

TERMS AND CONDITIONS

Payment terms

1. The terms of payment are strictly thirty (30) days (or such other period as nominated by the supplier herein) from the end of month of invoice and payment is due and payable on that date. The Phoenix Unit Trust trading as Phoenix Steel Sales Pty Ltd and its related bodies corporate (as that term is defined in the *Corporations Act 2001 (Supplier)*) may, at any time, unilaterally vary the terms of trade in its absolute and unfettered discretion. Credit card payments will attract a surcharge of 1.5%.
2. Should the Applicant not pay for the goods or services supplied by the Supplier in accordance with the credit terms as provided herein, or as agreed in writing by the Supplier from time to time, the Supplier shall be entitled to charge an administration fee of 10% of the amount of the invoice payable per year, or part thereof, from the date the goods or services were supplied (and not the day when the Supplier's invoice was payable) until payment by the Applicant.

Jurisdiction

3. The Applicant acknowledges and agrees that this agreement shall be governed by the laws of Western Australia, and the laws of the Commonwealth of Australia which are in force in Western Australia.
4. The Applicant acknowledges and agrees that any contract for the supply of goods or services between the Supplier and the Applicant is formed at the address of the Supplier.
5. The parties to this agreement submit to the non-exclusive jurisdiction of the courts of Western Australia and the relevant federal courts and courts competent to hear appeals from those courts.

Security/charges

6. The Applicant charges in favour of the Supplier all of its estate and interest in any real property that the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.
7. The Applicant charges in favour of the Supplier all of its estate and interest in any personal property that the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.
8. The Applicant appoints as its duly constituted attorney the Supplier's company secretary from time to time to execute in the Applicant's name and as the Applicant's act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Applicant may own in any Land Titles Office in any state or territory of Australia, even though the Applicant may not have defaulted in carrying out its obligations hereunder.

Purpose of credit

9. The Applicant acknowledges and agrees that the credit to be provided to the Applicant by the Supplier is to be applied wholly or predominantly for commercial purposes.
10. The credit facilities provided by the Supplier are not transferable by the Applicant without the prior written consent of the Supplier. The Supplier may assign this agreement to another party without prior notice to the Applicant. The Supplier will give the Applicant notice when the assignment has been effected.

Formation of contract

11. Quotations made by the Supplier shall not be construed as an offer or obligation to supply in accordance with the quotation. The Supplier reserves the right to accept or reject, at its discretion, any offer to purchase received by it. Only written acceptance by the Supplier of the Applicant's offer shall complete a contract.
12. Placement of an order, either verbally or in writing, shall imply acceptance of the Supplier's offer and of these terms and conditions.

Delivery / Provision of Goods

13. Even though the Applicant may:
 - (a) specify the quantity of Goods ordered;
 - (b) a delivery date; or
 - (c) both of the abovein the Order, the Supplier is not bound to deliver that quantity on the delivery date so specified in the Order.
14. Upon delivery, the Applicant must unload the Goods ordered from the Supplier's delivery vehicle.
15. The Supplier may deliver only a portion of the quantity of Goods ordered and may invoice the Applicant for that portion, unless the parties agree otherwise in writing.
16. The Applicant may not refuse to accept delivery of particular Goods on the grounds that the Supplier:
 - (a) has delivered only a portion of the quantity of Goods ordered to the Applicant; or
 - (b) was late in delivering the Goods to the Applicant.
17. If the Supplier fails to deliver any portion of the quantity of the Goods ordered by the delivery date specified in the Order, then the Applicant may cancel the Order relating to Goods if the Applicant notifies the Supplier of the cancellation of the Order in writing:
 - (a) before the Supplier delivers the Goods to the Applicant; and
 - (b) no later than:
 - (i) 7 days after placing that Order with the Supplier; or
 - (ii) such longer time as the Supplier and the Applicant may agree from time to time;unless notified in writing by the Applicant, all Goods will be delivered to the address on the Applicant's Order.
18. The Supplier agrees to use all reasonable endeavours to:
 - (a) deliver all of the Goods ordered by the Applicant by the delivery date specified; and
 - (b) provide any Services requested by the Applicant on the date or dates requested by the Applicant in the Order.
19. The Supplier may charge a storage fee for Goods ordered by the Applicant which is ready for delivery but held by the Supplier as a result of the Applicant's:
 - (a) request; or
 - (b) refusal to accept Goods.
20. The Supplier will not be liable for any Loss incurred or suffered by the Applicant as a result of any delay in delivery of Goods or the provision of Services.

