

**TRUST DEED**

**OF**

**Purll Superannuation Fund**



Puril Superannuation Fund

OF

SUPERANNUATION TRUST DEED

**TRUST DEED**  
**OF**  
**Purll Superannuation Fund**

**PRINCIPAL EMPLOYER:**

Bryglass Pty. Ltd. ACN 003 377 946 trading as Purll Plumbing

**THE TRUSTEES:**

Bryglass Pty. Ltd. A.C.N. 003 377 946

# SUPERANNUATION TRUST DEED

## INDEX

| TRUST DEED |   |      |
|------------|---|------|
| Clause     | Title   | Page |
| 1.         | Interpretation                                  | 1    |
| 2.         | Contributions                                   | 3    |
| 3.         | Application of contributions                    | 3    |
| 4.         | Limitation of benefits                          | 3    |
| 5.         | Defalcation                                     | 4    |
| 6.         | Forfeiture                                      | 4    |
| 7.         | Member not to charge benefit                    | 4    |
| 8.         | Power to dismiss                                | 4    |
| 9.         | Damages and compensation                        | 5    |
| 10.        | Appointment and removal of Trustees             | 5    |
| 11.        | Meetings of Trustees                            | 6    |
| 12.        | Trustees not under personal liability           | 7    |
| 13.        | Exercise of powers, authorities and discretions | 7    |
| 14.        | Authority to sign forms and documents           | 7    |
| 15.        | Trustees to be indemnified                      | 7    |
| 16.        | Investments                                     | 7    |
| 17.        | Rules   | 8    |
| 18.        | Amendments to the Deed or Rules                 | 8    |
| 19.        | Preservation of benefits                        | 8    |
| 20.        | Transfers from and to other funds               | 9    |
| 21.        | Discontinuance of the Fund                      | 10   |
| 22.        | Replacement of Principal Employer               | 10   |
| 23.        | Reduction or suspension of contributions        | 10   |
| 24.        | Tax and duty                                    | 11   |
| 25.        | Purchase of annuities                           | 11   |
| 26.        | Law of the Fund                                 | 11   |
| 27.        | Administration                                  | 11   |
| 28.        | Complying Funds                                 | 12   |

## The Schedule

| Rule |  | Page |
|------|--|------|
| 1.   | Eligibility                                  | 13   |
| 2.   | Contributions                                | 13   |
| 3.   | Member's reserve                             | 13   |
| 4.   | Annual review                                | 13   |
| 5.   | Benefit on retirement                        | 14   |
| 6.   | Benefit on death                             | 14   |
| 7.   | Ceasing to be in the Employer service        | 15   |
| 8.   | Surrender or maturity of policies            | 15   |
| 9.   | Deferral of benefit payment                  | 15   |
| 10.  | Unallocated portion of the Fund              | 15   |
| 11.  | Statutory Requirements - Trustees' Covenants | 16   |

## Appendix

|    |  |    |
|----|--|----|
| A. | Application by an Associated Employer. | 18 |
|----|--|----|

THIS DEED is made the 31 day of July, 1997.

42

**BETWEEN**

**Bryglass Pty. Ltd. ACN 003 377 946 trading as Purll Plumbing of 8 Bangalow Avenue, Mona Vale, N.S.W. (referred to in this Deed as the "Principal Employer")**

**AND**

**Bryglass Pty. Ltd. A.C.N. 003 377 946 of 8 Bangalow Avenue, Mona Vale, N.S.W. (referred to in this Deed as the "Trustees" which expression shall include the present Trustees or other Trustees or Trustee for the time being of this Fund).**

WHEREAS the Principal Employer has decided to establish an indefinitely continuing superannuation fund to be known as **Purll Superannuation Fund** (referred to in this Deed as the "Fund") in order to provide benefits for certain of its employees and of the employees of close associates and for the dependants of those employees AND WHEREAS the Trustees have agreed to act as Trustees of the Fund.

NOW THIS DEED WITNESSETH that the Fund shall come into operation on the date of this Deed and shall have as its primary purpose the provision of old age pensions and shall be managed and administered in accordance with the following Terms and Conditions.

**TERMS AND CONDITIONS**

**Interpretation**

1. In this Deed and the Rules the following words and expressions shall unless the context otherwise requires have the following meanings:
  - (1) "Act" means the Superannuation Industry (Supervision) Act 1993."
  - (2) "allocated portion of the Fund" at any date means the aggregate of the amounts in the members' reserves as at that date.
  - (3) "Associated Employer" means any company, person or firm which has a close association with the Principal Employer, has applied to the Trustees with the approval of the Principal Employer in or to the effect of the form set out in Appendix "A" to this Deed and has been accepted as a participant in the Fund.
  - (4) "dependant" in relation to a member means the spouse and any child of the member and any person who in the opinion of the Trustees is or was at the relevant date wholly or partially dependent on the member.
  - (5) "Disqualified Person" has the meaning set out in Section 120 of the Act.
  - (6) "Eligible Rollover Fund" means a fund as defined in Part 24 of the Act."
  - (7) "employee" means a person who is in the service of an Employer.
  - (8) "Employer" means each or any one (as the context requires) of the Principal Employer or any Associated Employer who has not ceased to be a participant in the Fund and where the word "Employer" is used in relation to a member it means the Employer by which the member is for the time being employed.
  - (9) "Fund" means the Fund which has been established in terms of this Deed.

