



**STEELMART**  
Sunshine Coast

**Steelmart Pty Ltd**  
**ABN: 56 609 960 401**  
**PO Box 5712**  
**Maroochydore BC QLD 4558**  
**Phone: (07) 53710160**  
[admin@steel-mart.com](mailto:admin@steel-mart.com)  
[www.steel-mart.com](http://www.steel-mart.com)

## Application for Commercial Credit

This document is an application for commercial credit to **Steelmart Pty Ltd ABN 59 609 960 401**.

If the credit application is accepted, a commercial credit account will then exist on the terms and conditions set out in this document between the Customer and **Steelmart Pty Ltd**. Termination of a commercial credit account terminates credit with **Steelmart Pty Ltd**.

The approval and existence of a commercial credit account with **Steelmart Pty Ltd** does not in itself create for the Customer any distribution or purchase rights in respect of any goods sold or delivered by **Steelmart Pty Ltd** – such rights must be separately obtained from **Steelmart Pty Ltd**.

In this application, “**Steelmart**” has the meaning given to it in the **Steelmart Pty Ltd** Standard Terms and Conditions of Sale.

### Privacy Statement

**Steelmart** collects the personal information requested in this form for the purpose of determining whether or not to extend commercial credit.

**Steelmart** may also collect personal information from external service providers for the purpose of determining whether or not to extend commercial credit. This information may from time to time be disclosed to organisations from whom **Steelmart** receives external services.

You may access your personal information retained by **Steelmart** on request.

Note: Terms defined in the enclosed **Steelmart** Standard Terms and Conditions of Sale have the same meaning in this application.

### Customer:

1. Please complete and sign the Application for Commercial Credit including the Deed of Guarantee and Indemnity.
2. Provide any relevant financial attachments to support your application.
3. Please return via email or post as per details above ensuring pages 2 and 4 are signed and returned.

# Application for Commercial Credit

Trading Name

Legal Entity (if different)

Date Started  ACN  ABN

Type of Entity  Public company  Private company  Trustee  Partnership  Sole trader  Government

Nature of Business

Estimated Monthly Trade \$  Credit Limit Sought \$

Statement Address  Invoice Address (if different)   
 mark 'X' if statement not required

Delivery Address

Preferred Method of Receiving Invoices & Statements  Fax  Post  E-mail Address

Phone  Fax

Email  Mobile

Website  Accountant's Email

Accounts Contact Name  Phone

Bank Account Name

Bank Details BSB  Account Number

Trade References

1	<input type="text"/>	Phone	<input type="text"/>
2	<input type="text"/>	Phone	<input type="text"/>
3	<input type="text"/>	Phone	<input type="text"/>

**Details of directors, partners, proprietors**

Full name	Date of Birth	Driver's License	Residential Address
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

The Customer declares and agrees —

- That the information in this Application and any attachments is true and accurate.
- The credit to be provided to the Customer is to be applied wholly or predominantly for business or investment purposes (or for both purposes).
- To be bound by the Standard Terms and Conditions of Sale enclosed with this form as varied from time to time without notice to the Customer.
- This Application may be signed only by the person(s), directors, or officers authorised to sign on behalf of the Customer.
- To supply balance sheet and profit and loss accounts on request.

**IMPORTANT**  
 You should **not** sign this declaration unless this credit is wholly or predominantly for business or investment purposes. By signing this declaration, you may **lose** your protection under the Consumer Credit Code.

Signed for the Customer by; Print Name: _____ Title: _____ Signature: _____	Date _____
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## Deed of Guarantee, Indemnity and Security

In this document ("**Guarantee**"):

- (a) "**Guarantor**" means the person(s) listed below as guarantor (jointly and severally);
- (b) "**Steelmart**" means **Steelmart Pty Ltd (ABN 59 609 960 401)** and its related bodies corporate from time to time (within the meaning of the Corporations Act 2001) which are incorporated in Australia, including its successors and assigns;
- (c) "**Secured Monies**" means all monies owing by the Customer to **Steelmart** from time to time in respect of Goods supplied and all costs and expenses which may be payable by the Customer to **Steelmart** (including any 'Amount Payable' under the Terms and Conditions);
- (d) "**Terms and Conditions**" means the **Steelmart** Standard Terms and Conditions of Sale applicable to the Customer;
- (e) unless otherwise stated, terms used or defined in the Terms and Conditions have the same meaning in the Guarantee.

