

# **PREMIER STEEL TECHNOLOGIES PTY LIMITED**

## **TERMS OF BUSINESS**

Unless otherwise stipulated in writing by Premier Steel Technologies Pty Limited, the Customer is deemed to purchase and/or accept delivery of the Goods upon the following conditions:

### **1. Definitions**

- 1.1 In these Terms of Trading, unless the contrary intention appears:  
"PREMIER" means Premier Steel Technologies Pty Limited ABN 99 075 159 732 and its successors and permitted assigns.  
"Customer" means the individual who requests PREMIER to supply the Goods or if the individual represents a company, partnership or trust that company, partnership or trust upon proof that such individual is duly authorised to make such request on behalf of the relevant company, partnership or trust.  
"Goods" means the goods supplied or services rendered by PREMIER pursuant to these Terms.  
"GST" has the meaning given to it in A New Tax System (Goods & Services Tax) Act 1999.  
"PPSA" means the Personal Property Securities Act 2009 (Cth).  
"PPSR" means the Personal Property Securities Register.  
"Price" means the price of the Goods charged to the Customer.  
"Quotation" means a quote for Goods issued to the Customer by PREMIER.  
"Customer Order" means a purchase order or other contractual request for the provision of Goods received by PREMIER.  
"Terms" means the terms as specified in this document.
- 1.2 Headings are for convenience only.

### **2. Quotations and Pricing and Contract**

- 2.1 PREMIER may at any time and at its absolute discretion accept or reject in whole or in part any request from the Customer for a Quotation.  
2.2 A Quotation is valid for a period of thirty (30) days from the date of Quotation, unless PREMIER specifies otherwise in writing. Any Quotation may be withdrawn earlier by notice from PREMIER at its absolute discretion.  
2.3 PREMIER reserves the right to withdraw, change or re-issue a Quotation if supply of the quoted Goods does not start within 30 days after the date of Quotation.  
2.4 PREMIER may increase or decrease the Price where it incurs an increase or decrease in its costs (including any transaction or other taxes) of supplying the Goods.  
2.5 Unless otherwise stated, Prices quoted are exclusive of GST and any other taxes or duties imposed or in relation to the Goods. The price also excludes freight costs.  
2.6 The Customer will not be entitled to make any deduction from the Price in respect of any set-off or counterclaim.  
2.7 A Customer Order must be made by the Customer in writing.  
2.8 A Customer Order does not constitute a binding contract until PREMIER has accepted such Customer Order in accordance with these Terms of Business.  
2.9 A Customer Order is accepted by PREMIER only if PREMIER:  
(a) Formally accepts the Customer Order by written acknowledgment; or  
(b) delivers the Goods described in the Customer Order, whichever occurs first.  
2.10 PREMIER may at any time and in its absolute discretion accept or reject part or all of any Customer Order.  
2.11 Prices may vary from those published or quoted from time to time. The Customer will be charged at the price current at the time an order is received.

### **3. Terms of Payment**

- 3.1 Terms of payment are strictly net cash on day of delivery or receipt of Goods, unless otherwise agreed in writing by PREMIER. Credit terms commence from earlier of date of invoice and first delivery of Goods. Any deposit required by PREMIER must be paid at the same time as placing of a Customer Order.  
3.2 If the Customer commits any default, all monies due and owing by it to PREMIER under these Terms, whether by way of credit or otherwise, will become due and payable immediately and all credit terms are thereafter withdrawn.  
3.3 The time for payment of any moneys due to PREMIER is of the essence.  
3.4 Receipt of a cheque or other negotiable instrument by PREMIER will not constitute payment and the Customer will remain liable for the Price until such cheque or negotiable instrument is paid in full.  
3.5 Without prejudice to any other rights of PREMIER, if the Customer fails to pay an invoice or any other moneys payable by the Customer under these Terms, that failure will constitute a default and interest at 10% per annum calculated on a daily basis will be payable on all moneys outstanding from the date payment is due until the date payment is received by PREMIER.