STAMP DUTY #20  
045897 12

- (10) "member" means an employee who is participating in the Fund as a member or (as the context requires) a person who has become entitled to receive a benefit under the Fund or for whom an amount is preserved within the Fund.
- (11) "member's reserve" in respect of a member at any date means the accrued amount standing in the member's reserve at that date as determined in the manner specified in Rule 3.
- (12) "normal retirement date" means the member's sixty-fifth birthday.
- (13) "review date" means the thirtieth day of June in each year or such other date as is selected by the Trustees and agreed to by the Employer as the date at which adjustments to contributions and benefits are to be determined each year.
- (14) "Rules" means the Rules for the time being governing the Fund being the Rules referred to in Clause 17 of this Deed and any alterations or additions to such Rules from time to time.
- (15) "service" means continuous service and for the purposes of this definition an employee's service shall not cease to be continuous by reason only of a transfer from the service of one Employer to the service of another Employer.
- (16) "Statutory Authority" means as the case may require, any one or more of the Insurance and Superannuation Commissioner, the Commissioner of Taxation or any other government authority responsible for administering the laws, regulations or any other rules governing the operation or the availability of income tax concessions to superannuation funds and approved deposit funds."
- (17) "Statutory Requirements" means the requirements imposed under any law or by any Statutory Authority which must be satisfied by a superannuation fund or an approved deposit fund as the case be in order to qualify for income tax concessions."
- (18) "this Deed" means the Deed by which the Fund has been established and any alterations or additions to the Deed for the time being in force governing the Fund.
- (19) "Trustees" means the Trustees for the time being of the Fund.
- (20) "unallocated portion of the Fund" means that part of the Fund which does not consist of insurance policies on the lives of members and is not included in the allocated portion of the Fund.
- (21) "Unclaimed Money" means amounts as defined in Section 225 of the Act.
- (22) In this Deed and in the Rules words importing the singular number include the plural and vice versa and words importing the masculine or neuter gender include all genders as the case may require.
- (23) The headings in this Deed and in the Rules are for the convenience of reference only and shall not affect the interpretation thereof.

### Contributions

2. (1) Each Employer separately covenants to pay to the Trustees or as directed by them:
  - (a) the contributions (if any) which each member has or is deemed to have requested the Employer to deduct from his salary and which the Employer has so deducted provided such contributions shall be remitted to the Trustees or at their direction by the 28th day of the month following the month in which the deduction was made; and
  - (b) (subject as provided in this Deed) the Employer's contributions in accordance with the Rules,

PROVIDED THAT the Employer may pay to the Trustees such additional sums (if any) in conformity with the Statutory Requirements as the Employer may from time to time determine and those sums shall be applied by the Trustees as the Employer shall in writing direct PROVIDED FURTHER THAT any Employer may at any time on giving one month's notice to the Trustees of its intention to do so terminate reduce or suspend the payment of its contributions to the Fund to the extent permitted by the Statutory Requirements.

- (2) Upon the expiration of the notice given by the Employer in accordance with sub-clause (1) of this clause the liability of the Employer to make the payments of contributions to the Fund shall cease either wholly or to the extent or for the period or in the circumstances mentioned in the notice except however in respect of payments due on or before the date of expiration of the notice.
- (3) The contributions payable by the Employer in respect of any member shall be paid by the Employer by which the member is for the time being employed or by such other Employer as agrees and is permitted by the Statutory Requirements to pay the said contributions.

### Application of contributions

3. The contributions received by the Trustees (or applied as directed by the Trustees) and any other money or property forming part of the Fund which is received by the Trustees shall be held in trust by the Trustees and managed, administered and applied by them in accordance with this Deed and the Rules and the Statutory Requirements.

### Limitation of benefits

4. The Trustees shall notwithstanding any other provisions of this Deed and the Rules ensure that the benefits payable by, and the contributions to, the Fund in respect of each member satisfy the Statutory Requirements relating to such matters as:
  - (1) the amount of the benefit payable from the Fund;
  - (2) the amount of the contributions payable to the Fund in any year;
  - (3) the timing of the payment of a benefit and the circumstances in which a benefit is paid from the Fund;
  - (4) the circumstances in which contributions are received into the Fund from or in respect of any member; and
  - (5) such other aspects or circumstances relating to benefits and contributions as are for the time being relevant.

### Defalcation

5. If a member has been part or privy to any defalcation in respect of the Fund or of the funds of the Employer or of any funds entrusted to him either alone or jointly with others by the Trustees or any Employer or if the member is dismissed because of misconduct or negligence or resigns to avoid dismissal on those grounds the benefit to which the member would otherwise have been entitled under the Fund shall (to the extent to which this is permitted under the Statutory Requirements) be applied so far as it shall extend to make good the defalcation and to meet any costs or losses (including the costs of any prosecution or civil proceedings) incurred by the Employer or the Trustees as a result of or incidental to or arising howsoever out of the defalcation misconduct or negligence and the amount so applied shall be paid by the Trustees to the Employer or retained in the Fund (as the case may require) and the balance of the said benefit shall be dealt with in accordance with the other provisions of this Deed and the Rules.