In consideration of **Steelmart** at the request of the Guarantor providing credit to the Customer for Goods supplied from time to time the Guarantor agrees to the following terms:

### 1. **Guarantee**

The Guarantor guarantees to **Steelmart** the due payment by the Customer of the Secured Monies.

### 2. **Indemnity**

The Guarantor indemnifies **Steelmart** against all losses, damages, costs and expenses which **Steelmart** may suffer as a consequence of any failure by the Customer to pay any of the Secured Monies.

### 3. **Payment**

On any default by the Customer to pay any of the Secured Monies the Guarantor shall forthwith on demand by **Steelmart** pay such Secured Monies to **Steelmart** without the necessity of any prior demand having been on the Customer or any other steps being taken against the Customer or its assets to enforce payment.

### 4. **Security**

The Guarantor

- (a) grants a security interest in all of its present and after-acquired property and in all of its present and future rights in relation to any personal property to **Steelmart**;
- (b) charges all of its rights, property and undertaking of whatever kind and wherever situated, whether present or future, including, without limitation, any interest in real property (other than any personal property to which the PPSA applies) to **Steelmart**;
- (c) mortgages all of its present and future interests in any real property to **Steelmart**, as security for its obligations under this Guarantee;
- (d) The Guarantor acknowledges that **Steelmart** has a caveatable interest in any real and leasehold property of the Guarantor which is or becomes subject to the charge or mortgage and may lodge a caveat over that property;
- (e) The Guarantor agrees to do anything that **Steelmart** reasonably requires (including executing a real property mortgage in a form approved by **Steelmart**) to perfect and register each security interest, charge and mortgage provided for by this Guarantee.

### 5. **Liability Unaffected**

The liability of the Guarantor under this Guarantee is not affected by:

- (a) the granting of time or any other indulgence to the Customer;
- (b) the release, waiver or variation of any of **Steelmart** rights against the Customer or any neglect or omission to enforce such rights;
- (c) any other things which under the law relating to sureties would or might but for this provision release the Guarantor in whole or in part from the obligations under this Guarantee;
- (d) the release of any one or more Guarantor by **Steelmart**;
- (e) amendment of the Terms and Conditions;
- (f) the Customer:
  - i. being an individual committing an act of bankruptcy or becoming an insolvent under administration;
  - ii. being a body corporate becoming an externally-administered body corporate or having an application for winding up filed against it;
  - iii. the Customer's obligations for payment becoming illegal, void, voidable or unenforceable in whole or in part;
  - iv. payment by the Customer to **Steelmart** to the extent that payment might be void or voidable for any reason (including under the Bankruptcy Act 1966 or the Corporations Act 2001);
  - v. failure to give notice of any matter to the Guarantor (including notice of default by the Customer);
  - vi. the Guarantor ceasing to be an officer of the Customer;
  - vii. the termination of any agreement between **Steelmart** and the Customer; or
  - viii. the withdrawal of or any variation to the credit provided by **Steelmart** to the Customer.

### 6. **Waiver of Rights**

The Guarantor waives any rights as surety or indemnifier (legal, equitable, statutory or otherwise) which may at any time be inconsistent with any provisions of the Guarantee.

### 7. **Continuing Obligation**

The Guarantee is a continuing security and remains in force until the Secured Monies have been fully paid and all agreements or arrangements between **Steelmart** and the Customer under which any Secured Monies may become owing have been terminated or discharged or until **Steelmart** discharges or terminates the Guarantee by notice in writing to the Guarantor.

### 8. **Costs**

The Guarantor must pay **Steelmart** all costs and expenses incurred by **Steelmart** in connection with the Guarantee, including legal costs (on a full indemnity basis), stamp duty (including fines and penalties), costs incurred or payable by **Steelmart** in relation to registering, maintain or releasing any security interest, charge, mortgage or caveat (including the cost of registering any PPSA financing statement) and costs incurred in the recovery of monies owing by the Guarantor or Customer to **Steelmart** or in otherwise enforcing **Steelmart** rights against the Customer under the Terms and Conditions or the Guarantor under the Guarantee.

### 9. **Severance**

If a provision of the Guarantee 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 this Guarantee.

### 10. **Applicable Law**

This document is governed by the law of the State or Territory applicable to the relevant Terms and Conditions and the courts of that State or Territory have non-exclusive jurisdiction in connection with this document.

