

OneSteel Standard Terms and Conditions of Sale

Effective 1 March 2011

In this document ("Terms and Conditions"):

- (a) "Application" means the application by the Customer to OneSteel for commercial credit;
- (b) "Contract" means the contract formed between OneSteel and the Customer by an Order accepted by an Order Acknowledgment;
- (c) "Customer" means the person placing the Order with OneSteel;
- (d) "Goods" means any goods, products, services or materials to be supplied by OneSteel;
- (e) "OneSteel" means the related bodies corporate (within the meaning of the Corporations Act 2001) of OneSteel Limited (ABN 63 004 410 833) and for each Contract means the company in this business division that issues an Order Acknowledgment;
- (f) "Order" is an order or offer to purchase described in clause 1(a);
- (g) "Order Acknowledgment" is defined in clause 1(b);
- (h) unless otherwise stated, an expression used or defined in the Corporations Act 2001 has the same meaning in the Terms and Conditions.

1. Orders, Order Acknowledgments and Contract

- (a) An order or an offer to purchase can be made by the Customer in writing or verbally.
- (b) An Order is accepted when the Customer receives from OneSteel an order acknowledgment in writing or if writing is not received, acknowledgment verbally or delivery, whichever first occurs.
- (c) When an Order is accepted by an Order Acknowledgment the Contract will be wholly documented by (in descending order of precedence) any specific term(s) agreed in writing, the Order Acknowledgment and these Terms and Conditions.
- (d) Previous dealings between OneSteel and the Customer shall not have any effect on the Contract.
- (e) Trade custom and/or trade usage is superseded by the Contract and shall not be applicable in the interpretation of the Contract.
- (f) A Contract constitutes the entire agreement between OneSteel and the Customer with respect to the Goods supplied under the Contract, all prior negotiations, proposals and correspondence are superseded by that Contract.
- (g) Subject to clause 16, if at any time in relation to the supply of the Goods, the Customer provides, refers to, submits or otherwise uses terms and conditions other than these Terms and Conditions such terms and conditions will not form part of, or be incorporated into, the Contract.

2. Prices

- (a) Unless otherwise agreed in writing, the price charged for the Goods shall be (i) exclusive of any transaction tax ("transaction tax" includes the goods and services tax as well as any identified or new transaction taxes that come into existence after the effective date of these Terms and Conditions), and (ii) as per the price ruling as determined by OneSteel at the date of delivery. Any price indications or price lists are subject to alteration in accordance with the price ruling as at that date of delivery.
- (b) Where a product margin is included on the invoice for Goods the Customer will pay that product margin in addition to any quoted price.
- (c) Where a transaction tax applies to any supply made under these Terms and Conditions, OneSteel may recover from the Customer an additional amount on account of that transaction tax.
- (d) Notwithstanding any provision in the Contract, OneSteel may increase the price of Goods after an Order Acknowledgment and prior to delivery of the Goods if the price increase results from an increase in the price of any inputs which comprise part of the Goods.
- (e) The Customer may upon the alteration of the price charged for the Goods in accordance with this clause 2, cancel any Order (or part thereof) at the new price within 7 days of notice of change of price.

3. Delivery

OneSteel will make all reasonable efforts to have the Goods delivered to the Customer or his designated agent as agreed between the parties (or if there is no specific agreement then at OneSteel's reasonable discretion), but OneSteel shall not be liable for (a) any failure to deliver or delay in delivery for any reason; or (b) any damage or loss due to unloading or packaging; or (c) except to the extent that such damage was caused by the negligent act or omission of OneSteel, damage to property caused upon entering premises to deliver the Goods. Any costs incurred by OneSteel due to any failure by the Customer to accept the Goods at time of delivery will be reimbursed by the Customer to OneSteel. Except as required by law, OneSteel will be under no obligation to accept Goods returned for any reason.

