

## CUSTOM STEEL DOORS AND WINDOWS – TERMS OF TRADE

These Terms of Trade (“*Terms*”) as amended or replaced from time to time, apply to any goods or services (“*Services*”) supplied or to be supplied to the Customer or any third person on the Customer’s behalf by the Company. If the Customer constitutes more than one person or entity, the Terms bind each of them jointly and severally.

All services shall be carried out by appropriately qualified staff. Services carried out or completed by the Company adhere to all regulations and guidelines set out in the applicable Australian Standards and/or any other standards associated with the type of work.

### 1. Definitions

“*Company*” means **The Real Man of Steel Pty Ltd ABN 25 616 234 998** (trading as *Custom Steel Doors and Windows*), its successors, assigns or any person acting on behalf of and with the authority of The Real Man of Steel Pty Ltd.

“*Customer*” means the customer (or any person acting on behalf of and with the authority of the customer) as described on any quotation, work authorisation or other form provided by the Company to the Customer. Any reference to the Customer also includes its successors or permitted assigns.

### 2. Acceptance

- a) Any instructions received by the Company from the Customer for the supply of Services and/or the Customer’s acceptance of any Services supplied by the Company shall constitute acceptance of these Terms by the Customer. The Company is under no obligation to accept a request for the supply of Services.
- b) Upon acceptance of these Terms by the Customer, the Terms are binding and can only be amended with the written consent of the Company.
- c) Where the customer is a corporate entity, the Customer shall give the Company not less than seven (7) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer’s name and/or any other change in the Customer’s details (including the Customer’s address). The Customer shall be liable for any loss incurred by the Company as a result of the Customer’s failure to comply with this clause.

### 3. Australian Consumer Law

To the extent permitted by law, these Terms exclude all conditions, warranties, terms and consumer guarantees implied by law (including *Australian Consumer Law and Fair Trading Act 2012*) arising in connection with a supply of goods and services.

### 4. Price and Payment

- a) Subject to these Terms, the price shall be the Company’s written quoted price to the Customer provided it is accepted within thirty (30) days (“*Price*”).
- b) The Company reserves the right to vary the Price by written notice to the Customer prior to commencing the Services if there is an increase in the costs of materials that are to be used.

- c) Any changes to the original design or scope (as described in the written quote) shall incur additional charges at the discretion of the Company.
- d) Unless otherwise agreed in writing by the Company, payment shall be made as follows:
  - i) Upon acceptance of the written quote – 50% of the Price as a deposit;
  - ii) During the provision of Services – 35% of the Price as a progress payment when so invoiced by the Company. (If Services are expected to take longer than fourteen (14) days to complete, the Customer agrees to make weekly progress payments, based on the amount of work that has been completed as determined by the Company);
  - iii) Upon completion of Services (as determined by the Company) – 15% being the balance.
- e) Payment must be made within seven (7) days of receipt by the Customer of an invoice from the Company in the manner indicated in that invoice.
- f) Any amount not paid by the due date will incur interest of 10% per annum with daily rests from the beginning of the billing cycle until payment is received by the Company.
- g) The Customer agrees to pay all costs and expenses (including legal costs on an indemnity basis, commissions paid by the Company to any corporate or mercantile agent) incurred by the Company in connection with the recovery of overdue amounts and enforcing these Terms.

## **5. Risk and title**

- a) Title in all goods (including but not limited to steel doors and windows) provided by the Company in the provision of the Services remain with the Company until the Customer has paid the Company in full and clear funds. However, all risk for the goods pass to the Customer on delivery to the Customer's designated address.
- b) A certificate signed by an officer of the Company identifying the goods and certifying that monies are owed to the Company shall be conclusive evidence of the Company's title in those goods and of the money owed to the Company.
- c) If any goods are damaged or destroyed following delivery to the Customer but prior to title passing, the Company is entitled to receive all insurance proceeds.
- d) Where the Customer authorises the Company to leave goods outside the Customer's designated premises or to deliver the goods to an unattended location, then such goods shall be left at the Customer's sole risk and it shall be the Customer's responsibility to ensure the goods are insured adequately.
- e) The Customer acknowledges that any illustration, drawing or specification supplied by the Company ("*Specs*") are drafts and approximates. Any tangible or intellectual property rights in Specs shall remain the property of the Company. Specs are to be treated at all times as

confidential and not made use of without the prior written consent of the Company. The Customer must return or destroy the Specs if directed by the Company to do so at any time.

## **6. Cancellation**

- a) Notwithstanding any other term, where the Customer cancels the Services prior to completion, the Customer shall pay the Company for:
  - i) any goods acquired or manufactured by the Company on behalf of the Customer unless such goods are deemed by the Company to be capable of use by the Company within 30 (thirty) days of the cancellation without modification or further cost to the Company; and
  - ii) all work in progress by the Company up to the date of cancellation.
- b) Upon payment pursuant to clause 6(a)(i) and/or (ii) (as applicable), the Customer may collect within 14 (fourteen) days of the payment the acquired or manufactured goods and/or work in progress from the Company.
- c) The Company has a continuing discretion to allocate available materials and labour and gives no warranty as to certainty of supply of Services by a particular date unless expressly agreed in writing in advance.

