

VH Steels Pty Ltd Terms of Trade

1. Basis of Agreement

- (a) By purchasing products from our Website, signing an Application for Credit, or placing an Order, you are indicating that you accept these Terms of Trade and agree to be bound by these Terms of Trade.

2. General

- (a) These Terms of Trade apply to all transactions between the Customer and the Supplier relating to the provision of Goods and Services, including all quotations, contracts and variations.
- (b) These Terms of Trade take precedence over Terms of Trade contained in any document of the Customer or elsewhere.
- (c) The Supplier may amend any details in a Quote by notice in writing to the Customer. Such amended details supersede any relevant prior detail in dealings between the parties.
- (d) The Supplier may vary or amend these Terms at any time by written notice to you. Any variations or amendments will apply to any Orders placed after the date of the notice

3. Quotes

- (a) The Supplier may provide the Customer with a Quote. Any Quote issued by the Supplier is valid for 7 days from the date of issue, or a longer period at the discretion of the Supplier, subject to stock availability.
- (b) Unless otherwise expressly agreed in writing, a Quote does not include delivery of the Goods.
- (c) Quotes are based upon the cost of materials available at the time of preparation of the Quote and assume the timely supply by the Customer of necessary instructions to the Supplier.
- (d) Following provision of a Quote to the Customer, the Supplier is not obliged to release Goods until the Quote has been accepted by the Customer by completing an Order form and returning the form to the Supplier.
- (e) The Supplier reserves the right to amend any Quote before the Order has been completed to take into account any rise or fall in the cost of completing the Order. The Supplier will notify the Customer of any amendment as soon as practicable, at which point the amended Quote will be the estimate or Quote for the purposes of these Terms of Trade.
- (f) An indication in a Quote of the time frame for the provision of the Goods is an estimate only and is not a fixed time frame. Subject to any obligations in respect of consumer guarantees under the Australian Consumer Law, this estimate is not binding upon the Supplier.

4. Orders

- (a) Orders by the Customer for the provision of Goods or Services may be submitted verbally, online via the Supplier's Website, or in writing on the Supplier's standard Order form (unless otherwise agreed).
- (b) An Order will not be placed by the Customer unless the Order clearly identifies the Goods ordered. Any costs incurred by the Supplier in reliance on incorrect or inadequate information may result in the imposition of an Additional Charge.
- (c) Written Orders must be signed by an authorised representative of the Customer and must specify the required date of delivery.
- (d) Placement of an Order by the Customer signifies acceptance by the Customer of these Terms of Trade and the most recent Quote.
- (e) The Supplier may in its absolute discretion refuse to provide Goods where:
 - (i) Goods are unavailable for any reason whatsoever;
 - (ii) credit limits cannot be agreed upon or have been exceeded; or
 - (iii) payment for Goods or Services previously provided to the Customer or any related corporation of the Customer or to any other party who is, in the reasonable opinion of the Supplier, associated with the Customer under the same or another supply contract, has not been received by the Supplier.
- (f) An Order cannot be cancelled without the prior written consent of the Supplier. Where an Order is cancelled, the Customer indemnifies the Supplier against any Losses incurred by the Supplier as a result of the cancellation, including, but not limited to loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.
- (g) The Customer acknowledges that each Order for supply of Goods that is not paid in full prior to provision of the Goods constitutes a security agreement.
- (h) Unless otherwise agreed in writing, the price charged for the Goods shall be exclusive of any transaction tax such as GST or any new transaction taxes that come into existence after the effective date of the Order.

5. Variations

- (a) The Customer may request that its Order be varied by providing a request in writing to the Supplier. A request for a variation must be agreed to in writing by the Supplier in order to have effect.
- (b) If the Customer wishes to vary its requirements after a Quote has been prepared or after the placement of an Order, the Supplier reserves the right to vary the Quote to include any Additional Charge in respect of any extra costs incurred or additional work carried out due to the variation, in accordance with its then current charge rates. A revised Quote issued by the Supplier in respect of the requested variation supersedes the original Quote. If the revised Quote only specifies additional work, the Quote for that additional work will be in addition to the immediately preceding Quote for the Goods and/or Services.
- (c) The Supplier has an automatic extension of time for the provision of the Goods or Services equal to the delay caused by the variation.