### **4. Title & Risk**

- 4.1 Title in the Goods will remain with PREMIER until the Customer has paid the Price in full, together with all other moneys payable to PREMIER under these Terms.  
4.2 For so long as title in the Goods remains with PREMIER:  
(a) PREMIER (or any person authorised by PREMIER for the purpose) will have the right, with or without prior notice to the Customer, to retake possession of the Goods (and to enter any premises occupied by the Customer without being liable for any damage thereby caused) and PREMIER may resell the Goods; and/or  
(b) The Customer will, if so requested by PREMIER, store separately those Goods in respect of which title is retained by PREMIER and clearly identify such Goods as the property of PREMIER.  
4.3 Where Goods in respect of which title has not passed to the Customer is sold by the Customer, any book debt created upon the sale of such Goods and the proceeds of sale of such Goods, when received by the Customer, will be held upon trust by the Customer for PREMIER. Any proceeds of sale so received by the Customer will be placed in a separate bank account and will first be applied towards the satisfaction of all indebtedness of the Customer to PREMIER.  
4.4 Unless the parties otherwise agree in writing and notwithstanding the provisions of this clause 4, the Goods will be at the Customer's risk from the earlier of:  
(a) the time at which delivery is deemed to take place pursuant to clause 5; and  
(b) the time at which title in the Goods passes to the Customer.  
4.5 Unless otherwise agreed by PREMIER, the Customer is prohibited from making or having made by any third party any goods described in a Quotation or agreement or described in any drawing, designs, design proposals, plans, specifications, or any other visible data accompanying or relating to a Quotation or agreement.  
4.6 Clause 4.5 does not apply where the drawing, design, design proposal, plan, specifications or other visible data in a quotation or agreement was wholly contributed by the Customer.  
4.7 The Customer acknowledges that this Clause 4 is an essential term and condition of supply, which will not be varied by PREMIER except by agreement with it in writing and the provisions of this Clause will apply despite any arrangement under which PREMIER grants the Customer credit.

### **5. Delivery & Packaging**

- 5.1 PREMIER will make all reasonable endeavours to supply the Goods on the agreed delivery date but any time or date stated for delivery is given and intended as an estimate only.  
5.2 Unless otherwise stated in writing, delivery will be deemed to take place on the earlier of:  
(a) the physical delivery of the Goods to the Customer's carrier (or its agent);  
(b) the physical delivery of the Goods to the Customer's nominated delivery address, site or place of business; or  
(c) thirty (30) days after PREMIER notifies the Customer in writing that the Goods are available for collection.  
5.3 Signature of any delivery note by any agent, employee or representative of the Customer or, where delivery is to any independent carrier, by such carrier or its agent, will be conclusive proof of delivery. Unloading of Goods upon delivery by PREMIER will be at the cost and risk of the Customer.  
5.4 The Customer will be liable for any storage charges, freight and related costs incurred by PREMIER where delivery is delayed by the Customer. PREMIER may charge a delay fee of 1% of the invoice value where Customer delivery delays extend greater than 30 days.  
5.5 Unless otherwise stated in writing, PREMIER will be entitled to make partial deliveries or deliveries by such instalments as PREMIER may reasonably determine, and may invoice for each partial delivery.  
5.6 Packaging of Goods will be by PREMIER standard packaging material unless otherwise specified by the Customer.  
5.7 Minimum quantities or order value may be set from time to time by PREMIER for particular Goods.

### **6. Variations, Delays & Cancellation**

- 6.1 PREMIER is not liable for delay in delivery occasioned by shortage of stock, default by sub-contractors or suppliers, delays in transit, accidents, strikes or other unavoidable occurrence. PREMIER will use its best endeavours to notify the Customer of supply shortages or delays in delivery as soon as it becomes aware of such.  
6.2 If PREMIER is unable to secure the quantity of the Goods required to fill the Customer order, the Customer agrees to accept whatever reasonable quantity PREMIER is able to deliver and pay accordingly.  
6.3 No Customer order may be cancelled or varied except with the consent in writing of, and on terms, which will, indemnify PREMIER against all losses. Any Quotation given based on proposed bulk orders, may be amended by PREMIER should the Customer's order subsequently be varied.  
6.4 If an order is cancelled by the Customer:  
(a) where design or production of the Goods has not commenced, 10% of the invoice price is payable to PREMIER; or  
(b) where design or production of the Goods has commenced, the full invoice price is payable to PREMIER (less any resale value for the Goods).

