

TERMS AND CONDITIONS OF TRADE

1 Introduction

1.1 Application of these Terms and Conditions of Trade:

These Terms and Conditions of Trade are incorporated into any contract between the Company and the Customer for the supply of Goods and/or Services by the Company to the Customer.

1.2 Definitions:

- (a) "The Company" means Steelman Fabrications Pty Ltd (ABN 88 147 048 360) trading as Steelman, its successors and assigns and any business conducted under any registered business name of which the Company is a proprietor.
- (b) "Consumer" means a consumer for the purposes of section 3 of the Australian Consumer Law.
- (c) "Customer" means either:
 - (i) the person or entity, its servants and agents, to whom Services or Goods are supplied as named in the Credit Application and which forms a part of this document;
 - (ii) or where no Credit Application is entered into, the person or entity, its servants and agents to whom Services or Goods are supplied as named in the Quote, or Purchase orders or associated emails and which forms a part of this document.
- (d) "Goods" means goods supplied by the Company to the Customer (and where the context permits includes any supply of Services as defined).
- (e) "GST", "supply" and "Tax Invoice" have the meaning given to those terms in a New Tax System (Goods and Services) Tax Act 1999 (Cth) and the term "GST" also includes any penalties or additional tax imposed in relation to the GST payable for the supply of the Goods and Services hereunder.
- (f) "Managing Director" means Charlie Demetriou.
- (g) "PPSA" means the Personal Property Securities Act 2009 (Cth) as amended from time to time and any term used and sections referred to in clause 8 has the same meaning as in the PPSA.
- (h) "Price" means the price for the Goods and Services as agreed between the Company and the Customer subject to clause 5 hereof.
- (i) "Quote" means a Quote provided by the Company to the Customer in accordance with clause 3.
- (j) "Services" means all services supplied by the Company to the Customer (and where the context permits includes any supply of Goods as defined above).
- (k) "Third Party Goods and/or Services" means goods and/or services that the Company obtains from a third party necessary, in the Company's absolute discretion, to provide the Goods and/or Services to the Customer.
- (l) "Work Authorisation form" means any form provided by the Customer to the Company pursuant to clause 3.2(b) hereof.

1.3 General:

In these Terms and Conditions of Trade, unless the context otherwise requires:

- (a) The singular includes the plural and vice versa;
- (b) A reference to a clause is a reference to a clause in these Terms and Conditions of Trade;
- (c) A reference to a party to these Terms and Conditions of Trade or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- (d) Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;

- (e) A reference to a period of time (including without limitation, a year, a quarter, a month or a day) is to a calendar period.

1.4 Headings:

In these Terms and Conditions of Trade, headings are for convenience reference only and do not affect interpretation.

2 Acceptance

- 2.1 Any instructions received by the Company from the Customer for the supply of Goods or the provision of the Services, including without limitation acceptance of a Quote pursuant to clause 3.2 below, constitutes acceptance of these Terms and Conditions of Trade.
- 2.2 Where more than one Customer has entered into this agreement the Customers will be jointly and severally liable for all payments of the Price.
- 2.3 On acceptance of these Terms and Conditions of Trade by the Customer, the Terms and Conditions of Trade are irrevocable and can only be rescinded in accordance with these Terms and Conditions of Trade or with the written consent of the manager of the Company.
- 2.4 None of the Company's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Company in writing nor is the Company bound by any such unauthorised statements.

3 Quote

- 3.1 The Company will, if requested by the Customer, provide the Customer with a Quote setting out:
 - (a) The Goods and/or Services required by the Customer; and
 - (b) An estimate of the Price.
- 3.2 Acceptance of the Quote by the Customer:
 - (a) The Customer can accept the Quote verbally, via email or by signing the Quote and returning the original signed Quote to the Company.
 - (b) The Customer may, in addition to the requirement in clause 3.2(a) above, provide the Company with a Work Authorisation form accompanied with a purchase order number.
- 3.3 Any Quote provided by the Company to the Customer is open for acceptance by the Customer for a period of thirty (30) days from the date of the Quote. The Company may grant an extension of this timeframe in its absolute discretion and advise the Customer of such extension in writing.
- 3.4 In accepting the Quote, the Customer warrants that:
 - (a) it has not relied on any representation made by the Company other than as set out in the Quote; and
 - (b) it has received, read and understood these Terms and Conditions of Trade which form part of the Customer's agreement with the Company.

4 Good and Services

The Goods and Services are as described on the invoice, Quote or Work Authorisation form.