6. Invoicing and payment

- (a) The Supplier may in its absolute discretion, issue an invoice to the Customer in any one or more of the following ways:
 - (i) prior to provision of the Goods, for an amount equal to the Quote and Additional Charges where the Supplier chooses to do so;
 - (ii) at the end of each week; or
 - (iii) upon completion of the provision of the Goods or Services or any time thereafter, for an amount equal to the Quote or the balance of the Quote outstanding, any Additional Charges and any amount not previously invoiced.
- (b) The amount payable in an invoice is as per the Quote and any Additional Charges.
- (c) The Customer must pay an invoice issued by the Supplier to the Supplier prior to the date for payment shown on a valid tax invoice, issued to the Customer (**Credit Period**).
- (d) If any invoice is due but unpaid, the Supplier may withhold the provision of any further Goods or Services until overdue amounts are paid in full.
- (e) The Supplier may in its complete discretion apply any payment received from the Customer to any amount owing by the Customer to the Supplier.
- (f) The Customer is not entitled to retain any money owing to the Supplier notwithstanding any default or alleged default by the Supplier of these Terms of Trade, including (but not limited to) the supply of allegedly faulty or defective Goods, provision of Services to an inadequate

standard or a delay in the provision of Goods or Services. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.

- (g) The Customer is to pay the Supplier on demand interest at the rate of 15% per annum on all overdue amounts owed by the Customer to the Supplier, calculated daily.
- (h) All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses of the Supplier, are to be paid by the Customer as a debt due and payable under the Terms of Trade.
- (i) The Customer and the Supplier agree to comply with their obligations in relation to Goods and Services Tax (GST) under the A New Tax System (Goods and Services Tax) Act 1999 and any other applicable legislation governing GST.

7. Additional Charges

- (a) The Supplier may require the Customer to pay Additional Charges in respect of Costs incurred by the Supplier as a result of reliance on inadequate or incorrect information or material provided by the Customer or information or material supplied later than required by the Supplier in order for it to provide the Goods or Services within the specified time frame (if any).
- (b) The imposition of Additional Charges may also occur as a result of cancellation by the Customer of an Order where cancellation results in Loss of the Supplier, storage costs for goods not collected from the Supplier, photocopying, communication costs, couriers, packing and handling, Government or council taxes or charges, additional work required by the Customer or any other occurrence which causes the Supplier to incur costs in respect of the Customer's Order additional to the quoted cost.

8. Acceptance of Goods

If the Customer fails to advise the Supplier in writing of any fault in Goods or failure of Goods to accord with the Customer's Order within 48 hours of delivery, the Customer is deemed to have accepted the Goods and to have accepted that the Goods are not faulty and accord with the Customer's Order. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.

9. Title and risk

- (a) Risk in Goods passes to the Customer immediately upon collection or delivery (including all risks associated with unloading) of the Goods.
- (b) Property in Goods supplied to the Customer pursuant to these Terms of Trade does not pass to the Customer until all money (including money owing in respect of other transactions between the Supplier and the Customer) due and payable to the Supplier by the Customer have been fully paid.
- (c) Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, the Customer:
 - (i) is a bailee of the Goods until property in them passes to the Customer;
 - (ii) irrevocably appoints the Supplier its attorney to do all acts and things necessary to ensure the retention of title to goods including the registration of any security interest in favour of the Supplier with respect to the Goods under applicable law;
 - (iii) must be able upon demand by the Supplier to separate and identify as belonging to the Supplier Goods supplied by the Supplier from other goods which are held by the Customer;
 - (iv) must not allow any person to have or acquire any security interest in the Goods;
 - (v) agrees that the Supplier may repossess the Goods if payment is not made within the Credit Period (or such longer time as the Supplier may, in its complete discretion, approve in writing) of the supply of the Goods; and
 - (vi) the Customer grants an irrevocable licence to the Supplier or its agent to enter the Customer's premises in order to recover possession of Goods pursuant to this paragraph. The Customer indemnifies the Supplier in respect of any damage to property or personal injury which occurs as a result of the Supplier entering the Customer's premises.
- (d) Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, and the Customer makes a new object from the Goods, whether finished or not, or the Customer mixes the Goods with other goods or the Goods become part of other goods (**New Goods**), the Customer agrees with the Supplier that the ownership of the New Goods immediately passes to the Supplier. The Customer will hold the New Goods on trust for the Supplier until payment of all sums owing to the Supplier whether under these Terms of Trade or any other contract have been made and the Supplier may require the Customer to store the New Goods in a manner that clearly shows the ownership of the Supplier.
- (e) For the avoidance of doubt, under paragraph (d), the ownership of the New Goods passes to the Supplier at the beginning of the operation or event by which the Goods are converted into, are mixed with or become part of other goods.
- (f) Notwithstanding paragraph (c) the Customer may transfer, sell or dispose of Goods, including New Goods, to a third party in the ordinary course of business provided that:
 - (i) where the Customer is paid by a third party in respect of Goods including New Goods, the Customer holds the whole of the proceeds of sale less any GST on trust for the Supplier - in a separate account - until all amounts owed by the Customer to the Supplier have been paid; or
 - (ii) where the Customer is not paid by a third party, the Customer agrees to assign all of its rights against the third party to the Supplier upon the Supplier giving the Customer notice in writing to that effect and for the purpose of giving effect to that assignment the Customer irrevocably appoints the Supplier as its attorney.
- (g) Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, the Customer acknowledges that the Supplier has a right to register and perfect a personal property security interest.

