

# **Customer Trading Terms & Conditions**

## 1. Application

These Terms apply to all Contracts for the supply of Goods by the Supplier to the Purchaser.

## 2. Definitions and Interpretation

(a) For the purpose of these Terms, unless the context otherwise necessarily requires

**“Contract”** means any agreement between the Purchaser and the Supplier for the supply of Goods.

**“Goods”** means any goods or Services which the Supplier has agreed to supply to the Purchaser.

**“GST”** has the same meaning as in A Tax System (Goods and Services Tax) Act 1999 (Cth). **“Job Site”** – means any site nominated by the Purchaser for the delivery of Goods.

**“Order”** means any request for the supply of Goods received by the Supplier from the Purchaser.

**“Parties”** means each of the Supplier and the Purchaser.

**“Price”** means the amount payable by the Supplier to the Purchaser for the Goods. **“Purchaser”** means any person, firm or corporation including successors, administrators and assignors who have requested the supply of Goods by the Supplier.

**“Services”** means services provided by the Supplier to the Purchaser in relation to any goods supplied by the Supplier.

**“Supplier”** means collectively, Best Bar Pty Ltd ACN 068 713 539 together with each of its wholly owned subsidiaries, related bodies corporate and assignors, including but not limited to BestBar (Vic) Pty Ltd ACN 086 622 273 and Best Bar (NSW) PTY LTD (ABN 45 087 961 135).

**“Terms”** means these trading terms and conditions.

**“Variation of Contract”** means any variation to the Contract agreed to by the Supplier.

**“Working Documentation”** means any architectural drawings, structural drawings and construction drawings, specifications and reinforcement schedules or such other documents which are provided by the Purchaser to the Supplier together with any subsequent variation, amendment, or site instruction.

(b) A reference to a person includes a reference to a corporation and vice versa if appropriate. Use of a gender or the plural includes all other genders and the singular and vice versa as appropriate.

## 3. Supplies

(a) A Contract will be created upon:

(i) receipt by the Supplier of an oral, written or online order from the Purchaser requesting the supply of Goods; and

(ii) acceptance of that order by the Supplier.

(b) The Supplier may at any time, and in its absolute discretion, refuse to supply Goods to the Purchaser.

(c) The parties agree that the Supplier is a manufacturer and supplier of steel reinforcement to the building and construction industry and shall not be regarded as a sub-contractor.

#### **4. Quotations**

(a) The mere provision of a quotation by the Supplier does not constitute a Contract.

(b) The Supplier may at any time and in its absolute discretion amend or withdraw a quotation.

(c) A quotation expires on the date specified on the quotation as the expiry date. If no expiry date is specified, the quotation expires 30 days after the date of the quotation.

#### **5. Orders**

(a) Any order by the Purchaser for the supply of Goods shall:

(i) if in writing, be signed by an authorised representative of the Purchaser; (ii) identify the Goods ordered.

(iii) be subject to these Terms and such additional terms as the Supplier may in its absolute discretion require; and

(iv) specify the required date of delivery.

(b) The Purchaser may not vary, amend or cancel any order made unless agreed to in writing by the Supplier.

(c) It is the responsibility of the Purchaser to deliver all Working Documentation without charge to the Supplier to enable scheduling of reinforcement. The Supplier accepts no responsibility for the correctness or otherwise of the Working Documentation.

#### **6. Price / Payment**

(a) Unless otherwise agreed to in writing by the Supplier and subject to clause 5(b) and (c) below, all Goods are sold to the Purchaser at the Supplier's ruling Price at the time the order was placed.

(b) The Supplier reserves the right to change the Price at any time and in its sole discretion and without any prior notice to the Purchaser.

(c) Where in the period prior to the delivery of the Goods to the Purchaser, the Supplier incurs an increase in the cost of producing and/or delivering the Goods, the Supplier may increase the Price of those Goods.

(d) Unless otherwise agreed to in writing, the Purchaser shall pay the Price to the Supplier in full either upon placement of an order or at any time prior to the delivery of the Goods.

