

# BJR PROCESSING PTY. LTD. T/A STEELPRO

## TERMS AND CONDITIONS OF SUPPLY

### 1. APPLICATIONS OF THESE TERMS AND CONDITIONS

For the purpose of this agreement "Steelpro" is BJR PROCESSING PTY. LTD. - ABN 47 258 612 969 and the "Buyer" is the business named on the quotation and/or credit account or work authorisation; "Goods" means steel fabrication, processing equipment, labour, material/product supply of any kind, services, as specified in the Purchase Order; "Purchase Order" means the document issued by the Buyer to Steelpro for the order of Goods and includes any specifications, drawings or other documents. "Contract" means Steelpro's accepted quotation or work authorisation.

### 2. QUOTATIONS

A quotation shall remain in force as a basis for placing orders with Steelpro for seven (7) days from the date of the quotation, unless otherwise stated on the Quotation.

### 3. CONTRACT

#### 3.1 Acceptance

Steelpro will not be obligated to proceed until an official purchase order is issued by the Buyer and all details pertaining to the Contract have been received by Steelpro.

#### 3.2 Price

The price/s quoted is/are based on the current costs of labour, materials, bank rate of exchange for demand drafts, freight, insurance (including war risk), customs duty and all other costs prevailing at the date of the Contract. Any rise in such costs and any additional tariffs, landing charges, dues, duties, taxes and other Government impositions incurred by Steelpro whether on an affective hourly rate or otherwise between the date of the Contract and the date of delivery shall be payable by the Buyer. Steelpro's calculations of increase in price due to any of the forgoing shall be conclusive.

#### 3.3 Sales Tax/GST

Neither Sales Tax nor GST is included in the quoted price. Any such tax that is applicable will be added to the quoted price. GST inclusive prices will be explicitly stated in writing, no other exemptions apply.

#### 3.4 Liquidated Damages

No liquidated damages will be accepted unless otherwise stated in writing in the Contract.

### 4. DESCRIPTIVE DATA

All illustrations, drawings, catalogues advertisements etc. accompanying Steelpro's quotation or work authorisation must be regarded as informative only and are not part of the Contract unless otherwise stipulated in the quotation or work authorisation. All weights, measurement, powers, capacities and other particulars specified in these illustrations and drawings etc. are stated in good faith but inaccuracies shall not vitiate the Contract or be made the basis of any claim against Steelpro nor justify rejection.

### 5. BUYER'S SPECIFICATIONS

5.1 The Buyer shall, on request, furnish free of charge to Steelpro three (3) copies of all specifications, drawings and other information specified to be supplied by the Buyer or which may be reasonably required for the execution of the Contract.

5.2 The Buyer shall be responsible for, and shall pay the costs of all alterations to the work or delays in execution of the work arising from discrepancies, errors or omissions or delay in providing such specifications, drawing and other information.

### 6. INSTRUCTIONS

Insofar as these conditions require that instructions be given in writing or that information be provided, the Buyer and Steelpro agree that all the terms and conditions of the Contract are set out herein and that Steelpro shall not be

bound to carry out any oral instructions given or alleged to have been given to any agent or representative of Steelpro.

### 7. COPYRIGHT AND MANUFACTURING DATA

Any proprietary products sold, produced or otherwise handled by Steelpro are covered by various patents, design copyright and licensing agreements. In order to protect Steelpro's intellectual property, Steelpro will not release to the Buyer any details which may be used to copy these aforementioned products. Information relating to geometric proportions, material specifications, manufacturing drawings, check sheets that include dimensional tolerances, Calculations, formulae and Steelpro's proprietary software will not be provided. All of the above restricted information is available for the Buyer's inspection in Steelpro's Darra office, where deemed appropriate by an authorised agent of Steelpro. Copies of this information will not be provided. Ownership of Copyright and intellectual property will at all times remain exclusively with Steelpro.

### 8. CONFIDENTIALITY

8.1 Steelpro's Quotation/Work Authorisation may contain information and/or concepts which are confidential to Steelpro. The information contained in any Quotation/Work Authorisation must be kept strictly confidential and used only for the purpose of evaluating Steelpro's proposal. Disclosure of any such confidential information to any third party or other use of such information without Steelpro's express written permission is strictly prohibited.

8.2 The Buyer acknowledges that copies of information, drawings, concepts or samples provided to Steelpro may be provided to third parties for the purpose of review, evaluation, Quotation or Production. While all reasonable steps will be taken to maintain confidentiality Steelpro accepts no responsibility or liability in this regard. In providing the aforementioned articles to Steelpro, The Buyer indemnifies Steelpro from any and all penalties resulting from loss of confidentiality.