10. Security Interest

- (a) The Customer grants to the Supplier a security interest in the Goods to secure payment of the amount payable to the Supplier. This security interest:
 - (i) extends to and continues in all proceeds and New Goods;
 - (ii) is a purchase money security interest to the extent to which it secures payment of that party of the outstanding amount payable to the Supplier.
- (b) If:
 - (i) a PPS Law applies or commences to apply to these Terms of Trade or any transaction contemplated by them; and
 - (ii) in the Supplier's opinion, the PPS Law enables or would enable the Supplier's security position to be improved without adversely affecting the Customer,the Supplier may give notice to the Customer requiring the Customer to do anything (including amending these Terms of Trade or execute any new Terms and Conditions) that in the Supplier's opinion is necessary, to the maximum possible extent, to overcome the circumstances contemplated in paragraph (ii)(A) or improve the security position.

11. Agency and assignment

- (a) The Customer agrees that the Supplier may at any time appoint or engage an agent to perform an obligation of the Supplier arising out of or pursuant to these Terms of Trade.

- (b) The Supplier has the right to assign and transfer to any person all or any of its title, estate, interest, benefit, rights, duties and obligations arising in, under or from these Terms of Trade provided that the assignee agrees to assume any duties and obligations of the Supplier owed to the Customer under these Terms of Trade.
- (c) The Customer is not to assign, or purport to assign, any of its obligations or rights under these Terms of Trade without the prior written consent of the Supplier.

12. Default by Customer

- (a) Each of the following occurrences constitutes an event of default:
 - (i) the Customer breaches or is alleged to have breached these Terms of Trade for any reason (including, but not limited to, defaulting on any payment due under these Terms of Trade);
 - (ii) the Customer, being a natural person, commits an act of bankruptcy;
 - (iii) the Customer, being a corporation, is subject to:
 - (A) a petition being presented, an order being made or a meeting being called to consider a resolution for the Customer to be wound up, deregistered or dissolved;
 - (B) a receiver, receiver and manager or an administrator under Part 5.3A of the Corporations Act 2001 being appointed to all or any part of the Customer's property and undertaking;
 - (C) the entering of a scheme of arrangement (other than for the purpose of restructuring);
 - (D) any assignment for the benefit of creditors;
 - (iv) the Customer purports to assign its rights under these Terms of Trade without the Supplier's prior written consent;
 - (v) the Customer ceases or threatens to cease conduct of its business in the normal manner.
- (b) Where an event of default occurs, except where payment in full has been received by the Supplier, the Supplier may:
 - (i) terminate these Terms of Trade;
 - (ii) terminate any or all Orders and credit arrangements (if any) with the Customer;
 - (iii) refuse to deliver Goods or provide further Services;
 - (iv) pursuant to clause 9(c), repossess and re-sell any Goods delivered to the Customer, the payment for which has not been received; or
 - (v) retain (where applicable) all money paid on account of Goods or Services or otherwise.
- (c) In addition to any action permitted to be taken by the Supplier under paragraph (b), on the occurrence of an event of default all invoices will become immediately due and payable.