### Forfeiture

6. (1) To the extent permitted by law the benefits being provided under the Fund in respect of a member shall (if or to the extent that this is permitted by the Statutory Requirements) be absolutely forfeited if he becomes bankrupt or insolvent or if he does or suffers anything whereby his benefit under the Fund or any part thereof shall become vested in or payable to some other person.
- (2) The benefits of a member shall (if or to the extent that this is permitted by the Statutory Requirements) be suspended if he is found by any competent Court or is shown to the satisfaction of the Trustees to be mentally ill or of unsound mind or incapable of managing his own affairs.
- (3) The Trustees may in their absolute discretion pay or apply the whole or any part of the benefits which have in accordance with this Clause been forfeited or suspended to or for the benefit of the member or any one or more of his dependants in such shares and proportions and in such manner as the Trustees in their absolute discretion determine PROVIDED HOWEVER that while the member is still in the service of the Employer the Trustees shall not make any payment in accordance with this Clause except for the maintenance or support of the member or his dependants and for the purpose of relieving hardship.
- (4) If in regard to a member whose benefits have been suspended in accordance with sub-clause (2) of this clause a competent Court declares or the Trustees are satisfied that the member is no longer mentally ill or of unsound mind and is capable of managing his own affairs or if the member dies any benefit which has become payable in respect of the member and which has not been applied in accordance with sub-clause (3) of this clause and any benefit which subsequently becomes payable shall be paid to him or his dependants or legal personal representative in accordance with the Rules.
- (5) For the purposes of this Clause "member" shall unless the context otherwise requires include a dependant who is in receipt of a benefit.

### Member not to Charge Benefit

7. A member while he is in the service of the Employer shall not charge mortgage transfer assign or otherwise deal with his benefit under the Fund or attempt to do so.

### Power to Dismiss

8. Nothing in this Deed or in the Rules shall restrict the right of the Employer to dismiss an employee or be used to increase damages in any action brought against the Employer in respect of an employee's dismissal.

Damages and compensation

9. Nothing in this Deed or in the Rules shall in any way affect the right of a member or his legal personal representatives or other persons to claim damages or compensation by common law or under a Workers' Compensation Act or any other statute in force governing compensation to a member injured or dying from an accident arising out of or in the course of his employment with the Employer and except as provided in the Rules the amount payable in terms of this Deed and the Rules shall not be reduced by reason of any payment of damages or compensation as aforesaid.

Appointment and removal of trustees

10. (1) The Trustees shall be either a corporation or two or more individuals and may be the Principal Employer itself.
- (2) Where the Trustees are a corporation it shall be nominated by agreement between the members and the Principal Employer, shall consent in writing to be appointed and shall be appointed by the Principal Employer (which may appoint itself) and it shall in relation to the composition of its directors and otherwise generally comply with the Statutory Requirements.
- (3) Where the Trustees are a corporation it shall cease to be Trustee:
- (a) when the Trustees serve notice in writing to that effect on the Principal Employer;
  - (b) if the corporation is or becomes a Disqualified Person;
  - (c) upon the Trustees ceasing to comply with Clause 10(2) above; or
  - (d) when the Principal Employer serves notice in writing to that effect on the Trustees;

PROVIDED THAT a new Trustee or Trustees shall then be appointed.

- (4) If the Trustees are individuals and the Fund has less than five members, then there shall be at least two Trustees nominated by agreement between the members and the Principal Employer who consent in writing to be appointed and shall be appointed by notice in writing from the Principal Employer to the Trustees.
- (5) A Trustee appointed pursuant to Clause 10(4) above shall cease to be a Trustee:
- (a) when the Principal Employer serves notice in writing to that effect on that Trustee;
  - (b) when the Trustee serves notice in writing to that effect on the Principal Employer; or
  - (c) if he is or becomes a disqualified Person; or
  - (d) upon his death or upon his being declared legally incompetent;

PROVIDED THAT a new Trustee shall be appointed immediately if there are only two Trustees or within sixty (60) days after the date of retirement of the Trustee in any other case, such Trustees to be nominated and appointed in accordance with Clause 10(4) above.

- (6) If the Trustees are individuals and the Fund has five or more members then there shall be an equal number of Trustees nominated by the Principal Employer ("the employer representative Trustees") and Trustees nominated by the the members ("the member representative Trustees") (being not less than one of each).

- (7) The employer representative Trustees shall be appointed and removed in the manner set out in Clauses 10(4) and 10(5) by the Principal Employer by notice in writing to the Trustees.
- (8) The member representative Trustees shall be members of the Fund who are nominated by the members, consent in writing to be appointed and are elected by the members in such manner as the Principal Employer determines.
- (9) A member representative Trustee shall cease to be a Trustee:
- (a) three (3) years from the date of his appointment or:
    - (i) after such shorter or longer period (if any) as may be determined by the Principal Employer either generally or in any particular case prior to his appointment; or
    - (ii) such longer period (if any) as may be unanimously agreed in respect of that member Trustee by the other Trustees (not including the particular member Trustee) prior to the date upon which his appointment as a member Trustee would otherwise expire;

with the intention that different periods of tenure of office may apply in respect of different member representative Trustees;
  - (b) when he serves notice in writing to that effect on the Principal Employer;
  - (c) when he ceases to be a member;
  - (d) if he is or becomes a Disqualified Person;
  - (e) upon his death or upon his being declared legally incompetent.
  - (f) upon receipt by the Trustees of a petition for his removal from office as a Trustee signed by more than half of the members.
- (10) In the event that one of two or more member representative Trustees ceases to hold office pursuant to Clauses 10(9)(b), 10(9)(c), 10(9)(d) or 10 (9)(e) the remaining member representative Trustees within sixty (60) days of the date the member representative Trustee ceases to hold office shall appoint another member representative Trustee who shall hold office on the same terms as the member representative Trustee he replaced.