4. Standard Grades of Material

- (a) Subject to clause 4(b), OneSteel will use its reasonable endeavours to:
 - i) supply Goods having the grade of material specified in the Order Acknowledgment; and
 - ii) ensure that the Goods' grade of material as specified in the Order Acknowledgment will, unless otherwise agreed, be in accordance with applicable Australian Standards and/or as detailed in any current, relevant price schedules, product handbooks or other product literature of OneSteel.
- (b) Except as required by law, OneSteel does not give any warranty in respect of goods which it supplies, but which it did not manufacture, or any part of goods which it supplies, but which it did not manufacture.

5. Payment

Payment for the Goods must be made in full (without any set off) and received by OneSteel by the last business day of the month following the month of delivery unless otherwise identified by OneSteel on any statement of account or invoice or unless these terms and conditions specify otherwise. Payment is only received by OneSteel when it receives cash or when the proceeds of other methods of payment are credited and cleared to OneSteel's bank account.

6. Title and related matters

- (a) The legal and equitable title to the Goods will only be transferred from OneSteel to the Customer when the Customer has met and paid all that is owed to OneSteel on any account whatsoever.
- (b) The Customer acknowledges that until the Customer has met and paid all that is owed to OneSteel on any account whatsoever, the Customer holds the Goods as bailee for OneSteel and that a fiduciary relationship exists between the Customer and OneSteel.
- (c) Until OneSteel receives full payment of all monies due to it from the Customer, the Customer shall keep the Goods separate and in good condition as a fiduciary of OneSteel, clearly showing OneSteel's ownership of the Goods and, shall keep books recording OneSteel's ownership of the Goods and the Customer's sale or otherwise of them in accordance with clauses 6(e) and 6(f). The Customer if required, shall deliver the Goods up to OneSteel.
- (d) If the Customer defaults, in addition to clause 7(b), OneSteel may take possession of the Goods wherever the Goods are located and the Customer agrees that representatives of OneSteel may enter upon the Customer's premises for that purpose.
- (e) Despite clause 6(a), the Customer may sell as fiduciary agent for OneSteel the Goods to a third party in the normal course of the Customer's business provided that where the Customer is paid by that third party, the Customer holds the proceeds of sale to the extent of the amount owing by the Customer to OneSteel at the time of receipt of such proceeds on trust for OneSteel. The Customer must keep those proceeds separate on trust for OneSteel and not mix those proceeds with any other monies.
- (f) If the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as related to the Goods on trust for OneSteel. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to OneSteel at the time of the receipt of such proceeds. The Customer must keep that part of the proceeds separate on trust for OneSteel and not mix those proceeds with any other monies.
- (g) The Customer agrees, at OneSteel's request, to do all acts matters and things including sign all documents (provided they are on terms similar to or having the same effect and are on terms no more onerous on the Customer than these Terms and Conditions) to ensure OneSteel holds a valid and perfected security interest under the Personal Property Securities Act 2009 (Cth). Any failure by the Customer to promptly comply with any such request constitutes a default under Clause 7 of these Terms and Conditions.

7. Default

- (a) A party will be in Default if:
 - (i) it breaches a material term in the Terms and Conditions and such breach is not remedied within 14 days of receiving notice from the other party requiring it to do so, unless such breach arises out of the supply of defective Goods, in which case OneSteel shall remedy the breach within such time as is reasonable in the circumstances; or
 - (ii) being a body corporate it becomes an externally-administered body corporate or has an application for winding up filed against it;
 - (iii) in the case of the Customer being an individual, it commits an act of bankruptcy or becomes an insolvent under administration;
 - (iv) in the case of the Customer, payment for the Goods has not been received by OneSteel by the due date of payment;
 - (v) in the case of the Customer, OneSteel forms the opinion that the Customer's creditworthiness or credit standing alters from that indicated in its Application.
- (b) If a party Defaults, the other party may:
 - (i) treat the whole of the Contract and any other Contract with the Customer as repudiated and sue for breach of contract; and/or
 - (ii) being OneSteel, refuse to supply any Goods to the Customer; and/or
 - (iii) being OneSteel, claim the return of any Goods in the Customer's possession where title has not passed to the Customer; and/or
 - (iv) being OneSteel, withdraw or vary any credit OneSteel has provided to the Customer; and/or
 - (v) being OneSteel, make all monies owing by the Customer to OneSteel on any account immediately due and payable;