5 Payments terms

5.1 Price:

Subject to clause 5.2 below, at the Company's sole discretion the Price will be either:

- (a) as indicated on invoices provided by the Company to the Customer in respect of the Goods/Services supplied; or

- (b) as set out in the Quote.
- 5.2 Variation of Price:
- (a) Any variation from the Goods/Services ordered by the Customer will be in addition to the Price and will be shown as variations on the invoice.
 - (b) Payment for all variations must be made in full at the time of completion.

- 5.3 Deposit:
- (a) At the Company's sole discretion a deposit may be required by the Customer.
 - (b) The deposit amount or percentage of the Price will be stipulated in the Quote or at the time of the order and will become immediately due and payable.
 - (c) The Company is under no obligation to provide the Goods/Services until the Deposit is paid in full.

- 5.4 Payment:
- (a) The time for payment for the Goods/Services is of the essence and will be stated on the invoice, Quote or any other order forms. If no time is stated, payment must be made within thirty (30) days from the date of the invoice.
 - (b) Payment will be made by cash on delivery of the Goods or completion of the Services, or by cheque, or by bank cheque, or any other method as agreed between the Company and the Customer.

- 5.5 Progress payments:
- (a) The Company may, at its sole discretion, agree for the Customer to pay the Price by way of Progress payments.
 - (b) If the Customer fails to make any progress payment, the Company may immediately stop any work for the Customer until any such outstanding payment is made.

- 5.6 GST:
The Price will be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Company.

6 Delivery or Completion

- 6.1 Unless expressly agreed in writing all deliveries are from the Company's premises.
- 6.2 Delivery of the Goods to a third party nominated by the Customer is taken to be delivery to the Customer for the purposes of this agreement.
- 6.3 Collection of the Goods by the Customer is taken to be delivery to the Customer for the purposes of this agreement.
- 6.4 Unless otherwise agreed in writing by the Managing Director of the Company, the Company's performance time is not of the essence and the Customer agrees and warrants that the Company is not liable for any penalty or damages for late delivery of or failure to provide the Goods and/or Services or any part thereof due to any cause whatsoever.

7 Retention of Title

- 7.1 Ownership of Goods remains with the Company:
Ownership of, or title in, the Goods will not pass to the Customer until the Customer has paid to the Company the Price for all Goods delivered to the Customer.
- 7.2 Continuing security:
The Customer agrees with the Company that they will treat the security interest in the Goods as a continuing and subsisting security with priority over a registered general security and any unsecured creditors.

8 Personal Property Securities Act 2009 (Cth)

- 8.1 Consideration:
- (a) In consideration of the Company supplying the Goods to the Customer, at the request of the Customer, the Customer, by accepting these Terms and Conditions of Trade:
 - (i) Grants to the Company, at the Company's discretion, a security interest or purchase money security interest (PMSI) in the Goods;
 - (ii) Agrees that any of the Goods or proceeds of sale of the Goods coming into existence after the date of these Terms and Conditions of Trade will come into existence subject to:
 - A. The security interest or PMSI granted in these Terms and Conditions of Trade; and

B. The terms of these Terms and Conditions of Trade;
without the need for any further action or agreement by the parties.

- (iii) Agrees that the Customer has received valuable consideration from the Company and that it is sufficient; and
- (iv) Agrees that the security interest or PMSI has attached or will attach to all Goods supplied now or in the future to the Customer when the Customer takes possession of the Goods and that the attachment of the security interest or PMSI has not in any way been deferred or postponed from the date of these Terms and Conditions of Trade.

8.2 Customer to take all steps:

- (a) The Company may, by notice to the Customer at any time, require the Customer to take all steps that the Company considers necessary or desirable to:
 - (i) Ensure that these Terms and Conditions of Trade or any security interest or PMSI arising under them, are enforceable against the Customer or any third party; and
 - (ii) Protect, perfect, record, or better secure the position of the Company under these Terms and Conditions of Trade as a first ranking security.

8.3 Registration and notices:

- (a) The Company reserves the right to register a financing statement in respect of any Goods supplied by the Company to the Customer under these Terms and Conditions of Trade (and in respect of which credit has been extended by the Company to the Customer).
- (b) The cost and expense of registering a financing statement or a financing change statement is to be paid by the Customer and may, where applicable, be debited against the Customer's credit account with the Company.
- (c) The Customer:
 - (i) waives the right to receive a copy of any notice, verification statement confirming registration of a financing statement or a financing change statement relating to the security interest or PMSI under these Terms and Conditions of Trade, unless the notice or statement is required by law and cannot be excluded; and
 - (ii) agrees to comply with any notice from the Company under this clause 8 at its cost and expense.
- (d) The Customer agrees:
 - (i) not to allow any person to register a financing statement over any of the Goods supplied by the Company without the prior written consent of the Company; and
 - (ii) that it must immediately notify the Company if it becomes aware of any person taking steps to register a financing statement in relation to the Goods.
- (e) The Customer agrees to perfect and maintain any security interest or PMSI that it may have in the goods under the PPSA.