Meetings of the trustees

11. (1) The Trustees may regulate their meetings as they think fit and may determine the quorum necessary for the transaction of business provided that if the Fund has five or more members then the quorum shall be two-thirds of the Trustees.
- (2) Any question or discretion (including the powers authorities and discretions by this Deed and the Rules vested in the Trustees generally) may be decided or exercised by a majority of the Trustees or in accordance with the resolution of the Trustees passed by the votes of a majority of the Trustees at a meeting of the Trustees at which a quorum is present provided that if the Fund has five or more members then a decision of the Trustees is of no effect if fewer than two-thirds of the total number of Trustees voted for it.
- (3) A resolution in writing signed by all the Trustees shall have the same effect and validity as a resolution of the Trustees passed at a meeting of the Trustees at which a quorum is present.
- (4) Minutes of Trustees' meetings must be kept, and retained for at least ten (10) years.

### Trustee not under personal liability

12. No Trustee shall be under any personal liability in respect of any loss or breach of trust relating to the Fund unless the same shall have been due to his own dishonesty.

### Exercise of powers, authorities and discretions

13. (1) The Trustees in the exercise of the powers, authorities and discretions vested in them by this Deed and the Rules shall have an absolute and uncontrolled discretion and may exercise or enforce all or any of those powers authorities or discretions from time to time and at any time or may refrain from exercising all or any of those powers, authorities or discretions from time to time or at all and their decisions as to the interpretation and effect of this Deed and the Rules shall be final.
- (2) If the Fund has five or more members and a provision in this Deed or the Rules permits the exercise of a discretion by a party other than the Trustees without the consent of the Trustees and such exercise would be subject to the Statutory Requirements that provision shall be taken to require the consent of the Trustees to the exercise of the discretion.

### Authority to sign forms and documents

14. The Trustees may by resolution authorise any limited number of the Trustees to sign or endorse cheques and to sign all documents and forms relating to the Fund and to the investments and any policies forming part of the Fund and the moneys payable thereunder and all documents and forms required under any Statutory Requirements in connection with the Fund.

### Trustees to be indemnified

15. Subject to any contrary provision in the Statutory Requirements each of the Trustees shall be indemnified by the Fund against all liabilities incurred by him in the execution or attempted execution or in respect of the non-execution of the trusts authorities powers and discretions contained in this Deed and shall have a lien on and may use any moneys for the time being in the hands of the Trustees for the indemnity and generally for the payment of all proper legal and other costs charges and expenses of administering or winding up the Fund and otherwise of performing their duties under this Deed. The indemnity hereby provided shall apply to any payment made on the death of a member to any person whom the Trustees bona fide believe to be entitled thereto.

### Investments

16. (1) Any moneys in the hands of the Trustees upon the trusts hereof and not required for payment of costs charges or expenses or for the immediate purposes of the Fund may be invested in any one or more of the following investments:
- (a) in any investment authorised by law for the investment of trust funds;
  - (b) in the purchase of or subscription for shares stock debentures or securities of any nature of any company incorporated or operating in Australia and whether those shares stock debentures or securities are or are not fully paid up or do or do not involve any contingent or reserve liability;
  - (c) on deposit at call or otherwise with any bank, insurance company or financial institution or with the Employer;
  - (d) in effecting or acquiring a policy of insurance or term insurance or annuity on the life of or in respect of a member (or in respect of a group or all of the members) and in paying premiums on the said policy;

(e) in units of any property trust or unit trust.

provided that the Trustees shall not invest in:

(f) loans to or investments in the Principal Employer or its associates;

which do not comply with the Statutory Requirements.

(2) The Trustees shall have full liberty from time to time to sell vary and transpose any investments of the Fund as aforesaid.

### Rules

17. The Rules set out in the Schedule to this Deed shall until altered as provided in this Deed apply to and be the Rules for the management of the Fund and the said Rules with any alterations or amendments thereof or additions thereto which are made as provided in this Deed shall be construed with this Deed but in so far as the Rules are inconsistent with the provisions of this Deed or any alterations or amendments thereof or additions thereto the said provisions of this Deed shall prevail.

### Amendments to the Deed or Rules

18. This Deed and the Rules may by resolution of the Trustees with the consent of the Principal Employer or by deed executed by all of the Trustees and the Principal Employer be added to or altered in any respect which would in the opinion of the Trustees and the Principal Employer be for the benefit of the past present or future employees of the Employers or their dependants but so that no addition or alteration shall:

- (1) impose any further liability on any employee entitled to participate in the Fund without that employee's consent; or
- (2) reduce the amount then included in the member's reserve for any member in respect of the contributions paid prior to the date on which the addition or alteration is made unless approval to the reduction has been obtained by the Trustees from the persons and in the manner for the time being specified in the Statutory Requirements.
- (3) No amendment shall be made to this Deed or the Rules which shall have the effect of changing the primary purpose of the Fund from the provision of old age pensions unless the Trust Deed and Rules provide that after such an amendment the Trustees must be a constitutional corporation.