### **7. Warranties**

- 7.1 PREMIER warrants that the Goods will be free from defects in material and workmanship. Any material published or distributed by PREMIER containing descriptions, illustrations, drawings, tolerances, data, dimensions or weights regarding the Goods are given in good faith and are general descriptions only.  
7.2 The Customer acknowledges that PREMIER, its servants and agents have not made any other statement or representation, undertaking or warranty regarding the fitness or condition of the Goods or any such matter which is or might be relevant to the Customer purchasing the Goods.  
7.3 The Customer acknowledges that the Goods are sold on the basis that the Customer has obtained all necessary approvals, licences or permits under all relevant laws and regulations, in relation to the Goods.  
7.4 The Customer acknowledges that PREMIER is not responsible for any statement or representation, undertaking or warranty made or given by the Customer to third parties in relation to the Goods.  
7.5 Subject to this Clause, PREMIER will, on behalf of the Customer enforce any warranties and/or guarantees given by a third party manufacturer or supplier of the Goods. PREMIER's liability under a warranty claim is limited to the repair or replacement of the Goods that are defective under normal use and working conditions and which have not been altered, repaired or otherwise tampered with by a third party or the Customer.  
7.6 PREMIER will not be liable for any loss, other expense, inconvenience or consequential damages, loss of profits, loss of business opportunity, loss of anticipated savings, depletion of goodwill or damage to equipment or property occasioned by the Goods, or the failure of the Goods, their design or construction.  
7.7 Subject to all rights and remedies which are provided pursuant to legislation and which cannot be excluded, restricted or modified by agreement, all terms, conditions, warranties and representations (whenever made and whether expressed or implied by circumstances, legislation, common law or otherwise) not expressed in these Terms are hereby negated and excluded.

### **8. Claims**

- 8.1 Subject to clause 7, no claim regarding the state or condition of the Goods will be accepted by PREMIER unless it is received by PREMIER within 7 days of delivery and PREMIER is given reasonable opportunity to investigate the claim.  
8.2 Goods returned following acceptance of a claim to PREMIER, must be accompanied by the original invoice or delivery docket and must be in the original packaging.  
8.3 Any credit for goods returned is at the discretion of PREMIER.

### **9. Indemnity**

- 9.1 If the Customer:  
(a) defaults in the due payment of any moneys payable to PREMIER, whether under these Terms or otherwise; or  
(b) is in default in the performance of its obligations under these Terms or any other agreement between PREMIER and the Customer; or  
(c) commits any act of bankruptcy, enters into any composition or arrangement with its creditors or (in the case of a company) does any act which would render it liable to be wound up or a resolution passed or a petition is filed for the winding up of the Customer or if a receiver is appointed over all or any of its assets,  
PREMIER may, at its option, suspend or terminate the supply of any further Goods, and payment for Goods supplied up to the date of such suspension or termination and any other moneys payable pursuant to these Terms or any other agreement between the parties, will immediately become due and payable.

### **10. PPSA**

- 10.1 The Customer acknowledges that these Terms may constitute a PPSA security interest. PREMIER has not agreed to postpone the time for attachment of any security interest granted to PREMIER under these Terms.  
10.2 The Customer:  
(a) must at PREMIER's request, promptly execute any documents and do anything required to register PREMIER's security interest in the Goods on the PPSR;