(e) The Purchaser shall pay to the Supplier accruing interest on any overdue invoices from the date when payment becomes due until the date of actual payment at a rate of 2.5% per calendar month. All payments made by the Purchaser shall be first applied by the Supplier to the accrued interest (if any).

(f) If more than one Purchaser has entered into a Contract, then each Purchaser shall be jointly and severally liable for the payment of the Price to the Supplier.

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(g) All Prices are exclusive of GST. The Purchaser shall indemnify the Supplier in respect of any GST which may be payable as a result of any supply of Goods by the Supplier to the Purchaser.

## **7. Credit**

- (a) If the Purchaser wishes to purchase Goods on credit from the Supplier, then it must first apply for such credit with the Supplier, which application the Supplier may, in its sole discretion, refuse.
- (b) Subject to clause 7
- (c) below, where the Supplier agrees to extend credit to the Purchaser, the Supplier shall submit to the Purchaser an invoice for the Goods (or any part thereof) delivered to the Purchaser and the full amount of each invoice together with any additional charges (as provided for in clause 8 herein) will be paid by the Purchaser to the Supplier no later than the date for payment specified on the invoice and if no payment date is specified within 14 days from the date the Goods were delivered to the Purchaser.
- (c) Notwithstanding any date for payment which may be specified on any invoice issued by the Supplier or otherwise provided for in these Terms, the Purchaser shall at all times ensure that the total amount outstanding from time to time remains within the pre-determined credit limit set by the Supplier.

## **8. Additional Charges**

- (a) In addition to the Price, the Purchaser hereby agrees to pay to the Supplier:
  - (i) all taxes, stamp duty or other statutory charges or levies payable in relation to the supply of Goods.
  - (ii) storage charges where Goods are not collected on the date agreed to between the Supplier and the Purchaser or specified on the Supplier's invoice.
  - (iii) demurrage costs or charges incurred by the Supplier for attendance at a Job Site after the expiration of one (1) hour for a rigid vehicle and two (2) hours for a semi vehicle, with such demurrage charges to be calculated upon then current master carrier rates.
  - (iv) all legal costs (on a solicitor/client basis) and disbursements incurred by the Supplier in relation to the supply of Goods.
  - (v) all costs, charges, expenses or any other outgoings incurred by the Supplier with respect to any Variation of Contract.
  - and
  - (vi) all costs and expenses incurred by the Supplier with respect to the recovery or return of Goods from the Purchaser.
  - (vii) all applicable service charges as detailed on the Service Charges Documents on the website:  
<https://www.bestbar.com.au/company/downloads/>
- (b) Where any variation to the Contract is requested by the Purchaser and agreed to by the Supplier the Purchaser hereby agrees to pay to the Supplier all costs and expenses incurred by the Supplier in relation to

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the Variation of Contract and the Supplier shall be granted an automatic extension of the time for delivery of the Goods equal to the delay caused by the Variation of Contract.

## **9. Tests**

Any tests or inspections of the Goods, or (where applicable) products or materials used in relation to the manufacture of Goods required by the Purchaser prior to delivery, shall be conducted at the cost of the Purchaser. The Supplier shall have no responsibility whatsoever for the quality or accuracy of the tests conducted under the supervision of the Purchaser.