### Preservation of benefits

19. (1) Except as referred to in sub-clause (2) of this clause and notwithstanding any other provisions of this Deed and the Rules, benefits which are required to be preserved within the Fund (or within any other fund or plan or approved deposit fund to which an amount is transferred) in accordance with the Statutory Requirements shall be so preserved until:
- (a) the member attains the age of fifty-five years and retires from the workforce;
  - (b) the member dies; or
  - (c) circumstances arise (including but not limited to the member's permanent incapacity or permanent invalidity or the member's permanent departure from Australia) when payment of the benefit may be made prior to the member's fifty-fifth birthday or prior to the member's retirement having regard to the Statutory Requirements.

- (2) In any case where a member requests that the member's reserve (or a specified part thereof) which in accordance with the Statutory Requirements is required to be preserved is to be applied to purchase an immediate or deferred annuity the Trustees will ensure that the annuity so purchased will:
- (a) in the case of an immediate annuity commencing on the member's retirement prior to his fifty-fifth birthday, be in the form of a non-commutable annuity payable for life;
  - (b) in the case of a deferred annuity:
    - (i) provide for instalments of the annuity to commence not later than the member's sixty-fifth birthday;
    - (ii) prohibit the surrender or assignment of the annuity before the Member's fifty-fifth birthday; and
    - (iii) prohibit the payment of any amount (whether a repayment of any part of the purchase price or a payment of an instalment of the annuity or otherwise) prior to the member's fifty-fifth birthday except in circumstances such as those referred to in paragraph (1)(b) and (c) of this Clause.

#### Transfers from and to other funds

20. (1) The Trustees may accept into the Fund an amount in respect of a member (or of an employee who thereupon becomes a member) which is transferred from another superannuation pension or other similar fund or plan in which he has participated or from an approved deposit fund in which he has been a depositor and in such cases:
- (a) the amount transferred into the Fund shall be credited to and form part of the member's reserve and shall be dealt with in accordance with the provisions of this Deed and Rules; and
  - (b) the Trustees shall ensure that the benefits arising from the amount transferred:
    - (i) are preserved as specified in Clause 19 to such extent as is necessary in accordance with the Statutory Requirements having regard to the advice received from the trustees of the fund or plan or approved deposit fund from which the amount is transferred; and
    - (ii) do not become payable earlier than would have been permitted under the provisions of the trust deed governing the fund from which the amount has been transferred.
- (2) In any case where the Trustees are advised that a member may participate in another superannuation pension or similar fund or plan the Trustees may in lieu of dealing in accordance with the other provisions of this Deed and the Rules with the benefits under the Fund relating to the member or with such part thereof as the Trustees determine transfer the amount in the Fund relating to those benefits or the part thereof to the trustees of the other superannuation pension or similar fund or plan PROVIDED HOWEVER that a transfer may be made in accordance with this sub-clause only if the Trustees are satisfied that:
- (a) the rights of the member or his dependants or legal personal representatives to receive the benefits arising from the amount transferred are fully secured;
  - (b) benefits will be preserved within that fund or plan as referred to in Clause 19; and

- (c) that fund or plan is satisfying the relevant Statutory Requirements.
- (3) In any case where a member (who has not attained the age of sixty-five years) so requests the Trustees will (provided they are satisfied that the amount transferred will be preserved within the approved deposit fund to the extent and in the manner referred to in Clause 19) transfer to an approved deposit fund nominated by the member such amount (or such part thereof as the member specifies) as would otherwise have been payable to the member in consequence of his ceasing to be in the service of the Employer or as would otherwise have been preserved within the Fund in accordance with the provisions of Clause 19 of this Deed.

#### Discontinuance of the Fund

21. (1) If all of the Employers terminate their contributions to the Fund or if for any reason the Principal Employer decides to discontinue the Fund the Trustees shall cause a valuation to be made of the net assets of the Fund and shall allocate the amount then in the Fund to the members in such shares and proportions as they consider equitable and the amounts so allocated shall be held in trust and invested by the Trustees and the amount allocated to the member and any accretion thereto (or less any diminution thereof) shall subject to the other provisions of this Deed and any relevant Rules (and in particular Clause 19 of this Deed) be paid to the member on his ceasing to be in the service of the Employer or to the dependants or legal personal representatives of the member in the event of his death.
- (2) If any Employer terminates its contributions to the Fund in respect of some or all of the members for whom it has been contributing the Trustees shall unless another Employer agrees to continue the contributions in respect of those members within the provisions of this Deed hold the amount in the member's reserve for each of those members in trust and subject to Clause 19 of this Deed the Trustees shall pay the said amount and any accretion thereto (or less any diminution thereof) to the member on his ceasing to be in the service of the Employer or to the dependants or legal personal representatives of the member in the event of his death.
- (3) If on the discontinuance of the Fund there is no member or if after the payment of amounts to members or their dependants or legal personal representatives as provided in sub-clause (1) of this Clause a surplus remains in the Fund the surplus shall be divided amongst and paid to the Employers in such shares and proportions as the Trustees determine.