- 8. Risk**
Risk in the Goods passes to the Customer upon delivery (including all risks associated with unloading) or upon title in the Goods passing to the Customer, whichever is the earlier.
- 9. Credit**
- (a) OneSteel may grant the Customer credit upon the Terms and Conditions on the basis of the Application and such other documents and information as may be required by OneSteel.
- (b) Until OneSteel grants the Customer credit by notice in writing, OneSteel will only supply Goods to the Customer on the basis of cash in advance.
- (c) The granting of credit does not oblige OneSteel to extend any particular amount of credit to the Customer.
- (d) The Customer must notify OneSteel in writing if there is any change in the shareholding or ownership of the Customer or any material change in the Customer's financial position. The Customer agrees that if requested by OneSteel the Customer will:
- charge in favour of OneSteel all beneficial interests (freehold and leasehold) in real estate held now or in the future by it as security for payment of all and any moneys payable by the Customer to OneSteel;
 - execute a mortgage or other instrument of security in form requested by OneSteel.
- 10. Intellectual Property**
- (a) The Customer warrants to OneSteel that all documents provided by the Customer are accurate and that OneSteel is entitled to use all such documents for the purposes of the Contract and that such use does not infringe any third party's intellectual property rights.
- (b) The Customer indemnifies OneSteel against all claims and all losses and damages incurred by OneSteel as a result of documents provided by the Customer to OneSteel for the purposes of or in the course of the supply of the Goods breaching a third party's intellectual property rights.
- (c) If the Customer receives any confidential information from OneSteel the Customer may not use or disclose such information unless it receives the prior written consent of OneSteel, such information enters the public domain (other than as a result of a breach of this clause) or the use or disclosure is required by law.
- 11. Force Majeure**
OneSteel is not liable for failure to perform the Contract to the extent and for so long as its performance is prevented or delayed without substantial fault or negligence by OneSteel because of:
- circumstances outside OneSteel's control;
 - failure of OneSteel's machinery; or
 - failure of a supplier to OneSteel
- provided that OneSteel gives notice to the Customer of the delay and uses reasonable efforts to remedy the cause of the delay quickly.
- 12. Representations and Fitness for Purpose**
- (a) Except as expressly provided to the contrary in the Contract, all representations, warranties, terms and conditions in relation to the Goods (whether implied or otherwise) are hereby excluded to the maximum extent permitted by law.
- (b) The Customer agrees that if it is aware (or should be aware) that the Goods, the subject of an Order, are for a particular purpose (including, but not limited to, use as a component part of another product) or are required to possess special or uniform characteristics, the Customer will clearly specify that purpose or those characteristics in any such Order. The Customer agrees that, unless expressly agreed by OneSteel in writing, it has made its own enquiries in relation to the suitability of the Goods and does not rely on representations by OneSteel in relation to their suitability for a particular purpose or any steps which may need to be taken in relation to their use.
- 13. Limitation of Liability**
- (a) Subject to clauses 3 and 12(a), OneSteel's liability to the Customer (and any party claiming through the Customer against OneSteel) for any claim for loss or damages (including legal expenses) made in connection with the Contract whether in contract, tort (including negligence), under statute, in equity or otherwise (including any liability pursuant to or by reason of terms implied into this contract by the Trade Practices Act 1974 (Cth) (as amended) or relevant State or Territory legislation) shall be strictly limited as follows (except to the extent that the law prohibits such a limitation):
- for any liability arising from Goods not meeting the specification or which are said to be otherwise defective or deficient, OneSteel's liability is limited to the cost of replacement of those Goods as soon as reasonably practicable, or the repair of those Goods or the repayment (or allowance) of the invoice price of those Goods (at the option of OneSteel);
 - for any liability arising from the services not meeting the scope or which are said to be otherwise defective or deficient, OneSteel's liability is limited to the provision of the services again or payment of the cost of having the relevant services provided (at the option of OneSteel);
 - for any liability that does not fall within the scope of clauses 13(a) i) or ii), OneSteel's liability for any loss or damage arising from or caused in any way by OneSteel, the Goods or services it supplies or the Contract is excluded (to the maximum extent permitted by law);