8.4 No accessions or commingling of Goods:

The Customer must not allow the Goods to become accessions or commingled with other goods unless the Company has first perfected any security interest or PMSI that the Company has in relation to the Goods.

8.5 Perfection:

If the Company perfects any security interest or PMSI that the Company has in relation to the Goods, the Customer must not do anything that could materially adversely affect:

- (a) the Company's business; or
- (b) in the opinion of the Company, the Company's security position under these Terms and Conditions of Trade.

8.6 Right of entry

The Customer irrevocably grants to the Company the right to enter on the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, if the Company has cause to exercise any of the Company's rights under section 110 of the PPSA, and the

Customer indemnifies the Company from any claims made by any third party as a result of that exercise.

8.7 Contracting out of enforcement provisions

If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising out of these Terms and Conditions of Trade, the Company and the Customer agree that each of the provisions of the PPSA which section 115 of the PPSA permits parties to contract out of, other than sections, 117, 118, 134(1) and 135, do not apply to the enforcement of that security interest.

8.8 Payments made in respect of the Goods/Services

The Company may, at its absolute discretion, apply any amounts received from the Customer towards amounts owing to the Company in such order as the Company may determine.

8.9 Confidentiality

The Company and the Customer may not disclose any information of a kind referred to in section 275(1) that is not in the public domain except in circumstances required by sections 275(7)(b)-(e).

8.10 If Customer insolvent

If the Customer becomes insolvent, without prejudice to any other rights of the Company:

- (a) the Customer's right to sell the Goods in the ordinary course of business in accordance with the PPSA and any other rights of the Customer in respect of the Goods immediately cease; and
- (b) the Customer must immediately return to the Company the Goods in which title has not passed as provided for under clause 7 hereof.

9 Risk

9.1 Notwithstanding the Retention of Title provisions set out in clause 7 hereof, the risk in the Goods will pass to the Customer upon the delivery of the Goods to the Customer.

9.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Customer, the Company is entitled, without affecting any other rights and remedies under any agreement, to any insurance proceeds payable for the Goods. This clause applies whether or not money has become payable under this agreement. The production of these Terms and Conditions of Trade by the Company is sufficient evidence of the Company's right to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.

10 Defects>Returns

10.1 The Customer must notify the Company in writing of any alleged defect, shortage in quantity, damage or failure to comply with the description or Quote within seven (7) days of the delivery of the Goods. On the expiration of such time, the Goods are deemed to be free of any damage and in compliance with the quote.

10.2 Upon receipt of notice given under clause 10.1 above, the Company shall be entitled to enter the Customer's premises and inspect the Goods within a reasonable time.

10.3 If the Company agrees that there are Goods which the Customer is entitled to reject then the Company must notify the Customer of such agreement in writing.

10.4 Subject to clause 11 below, any liability of the Company arising from this clause 10 is limited to either (at the Company's sole discretion) repairing or replacing the Goods.

11 Warranty

11.1 If the Customer is a Consumer then the Goods and Services come with guarantees that cannot be excluded under the Australian Consumer Law. The guarantees under the Australian Consumer Law are given by the Company.

11.2 The Company will repair or replace any Goods with a structural defect for a period twelve (12) months from the invoice date.

11.3 The warranties provided by the Company to the Customer under this clause 11 do not cover any defect or damage caused by:

- (a) Failure on the part of the Customer to properly maintain the Goods;
- (b) Improper handling, operation or use of the Goods by the Customer;
- (c) Failure on the part of the Customer to follow any instructions or guidelines provided by the Company;
- (d) Any use of the Goods otherwise than in the way the Goods were designed to perform;

- (e) The continued use of any Goods after a defect becomes apparent or would have become apparent to a reasonably prudent operator or user;
- (f) Fair wear and tear;
- (g) An accident or act of God;
- (h) A non-structural defect;
- (i) Inadequate or incorrect details, plans or specifications provided by the Customer or prepared by a third party on the Customer's behalf; or
- (j) Any modifications, alterations, servicing or repairs to the Goods.