#### Replacement of Principal Employer

22. If the Principal Employer gives the Trustees written notice that it is unable or unwilling to continue as a contributor to and participant in the Fund, the Trustees shall have the following powers:
- a) to invite in writing another Employer that is willing to continue the Fund, to take the place of the Principal Employer and such other Employer shall, upon written acceptance of such invitation, become Principal Employer for the purposes of this Deed; or
- b) to invite in writing a company, person or firm that is willing to continue the Fund, to take the place of the Principal Employer, and such company, person or firm shall upon written acceptance of such invitation become the Principal Employer for the purposes of this Deed.

#### Reduction or suspension of contributions

23. If the Employer (subject to the relevant Statutory Requirements) reduces or suspends its contributions to the Fund in respect of some or all of the members for whom it has been contributing the Trustees shall make such adjustments to the benefits for members as they consider appropriate taking into account the contributions (if any) likely to be paid in the future PROVIDED HOWEVER that the amounts already included in the members' reserves in respect of the contributions paid prior to the date of the reduction or suspension of contributions shall not thereby be reduced.

### Tax and duty

24. (1) The Trustees shall have power to deduct from any amount payable to or in respect of a member from the Fund such sums in respect of income or other taxes or duties as relate to the amount so payable and the Trustees shall remit each of the said sums to the relevant authority and shall advise the member or his dependants or legal personal representatives as the case may be.
- (2) The Trustees shall ensure that moneys are available to pay income and other taxes or duties imposed in the Fund and shall for this purpose have power to retain or delay payment of moneys otherwise currently payable under this Deed and the Rules whether on a member's termination of service or death or as a result of the discontinuance of the Fund or otherwise.

### Purchase of annuities

25. If in any case a member who has ceased to be in the service of the Employer so requests the Trustees will subject to Clause 19 of this Deed apply the member's reserve or the portion thereof specified by the member in the purchase of an annuity or allocated pension in the name of the member of such type as the member specifies being an annuity which qualifies as an eligible annuity as referred to in section 27A(1) of the *Income Tax Assessment Act 1936* as amended.

### Law of the Fund

26. This Deed and the Rules shall be governed by and construed in accordance with the law of the State of New South Wales.

### Administration

27. (1) The Trustees shall keep or cause to be kept a complete record of all persons who become members of the Fund and of the income and expenditure of the Fund and all other matters essential for the working of the Fund.
- (2) The Trustees shall appoint an auditor to the Fund, or a firm or such persons, who shall comply with all statutory requirements and the Trustees may remove any such auditor.
- (3) The Trustees shall keep and retain for at least five (5) years after the end of each year of income such accounting records as correctly record and explain the transactions and financial position of the Fund. The Trustees shall prepare a statement of financial position and an operating statement for each year of income. Such accounting records and statements shall be audited by an approved auditor who must give a certificate within nine (9) months after the year of income if the Fund has less than five members and within six (6) months if the Fund has five or more members. A copy of the statement of financial position and operating statement shall be provided by the Trustees to every Employer.
- (4) The Trustees shall disclose to members such information, at the time and in the manner, prescribed by the Statutory Requirements to be so disclosed to members and the Trustees shall retain copies of all reports to members for so long as they are relevant and in any event for at least ten years.
- (5) The Trustees shall to the extent required by the Statutory Requirements, keep the Statutory Authority informed as to the status of the Fund and in particular shall notify the Commissioner within three (3) days of the Trustees becoming aware of an event having a significant adverse effect on the financial position of the Fund.

- (6) If the Fund has five or more members the Trustees shall establish and communicate to members arrangements for members to make inquiries into or complaints about the operation and management of the Fund and for any such inquiries or complaints to be considered and dealt with within ninety (90) days.
- (7) The Trustees may, and shall as required by the Statutory Requirements, rollover to an Eligible Rollover Fund such benefits as are permitted or required to be so dealt with by the Statutory Requirements.
- (8) The Trustees shall as and when required by the Statutory Requirements pay to the Statutory Authority amounts of Unclaimed Money in the Fund.
- (9) The Trustees shall keep records of appointments of and changes in the Trustees including consents to act as Trustees and retain them for at least ten (10) years.

#### Complying Funds

28. (1) Notwithstanding any other provision of this Deed and the Rules the Trustee shall have power to operate and administer the Fund in such a way from time to time as to ensure the Fund satisfies the Statutory Requirements for the time being applying to a complying fund. In the event of any inconsistency between the provisions of the Statutory Requirements on the one hand and this Deed and the Rules on the other, the provisions of the Statutory Requirements shall prevail and the inconsistent provision shall be deemed deleted to the same extent and effect as if never incorporated but the remainder of this Deed and the Rules shall not be affected and shall continue in full force and effect.
- (2) Notwithstanding any provision of this Deed, any provision of the Statutory Requirements that is required to be included in this Deed for the Fund to remain or to be a complying fund shall be deemed to be included in this Deed as if every such provision was set out in this Deed on and from the date that the provision is required to be so included. In the event of any inconsistency between the provisions deemed by this sub-clause to be included in this Deed and the terms of this Deed, the provisions deemed to be included by this sub-clause shall prevail.