**11. Contracting out of the PPSA**

The Guarantor waives the right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded. Each provision of the PPSA which section 115 of the PPSA permits parties to contract out of, other than section 117 and 118 (relationship with land laws) and 134(1) and 135 (retention of collateral), do not apply to the enforcement of any security interest under this Guarantee.

The Guarantor and Steelmart will not disclose information of the kind mentioned in section 275(1) of the PPSA or authorise the disclosure of this agreement under section 275(7)(c) of the PPSA, unless required by law.

**12. Steelmart May Assign**

Without notice to the Guarantor or the Customer, Steelmart may assign to any person:

- (a) the whole or any part of a debt comprised in the Secured Money; and/or
- (b) this Guarantee including the benefit of any indemnity in this Guarantee.

**13. Final Discharge**

Even when the Guarantor does not owe any money to **Steelmart**, **Steelmart** is not obliged to discharge the Guarantee if in **Steelmart** opinion:

- (a) within a reasonable time the Guarantor might owe money to **Steelmart**;
- (b) a payment made to **Steelmart** might be void or voidable for any reason (including under the Bankruptcy Act 1966 or the Corporations Act 2001).

**Steelmart** rights under this Guarantee survive and do not merge upon expiry or earlier termination of this Guarantee.

**14. Attorney**

The Guarantor irrevocably appoints **Steelmart** and each of its authorised officers, jointly and severally, to be its attorney to:

- (a) do any act or thing which it is required to do, and has not done, under this Guarantee (including executing and registering instruments); and
- (b) exercise its right of proof in the winding-up of the Customer in respect of any claim the Guarantor has against the Customer, other than a claim arising as a result of the Guarantor making a payment under this Guarantee. The attorney will hold any dividend received in respect of that proof on trust for **Steelmart** to the extent of the Secured Monies and will pay any balance remaining (after **Steelmart** has received the Secured Monies and any other amounts payable under this Guarantee) to the Guarantor.

**Steelmart** may exercise its powers even if this involves a conflict of duty and even if it has a personal interest in doing so. A third party may rely on a copy of this Guarantee certified by a solicitor as evidence of the appointment of **Steelmart** as the attorney of the Guarantor. The Guarantor must ratify all acts and things done by **Steelmart** and its authorised officers in the exercise of this power of attorney.

**15. Void or voidable transactions**

Under laws relating to insolvency, a person may claim that a transaction (including a payment) in connection with this Guarantee or the Terms and conditions is void or voidable. If, the Guarantee has been released or discharged by **Steelmart** in reliance on a transaction which is subsequently the subject of such, a claim which is upheld, conceded or compromised, then:

- (a) **Steelmart** is immediately entitled as against the Guarantor to the rights in connection with this Guarantee to which it was entitled immediately before the transaction; and
- (b) on request from **Steelmart**, the Guarantor agrees to do anything (including signing any document) to restore to **Steelmart** all rights held by it from the Guarantor immediately before the release or discharge and to indemnify **Steelmart** against any costs, losses and expenses suffered or incurred by it as a result of the upholding, concession or compromise of the claim.

**16. No double proof**

No Guarantor is entitled to:

- (a) lodge any proof of debt in the winding up of the Customer;
- (b) exercise any right of subrogation; or otherwise be entitled to the benefit of any security held by **Steelmart**, (other than through an attorney appointed under clause 14) unless and until the Secured Monies have been paid, discharged or recovered in full.

**17. Suspense Account**

**Steelmart** may place in a suspense account any payment it receives from the Guarantor for as long as it thinks prudent and need not apply it towards satisfying the Secured Monies or other amounts payable under this Guarantee.

**18. No contribution**

No Guarantor may make a claim under or enforce any right of contribution it may have against any other person unless and until the Secured Monies have been paid, discharged or recovered in full.

**18. Notices**

The Guarantor appoints the Customer as its agent to receive any notice or demand in connection with this Guarantee.

