

ONESTEEL NZ STANDARD TERMS AND CONDITIONS OF SALE

Effective 1st November 2004

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 Acknowledgement and, for the avoidance of doubt, includes these Terms and Conditions, the Order Acknowledgement and any related verbal agreement (if applicable), themselves, together with any and every invoice or other document evidencing or describing, whether by item or kind or otherwise, any Goods;
- (c) "**Customer**" means the person placing the Order with OneSteel;
- (d) "**Goods**" means any steel, aluminium, bar sections, building products, fittings, pilings, pipe and tube, plate, railway track products, reinforcing steels, sheet and coil, structural sections, valves, wire products or manufactured steel products to be supplied to the Customer by OneSteel and, for the avoidance of doubt, in each case includes all such goods and property so supplied:
 - (i) whether or not described by item or kind that enables them to be identified;
 - (ii) which are or comprise inventory of the Customer;
- (e) "**GST**" means goods and services tax payable under the Goods and Services Tax Act 1985.
- (f) "**OneSteel**" means the related companies (within the meaning of section 2(3) of the Companies Act 1993) of OneSteel Limited (ABN 63 004 410 833) and for each Contract means the company in this business division that issues an Order Acknowledgement;
- (g) "**Order**" means an order or an offer to purchase can be made by the Customer in writing or verbally ;
- (h) "**Order Acknowledgement**" notification given to the Customer by OneSteel acknowledging an Order in writing, or if writing is not received, acknowledgement verbally. ;
- (i) unless otherwise stated, an expression used or defined in the Companies Act 1993 has the same meaning in the Terms and Conditions.

1. **Orders, Order Acknowledgements and Contract**

- (a) An Order is accepted when the Customer receives from OneSteel an Order Acknowledgement or delivery, whichever first occurs;
- (b) Previous dealings between OneSteel and the Customer shall not have any effect on the Contract or its interpretation;
- (c) Trade custom and/or trade usage is superseded by the Contract and shall not be applicable in the interpretation of the Contract;

2. Continuity Provisions

The Contract forms the basis on which OneSteel supplies and sells Goods to the Customer. Each such supply and sale shall be effected pursuant to the terms of the Contract (unless in any specific case agreed otherwise in writing). All prior negotiations, proposals and correspondence are superseded by the Contract and the Contract will, in all circumstances, prevail over the Customer's terms and conditions of purchase (if any). Any invoice or other document evidencing or describing any Goods is incorporated into and forms part of the Contract.

3. Prices

- (a) Unless otherwise agreed in writing, the price charged for the Goods shall be
 - (i) exclusive of any transaction tax ("**transaction tax**" includes GST as well as any identified or new transaction tax 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 Acknowledgement 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.

4. 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) 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.

5. Standard Grades of Material

- (a) Subject to clause 6(b), OneSteel will use its reasonable endeavours to:
 - (i) supply Goods having the grade of material specified in the Order Acknowledgement; and

- (ii) ensure that the Goods' grade of material as specified in the Order Acknowledgement 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) Goods supplied which are not manufactured by OneSteel (or to the extent that they are not manufactured by OneSteel) are subject to the chemical composition, physical properties and product standards of the original manufacturer, and by such warranty as specified by the original manufacturer (if any), and OneSteel does not, unless specifically required by law, give any warranty beyond such warranty.

6. **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 One Steel on any statement of account or invoice. 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.

7. **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 One Steel, 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 paragraph 9(c). The Customer if required, shall deliver the Goods up to OneSteel.
- (d) If the Customer defaults, in addition to clause 10(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 paragraph 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.

8. **Default**

- (a) The Customer will be in default if:
- (i) the Customer breaches the Terms and Conditions;
 - (ii) payment for the Goods has not been received by OneSteel by the due date of payment;
 - (iii) the Customer being an individual commits an act of bankruptcy or becomes an insolvent under administration;
 - (iv) the Customer being a body corporate becomes an externally-administered body corporate or has an application for winding up filed against it;
 - (v) OneSteel forms the opinion that the Customer's credit worthiness or credit standing alters from that indicated in its Application;
- (b) If the Customer defaults, OneSteel 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) refuse to supply any Goods to the Customer; and/or
 - (iii) claim the return of any Goods in the Customer's possession where title has not passed to the Customer; and/or
 - (iv) without notice to the Customer withdraw or vary any credit OneSteel has provided to the Customer; and/or
 - (v) without notice to the Customer make all monies owing by the Customer to OneSteel on any account immediately due and payable.
- (c) At any time after a default occurs, OneSteel may (whether or not OneSteel has exercised any other right) appoint any person to be a receiver of all or any of the Goods. In addition to, and without limiting or affecting any other powers and authorities conferred on a receiver (whether under the Receiverships Act 1993 or at law or otherwise), a receiver has the power to do all things in relation to the Goods as if the receiver has absolute ownership of the Goods.