## THE SCHEDULE REFERRED TO IN THE DEED

### Rules for the Management of the Superannuation Fund

#### Eligibility

1. Every employee who is invited by the Principal Employer to participate in the Fund shall on making written application in a form approved by the Trustees become a member and be deemed to have approved of and shall be bound by all the provisions of this Deed and the Rules and shall be deemed to have authorised the Employer to deduct from his salary such amounts as will provide the employee's contributions to the Fund.

#### Contributions

2. The Employer shall contribute to the Fund in respect of each member such amount as is required by the Statutory Requirements (or by such other relevant Statute or Regulation dealing with superannuation contributions by employers) or such greater amount as the Employer determines and the member shall contribute to the Fund such amount (if any) as is agreed upon by the member and the Employer.

#### Member's reserve

3. (1) The member's reserve at any date shall consist of the contributions to the Fund by and in respect of the member which have been received by the Trustees plus the amounts credited thereto and less the amounts debited thereto in accordance with this Deed and the Rules.  
(2) The member's share as determined from time to time by the Trustees of the net investment earnings of the Fund shall be credited to and shall form part of the member's reserve and the member's share as aforesaid of the net investment losses shall be debited against and shall thereby reduce the member's reserve.  
(3) Where it is necessary for the purposes of the Rules to determine at a specified date the amount of the member's reserve the Trustees shall determine the amount (if any) to be credited to and to form part of the member's reserve (or to be debited against and thereby to reduce the member's reserve) in respect of the member's share of the net investment earnings (or losses) of the Fund for the period from the last review date until the specified date.  
(4) If a policy on the life of the member is effected or acquired by the Trustees the premiums paid by the Trustees in respect of that policy and the amount (if any) paid by the Trustees to acquire that policy shall be debited against and shall thereby reduce the member's reserve and any amount received by or payable to the Trustees in respect of the policy (whether on the death or disablement of the member or on the maturity or surrender of the policy or of any bonus additions thereto or on the sale of the policy or otherwise) shall be credited to and shall form part of the member's reserve and if in any case the policy on the life of the member is assigned to the member or otherwise dealt with at the member's request the surrender or current value or the proceeds thereof (as the case may be) shall be deemed to be part of the member's reserve.

#### Annual review

4. (1) The Trustees shall on a selected date in each year (called the "review date") determine the net investment earnings or losses of the Fund for the period then ended and shall allocate those earnings or losses to the members' reserves and to the unallocated portion of the Fund on a proportionate basis determined by the Trustees and the amount allocated to each member shall be credited to and shall form part of that member's reserve or (in the case of a net loss) shall be debited against and shall thereby reduce that member's reserve as at the review date.

- (2) The amount (if any) allocated to the unallocated portion of the Fund in accordance with sub-rule (1) of this rule shall be added to and shall form part of the unallocated portion of the Fund or (in the case of a net loss) shall be debited against and shall thereby reduce the unallocated portion of the Fund as at the review date.
- (3) In determining the net investment earnings or losses of the Fund for the purposes of this Deed and the Rules the Trustees may:
  - (a) at such times as they consider appropriate cause a valuation to be made of the assets of the Fund and shall include any increase in the net value of the assets in the investment earnings and shall reduce the said earnings (or shall increase the investment losses) by any decrease in the net value of the assets;
  - (b) use a method of averaging which they consider to be appropriate in order to reduce the fluctuations in the rate of net investment earnings (or losses) from year to year and for this purpose the Trustees may obtain actuarial or other advice if they so determine.
- (4) The Employer shall prior to each review date supply to the Trustees such information as the Trustees request relating to members and employees who are invited to become members including their current salaries in order that the benefits payable under the Fund and the contributions to provide those benefits may be determined.

#### Benefit on retirement

5. (1) If the member retires on or after his normal retirement date or within a period of five years prior to his normal retirement date the amount of his benefit shall be equal to the member's reserve as at the date of his retirement.
- (2) If the member continues in the service of the Employer after his normal retirement date the member may (if permitted by the Statutory Requirements) request the Trustees to pay the benefit to him at any time after that date.
- (3) Unless the member otherwise elects the benefit shall be applied by the Trustees in the purchase of an annuity pursuant to clause 25 of the Deed provided that the member may by notice in writing to the Trustees within thirty (30) days after the benefit became due request that the whole of the benefit or so much thereof as the member specifies in the notice shall be paid to the member as a capital sum.

#### Benefit on death

6. (1) If the member dies while he is in the service of the Employer the amount of the benefit then payable shall be equal to the member's reserve at the date of his death.
- (2) The Trustees shall pay or apply the benefit payable on the member's death as aforesaid to or for the benefit of any one or more of the member's dependents or to his legal personal representatives and in such shares and proportions and in such manner as the Trustees in their absolute discretion determine provided that, if the Fund has five or more members, before exercising their discretion and making any payment the Trustees may give notice to potential beneficiaries under the Superannuation (Resolution of Complaints) Act 1993.
- (3) Where a dependant to whom an amount being the benefit payable (or part thereof) is to be paid is a minor or is otherwise under a legal disability the Trustees may pay the said amount to the legal personal representatives of the deceased member or to the parent or guardian of the dependant in trust to be applied for the benefit of the dependant and the receipt of the person so paid shall be sufficient evidence to the Trustees that the amount has been paid for the benefit of the dependant.