- (b) In addition to the provisions of clause 13(a), OneSteel shall not be liable for any indirect, special or consequential loss or damage of any nature whatsoever resulting from or caused in any way by the Goods or services it supplies, where "indirect, special or consequential loss or damage" includes:
- any loss of income, profit, production, contract, customers, business opportunity or business;
 - any loss of goodwill or reputation;
 - any loss of value of intellectual property; (D) any loss or damage resulting from the loss or damage to goods other than the Goods.
- (c) Any claim by the Customer in respect of defective Goods or damaged Goods must be made in writing within 14 days of the delivery of the Goods, unless a longer period is expressly agreed to by OneSteel in writing.
- (d) Despite any other provision of the Contract, OneSteel is not liable for:
- the cost of removal of Goods not meeting the specification or which are said to be otherwise defective or deficient, whether installed or otherwise;
 - the cost of installation of replacements for Goods not meeting the specification or which are said to be otherwise defective or deficient;
 - defects or deficiencies in Goods caused by improper installation or maintenance of Goods or related components or normal wear and tear and damage.
- 14. Waiver**
A party waives a right under a Contract only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- 15. Severance**
If a provision of a Contract would, but for this clause, be unenforceable:
- the provision must be read down to the extent necessary to avoid that result;
 - if the provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of the Contract.
- 16. Variation**
Except in respect of a Contract incorporating the Terms and Conditions, OneSteel may at any time vary the Terms and Conditions without notice to or the agreement of the Customer.
- 17. Costs**
The Customer must pay OneSteel all costs and expenses incurred by OneSteel in connection with the Contract including legal expenses (on a solicitor-client basis), stamp duty and costs incurred in the recovery of monies owing by the Customer to OneSteel or in otherwise enforcing OneSteel's rights against the Customer under the Contract.
- 18. Applicable Law**
This document is governed by the law of the State or Territory in which the Order is accepted by OneSteel and the courts of that State or Territory have non-exclusive jurisdiction in connection with this document. The Sale of Goods (Vienna Convention) Act 1986 (New South Wales) (and any similar legislation relating to the Vienna Convention in other States or Territories) does not apply to the Contract.
- 19. OneSteel may Assign**
OneSteel may assign to any person this document and any Contract. In the event of assignment the Customer may, if it has reasonable grounds to believe that the assignee will not comply with the Contract, terminate any Contract which has not been completed and which was entered into prior to the assignment with 30 days notice.
- 20. Dispute Resolution**
- (a) The parties must attempt to resolve any dispute or claim arising out of or under a Contract by a negotiation in good faith before either party litigates that dispute or claim. Accordingly, any party who believes that there is a dispute or claim arising under a Contract must give the other party(s) written notice of that fact and specify the nature of the claim or dispute. Within 7 days (or such other time as the parties agree) of receipt of such notice by the other parties, the representatives of all parties shall meet to negotiate in good faith that dispute or claim.
- (b) Any dispute or claim arising out of or under a Contract which remains unresolved after 1 month after the date on which written notice is given under sub-clause (a) may be litigated by either party.
- (c) For the avoidance of doubt, nothing in this clause prevents either of the parties from commencing urgent injunctive or interlocutory proceedings in a competent court.
- 21. Measures**
- (a) Any and all statements made by OneSteel as to weight, length, quantity or other characteristics of Goods are approximate and OneSteel may supply Goods on an actual or calculated basis.
- (b) A calculated basis will be in accordance with the applicable Australian standards.
- (c) OneSteel's statements as to weight, length, quantity or other characteristics are final and OneSteel is not liable for any errors in such statements unless the Customer gives OneSteel.
- written notice of any error within 14 days of delivery;
 - a reasonable opportunity to examine and re-test the Goods before they are used or dealt with.
- 22. Shortages**
- (a) The Customer will inspect and check all Goods received as soon as practicable upon unloading. No claim by the Customer for shortages of Goods may be made unless such claim is notified to OneSteel with forty-eight (48) hours of such inspection.
- (b) OneSteel will endeavour to rectify any shortages as soon as practicable after receiving notice but will not suffer any liability from or in respect of such rectification.