### 9. PAYMENT

#### 9.1 Time for Payment

##### (a) Account Customers

Payment terms apply strictly from date of Steelpro's invoice and all invoices shall be payable not more than thirty (30) or sixty (60) days, as stated on Steelpro's issued invoice, from the date thereof without deduction.

##### (b) Cash On Delivery (C.O.D.) Customers

Payment terms shall be in full as per Steelpro's issued invoice prior to receipt of any Contracted items by The Buyer. Steelpro reserves the right to require payment of the Contract in full or in part as a condition of commencement of works as stated in the Contract.

#### 9.2 Progress Payments

During the progress of the Contract Steelpro may submit from time to time to the Buyer a statement showing the value of work done and/or materials purchased for the Contract and the Buyer shall make a progress payment to Steelpro, as specified on Steelpro's issued invoice, of each such statement.

#### 9.3 Cancellation

Steelpro's acceptance at the Buyer's request of the cancellation of any order or part thereof implies the Buyer's agreement to the payment of a cancellation charge covering all material purchased for and all work whether productive or non-productive on the product or tools for it, carried out in connection with the order plus an amount for indirect costs and profit. Steelpro's account shall be conclusive as to the amount payable. Payment must be made within seven (7) days of receipt of Steelpro's invoice.

#### 9.4 Interest

Steelpro may charge interest at the overdraft rate of their bank (calculated on a daily basis) on amounts not paid within the time specified on Steelpro's invoice to the Buyer.

#### 9.5 Damages

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The Buyer must pay Steelpro any costs, expenses or losses incurred by Steelpro as a result of the Buyer's failure to pay Steelpro all sums outstanding as owed by the Buyer to Steelpro including without limiting the generality of the forgoing any debt collection and legal costs incurred in enforcing payment on a solicitor and own client basis.

### 10. IMPORT LICENSE

If an Import License is necessary to obtain admission into the country of destination of the Goods quoted the procurement shall be arranged by and at the cost of the Buyer who will also make the necessary arrangements for remission of funds to Australia.

### 11. SUSPENSION OF WORK

In the event of the suspension of work on the Buyer's instructions or lack of instructions, the Contract price may be increased by Steelpro to cover any extra expense thereby incurred and Steelpro's calculation of such increase shall be conclusive.

### 12. PROLONGATION

12.1 In the event that Steelpro is prevented from performing its obligations under the Contract within the terms and conditions herein due to any act or omission by any person, body or thing whatsoever, including strike action or act of God, then Steelpro has the right to extend the time to perform its obligations for a similar period to that for which it was unable to work.

12.2 If the prolongation is due to the Buyer or its agents failing to supply material, site access or facilities, information, drawings or do anything whatsoever that the Buyer or its agents should have done under its contractual obligations then the Buyer must pay prolongation costs as determined by Steelpro.

### 13. ACCEPTANCE INSPECTION

13.1 Unless stated in writing in the Contract, any testing and inspection by the Buyer shall be at the Buyer's workshop.

13.2 All costs and fees incurred in connection with testing and inspection other than those specifically included in the Contract will be payable by the Buyer.

13.3 No testing (of any kind), conformance reporting or any other quality assurance procedures or services are provided by Steelpro unless specifically included in the Contract

### 14. STORAGE OF GOODS

14.1 Steelpro takes no responsibility for the storage and handling of the Buyer's Goods whilst in Steelpro's possession. Every care will be taken to ensure the safe handling and storage of the Goods as per the manufacturer's recommendations but Steelpro is not responsible for any damage sustained and will accept no claims for damages, reimbursement or replacement.

14.2 Steelpro undertakes to store the Buyer's goods in good faith for a reasonable time where possible. In the event that Steelpro requests the Buyer to remove their goods from Steelpro's premises this shall take place within seven (7) working days.

### 15. INSURANCE

Unless otherwise stipulated herein in the Contract Steelpro shall not be responsible for loss or damage occasioned by burglary, fire, water, accident or any other cause to the Buyer's property when left in Steelpro custody and it shall not be obligatory on the part of Steelpro to insure or exercise special case with the Buyer's property. If so directed by the Buyer, Steelpro will take out suitable insurance at the cost of the Buyer.

### 16. DELIVERY

16.1 Delivery of the Goods "Ex Works", to a third party and/or site nominated by the Buyer is deemed to be delivery to the Buyer for the purpose of this agreement.

16.2 Any time or date for delivery is given and intended as an estimate only and Steelpro shall not be responsible for the consequences of delayed delivery howsoever arising. The Buyer shall accept delivery of the Goods ordered upon completion of manufacture by Steelpro but not earlier than the specified delivery time, unless otherwise explicitly stated in writing.