9. **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. The Customer is still required to pay OneSteel for Goods already delivered and for Goods manufactured or ordered to specification and not yet delivered

10. **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.
- (e) The Customer agrees that if requested by OneSteel the Customer will:
 - (i) 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;
 - (ii) execute a mortgage or other instrument of security in form requested by OneSteel.

11. **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 paragraph) or the use or disclosure is required by law.

12. **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 because of:

- (a) circumstances outside OneSteel's control;
- (b) failure of OneSteel's machinery; or
- (c) failure of a supplier to OneSteel.

13. **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 (where implied or otherwise) are hereby excluded to the maximum extent permitted by law.
- (b) The Customer agrees that 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.

14. **Limitation of Liability**

- (a) Subject to clause 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 for contract, tort (including negligence), under statute, in equity or otherwise shall be as follows:
- (i) if OneSteel is in breach of a Contract OneSteel's liability is strictly limited to:
 - (aa) for goods, products or materials the cost of replacement of the defective Goods as soon as reasonably practicable, or the repair of the defective Goods or the repayment (or allowance) of the invoice price of the defective Goods at the option of OneSteel;
 - (bb) for services, to the provision of the services again or payment of the cost of having the relevant services provided again at the option of OneSteel;
 - (ii) OneSteel's liability for breach of a Contract does not extend beyond the defective Goods to any other Goods that are part of an Order or otherwise;
 - (iii) where loss or damage is not covered by subparagraph 13(a)(i), OneSteel is not liable to the Customer under statute, in equity or in tort (including negligence or otherwise) for any loss or damage to person or property arising from or caused in any way by the Goods;
 - (iv) 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;
 - (v) "indirect, special or consequential loss or damage" includes
 - (aa) any loss of income, profit or business;
 - (bb) any loss of goodwill or reputation;
 - (cc) any loss of value of intellectual property.
- (b) Any claim by the Customer in respect of defective Goods and/or damaged Goods must be made in writing within 14 days of the delivery of the Goods.
- (c) OneSteel's obligations in the event of paragraph 13(a) applying do not include:
- (i) the cost of removal of defective Goods whether installed or otherwise;
 - (ii) the cost of installation of replacement for defective Goods;
 - (iii) defects in Goods caused by improper installation or maintenance of Goods or related components or normal wear and tear and damage.

15. **Waiver**

OneSteel 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.

16. **Severance**

If a provision of a Contract would, but for this clause, be unenforceable:

- (a) the provision must be read down to the extent necessary to avoid that result;
- (b) 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.

17. **Variation**

OneSteel may vary the Terms and Conditions without notice to the Customer.

18. **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.

19. **Applicable Law**

This document is governed by the law of New Zealand and the courts of New Zealand have non-exclusive jurisdiction in connection with this document. To the extent permissible by law, any legislation relating to the Vienna Convention does not apply to the Contract.

20. **OneSteel may Assign**

Without notice to the Customer, OneSteel may assign to any person this document and any Contract.

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:
 - (i) written notice of any error within 14 days of delivery;
 - (ii) 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 uploading. 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.

23. Steel reinforcing products

If the Goods are steel reinforcing products supplied by OneSteel Trading Pty Ltd or OneSteel Reinforcing Pty Ltd (or their subsidiaries) then:

- (a) Generally, the steel mass supplied will be within the tolerances permitted by Australian AS1302, AS1303, AS1304, AS4671, AS3600, AS2870, AS2327 and AS1100.
- (b) When calculating the mass of the steel reinforcing products, OneSteel will make calculations on a per metre basis in accordance with AS1302 and AS4671. OneSteel will add a margin of 2.5% onto the calculated mass to cover rolling variations and other costs.
- (c) Calculations with respect to length shall be made in accordance with AS1100 Part 501.

24. Consumer Goods Act

The Customer warrants that it is acquiring the Goods for business purposes and the Customer agrees that the Consumer Guarantees Act 1993 does not apply to the supply of Goods evidenced by the Contract.

25. Conflict

These Terms and Conditions are paramount, and, to the extent that there is any conflict between any provision of them and any invoice or other document evidencing or describing any Goods, the Terms and Conditions will prevail. Further, if there is any other document or arrangement which conflicts with the Contract, the Contract shall prevail.