Special Orders

21. This clause:
 - (a) overrides any other provision in these Conditions to the extent of any inconsistency; and

(b) applies if:

- (i) the Applicant requests the Supplier to manufacture Goods; and
- (ii) plans and specifications for Goods are supplied by the Applicant for this purpose; and
- (iii) there is no specific agreement between the Applicant and the Supplier relating to the supply of Goods.

22. The Supplier will manufacture Goods according to the Applicant's plans and specifications.
23. The Applicant warrants that it holds the relevant copyright and/or patent in the plans and specifications and will indemnify the Supplier for any liability in any action for breach of copyright and/or patent asserted by any party against them.
24. The Supplier's liability for Goods manufactured to the Applicant's plans and specifications is limited to:
 - (a) defects in workmanship; and
 - (b) replacement of the Goods manufactured.
25. The Supplier makes no warranties as to the:
 - (a) engineering integrity of the plans and specifications; or
 - (b) fitness of the Goods for the Applicant's intended purpose.

Retention of title

26. Whilst the Applicant has not paid for the goods supplied in full at any time, the Applicant agrees that property and title in the goods shall not pass to the Applicant and the Supplier retains the legal and equitable title in those goods supplied and not yet sold.
27. Until payment in full has been made to the Supplier, the Applicant will hold the goods in a fiduciary capacity for the Supplier and agrees to store the goods in such a manner that they can be identified as the property of the Supplier, and shall not mix the goods with other similar goods.
28. The Applicant shall be entitled to sell the goods in the ordinary course of its business, but until full payment for the goods has been made to the Supplier, the Applicant shall sell as agent and bailee for the Supplier and the proceeds of sale of the goods shall be held by the Applicant on trust for the Supplier absolutely.
29. The Applicant's indebtedness to the Supplier, whether in full or in part, shall not be discharged by the operation of clause 28 hereof unless and until the funds held on trust are remitted to the Supplier.
30. The Applicant agrees that whilst property and title in the goods remains with the Supplier, the Supplier has the right, with or without prior notice to the Applicant, to enter upon any premises occupied by the Applicant (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Applicant) to inspect the goods of the Supplier and to repossess the goods which may be in the Applicant's possession, custody or control when payment is overdue.
31. The Applicant will be responsible for the Supplier's costs and expenses in exercising its rights under clause 30. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Applicant against the Supplier, its employees, servants or agents.
32. The Applicant agrees that where the goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the goods, and if necessary, sell the goods with the trademark or name of the Applicant on those goods, and the Applicant hereby grants an irrevocable licence to the Supplier to do all things necessary to sell the goods bearing the name or trademark of the Applicant.
33. For the avoidance of doubt, the Supplier's interest constitutes a 'purchase money security interest' pursuant to the *Personal Property Securities Act 2009*.

Cancellation of terms of credit

34. The Supplier reserves the right to withdraw credit at any time, whether the Applicant is in default under the terms of this agreement or not.
35. Upon cancellation with or without notice all liabilities incurred by the Applicant become immediately due and payable to the Supplier.

Additional Charges

36. The Supplier may charge the Applicant for any costs, expenses or charges incurred by them as a result of:
 - (a) vehicle or wagon detention may caused or contributed to by the Supplier;
 - (b) damage on ships caused by any act or omission of the Applicant; or
 - (c) any special requirements or stipulations of the Applicant accepted by the Supplier but not provided for in these Conditions.

Indemnity

37. The Applicant agrees to indemnify the Supplier and keep the Supplier indemnified against any claim. This indemnity includes any legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.

Supplier's Warranties and Indemnities

38. The warranties implied by the provisions of the *Sale of Goods Act 1895* are expressly excluded from the operation of these Conditions.
39. Subject to Clause 40, the Supplier will repair or replace any part of the Goods which are in its opinion, defective upon the following conditions:
 - (a) the defect arises as a result of any structural fault or defect in the materials used in the manufacture of that item;
 - (b) the alleged defect is not occasioned by the neglect or abuse of the item in question;
 - (c) the alleged defect does not include fading or aging of any material used in the item's construction.
40. The Applicant is responsible for inspecting the Goods upon delivery and if the Goods are not to the satisfaction of the Applicant, then:
 - (a) written notice by the Applicant specifying the alleged defects must be received by the Supplier within 7 days of delivery; and
 - (b) Goods shall be left in the same condition as when they were delivered until the Supplier or its authorised agent has inspected the Goods otherwise the Applicant is deemed to have accepted the Goods and liable for full payment; and
 - (c) the Supplier shall arrange inspection of the Goods within a reasonable time of receiving the written notice.
41. The Supplier will honour any warranty given by a manufacturer of the Goods.