16.3 All charges incurred should the Buyer not take delivery as specified in the Contract shall be payable by the Buyer including a storage charge of 1% per month (calculated on a daily basis) of the value of the Goods. In the case of sales on "Ex Works" delivery shall be deemed to be affective on dispatch of the completed Goods (see Clause 14)

16.4 Packing and freight will be charged to and payable by the Buyer unless otherwise stated in the Contract. In the case of sales on an F.O.B or similar basis any risk for which Steelpro might otherwise be liable shall cease after the Goods have been put on the wharf, rail, ship or other vehicles at place of delivery whether or not freight may be arranged or carrier engaged by Steelpro for Buyer's benefit or convenience.

### 17. FREIGHT

The Buyer agrees that as Steelpro has no control over the carrier's conditions the Buyer accepts and abides by the conditions and stipulations on bills of loading and similar documents.

### 18. FORCE MAJEURE

Steelpro will have no liability to the Buyer in relation to any loss, damage or expense caused by Steelpro's failure to deliver the Goods or delay in delivering the Goods as a result of fire, flood, strike, accident, lock-out, hindrance, riot, civil commotion, war, inability to produce or obtain raw materials or component parts or import or other licenses or any other occurrence beyond Steelpro's control but any such delay shall not exempt the Buyer from the obligation to accept or take delivery of and pay for the said Goods.

### 19. WARRANTY

19.1 The Trade Practices Act 1974 and similar state laws in certain circumstances imply mandatory conditions and warranties (the "consumer warranties"). In such circumstances the Buyer has the benefit of the consumer warranties. All other express or implied conditions or warranties in respect of the Goods are hereby excluded from the Contract.

19.2 No express warranty is given as to fitness or suitability of the Goods for any specific application or use. To the extent permitted by the Trade Practices Act and like provisions in similar state laws the liability of Steelpro shall in any case be limited to the repair or replacement at the option of Steelpro of the defective material at the workshops of Steelpro.

19.3 The Buyer acknowledges that no person representing or purporting to represent Steelpro has authority to make any representations or warranties on behalf of Steelpro other than those set out expressly in the Contract and to the extent permitted by the Trade Practices Act and similar state laws, and any further express or implied representations and warranties are expressly void.

19.4 Steelpro reserves the right to make null and void the warranty should the Goods be modified, altered, damaged or put to any undue stress. Work and/or service carried out on the Goods by anyone other than Steelpro and/or their nominated agents shall make the warranty null and void unless the Buyer obtains written approval from Steelpro before any remedial work is carried out.

### 20. CLAIMS

The Buyer must within thirty (30) days of the date of delivery of the Goods notify Steelpro in writing of any matter or thing by reason whereof the Buyer alleges that the Goods are not in accordance with Contract.

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Otherwise the Goods shall be deemed to be in all respects in accordance with the Contract and the Buyer shall be bound to accept and pay for the same accordingly.

### 21. RETURNS

21.1 Subject at all times to the provisions of the Trade Practices Act and like provisions in similar state laws, Goods returned to and accepted by Steelpro as defective will be dealt with in accordance with these conditions but shall not give rise to any claim on account of any loss, damage, expense or otherwise whatsoever.

21.2 Returns for credit will not be accepted except by authorised written agreement. The Buyer shall be solely liable for all freight costs of any return.

### 22. CONSEQUENTIAL LOSS

To the extent permitted by the Trade Practices Act and like provisions in similar state laws, Steelpro shall not be subject to, nor incur, and the Buyer hereby releases Steelpro from any claim, action or liability for consequential loss or damage to persons or property including loss of use of the Goods or of profits arising by reason of delays, non-delivery, defective materials or workmanship, negligence or any matter, conduct or thing done or omitted by Steelpro.

### 23. DEFAULT IN PAYMENT

Should the Buyer make default in payment or fail to carry out the terms of the Contract or fail to duly make payment under any contract with Steelpro or become insolvent or bankrupt or call a meeting of creditors or go into liquidation, voluntary or otherwise Steelpro may, notwithstanding any waiver of any such default or failure, and without prejudice to its other rights under the Contract, suspend delivery or cancel the Contract or require payment in cash before or on delivery of the Goods, notwithstanding the terms of payment specified. Steelpro may exercise such rights either as to the whole or part of the contracted Goods. All Goods supplied by Steelpro remain the property of Steelpro until all monies outstanding to Steelpro in connection with the Contract (other than agreed retention monies if any) have been paid.