11.4 Return of Goods – Consumers:

If the Customer is a Consumer:

- (a) The Customer is entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.
- (b) If the Customer believes the Goods do not comply with the statutory guarantees, the Customer must contact the Company and make arrangements for the return of the Goods. The Customer must provide proof of purchase. If the Company agrees that the Goods do not comply with the statutory guarantee, the Company will cover the costs of repairing the Goods or replacing them with the same or comparable product. Please note: All warranty claims are submitted at the Customer's expense by returning the goods to the Company.
- (c) No other guarantees or warranties apply to the Goods unless a further and additional warranty is provided, in writing, to the Customer by the Company.

11.5 Return of Goods – Non Consumers:

If the Customer is not a Consumer:

- (a) Unless agreed in writing by the Company, the Company will not accept the return of the Goods.
- (b) The Customer must provide proof of purchase when returning the Goods to the Company.
- (c) These conditions will not exclude, or limit the application of any provision of any statute including any implied condition or warranty, the exclusion of which would contravene any statute or cause any part of this clause to be void. To the extent permitted by law, all conditions, warranties and undertakings are expressly excluded.
- (d) The Company's liability for breach of a non-excludable condition or warranty is limited at the Company's option, to the replacement of the Goods or the supply of equivalent goods.
- (e) The Company will not be liable for any indirect loss or damages whatsoever, including consequential loss, loss of profits, loss of opportunity or loss of use.

11.6 Services - Consumers:

- (a) If the Customer is a Consumer and the services fail to meet a guarantee under the Australian Consumer Law (and such failure does not amount to a major failure) then:
 - (i) The Customer must contact the Company.
 - (ii) The Customer must not make alternative arrangements to fix the problem without first giving the Company such opportunity.
 - (iii) The Customer must provide proof of purchase.
 - (iv) If the Company agrees that the Services do not comply with the statutory guarantee, then the Company must offer to fix the problem free of charge and within a reasonable time.
- (b) No other guarantees or warranties apply to the Services unless a further and additional warranty is provided, in writing, to the Customer by the Company.

12 Intellectual Property

12.1 Where the Company has designed or drawn Goods for the Customer then the copyright in those designs and drawings will remain with the Company and may only be used by the Customer with the Company's consent.

12.2 The Customer warrants that all designs or instructions to the Company will not cause the Company to infringe any patent, registered design or trade mark in the execution of the Customer's order.

13 Default and Consequences of Default

- 13.1 Interest on overdue invoices will accrue daily from the date when payment becomes due until the date of payment at the rate charged by the Company's bank in respect of unsecured overdraft facilities plus 2%.
- 13.2 If the Customer defaults in payment of any invoice when due, the Customer will indemnify the Company from and against all the Company's costs and disbursements including the payment of Company's legal costs on a full indemnity basis or a solicitor and own client costs basis and in addition all of the Company's nominees costs of collection.
- 13.3 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment) the Company may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the Terms and Conditions of Trade.
- 13.4 The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company exercised its rights under this clause.
- 13.5 If any account remains unpaid at the end of the second month after supply of the Goods or Services an immediate amount of \$50.00 will be levied for administration fees which will become immediately due and payable.
- 13.6 If:
- (a) Any money payable to the Company becomes overdue or in the Company's opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the customer or any asset of the Customer,

then without prejudice to the Company's other remedies at law:

- (i) the Company will be entitled to:
 - A. Cancel any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies; and
 - B. Forfeit any deposit paid to the Company by the Customer; and
- (ii) all amounts owing to the Company will, whether or not due for payment immediately become payable in addition to the interest payable under clause 13.1 hereof.

14 Unpaid Seller's rights

- 14.1 Where the Customer has left any equipment with the Company for repair, modification, exchange or for the Company to perform any other Service in relation to the equipment and the Company has not received the whole of the Price, or the payment has been dishonoured, the Company will have:
- (a) a lien on the equipment;
 - (b) the right to retain the equipment for the Price while the Company is in possession of them;
 - (c) a right to sell the equipment;

- (d) a right to dispose of the equipment, provided that the lien of the Company will continue despite the commencement of proceedings or judgment for the Price having been obtained.

15 Cancellation

- 15.1 The Company may cancel these Terms and Conditions of Trade or cancel delivery of Goods at any time before the Goods are delivered by giving written notice.
- 15.2 The Company will not be liable for any loss or damage, including any consequential loss or damage, arising from such cancellation.