13. Exclusions and limitation of liability

- (a) The Customer expressly agrees that use of the Goods and Services is at the Customer's risk. To the full extent allowed by law, the Supplier's liability for breach of any term implied into these Terms of Trade by any law is excluded.
- (b) All information, specifications and samples provided by the Supplier in relation to the Goods or Services are approximations only and, subject to any guarantees under the Australian Consumer Law, small deviations or slight variations from them which do not substantially affect the Customer's use of the Goods or Services will not entitle the Customer to reject the Goods upon delivery, or to make any claim in respect of them.
- (c) The Supplier gives no warranty in relation to the Services provided or supplied. Under no circumstances is the Supplier or any of its suppliers liable or responsible in any way to the Customer or any other person for any loss, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues), as a result, direct or indirect of any defect, deficiency or discrepancy in the Goods or Services including in their form, content and timeliness of deliveries, failure of performance, error, omission, defect, including, without limitation, for and in relation to any of the following:
 - (i) any Goods or Services supplied to the Customer;
 - (ii) any delay in supply of the Goods or Services; or
 - (iii) any failure to supply the Goods or Services.
- (d) Any advice, recommendation, information, assistance or service given by the Supplier in relation to Goods and/or Services is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty or accuracy, appropriateness or reliability. The Supplier does not accept any liability or responsibility for any Loss suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.
- (e) The Australian Consumer Law may give to the Customer certain guarantees. Where liability for breach of any such guarantee can be limited, the Supplier's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of Goods, to the replacement or repair of the Goods or the costs of resupply or replacement of the Goods or with respect to Services to the supply of Services again or cost of re-supplying the Services again.

14. Indemnity

- (a) The Customer indemnifies and keeps indemnified the Supplier, its servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Customer) against the Supplier or, for which the Supplier is liable, in connection with any Loss arising from or incidental to the provision of Goods or Services, any Order or the subject matter of these Terms of Trade including, but not limited to any legal costs incurred by the Supplier in relation to meeting any claim or demand or any party/party legal casts for which the Supplier is liable in connection with any such claim or demand. This provision remains in force after the termination of these Terms of Trade.

15. Force majeure

- (a) If circumstances beyond the Supplier's control prevent or hinder its provision of the Goods or Services, the Supplier is free from any obligation to provide the Goods or Services while those circumstances continue. The Supplier may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.
- (b) Circumstances beyond the Supplier's control include, but are not limited to, unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war, acts of God, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

16. Privacy

- (a) Where the Customer provides the Supplier with personal information (as defined in the Privacy Act 1988) about any individual (including the Customer where applicable), the Customer must have that individual's consent.
- (b) The Supplier may collect, use and disclose that personal information for purposes relating to an Order and to the Customers credit application.
- (c) The Customer consents to the Supplier conducting lawful credit and reference checks.
- (d) The Supplier may provide marketing communications to the Customer by email and other means on an ongoing basis unless the Customer opts out by contacting the Supplier.
- (e) The Supplier will not retain your credit card details or banking information. All credit card details provided will be deleted or destroyed once

payment is processed.

- (f) The privacy policy of our debit services provider can be viewed at www.bankofmelbourne.com.au. By placing an Order you are indicating that you have read the privacy policy of our debit services provider and agree to its terms.

17. Other matters

- (a) These Terms of Trade are governed by the laws of Victoria and each party irrevocably submits to the non-exclusive jurisdiction of the courts of such state.
- (b) These Terms of Trade and any Quotes and written variations agreed to in writing by the Supplier represent the whole agreement between the parties relating to the subject matter of these terms.
- (c) These Terms of Trade supersede all oral and written negotiations and communications by and on behalf of either of the parties.
- (d) In entering into these Terms of Trade, the Customer has not relied on any warranty, representation or statement, whether oral or written, made by the Supplier or any of its employees or agents relating to or in connection with the subject matter of these Terms of Trade.
- (e) If any provision of these Terms of Trade at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.
- (f) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