### 24. RETENTION OF TITLE

#### 24.1 Title

Notwithstanding the delivery of the Goods or their installation, title in any particular Goods shall remain with Steelpro regardless of whether the Goods are on-sold by the Buyer until the Buyer has paid and discharged any and all monies owing pursuant to any invoice issued by Steelpro for the Goods, including all applicable GST and other taxes, levies and duties. Should the Goods be installed into another piece of equipment to form part of that equipment, the Buyer shall ensure that the Goods remain separate, distinct and identifiable and shall be severable from the equipment into which it is installed. Goods belonging to Steelpro whether they are installed or in storage may be required to be marked permanently so they are identifiable as such.

24.2 Any payment made by or on behalf of the Buyer which is later avoided by the application of any Statutory Provisions shall be deemed not to discharge Steelpro's title in the Goods nor the Buyer's indebtedness to Steelpro and, in such an event, the parties are to be restored to the rights which each respectively would have had if the payment had not been made.

#### 24.3 Bailment

24.4 The Buyer acknowledges that it is in possession of the Goods solely as Bailee until payment of all invoices for the Goods is made pursuant to clause 24.1 and until that time:

- (a) The Buyer is not entitled to sell the Goods but only in the ordinary course of business; and
- (b) The Buyer shall be fully responsible for any loss or damage to the Goods whatsoever and howsoever caused following delivery or installation of the Goods to the Buyer.

#### 24.5 Repossession

24.6 The Buyer hereby irrevocably grants to Steelpro the right, at its sole discretion, to remove or repossess any Goods from the

24.7 Buyer and sell or dispose of them, and Steelpro shall not be liable to the Buyer or any person claiming through the Buyer and Steelpro shall be entitled to retain the proceeds of any Goods sold and apply same towards the Buyer's indebtedness to Steelpro.

24.8 If the Buyer commits an act of bankruptcy, enters into any form of administration or liquidation, makes any composition or arrangement with its creditors, ceases to carry on business or breaches any fundamental clause of this agreement, then Steelpro may, without prejudice to any other remedies it may have, repossess any Goods delivered to the Buyer on any account which has not been paid in accordance with the terms and conditions herein and commence proceedings to recover the balance of any monies owing Steelpro by the Buyer.

### 25. PRIVACY

25.1 The Buyer hereby authorises Steelpro to collect, retain, record, use and disclose consumer and/or commercial information about the Buyer in accordance with the Privacy Act 1988, to persons and/or legal entities who are a solicitor or any other professional consultant engaged by Steelpro, a Debt Collector, Credit Reference Organisation and/or any other individual or organisation which maintains credit references and/or default listings.

25.2 The Buyer also authorises Steelpro to make enquiries with respect to the Buyer's consumer and commercial credit worthiness; to exchange information with other Credit Providers in respect to previous consumer and commercial defaults of the Buyer and to notify other Credit Providers of a consumer and/or commercial default by the Buyer.

### 26. SECURITY AND CHARGE

The Buyer hereby charges all property, both equitable and legal present or future of the Buyer in respect of any monies that may be owing the Buyer to Steelpro under the terms and conditions or otherwise and hereby authorises Steelpro or its solicitors to execute any consent form as its attorney for the purpose of registering a caveat over any real property owned by the Buyer at any time or to register this charge over assets of the Buyer with the Australian Securities and Investments Commission.

### 27. SEVERABILITY

27.1 The Contract is to be regarded as severable in the event of the Goods being of different kinds or the Contract providing for delivery by instalments and the separate items of the Contract shall be regarded as separately contracted for and each and every delivery under the Contract shall be regarded as a separate contract and damages arising from any alleged break of Contract by Steelpro shall be limited accordingly.

27.2 Any provision in these terms and conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these terms and conditions or affecting the validity or enforceability of that provision in any other jurisdiction.

### 28. GOVERNING LAW AND JURISDICTION

These terms and conditions are governed by the laws of the State of Queensland and all disputes arising between the Buyer and Steelpro will be submitted to the Brisbane Registry of any Court as is competent to hear the matter.

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ADDITIONAL CONDITIONS APPLICABLE TO  
CONTRACTS FOR MAINTENANCE OR SUPPLY AND  
INSTALLATION OF GOODS.

### 29. WORKING HOURS

Works will be carried out during Steelpro's normal working hours, available upon request. Work carried out at other times at the Buyer's request will be subject to an extra charge.

### 30. TOLERANCES

Works carried out are subject to standard processing industry guideline tolerances, being;  $\pm 2\text{mm}$  for brake pressing, plate rolling and guillotining, and  $\pm 2\%$  for section rolling. Applicable tolerances are variable,

### 31. QUALIFICATIONS

Orders are only acceptable upon and subject to the foregoing conditions of supply and (where the Contract is for maintenance or the supply and installation of Goods) the conditions hereinafter set forth which constitute the whole agreement between the parties. Unless expressly agreed in writing by Steelpro any qualifications of these conditions in a Buyer's form shall not apply.