070 = $172.27
16/03/06	Fax R to C	16/03/06	GRD14702	Missing supply 1.068tonne	1.068+$1,070 = $1142.76
16/03/06	Fax R to C	16/03/06		Deducting delay costs at the rate of $25,000.00 per day	Cannot calculate
18/03/06	Fax R to C	18/03/06	GRD14705	Incorrect supply NFD	Cannot calculate
18/03/06	Fax R to C	18/03/06	GRD14705	Incorrect supply NFD	Cannot calculate
18/03/06	Fax R to C	18/03/06	GRD14705	Incorrect supply NFD	Cannot calculate
22/03/06	Fax R to C	22/03/06	GRD14644	Missing supply 240 of 480 @0.401Tonne	0.20 x $1,070 = $214.54
23/03/06	Fax R to C	23/03/06	GRD14645	Incorrect supply – will cut on site NFD	Cannot calculate
24/03/06	Fax R to C	24/03/06		Delays $25,000/day	Cannot calculate
29/03/06	Fax R to C	29/03/06		Delays $25,000/day	Cannot calculate
03/04/06	Fax R to C	03/04/06	GRD14716	Ref to hand sketched ligs NFD	Cannot calculate
06/04/06	Fax R to C	06/04/06	GRD14717	Short delivery 130 of 350 @.987tonne & 30 of 200 @1.092tonne	0.53 x $1,070 = $567.53
12/04/06	Fax R to C	12/04/06		Delays $25,000/day	Cannot calculate
24/05/06	Fax R to C	24/05/06	GRD14733	Missing reo NFD	Cannot calculate
23/06/06	Fax R to C	23/06/06		Delays $25,000/day	Cannot calculate
23/06/06	Fax C to R	23/06/06		Explanation	N/A

24/06/06	Fax R to C	24/06/06		Complaints	Cannot calculate
5/07/06	Fax R to C	5/07/06		Delays $25,000/day	Cannot calculate
5/07/06	Fax R to C	5/07/06		Delays $25,000/day	Cannot calculate
5/07/06	Fax R to C	5/07/06	GRD14820	Some reo complaint NFD	Cannot calculate
8/07/06	Fax R to C	8/07/06	GRD14824	Missing reo NFD	Cannot calculate
14/07/06	Fax R to C	14/07/06		Delays $30,000/day	Cannot calculate
17/07/06	Fax R to C	17/07/06	GRD14829	Future reo and missing reo NFD	Cannot calculate
19/07/06	Fax R to C	19/07/06	GRD13607	Missing reo CT2 &CT5 NFD	Cannot calculate
30/09/06	Fax R to C	30/09/06		Defective reo NFD to assist to calculate weight	Cannot calculate
				TOTAL	**$16,643.23**