## **10. Delivery**

- (a) Subject to clause 10(b) below, the Purchaser must provide the Supplier with a minimum of 10 business days prior notice of the date by which the Purchaser requires the Goods to be delivered to it.
- (b) The Supplier is not bound to accept any delivery date notified by the Purchaser. The parties acknowledge that all delivery times provided are estimates only and are not binding on the Supplier.
- (c) Unless otherwise agreed to in writing, the Supplier is not required to deliver any Goods to the Purchaser unless the Purchaser has paid all monies owing to the Supplier in full.
- (d) All Goods shall be delivered to the Supplier's premises during normal business hours unless agreed to by the Supplier.
- (e) Where the Purchaser requires that the Goods be delivered at a Job Site the Purchaser must provide the Supplier with the address for the Job Site at least 2 business days prior to the scheduled delivery. The Supplier may, at its sole discretion, refuse to deliver any Goods to a Job Site. Should the Supplier refuse to deliver the Goods to the Job Site, then the Goods will be delivered to the Suppliers Premises.
- (f) The Purchaser must ensure that the Job Site can be accessed by vehicle on properly constructed roadway.
- (g) The Supplier may, in its absolute discretion, unload the Goods at the Job Site or as close to the Job Site as conditions allow.
- (h) Unless otherwise agreed prior to delivery of Goods, all unloading of Goods shall be the responsibility of the Purchaser and shall be undertaken at the Purchaser's cost.
- (i) In the event that the Purchaser or its agent is not in attendance when the Goods are delivered, the Supplier reserves the right to unload the Goods and will not be responsible for any claims, damages, expenses or costs resulting or arising there from.
- (j) Where the Purchaser requires the Supplier or its agent to enter onto the Purchaser's property for the purpose of unloading Goods, the Suppliers shall not be liable for any damage to the property thereon.
- (k) Delivery of the Goods shall be deemed to have occurred upon either the collections of Goods from the Supplier or upon the arrival of the Goods at the Job Site or Supplier Premises (as the case may be).
- (l) Where a delivery of Goods cannot be effected for whatever reason, the Purchaser shall pay to the Supplier a delivery and return fee calculated in accordance with the then applicable master carrier rates.

## 11. Inspection

(a) It is the responsibility of the Purchaser to inspect the Goods immediately upon delivery. (b) Any claim for:

- (i) a shortage of Goods; (ii) damage to the Goods;
- (iii) defects or fault in the Goods, must be notified to the Supplier within 24 hours after delivery of those Goods.

(c) The Supplier reserves the right to inspect the Goods and to seek its own assessment of the Goods notified in accordance with clause 11(b).

(d) If the Purchaser fails to advise the Supplier of any shortage, fault, damage or failure of the Goods within 24 hours of delivery, the Purchaser shall be deemed to have accepted that the Goods were not faulty or damaged at the time of delivery and generally accord with the order.

(e) Goods shall not be deemed damaged or defective by reason only of presence of rust, millscale, or rolling seams.

## 12. Mass and Dimensions of the Goods

The mass of steel reinforcing bars involved will be the calculated mass per meter in accordance with AS/NZS4671, plus an allowance for manufacturing tolerances as outlined in paragraph 7.3 of AS/NZS4671.

## 13. Risk / Property

- (a) Risk in the Goods shall pass to the Purchaser immediately upon delivery.
- (b) Notwithstanding the passing of risk, title in the Goods delivered shall not pass to the Purchaser until all monies payable by the Purchaser to the Supplier have been paid in full.
- (c) The Purchaser shall hold all Goods on trust and as bailee for the Supplier until all amounts owed by the Purchaser to the Supplier have been paid in full.
- (d) The Purchaser shall store all Goods delivered by the Supplier separately from all other items or property in the possession or control of the Purchaser such that the Goods are clearly identifiable and distinguishable from all other goods in the possession or control of the Purchaser.
- (e) The Purchaser hereby authorises the Seller to enter onto the Sellers Premises and Job Site and to take possession of the Goods.
- (f) Where:
  - (i) the Purchaser makes new objects from the Goods (whether finished or not) (the "new objects"); (ii) the Purchaser mixes the Goods with other goods (the "mixed goods"); or
  - (iii) the Goods become part of any other goods (the "new goods"), title to the new objects, the new goods and the mixed goods shall immediately pass to the Supplier.

(g) Notwithstanding sub-clause 13(b) above, the Purchaser may transfer, sell or dispose of the Goods, the new objects, the mixed goods and the new goods to a third party in the ordinary course of business provided that:

- (i) all monies owing to the Supplier have been paid in full; or
- (ii) the Purchaser deposits the proceeds from the sale of the Goods, the new objects, the new goods and the mixed goods (the "sale proceeds") into a bank account specifically created for the purpose of receiving the sale proceeds. Only sale proceeds may be deposited into the specifically created bank account. The Purchaser will hold the sale proceeds in trust for the Supplier until such time as all the monies due and owing by the Purchaser to the Supplier have been paid for in full.