16 General

- 16.1 If the Company obtains Third Party Goods and/or Services, the Customer agrees that any costs incurred by the Company in relation to this are to be paid by the Customer, on demand, and are in addition to the Price.
- 16.2 If any provision of these Terms and Conditions of Trade is invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.
- 16.3 All Goods and Services supplied by the Company are subject to the laws of Queensland and the Company takes no responsibility for changes in the law which affect the Goods and Services supplied.
- 16.4 The Company will be under no liability whatsoever to the Customer for any indirect loss and/or expense including without limitation, loss of profits suffered by the Customer arising out of a breach by the Company of these Terms and Conditions of Trade.
- 16.5 If the Customer provides to the Company a copy of the Customer's own terms and conditions, the Customer agrees that these Terms and Conditions of Trade still prevail.
- 16.6 If there is a breach of this contract by the Company the remedies of the Customer will be limited to damages.
- 16.7 Under no circumstances will the liability of the Company exceed the Price of the Goods.
- 16.8 The Customer will not set off against the Price amounts due from the Company.
- 16.9 The Company may license or subcontract all or any part of its rights and obligations without the Customer's consent.
- 16.10 The Company reserves the right to review these Terms and Conditions of Trade at any time and from time to time. If, following a review, there is to be any change in the Terms and Conditions of Trade, that change will take effect from the date on which the Company notifies the Customer of the change.
- 16.11 Neither party will be liable for any default due to an act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either of them.
- 16.12 These Terms and Conditions of Trade shall be governed by and interpreted in accordance with Queensland law only and the parties submit themselves irrevocably to the jurisdiction of the courts of Queensland and courts competent to hear appeals therefrom.



STEELMAN FABRICATIONS PTY LTD t/a STEELMAN

A.B.N. 88 147 048 360

PO Box 101 Hamilton Qld 4007, 474 Curtin Avenue East, Eagle Farm Qld 4009

PH 07 3868 2082 FAX 07 3268 5950 EMAIL info@steelman.com.au

PRIVACY STATEMENT

The Company's Privacy Statement contains details about the collection, use and disclosure of your personal information and how the Company deals with this information.

Please read this information carefully and retain it for your records.

1. What information the Company collects and holds.

- (a) The Customer's personal information as set out in this Application;
- (b) The Customer's personal information, collected from someone other than the Customer, including (but not limited to) information such as the Customer's consumer or commercial credit or business history, commercial activities, and credit-worthiness with the Customer's Consent; and
- (c) The personal information of the Guarantors of the Customer as set out in this Application.

2. How the Company collects the Customer's information.

The Company may collect the Customer's information in a number of ways including:

- directly from the Customer (such as the information provided to the Company in this Application);
- from publicly available sources of information;
- when legally authorised or required to do so; and
- from third parties including the Customer's bank or any trade referee disclosed in the Application with the Customers consent

3. How the Company holds the Customer's information

The Company may store the Customer's information in hard copy or electronic format. The Company takes reasonable steps to maintain the security of your information and to protect it from unauthorised disclosures.

4. How the Company uses the Customer's information

The Company may use the Customer's information for a range of different purposes, including:

- to verify the Customer's identity, or to conduct appropriate checks for credit-worthiness and for fraud checking;
- to provide goods and services to the Customer and to provide the Customer with information about those goods and services, to assist the Customer with inquiries or purchases;
- to administer and manage the goods and services the Company provides to the Customer, to charge and bill the Customer for them and to collect any amounts the Customer may owe to the Company.

5. When the Company discloses the Customer's information

The Company may disclose the Customer's information to third parties who provide services to the Company and that assist the Company with the purposes for which it uses the information.

The Company may also disclose the Customer's information:

- to the Customer's authorised representatives or advisers, or otherwise when the Customer asks the Company to do so;
- to credit-reporting bodies and fraud-checking agencies and to credit providers for credit related purposes such

as credit-worthiness, credit rating, credit provision and financing;

- to law enforcement and national security agencies and other government and regulatory authorities as required or authorised by law; and
- for the purpose of facilitating or implementing a transfer/sale of the Company's assets or business.

In some cases, the organisations to who the Company may disclose the Customer's information may be based outside Australia.

6. How the Customer may access or correct its personal information or make a privacy complaint

If the Customer wishes to access any of its personal information held by the Company or would like to correct any errors in that information, please contact the Company by:

Phone:

Email:

The Customer may also use these contact details to notify the Company of any privacy complaint the Customer may have against the Company, including if the Customer thinks that the Company has failed to comply with the Australian Privacy Principles (APP) or any binding APP code that has been registered under the *Privacy Act*. The Company is committed to acknowledging the Customer's complaint in a prompt manner and will give the Customer an estimated timeframe for when the Company will respond to the complaint.

While the Company hopes that it will be able to resolve any complaints the Customer may have without needing to involve third parties, the Customer may also be able to lodge a complaint with a relevant regulator such as the Australian Information Commissioner (www.oaic.gov.au).

Please note: any reference to the Customer in this Privacy Statement includes a reference to a Guarantor of the Customer as set out in this Application.