### Ceasing to be in the Employer service

7. If the member prior to his normal retirement date ceases (other than by reason of his death or retirement as aforesaid) to be in the service of the Employer the benefit determined as follows shall, subject to the other provisions of this Deed and the Rules (and in particular Clause 19), be payable to the member.
- (1) If the member ceases to be in the service of the Employer on account of sickness or accident (proof of which is furnished to the satisfaction of the Trustees) the benefit payable shall be equal to the member's reserve at the date of his ceasing to be in the service of the Employer.
  - (2) If the member ceases for any other reason to be in the service of the Employer the benefit payable shall be equal to that proportion of the member's reserve at the date of his ceasing to be in the service of the Employer which the contributions to the Fund by the member bear to the aggregate of the contributions by and in respect of the member PROVIDED HOWEVER that the Trustees may in any particular case pay to the member such greater amount (being not greater than the amount of the benefit payable as specified in paragraph (1) of this sub-rule) as they determine PROVIDED FURTHER that in no case will the amount of the benefit be less than the sum required to be vested in the member in accordance with the Statutory Requirements.

### Surrender or maturity of policies

8. Where a policy on the life of the member is included in the Fund the Trustees shall when for any reason a benefit becomes payable or on the maturity of the policy or on the death of the member or at any other relevant time collect the proceeds of the policy or surrender the policy and the said proceeds or the amount received on the surrender of the policy shall as referred to in sub-rule (4) of Rule 3 be credited to and form part of the member's reserve or (if the policy is otherwise dealt with as agreed between the member and the Trustees) the surrender or current value thereof shall be taken into account by the Trustees in determining the amount payable to or in respect of the member in accordance with this Deed and the Rules.

### Deferral of benefit payment

9. In any case where a member who has ceased to be in the service of the Employer prior to his normal retirement date so requests the Trustees will retain in the Fund on behalf of the member for such period as the member specifies (being up to 90 days following the date of cessation of the member's service or for such longer period as the Trustees in any particular case approve) the amount of the benefit payable to the member in accordance with the other provisions of this Deed and the Rules and shall at the request of the member at or before the expiration of the said period (but subject to the provisions of Clause 19 of this Deed) pay to the member the said amount together with interest (if any) thereon in respect of the period at such rate as the Trustees determine having regard to the earning rate of the Fund as referred to in Rule 4.

### Unallocated portion of the Fund

10. (1) If, when a member ceases for any reason to be in the service of the Employer or to be a member, a part or the whole of the member's reserve is not paid to the member or otherwise dealt with in accordance with this Deed and the Rules, the said part or the whole (as the case may be) of the member's reserve not so paid or dealt with shall be transferred to and become part of the unallocated portion of the Fund.

- (2) The Trustees may from time to time apply the amounts in the unallocated portion of the Fund in any of the following ways (but subject to the limitations referred to in Clause 4 of this Deed):
- (a) in providing assistance to any member in case of need;
  - (b) in providing assistance to the dependants of any member or former member;
  - (c) in augmenting the benefit payable in terms of the Rules to the member;
  - (d) in or towards payment of contributions under the Fund;
  - (e) in paying any expenses in connection with the establishment or administration of the Fund;
  - (f) in stabilising the investment earnings of the Fund and in offsetting the effect on the member's reserves of investment losses.
- (3) If any part of the unallocated portion of the Fund is applied as aforesaid to augment the benefit payable to a member or as contributions to the Fund the amount so applied shall be credited to and shall form part of the member's reserve.

#### Statutory Requirements – Trustees' Covenants

- 11 The Statutory Requirements concerning trustees' covenants are deemed to be included in this Deed and must be observed and performed by the Trustees. Subject to any subsequent variation to the Statutory Requirements the Trustees covenant:
- (a) to act honestly in all matters concerning the Fund;
  - (b) to exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
  - (c) to ensure that the Trustees' duties and power are performed and exercised in the best interests of the beneficiaries;
  - (d) to keep the money and other assets of the Fund separate from any money and assets, respectively:
    - (i) that are held by the Trustees personally: or
    - (ii) that are money or assets, as the case may be of an Employer or an associate of an Employer;
  - (e) not to enter into any contract, or do anything else, that would prevent the Trustees from, or hinder the Trustees in, properly performing or exercising the Trustees' functions and powers;
  - (f) to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund including, but not limited, to the following:
    - (i) the risk involved in making, holding and realising, and the likely return from, the Fund's investments having regard to its objectives and its expected cash flow requirements;

- (ii) the composition of the Fund's investments as a whole including the extent to which the investment are diverse or involve the Fund in being exposed to risks from inadequate diversification;
  - (iii) the liquidity of the Fund's investments having regard to its expected cash flow requirements;
  - (iv) the ability of the Fund to discharge its existing and prospective liabilities;
- (g) if there are any reserves of the Fund – to formulate and to give effect to a strategy for their prudential management, consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;
- (h) to allow a beneficiary access to any information or documents prescribed by the Statutory Requirements.

**EXECUTED** as a Deed.

The Common Seal of  
 Bryglass Pty. Ltd.  
 ACN 003 377 946 trading  
 as Purl Plumbing was  
 affixed to this document  
 by authority of the  
 Board of Directors and  
 in the presence of: 



The Common Seal of  
 Bryglass Pty. Ltd.  
 A.C.N. 003 377 946 was  
 affixed to this document  
 by authority of the  
 Board of Directors and  
 in the presence of: 



