

## 1. Definitions

- 1.1 “B&B Steel” means “Kia Kaha Queensland Pty Ltd (ACN: 120-781-562) as trustee for The Auckram-Carter Family Trust (ABN: 19-377-677-061) trading as B&B Steel Fabrication (B&B Steel), its successors and assigns or any person acting on behalf of and with the authority of Kia Kaha Queensland Pty Ltd.
- 1.2 “Customer” means the person/s ordering the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 “Goods” means all Works, Services, Steel fabrication, manufactured product, substitute product, repair, or related goods or services supplied by B&B Steel to the Customer at the Customer’s request from time to time (where the context so permits the terms “Goods”, “Services” or “Works” shall be interchangeable for the other).
- 1.4 “Price” means the Price payable for the Goods as agreed between B&B Steel and the Customer in accordance with clause 3 below.

## 2. Acceptance

- 2.1 **The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions when the Customer places an order** for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with B&B Steel’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and B&B Steel.

## 3. Price and Payment

- 3.1 At B&B Steel’s sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by B&B Steel to the Customer; or
  - (b) B&B Steel’s quoted price (subject to clause 3.2) which will be valid for the period stated in the quotation or otherwise for a period of sixty (60) days.
- 3.2 B&B Steel reserves the right to change the Price if a variation to B&B Steel’s quotation is requested. Any variation from the plan of scheduled Goods or specifications (including, but not limited to, any variation as a result of additional Goods required due to hidden or unidentifiable difficulties or as a result of increases to B&B Steel in the cost of materials and labour) will be charged for on the basis of B&B Steel’s quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 3.3 At B&B Steel’s sole discretion a non-refundable deposit may be required.
- 3.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by B&B Steel, which may be:
- (a) on delivery/completion of the Goods;
  - (b) by way of instalments/progress payments in accordance with B&B Steel’s payment schedule;
  - (c) thirty (30) days following the end of the month in which a statement is posted to the Customer’s address or address for notices;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by B&B Steel.
- 3.5 Payment may be made by cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and B&B Steel.
- 3.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to B&B Steel an amount equal to any GST B&B Steel must pay for any supply by B&B Steel under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

## 4. Dimensions, Plans and Specifications

All customary industry tolerances shall apply to the dimensions and measurements of the Goods unless B&B Steel and the Customer agree otherwise in writing.

B&B Steel shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer.

If the giving of an estimate or quotation for the supply of Goods involves B&B Steel estimating measurements and quantities, it shall be the responsibility of the Customer to verify the accuracy of B&B Steel's estimated measurements and quantities, before the Customer places an order based on such estimate or accepts such quotation.

Should the Customer require any changes to B&B Steel's estimated measurements and quantities, the Customer shall request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.

## **5. Limitation of Liability**

B&B Steel shall be under no liability whatsoever to the Customer for any indirect loss and/or expense (including loss of profit or goodwill) suffered by the Customer or any third party arising out of a breach by B&B Steel of these terms and conditions.

In the event of any breach of this contract by B&B Steel the remedies of the Customer shall be limited to damages and B&B Steel's liability (if any) whether in contract, tort or otherwise in respect of any defect in the Goods, Materials, Services, or for any breach of these terms and conditions, or of any duty owed to the Customer in connection with them shall be limited to the amount of the Price.

## **6. Delivery of Goods**

6.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:

- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at B&B Steel's address; or
- (b) B&B Steel (or B&B Steel's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.

6.2 At B&B Steel's sole discretion the cost of delivery is included in the Price and shall be confirmed in the quotation.

6.3 Any time or date given by B&B Steel to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and B&B Steel will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

## **7. Risk**

7.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.

7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, B&B Steel is entitled to receive all insurance proceeds payable for the Goods. The production of terms and conditions by B&B Steel is sufficient evidence of B&B Steel's rights to receive the insurance proceeds without the need for any person dealing with B&B Steel to make further enquiries.

7.3 If the Customer requests B&B Steel to leave Goods outside B&B Steel's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.

## **8. Title**

8.1 B&B Steel and the Customer agree that ownership of the Goods shall not pass until:

- (a) the Customer has paid B&B Steel all amounts owing to B&B Steel; and
- (b) the Customer has met all of its other obligations to B&B Steel.

8.2 Receipt by B&B Steel of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

8.3 It is further agreed that:

- (a) until ownership of the Goods passes to the Customer in accordance with clause 8.1 that the Customer is only a bailee of the Goods and must return the Goods to B&B Steel on request.
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for B&B Steel and must pay to B&B Steel the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed. The Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for B&B Steel and must pay or deliver the proceeds to B&B Steel on demand.

- (c) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of B&B Steel and must sell, dispose of or return the resulting product to B&B Steel as it so directs.
- (d) the Customer irrevocably authorises B&B Steel to enter any premises where B&B Steel believes the Goods are kept and recover possession of the Goods.
- (e) B&B Steel may recover possession of any Goods in transit whether or not delivery has occurred.
- (f) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of B&B Steel .
- (g) B&B Steel may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

## **9. Personal Property Securities Act 2009 (“PPSA”)**

9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

9.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by B&B Steel to the Customer.