The right of the Purchaser to deal with the Goods will immediately cease upon the appointment to the Purchaser of either a liquidator, a receiver, a receiver and manager, an administrator, provisional liquidator, or a bankruptcy trustee.

### **14. Exclusions of Liability**

- (a) The Supplier will not, in any circumstances, be liable or responsible for any claims, liabilities, cost, expense, loss, damage or defect arising (either directly or indirectly) from or in connection with the supply of the Goods and these Terms. (b) To the extent that these Terms cannot, by law, operate to exclude the liability of the Supplier for any claims, liabilities, loss, expense, damage or defect arising from or in connection with the supply of the Goods and these Terms, then the liability of the Supplier is limited to either: (i) the repair or replacement of the Goods; or (ii) The refund of the Price paid by the Purchaser for the affected Goods; or (iii) The payment of an amount equal to the cost of replacing the affected Goods.
- (c) With exception of these Terms, any terms implied by operation of Australian law, all terms, conditions and warranties are hereby excluded.

### **15. Default by the Purchaser**

- (a) In the event that:
  - (i) any money payable to the Supplier becomes overdue; or
  - (ii) in the Supplier's opinion the Purchaser will be unable to meet its payments as they fall due; or
  - (iii) the Purchaser becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors or makes an assignment for the benefit of its creditors; or
  - (iv) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Purchaser or any asset of the Purchaser, then:
    - (i) the Supplier shall be entitled to cancel all or any part of any order which remains unperformed.
    - (ii) all amounts owing to the Supplier will, whether or not due for payment, become immediately payable; and
    - (iii) the Supplier may terminate any Contract.

(b) The Purchaser shall not at any time be entitled to retain any money owing to the Supplier notwithstanding any default or alleged default by the Supplier of the Terms including the supply of allegedly faulty or defective Goods.

## 16. Security

(a) The Purchaser hereby agrees to mortgage and/or charge all its interest (whether proprietary, legal, equitable or beneficial) any land or asset to the Supplier as security for all amounts payable to the Supplier by the Purchaser.

(b) The Purchaser acknowledges and agrees that the Supplier shall be entitled to lodge a caveat over any land to which clause 16(a) applies.

(c) The Purchaser hereby irrevocably appoints the Supplier as the Purchaser's attorney to execute any mortgage or charge (whether registerable or not) against the interest of the Purchaser in any land or asset in favour of the Supplier in order to give effect to clause 16 (a) above.

## 17. Privacy Act 1988

(a) The Purchaser agrees to the Supplier obtaining from a credit-reporting agency a credit report on the Purchaser containing personal credit information in relation to credit provided by the Supplier.

(b) The Purchaser agrees that the Supplier may exchange information about the Purchaser with any credit providers named in any report issued by a reporting agency for the following purposes:

(i) to assess an application for credit by the Purchaser; and

(ii) to notify other credit providers of a default by the Purchaser.

## 18. General

(a) The Supplier and any authorised representative of the Supplier can give a demand or notice to the Purchaser. A demand or notice can be served on the Purchaser either by post (at the last known address of the Purchaser), by facsimile or by email.

(b) The Purchaser hereby agrees to the Supplier serving any court documents filed by the Supplier with any court of competent jurisdiction on the Purchaser at the Purchaser's last known address.

(c) The Purchaser shall not be entitled to set off any amount whatsoever against the Supplier.

(d) The Supplier may assign or license any or all of its rights and obligations to the Purchaser without the Purchaser's consent.

(e) The Supplier reserves the right to change these Terms at any time without notification to the Purchaser and without the Purchaser's consent.

(f) Any variation to these Terms must be in writing and signed by the Supplier.

- (g) These Terms shall be constituted by the laws of the State of Victoria. The parties submit to the jurisdiction of the courts in the State of Victoria.
- (h) If there is any inconsistency between these Terms and any other document, agreement or understanding as between the parties, then these Terms shall apply.
- (i) If any part or clause of these Terms is held illegal or unenforceable then that clause or part may be severed with the remaining clauses or parts remaining in force.