**The Guarantor acknowledges that it has read and understood this Guarantee and, prior to its execution, has had the opportunity to obtain independent legal and/or financial advice.**

EXECUTED AS A DEED:

Name of Customer: \_\_\_\_\_

Name of Guarantor	Name of Guarantor
Signature of Guarantor	Signature of Guarantor
Address of Guarantor	Address of Guarantor
Name of Witness	Name of Witness
Signature	Signature
Date	Date

## Steelmart Standard Terms and Conditions of Sale Effective 1/8/2017

In this document:

- (a) "Accession" means any Goods which are installed in or affixed to other goods;
  - (b) "ACL" means the Australian Consumer Law which is contained in Schedule 2 of the Competition and Consumer Act 2010 (Cth);
  - (c) "Amount Payable" means, at any time, all amounts payable by the Customer to **Steelmart Pty Ltd (ABN 59 609 960 401)** and its related bodies corporate (within the meaning of the Corporations Act 2001 (Cth)) at that time (whether or not those amounts have become due for payment under clause 4 or any other provision of the Terms and Conditions) in connection with the Goods or the Contract (including, without limitation, any invoiced amount, interest, fees, costs or expenses);
  - (d) "Customer" means the customer specified in an application for commercial credit (or if there is no application, the person placing the Order, or on whose behalf the Order is placed, with **Steelmart**);
  - (e) "Default" is defined in clause 8;
  - (f) "Contract" means the Terms and Conditions and, for an Order, the relevant Order Acknowledgment;
  - (g) "Goods" means any goods, products, services or materials supplied or to be supplied by **Steelmart** at any time and from time to time including, without limitation, any goods specified in an Order acknowledgement or invoice;
  - (h) "**Steelmart**" means **Steelmart Pty Ltd (ABN 59 609 960 401)** and its related bodies corporate (within the meaning of the Corporations Act 2001 (Cth)) and for each Order means the company (being **Steelmart Pty Ltd** or one of its related bodies corporate) that issues the relevant Order Acknowledgment;
  - (i) "Order" is an order or offer to purchase described in clause 1(a);
  - (j) "Order Acknowledgment" is defined in clause 1(b);
  - (k) "Processed Goods" means Goods which after their delivery become part of a product or mass by being manufactured, processed, assembled, commingled or otherwise dealt with in such a way that their identity is lost in the product or mass;
  - (l) "PPSA" means the Personal Property Securities Act 2009 (Cth);
  - (m) "Terms and Conditions" means the terms and conditions set out in this document, as modified or amended in relation to a particular Order by a written Order Acknowledgment or in accordance with clause 25;
  - (n) the terms "financing statement", "proceeds", "purchase money security interest", "security agreement", "security interest" and "verification statement" have the respective meanings given to them under, or in the context of, the PPSA;
  - (o) unless otherwise stated, an expression used or defined in the Corporations Act 2001 (Cth) has the same meaning in the Terms and Conditions;
  - (p) words indicating the singular include the plural and vice versa.
- 1. Orders, Order Acknowledgments and Terms and Conditions**
- (a) An order or an offer to purchase can be made by the Customer in writing or verbally. An Order is accepted when the Customer receives from **Steelmart** an acknowledgment of the Order from **Steelmart** or delivery of the relevant Goods, whichever first occurs ("Order Acknowledgment").
  - (b) The Terms and Conditions apply to every Order, unless otherwise agreed in writing by **Steelmart**. Acceptance of Goods by the Customer is conclusive evidence that the Terms and Conditions apply and are binding on the Customer.
  - (c) The Customer acknowledges that the Terms and Conditions constitute a security agreement, and that **Steelmart** may register a financing statement in respect of the security interests provided for by the Terms and Conditions.
  - (d) The Contract constitutes the entire agreement between **Steelmart** and the Customer with respect to any Order. All prior negotiations, proposals, previous dealings, correspondence, trade custom and/or trade usage are superseded by and will not affect the interpretation of the Contract.
  - (e) If at any time in relation to the supply of the Goods, the Customer provides, refers to, submits or otherwise uses terms and conditions other than the Terms and Conditions, such terms and conditions will not form part of, or be incorporated into, the Order or Contract.
- 2. Prices**
- (a) Unless otherwise agreed in writing, the price charged for the Goods shall be:
    - i. exclusive of any transaction tax ("transaction tax" includes the goods and services tax as well as any identified or new transaction taxes that come into existence after the effective date of the Terms and Conditions); and
    - ii. as per the price ruling as determined by **Steelmart** 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 the Terms and Conditions, **Steelmart** may recover from the Customer an additional amount on account of that transaction tax.
- (d) Notwithstanding any provision in the Contract, **Steelmart** may increase the price of Goods after an Order Acknowledgment 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.
- (e) The Customer may upon the alteration of the price charged for the Goods in accordance with this clause 2, cancel any Order (or part thereof) at the new price within 7 days of **Steelmart** providing notice of the change of price.