## **7. Force Majeure**

The Company is not liable for any delay or the failure to perform any obligation arising as a result of any event beyond its control.

## **8. Compliance with laws and safety obligations**

- a) The Customer shall obtain (at its own expense) all licences, permits and approvals that may be required for the Services.
- b) The Customer agrees that the premises will comply with any occupational health and safety laws relating to building/construction sites (if applicable) and any other relevant safety standards or legislation.
- c) It is the Customer's responsibility to remove any toxic substances that are discovered at the premises and the Customer agrees to indemnify the Company in relation to any costs incurred by the Company as a consequence of such a discovery.
- d) The Company is not responsible for the removal of rubbish from or clean-up of the building/construction site.

## **9. Security Interest**

- a) The Customer agrees that these Terms, including any quotation or invoice covering any goods used in the provision of Services by the Company ("*goods*"), constitute a security agreement for the purposes of the PPSA and the Customer grants the Company a security interest over the goods.

- b) The Customer consents to registration of that security interest on the Personal Property Security Register and does not require notification by the Company of registration when made.
- c) "PPSA" means the *Personal Property Securities Act 2009 (Cth)* (as amended) and any other legislation and regulations in respect of it and the following words have the respective meanings given to them in the PPSA: financing change statement, financing statement, register, registration, security agreement, security interest and verification statement.
- d) The Customer further agrees that:
  - i) the Company may register any actual or impending security interest (in any manner the Company considers appropriate) in relation to any security interest contemplated or constituted by these Terms in the goods and the proceeds arising in respect of any dealing in the goods;
  - ii) the Company will continue to hold the security interest in the goods notwithstanding that the goods may be processed, altered from their supplied form or commingled with other goods;
  - iii) the security interest will have priority over any registered or unregistered general (or other security) and any unsecured creditor, to the fullest extent permitted by law;
  - iv) the security interest secures all monies owing to the Company under these Terms or otherwise; and
  - v) if the Customer defaults under these Terms, the Company may enforce its security interest in the goods by entering the Customer's property or premises or that of a third party without notice to seize, dispose of or retain the Property (without being liable to the Customer or any other party) to the extent allowed by law, or by exercising all or any of its other rights under these Terms or under the PPSA.
- e) The Customer undertakes to:
  - i) do anything that is required by the Company:
    - i. so that the Company acquires and maintains its security interest under the PPSA in respect of the goods and its proceeds;
    - ii. to register a financing statement or financing change statement; and
    - iii. to ensure that the Company's security position and rights and obligations are not adversely affected by the PPSA;
  - ii) not register a financing change statement in respect of a security interest contemplated or constituted by these Terms without the Company's prior written consent;
  - iii) not create or purport to create any security interest in the goods, nor register, or permit it be registered, a financing statement or a financing change statement in relation to the goods in favour of a third party without the Company's prior written consent; and
  - iv) not otherwise deal with the goods in a way which will or may prejudice any rights of the Company set out in these Terms or pursuant to the PPSA.
- f) For any goods supplied to the Customer that are not goods that are used predominantly for personal, domestic or household purposes, the parties agree to contract out of the application of sections 95, 118, 121(4), 130, 132(4), 135, 142 or 143 of the PPSA in relation to the goods.

- g) The Customer waives any right the Customer may otherwise have to:
  - i) Receive any notices the Customer would otherwise be entitled to receive under sections 95, 118, 121, 130, 132 or 135;
  - ii) Apply to a Court for an order concerning the removal of an accession under section 97;
  - iii) Object to a proposal to purchase or retain any collateral under sections 130 and 135;
  - iv) Receive a copy of a verification statement confirming registration of a financing statement, or a financing change statement, relating to any security interest the Company may have in goods supplied to the Customer from time to time.
- h) Notwithstanding any other clause herein, the Customer agrees to notify the Company in writing of any anticipated change in the Customer's name, address, contact details, business practice, or other change in the Customer's details registered on the PPSR, at least ten (10) days prior to effecting any such change.
- i) The Customer also hereby charges in favour of the Company all of its right title and interest in all real estate, which it now has or may hereafter acquire.

#### **10. General**

- a) If any provision of these Terms shall be invalid, illegal or unenforceable the validity, existence, legality and enforceability of the remaining Terms shall not be affected.
- b) If the Company elects not to exercise any of its rights arising as a result of breach of these Terms it shall not constitute a waiver of any rights relating to any subsequent or other breach.
- c) These Terms shall be governed by the laws of Victoria, Australia and are subject to the jurisdiction of the courts in Victoria, Australia.
- d) In the event of any breach of these Terms by the Company (and to the extent allowed by law), the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price. The Company shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these Terms.
- e) Notwithstanding clause 10(d), the Company will not be liable for any claim regarding an alleged fault or defect contributed to by the Customer or any third party nor for any associated transport, installation, rectification, labour or other cost. The Customer acknowledges that to the extent allowed by law the Company accepts no liability in relation to products manufactured by third parties and gives no warranty of suitability or fitness for purpose of any such products.
- f) The Customer shall not be entitled to set off against or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Company nor to withhold payment of any invoice because part of that invoice is in dispute.
- g) The Company may licence or sub-contract all or any part of its rights and obligations without the Customer's consent.