42. If there is no manufacturer's warranty for the Goods, then the Supplier will provide its own warranty, as limited by defects contemplated by clause 39(a) to (c) above and for a period as stated on any sale note.

Provision of further information

43. The Applicant undertakes to comply with any request by the Supplier to provide further information for the purpose of assessing the Applicant's creditworthiness, including an updated credit application.

44. If the Applicant is a corporation (with the exception of a public listed company), it must advise the Supplier of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders the Supplier may ask for new guarantors to sign a guarantee and indemnity.

Corporations

45. If the Applicant is a corporation, the Applicant warrants that all of its directors have signed this agreement and that all of its directors will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.

Trustee capacity

46. If the Applicant is the trustee of a trust (whether disclosed to the Supplier or not), the Applicant warrants to the Supplier that:

- (a) the Applicant enters into this agreement in both its capacity as trustee and in its personal capacity;
- (b) the Applicant has the right to be indemnified out of trust assets;
- (c) the Applicant has the power under the trust deed to sign this agreement; and
- (d) the Applicant will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier.

47. The Applicant must give the Supplier a copy of the trust deed upon request.

Partnership

48. If the Applicant enters into this agreement as partners, the Applicant warrants that all of the partners have signed this agreement and that all of the partners will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.

49. If the Applicant is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier. In the case of a change of partners, the Supplier may ask for new guarantors to sign a guarantee and indemnity.

Insolvency

50. If the Applicant becomes insolvent, the Applicant remains liable under this agreement for payment of all liabilities incurred hereunder. The Applicant remains liable under this agreement even if the Supplier receives a dividend or payment as a result of the Applicant being insolvent.

Waiver

51. A waiver of any provision or breach of this agreement by the Supplier must be made by an authorised officer of the Supplier in writing. A waiver of any provision or breach of this agreement by the Applicant must be made by the Applicant's authorised officer in writing.

Costs

52. The Applicant must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Applicant. The Applicant must also pay for all stamp duty and other taxes payable on this agreement (if any).

53. The Applicant will pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Applicant, including debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Applicant to the Supplier irrespective of whether pursuit of the recovery action, claim or remedy is successful.

Taxes and duty

54. The Applicant must pay GST on any taxable supply made by the Supplier to the Applicant under this agreement. The payment of GST is in addition to any other consideration payable by the Applicant for a taxable supply.

55. If as a result of:
- (a) any legislation becoming applicable to the subject matter of this agreement; or

- (b) any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;

the Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Applicant, then the Applicant must pay the Supplier these additional amounts on demand.

Interest rates

56. The interest rate on any outstanding debts is a fixed rate of 15% per annum.

Set-off

57. All payments required to be made by the Applicant under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding.

58. Any amount due to the Supplier from time to time may be deducted from any monies which may be or may become payable to the Applicant by the Supplier.

Miscellaneous

59. The Supplier is not liable for any loss caused to the Applicant by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other activity beyond the Supplier's control.

60. In relation to the supply of goods, the Supplier's liability is limited to:

- (a) replacing the goods or supplying similar goods;
- (b) repairing the goods;
- (c) providing the cost for replacing the goods or for acquiring equivalent goods; and
- (d) providing the cost for having the goods repaired.

61. In relation to the supply of services, the Supplier's liability is limited to:

- (a) supplying the service again; or
- (b) providing for the cost of having the services supplied again.

62. The Supplier is not liable, whether claims are made or not, for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Applicant.

Severance

63. If any provision of this agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.

64. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

Variation

65. The Applicant agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of the Supplier at any time by written notice to the Applicant.

66. Any proposed variation to these terms and conditions by the Applicant must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.

Consent to register

67. The Applicant hereby consents to the Supplier recording the details of this Agreement on the Personal Property Securities Register and agrees to do all things necessary and reasonably required by the Supplier to effect such registration.

Entire agreement

68. This agreement constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.

Privacy Act

69. The Applicant agrees to the terms of the *Privacy Act 1988* authorisation contained in this document.

The Applicant hereby applies for the opening of an account and provides the above information in support thereof.

I am/We are authorised to sign this credit application form on behalf of the Applicant and the information given is true and correct to the best of my/our knowledge.

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|---------------------|--|-----------------------------|--|
| Name (print) | | Witness name (print) | |
| Signature | | Signature | |
| Position | | Date | |
| Date | | | |
| Name (print) | | Witness name (print) | |
| Signature | | Signature | |
| Position | | Date | |
| Date | | | |