### 3. Delivery

**Steelmart** will make all reasonable efforts to have the Goods delivered to the Customer or its designated agent as agreed between the parties (or if there is no specific agreement then at **Steelmart**'s reasonable discretion), but **Steelmart** 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) except to the extent that such damage was caused by the negligent act or omission of **Steelmart** damage to property caused upon entering premises to deliver the Goods.

Any costs incurred by **Steelmart** due to any failure by the Customer to accept the Goods at time of delivery will be reimbursed by the Customer to **Steelmart**. Except as required by law, **Steelmart** will be under no obligation to accept Goods returned for any reason.

### 4. Payment

For so long as **Steelmart** has agreed to provide credit to the Customer under the Terms and Conditions and has not exercised its powers to withdraw, refuse or suspend credit under clause 8(b) or 10(c) or otherwise, payment for the Goods must be made in full (without any set off) and received by **Steelmart** by the last business day of the month following the month of delivery unless otherwise specified by **Steelmart** on any statement of account or invoice or unless the Contract specify otherwise. Payment is only received by **Steelmart** when it receives cash or when the proceeds of other methods of payment are credited and cleared to **Steelmart** bank account. **Steelmart** may set off any amount due and payable by **Steelmart** to the Customer against any amount due and payable by the Customer to **Steelmart**.

### 5. Title and related matters

- (a) The legal and equitable title to the Goods will only be transferred from **Steelmart** to the Customer when the Amount Payable has been reduced to zero.
- (b) Until the Amount Payable has been reduced to zero, the Customer holds the Goods as bailee for **Steelmart** and a fiduciary relationship exists between the Customer and **Steelmart**.
- (c) If there is any Amount Payable, until the Goods are sold in accordance with clause 5(f), or become an Accession or Processed Goods, the Customer shall:
  - i. keep the Goods separate and in good condition as a fiduciary of **Steelmart**, clearly showing **Steelmart** ownership of the Goods;
  - ii. keep books recording **Steelmart** ownership of the Goods and the Customer's sale or otherwise of them in accordance with clause 5(f); and
  - iii. if required by **Steelmart**, deliver the Goods up to **Steelmart**.
- (d) The Customer may only install or affix the Goods to other goods (so that they become an Accession to those other goods) or use or permit the Goods to be manufactured, processed, assembled, commingled or otherwise dealt with (so that they become Processed Goods) in the ordinary course of its normal business.
- (e) If the Customer is in Default, in addition to **Steelmart** other rights under the Terms and Conditions, the PPSA or any other applicable law, **Steelmart** may:
  - i. take possession of the Goods or any Processed Goods, wherever they are located;
  - ii. remove any Goods which have become an Accession; and/or
  - iii. enter upon the Customer's premises for that purpose; and/or
  - iv. appoint any person to be a receiver of all or any of the Goods, Accessions, Processed Goods or other assets the subject of the security interests created by this document.
- (f) Despite clause 5(a), the Customer may sell the Goods, any Accession or any Processed Goods to a third party in the normal course of the Customer's business provided that the Customer holds the proceeds of sale on trust for **Steelmart** to the extent of the Amount Payable. The Customer must keep those proceeds separate on trust for **Steelmart** and not mix those proceeds with any other monies.
- (g) Unless otherwise expressly agreed in writing, **Steelmart** will allocate and apply amounts received from the Customer in the following order:
  - i. in or towards payment of any part of the Amount Payable which is not part of the purchase price of any Goods, in the order in which those