- (b) must indemnify, and upon demand reimburse PREMIER for all expenses incurred in registering a financing statement on the PPSR;
  - (c) must keep full and complete records of the Goods;
  - (d) must not without the prior written consent of PREMIER, sell, lease, dispose of, create a security interest in, mortgage or part with possession of the Goods or any interest in them (or purport or attempt to purport to do such a thing) or permit any lien over the Goods;
  - (e) without limiting any other right PREMIER may have, must immediately return the Goods if requested to do so by PREMIER following non-payment of any amount owing by the Customer to PREMIER or following breach of any other obligation of the Customer to PREMIER;
  - (f) gives PREMIER the right to inspect the Goods or any part of them at all reasonable times;
  - (g) must not change its name, address or contact details without providing PREMIER prior written notice; and
  - (h) must not register a financing change statement or a change demand without the prior written consent of PREMIER.
- 10.3 So far as permitted by the PPSA, the Customer waives its right:
- (a) to receive a copy of any verification statement or financing change statement or a statement of account on sale of the Goods;
  - (b) to receive any notice required under the PPSA, including a notice that PREMIER intends to sell the Goods or to retain the Goods on enforcement of the security interest granted to PREMIER;
  - (c) to object to a proposal by PREMIER to retain the Goods in satisfaction of any obligation owed by the Customer to PREMIER;
  - (d) where any Goods become attached to other goods and are deemed an accession as defined in the PPSA, to not have any goods damaged when PREMIER removes the accession, to receive notice of removal of the accession and to apply to the court for an order concerning the removal of the accession, under the PPSA.
- 10.4 By submitting a Customer Order, entering into a PREMIER commercial credit application, or acceptance of delivery of Goods, the Customer acknowledges that it has entered into a security agreement as defined by the PPSA and that PREMIER may register its security interest on the PPSR.

#### **11. Customer Specifications**

- 11.1 The Price excludes any design costs incurred by PREMIER. PREMIER reserves the right to charge the customer for the costs incurred by PREMIER in relation to the provision of design services.
- 11.2 When calculating any amounts to be charged pursuant to clause 11.1, PREMIER will have regard to market rates for comparable design services.
- 11.3 Goods manufactured in accordance with Customer designs are done so at Customers risk and Customer indemnifies PREMIER from any third party claim for breach of intellectual property rights of that other party.

#### **12. Exclusion of Customer Conditions**

- 12.1 The placing of a Customer Order by the Customer with PREMIER for Goods includes the acceptance of these Terms as the sole basis of sale to the exclusion of any conditions of sale appearing on any document of the Customer.
- 12.2 These Terms will not be modified by any condition expressed in any document unless such modification is accepted in writing by PREMIER.

#### **13. Notices**

- 13.1 Any notice required under this agreement will be deemed effectively given if:
- (a) Mailed to the registered company or (if the recipient is not a company) last known principal place of business of the recipient, in which case notice will be deemed received 3 working days after mailing.
  - (b) Delivered by hand to the registered office or (if the recipient is not a company) last known principal place of business of the recipient.
  - (c) In the case of facsimile transmission, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the addressee.

#### **14. Privacy & Confidentiality**

- 14.1 The Privacy Act allows PREMIER to give a credit-reporting agency personal information contained in a credit application. Information which may be given includes particulars of the Customer's identity (including name, sex, date of birth, address, both current and previous, and in the case of an individual, driving licence number and employer's name).
- 14.2 The Customer consents to and authorises PREMIER:
- (a) to obtain information about the Customer's credit worthiness from its bank or any trade reference and/or any other credit provider and/or credit reporting agency; and
  - (b) to give a credit reporting agency information about the Customers credit.
- 14.3 Each party will keep information it receives under this contract concerning the other party in the strictest of confidence.

#### **15. General**

- 15.1 Unless the Quotation states that the Price is a lump sum, the Price in the Quotation is based on estimated quantities of Goods as applicable, and unless the Price is a lump sum, the Customer is liable to pay for the actual quantity of Goods necessary for PREMIER to perform its obligations. Other than with a lump sum price, any adjustment in the actual Price compared to the Quotation will reflect the increases or decreases of the Goods actually supplied or provided.
- 15.2 The Customer will not assign or transfer any of its benefits or obligations under these Terms.
- 15.3 If any provision of these Terms shall be void or unenforceable by reason of law, those provisions will be deleted and the remaining provisions of these Terms will continue in full force and effect.
- 15.4 These Terms and the Customer's order constitute the entire agreement between the parties.
- 15.5 These Terms and the contract that is created between the parties will be construed with, and governed in all respects by, the laws of New South Wales, Australia.