9.3 The Customer undertakes to:

- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which B&B Steel may reasonably require to;
  - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  - (ii) register any other document required to be registered by the PPSA; or
  - (iii) correct a defect in a statement referred to in clause 9.3(a)(a) or 9.3(a)(ii);
- (b) indemnify, and upon demand reimburse, B&B Steel for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of B&B Steel ;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of B&B Steel ;
- (e) immediately advise B&B Steel of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

9.4 B&B Steel and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

9.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

9.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

9.7 Unless otherwise agreed to in writing by B&B Steel, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.

9.8 The Customer must unconditionally ratify any actions taken by B&B Steel under clauses 9.3 to 9.5.

9.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.

## **10. Security and Charge**

10.1 In consideration of B&B Steel agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

10.2 The Customer indemnifies B&B Steel from and against all B&B Steel’s costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising B&B Steel’s rights under this clause.

10.3 The Customer irrevocably appoints B&B Steel and each director of B&B Steel as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.

### **11. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**

11.1 The Customer must inspect the Goods on delivery and must within fourteen (14) days of delivery notify B&B Steel in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow B&B Steel to inspect the Goods.

11.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).

11.3 B&B Steel acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

11.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, B&B Steel makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. B&B Steel's liability in respect of these warranties is limited to the fullest extent permitted by law.

11.5 If the Customer is a consumer within the meaning of the CCA, B&B Steel's liability is limited to the extent permitted by section 64A of Schedule 2.

11.6 If B&B Steel is required to replace the Goods under this clause or the CCA, but is unable to do so, B&B Steel may refund any money the Customer has paid for the Goods.

11.7 If the Customer is not a consumer within the meaning of the CCA, B&B Steel's liability for any defect or damage in the Goods is:

- (a) limited to the value of any express warranty or warranty card provided to the Customer by B&B Steel in B&B Steel's sole discretion;
- (b) limited to any warranty to which B&B Steel is entitled, if B&B Steel did not manufacture the Goods;
- (c) otherwise negated absolutely.

11.8 Subject to this clause 12, returns will only be accepted provided that:

- (a) the Customer has complied with the provisions of clause 11.1; and
- (b) B&B Steel has agreed that the Goods are defective; and
- (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
- (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.

11.9 Notwithstanding clauses 11.1 to 11.8 but subject to the CCA, B&B Steel shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

- (a) the Customer failing to properly maintain or store any Goods;
- (b) the Customer using the Goods for any purpose other than that for which they were designed;
- (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) the Customer failing to follow any instructions or guidelines provided by B&B Steel ;
- (e) fair wear and tear, any accident, or act of God.

### **12. Default and Consequences of Default**

12.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of five percent (5%) per calendar month (and at B&B Steel's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

12.2 If the Customer owes B&B Steel any money the Customer shall indemnify B&B Steel from and against all costs and disbursements incurred by B&B Steel in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Customer basis, B&B Steel's collection agency costs, and bank dishonour fees).

12.3 Without prejudice to any other remedies B&B Steel may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions B&B Steel may suspend or terminate the supply of Goods to the Customer.

12.4 B&B Steel will not be liable to the Customer for any loss or damage the Customer suffers because B&B Steel has exercised its rights under this clause.

12.5 Without prejudice to B&B Steel's other remedies at law B&B Steel shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to B&B Steel shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to B&B Steel becomes overdue, or in B&B Steel's opinion the Customer will be unable to make a payment when it falls due;
- (b) the Customer 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
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

### **13. Cancellation**

13.1 B&B Steel may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice B&B Steel shall repay to the Customer any money paid by the Customer for the Goods. B&B Steel shall not be liable for any loss or damage whatsoever arising from such cancellation.

13.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by B&B Steel as a direct result of the cancellation (including, but not limited to, any loss of profits).

13.3 Cancellation of orders for Goods made to the Customer's specifications, or for non-stock list items, will definitely not be accepted once production has commenced, or an order has been placed.

### **14. Privacy Act 1988**

14.1 The Customer agrees for B&B Steel to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by B&B Steel.

14.2 The Customer agrees that B&B Steel may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- (a) to assess an application by the Customer; and/or
- (b) to notify other credit providers of a default by the Customer; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Customer.

The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

14.3 The Customer consents to B&B Steel being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

14.4 The Customer agrees that personal credit information provided may be used and retained by B&B Steel for the following purposes (and for other purposes as shall be agreed between the Customer and Joiner or required by law from time to time):

- (a) the provision of Goods; and/or
- (b) the marketing of Goods by B&B Steel, its agents or distributors; and/or
- (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.

14.5 B&B Steel may give information about the Customer to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Customer;



(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

14.6 The information given to the credit reporting agency may include:

- (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
- (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
- (c) advice that B&B Steel is a current credit provider to the Customer;
- (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
- (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
- (f) information that, in the opinion of B&B Steel, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
- (g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
- (h) that credit provided to the Customer by B&B Steel has been paid or otherwise discharged.

## **15. General**

15.1 The failure by B&B Steel to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect B&B Steel's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

15.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which B&B Steel has its principal place of business, and are subject to the jurisdiction of the courts in that state.

15.3 Subject to clause 12. B&B Steel 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 B&B Steel of these terms and conditions (alternatively B&B Steel's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

15.4 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 B&B Steel nor to withhold payment of any invoice because part of that invoice is in dispute.

15.5 B&B Steel may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

15.6 The Customer agrees that B&B Steel may amend these terms and conditions at any time. If B&B Steel makes a change to these terms and conditions, then that change will take effect from the date on which B&B Steel notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for B&B Steel to provide Goods to the Customer.

15.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

15.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.