- amounts were incurred; and
- ii. secondly, in or towards payment of the purchase price of Goods in the order in which those Goods were invoiced.
- This order of allocation and application will apply notwithstanding any instruction, request or appropriation of the Customer as to the way in which a payment made by it should be applied by **Steelmart**, or any condition attached by the Customer to any payment made by it.
- 6. Security Interest, Charge and Mortgage**
- (a) The Customer grants to **Steelmart** a security interest in the Goods to secure payment of the Amount Payable. The security interest:
    - i. extends to and continues in all proceeds, Accessions and Processed Goods; and
    - ii. is a purchase money security interest to the extent to which it secures payment of that part of the Amount Payable which comprises the aggregate unpaid purchase price of Goods.
  - (b) The Customer must not do or permit anything to be done that may result in the purchase money security interest granted to **Steelmart** ranking in priority behind any other security interest.
  - (c) The Customer charges in favour of **Steelmart** all of its interest in all present and future real property of the Customer to secure the performance of the Customer's obligations under the Contract, including payment of the Amount Payable. The Customer acknowledges that **Steelmart** has a caveatable interest in any real property of the Customer under this clause and may lodge a caveat over that property. Upon demand by **Steelmart**, the Customer agrees to immediately execute a mortgage on terms satisfactory to **Steelmart** to more particularly describe the security interest conferred by this clause. Should the Customer fail within a reasonable time of such demand to execute that mortgage, then the Customer irrevocably appoints **Steelmart** as its attorney with authority to do on its behalf anything that it may lawfully authorise an attorney to do including, without limitation, to make, sign, execute, seal and deliver any document and to take possession of, use, sell or otherwise dispose of any real property of the Customer.
- 7. Contracting out of the PPSA**
- (a) The Customer:
    - i. waives the right under section 157 of the PPSA to receive a copy of the verification statement verifying registration of a financing statement or a financing change statement relating to a security interest created under the Contract; and
    - ii. contracts out of its rights to receive any other notice or statement under any other provision of the PPSA (including for the avoidance of doubt, any of the provisions specified in paragraph (b)).
  - (b) To the fullest extent permitted by the PPSA, the parties agree to contract out of sections 95, 117, 118, 120, 121(4), 125, the second sentence of section 126(2), sections 129(2), 129(3), 130, 132(3)(d), 132(4), 135, 142 and 143, which sections (or parts of sections) shall not apply.
- 8. Default**
- (a) A party will be in Default if:
    - i. it breaches a material term of the Contract and such breach is not remedied within 14 days of receiving notice from the other party requiring it to do so, unless such breach arises out of the supply of defective Goods, in which case **Steelmart** shall remedy the breach within such time as is reasonable in the circumstances;
    - ii. being a body corporate, it becomes an externally-administered body corporate or has an application for winding up filed against it;
    - iii. in the case of the Customer being an individual, it commits an act of bankruptcy or becomes an insolvent under administration;
    - iv. in the case of the Customer, payment for the Goods has not been received by **Steelmart** by the due date for payment; or
    - v. in the case of the Customer, any representation or warranty made by it in or in connection with the Contract, or any information provided by it to **Steelmart** in or in connection with the Application, is incorrect, misleading or deceptive (whether by omission or otherwise) in any material respect; or
    - vi. in the case of the Customer **Steelmart**, forms the opinion in its absolute discretion that the Customer's creditworthiness or credit standing alters from that indicated in its Application.
  - (b) If a party Defaults, the other party may:
    - i. treat an Order Acknowledgement or the whole of the Contract as repudiated and sue for breach of contract; and/or
    - ii. being **Steelmart**, refuse to supply any Goods to the Customer on credit or at all; and/or
    - iii. being **Steelmart**, claim the return of any Goods in the Customer's possession where title has not passed to the Customer or exercise any other right or remedy available to it under the Contract, the PPSA or any other applicable law, including to enforce the security interests created by the Contract; and/or
    - iv. being **Steelmart**, by notice to the Customer declare all monies owing by the Customer to **Steelmart** on any account immediately due and payable (including the Amount Payable).

- 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.
- 10. Credit**
- Any agreement by **Steelmart** to grant the Customer credit upon the Terms and Conditions has been or will be made on the basis of a credit application and such other documents and information as may be required by **Steelmart**. Until **Steelmart** grants the Customer credit by notice in writing, or if having granted credit, **Steelmart** exercises its powers to withdraw, refuse or suspend credit under clause 8(b) or 10(c) or otherwise under the Terms and Conditions, **Steelmart** will only supply Goods to the Customer on the basis of cash in advance.
- The granting of credit does not oblige **Steelmart** to extend any particular amount of credit to the Customer and **Steelmart** may withdraw, refuse, suspend or limit credit to the Customer at any time, in its absolute discretion, without notice or providing any reason.
- The Customer must notify **Steelmart** 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.
- 11. Intellectual Property**
- (a) The Customer warrants to **Steelmart** that all documents provided by the Customer are accurate and that **Steelmart** 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 **Steelmart** against all claims and all losses and damages incurred by **Steelmart** as a result of documents provided by the Customer to **Steelmart** 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 **Steelmart** the Customer may not use or disclose such information unless it receives the prior written consent of **Steelmart**, such information enters the public domain (other than as a result of a breach of this clause) or the use or disclosure is required by law.
- 12. Force Majeure**
- Steelmart** is not liable for failure to perform its obligations under the Contract to the extent and for so long as its performance is prevented or delayed without substantial fault or negligence by **Steelmart** because of circumstances outside **Steelmart** control, failure of **Steelmart** machinery, or failure of a supplier to **Steelmart**, provided that **Steelmart** gives notice to the Customer of the delay and uses reasonable efforts to remedy the cause of the delay quickly.
- 13. Representations and Fitness for Purpose**
- (a) Except as expressly provided to the contrary in the Contract, all representations, warranties, guarantees and implied terms or conditions in relation to the Goods (whether implied or otherwise) are hereby excluded to the maximum extent permitted by law.
  - (b) The Customer agrees that if 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. The Customer agrees that, unless expressly agreed by **Steelmart** in writing, it has made its own enquiries in relation to the suitability of the Goods and does not rely on representations by **Steelmart** in relation to their suitability for a particular purpose or any steps which may need to be taken in relation to their use.
- 14. Limitation of Liability**
- (a) **Steelmart** liability to the Customer (and any party claiming through the Customer against **Steelmart**) for any claim for loss or damages (including legal expenses) made in connection with the Contract (including the supply of Goods described in the Contract) whether in contract, tort (including negligence), under statute, in equity or otherwise shall be strictly limited as follows (except to the extent that the law prohibits such a limitation):
    - i. for any liability arising from Goods not meeting the specification or which are said to be otherwise defective or deficient, **Steelmart** liability is limited to the cost of replacement of those Goods as soon as reasonably practicable, or the repair of those Goods or the repayment (or allowance) of the invoice price of those Goods (at the option of **Steelmart**);
    - ii. for any liability arising from the services forming part of the Goods not meeting the scope or which are said to be otherwise defective or deficient, **Steelmart** liability is limited to the provision of the services again or payment of the cost of having the relevant services provided (at the option of **Steelmart**);
    - iii. for any liability that does not fall within the scope of clauses 14(a)i) or ii), **Steelmart** liability for any loss or damage arising from or caused in any way by **Steelmart**, the Goods it supplies or the Contract is excluded (to the maximum extent permitted by law).
  - (b) **Steelmart** shall not be liable, to the maximum extent permitted by law, for

any indirect, special or consequential loss or damage of any nature whatsoever resulting from or caused in any way by the Goods it supplies, where "indirect, special or consequential loss or damage" includes: (A) any loss of income, profit, production, contract, customers, business opportunity or business; (B) any loss of goodwill or reputation; (C) any loss of value of intellectual property; (D) any loss or damage resulting from the loss or damage to goods other than the Goods.

- (c) Any claim by the Customer in respect of defective, non-conforming or damaged Goods must be made in writing within 14 days of the delivery of the Goods, unless a longer period is expressly agreed to by **Steelmart** in writing.
- (d) Despite any other provision of the Contract, **Steelmart** is not liable, to the maximum extent permitted by law, for:
- the cost of removal of Goods not meeting the specification or which are said to be otherwise defective or deficient, whether installed or otherwise;
  - the cost of installation of replacements for Goods not meeting the specification or which are said to be otherwise defective or deficient;
  - defects or deficiencies in Goods caused by improper installation or maintenance of Goods or related components or normal wear and tear and damage.

#### 15. Waiver

Except as expressly set out in the Terms and Conditions, a party waives a right under the 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 the 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 and notices

(a) **Steelmart** may at any time vary the Terms and Conditions applicable to future Orders and may notify the Customer of these changes or provide any other notice under or in connection with the Terms and Conditions by email, facsimile, post or, in the case of a variation of the Terms and Conditions, by publishing the revised Terms and Conditions or notice on its website. If **Steelmart** publishes the revised Terms and Conditions on its website, it may (but is not obliged to) notify the Customer that it has done so on any invoice or Order Acknowledgement.

(b) Notices given by **Steelmart** will be deemed to be received:

- if given by email, on being sent, provided the notice is sent to the email address of an officer or employee of the Customer responsible for placing or administering orders for Goods and no "out of office" or other automated reply is received indicating that the message has not been or will not be received or read by the intended recipient;
- if given by facsimile transmission to a facsimile number shown in the application for credit (or any other number provided by the Customer) by production by **Steelmart** of a copy of the facsimile transmission bearing the time and date of dispatch, on that date and at that time; and
- if given by post, on the third day after posting.

(c) The Customer agrees to regularly check **Steelmart** website for any notices of changes to the Terms and Conditions and to accept any notices from **Steelmart** as agent for any guarantor.

#### 18. Costs

The Customer must pay **Steelmart** all costs and expenses incurred by **Steelmart** in connection with the Contract including legal expenses (on a full indemnity basis), stamp duty (including fines and penalties) and costs incurred or payable by **Steelmart** in connection with registering, maintaining or releasing any security interest, charge, mortgage or caveat in connection with the Contract, or the recovery of the Amount Payable or in otherwise enforcing **Steelmart** rights against the Customer under the Contract. The costs of registering any PPSA financing statement will be paid by the Customer and may be invoiced or debited against the Customer's credit account.

#### 19. Default Interest

**Steelmart** may charge interest on any overdue amount at a rate equivalent to 2.5% p.a. above the business overdraft interest rate of its principal banker, as determined and calculated by **Steelmart**. Such interest will be payable on demand by **Steelmart** and for so long as it remains unpaid will compound on a monthly basis.

#### 20. Applicable Law

The Contract is governed by, and the Customer submits to the law of the State of Queensland (or any other State or Territory nominated by **Steelmart**). The courts of that State or Territory have non-exclusive jurisdiction in connection with the Contract. The Sale of Goods (Vienna Convention) Act 1986 (New South Wales) (and any similar legislation relating to the Vienna Convention in other States or Territories) does not apply to the Contract.

#### 21. Assignment

**Steelmart** may assign its rights or novate its rights and obligations under the Contract (in whole or in part) to any person without the consent of the Customer. In the event of a novation, the Customer may, if it has reasonable grounds to believe that the novatee will not comply with the Contract, by written notice given within 30 days of receiving notice of the novation terminate any Order which has not been completed and which was accepted prior to the novation. The Customer may not assign or otherwise transfer its rights under the Contract without prior notice to and consent from **Steelmart**. The Customer must promptly notify **Steelmart** in writing of any change to its registered address or other contact details provided to **Steelmart**.

#### 22. Attorney

The Customer irrevocably appoints **Steelmart** and each of its authorised officers, jointly and severally, to be its attorney to do any act or thing which the Customer is required to do under the Contract, if the Customer is in Default (including executing and registering instruments). **Steelmart** may exercise its powers even if this involves a conflict of duty and even if it has a personal interest in doing so. A third party may rely on a copy of the Terms and Conditions certified by a solicitor as evidence of the appointment of **Steelmart** as the attorney of the Customer. The Customer must ratify all acts and things done by **Steelmart** and its authorised officers in the exercise of this power of attorney.

#### 23. Standard Grades of Materials and Measures

(a) Subject to clause 23(b), **Steelmart** will use its reasonable endeavours to:

- supply Goods having the grade of material specified in the Order Acknowledgment (if applicable); and
- ensure that any grade of material as specified in the Order Acknowledgment 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 **Steelmart**.

(b) Unless otherwise agreed in writing:

- all Goods will be supplied and delivered in accordance with **Steelmart**'s standard practice and shall be subject to **Steelmart** normal tolerances, limitations and variations of the following: dimension, weight, shape, composition, mechanical properties, structure, quality and service conditions;
- any statements made by **Steelmart** as to weight, length, quantity or other characteristics of Goods are approximate and **Steelmart** may supply Goods on an actual or calculated basis (calculated in accordance with applicable Australian standards); and
- Steelmart** statements as to weight, length, quantity or other characteristics are final (in the absence of manifest error) and will not be contested by the Customer unless the Customer has given **Steelmart** written notice of any error within 14 days of delivery and a reasonable opportunity to examine and re-test the Goods before they are used or dealt with.

#### 24. Shortages

(a) The Customer will inspect and check all Goods received as soon as practicable upon unloading. No claim by the Customer for shortages of Goods may be made unless such claim is notified to **Steelmart** with 48 hours of such inspection.

(b) **Steelmart** will endeavour to rectify any shortages as soon as practicable after receiving notice but will not be liable for or in respect of such rectification.