

# Stainless Central Terms and Conditions

November 2018

## 1. APPLICATION

These terms form part of any:

- (a) sale of Products by the Seller to the Buyer; and
- (b) provision of Services to the Buyer;

## 2. DEFINITIONS

In this Agreement:

- (a) **Buyer** means the buyer of Product or Services from the Seller;
- (b) **Default Event** means where:
  - (i) the Buyer does not pay any amount owing to the Seller when it is due;
  - (ii) an Insolvency Event occurs; or
  - (iii) the Buyer is in breach of any obligation it has to the Seller and does not rectify it after 7 days' notice;
- (c) **Delivery** means delivery of Products to any place nominated by the Seller or to any agent or courier nominated by the Buyer and Delivered has a corresponding meaning;
- (d) **Force Majeure Event** means any event outside the control of the Seller;
- (e) **Insolvency Event** includes any of the following:
  - (i) the Buyer commits an act of bankruptcy;
  - (ii) a receiver is appointed to the Buyer or any of its property;
  - (iii) the Buyer has a liquidator, administrator or some other form of insolvency administrator appointed to it or in respect of any of its property, whether formal or informal;
  - (iv) the Buyer ceases to carry on business; or
  - (v) the Buyer enters into a scheme of compromise with its creditors;
- (f) **Premises** means anywhere that Products are stored by the Buyer or on behalf of the Seller;
- (g) **Price** means the price for the Products determined in accordance with the Seller's pricing policy as notified to the Buyer or listed on its website from time to time;
- (h) **Product** means any goods or products supplied by the Seller to the Buyer whether on consignment or otherwise;
- (i) **PPSA** means the Personal Property Securities Act 2009 (Cth);
- (j) **Seller** means Stainless Central Pty. Limited ABN 56 165 870 208; and
- (k) **Services** means services provided by the Seller to a Buyer

## 3. EXCLUSION OF CONDITIONS AND WARRANTIES

- (a) To the fullest extent permitted by any law, all conditions and warranties implied by law arising out of the supply of the Product by the Seller, are excluded.
- (b) The Seller does not limit or exclude the application of any provision of any statute (including the *Competition and Consumer Act 2010* (Cth) or any similar law) where to do so would contravene that statute or cause any part of this clause to be void.

- (c) Without limiting clause 3(a), the Seller has no liability (including liability for negligence) to any person for:

- (i) any loss or damage (including consequential loss) suffered by any person which arises directly or indirectly out of the supply of Products to any person,
- (ii) any loss or damage (including consequential loss) suffered by any person which arises directly or indirectly out of any failure of, or defect or deficiency in, any Product; or
- (iii) any loss or damage (including consequential loss) suffered by any person which arises directly or indirectly out of the provision of any advice, recommendation or service by the Seller.

## 4. LIMITATION OF LIABILITY

Where any condition or warranty arising out of the supply of Products by the Seller cannot be excluded by any law, the liability of the Seller arising out of a breach of any condition or warranty is, at the Seller's option, to the extent permitted by law, limited to:-

- (a) in the case of the supply of Products by the Seller:
  - (i) replacement of the Products;
  - (ii) paying the cost of supplying equivalent products; or
  - (iii) refunding the price paid by the Buyer in respect of the supply of the Products; and
- (b) in the case of the provision of any Services by the Seller, by supplying the Services again or paying the cost of having equivalent Services supplied.

## 5. DELIVERY

Unless other delivery arrangements are agreed, Delivery will take place at the Seller's premises. The Seller will make all reasonable efforts to have the Products Delivered to the Buyer on any date agreed between the parties as the Delivery date, but the Seller has no liability if Delivery is not made on this date. The Buyer must accept Delivery of the Products ordered and pay the Price irrespective of any delay in Delivery.

## 6. RISK AND STORAGE

- (a) Risk in the Products passes to the Buyer on Delivery.
- (b) The Buyer is responsible for the proper storage, handling and use of the Products.
- (c) Without limiting clause 6(b) the Buyer must:
  - (i) store the Products in compliance with all relevant environmental laws and regulations; and
  - (ii) hold and comply with all permits and licences required by law or the Seller, which relate to storing and handling the Products.

## 7. PROPERTY AND PPSA

- (a) A term that is used in italics in this clause 7 has the same meaning as used in the PPSA.

- (b) Legal and equitable property in the Products supplied by the Seller to the Buyer does not pass to the Buyer until:
- (i) the money owing for those Products;
  - (ii) and any other money owing by the Buyer to the Seller, has been paid (whether or not the Products are Delivered at different times, are the subject of separate invoices or, after Delivery, may be determined by the Seller to be the subject of a specific invoice).
- (c) Until all amounts owing by the Buyer to the Seller are paid, the Buyer:
- (i) must properly store, protect and insure the Products, including storing them in a manner that clearly shows that they are the property of the Seller;
  - (ii) must not consume or sell Products other than in the ordinary course of business;
  - (iii) may use the products in a manufacturing or other process of its own or of a third party in the ordinary course of business;
  - (iv) (without prejudice to any other rights of the Seller) authorises the Seller and any person authorised by it to enter any Premises to inspect Products and undertake a stocktake;
  - (v) agrees not to attempt to sell, assign, charge or otherwise encumber or grant any right or interest in any Products or over any debts and other obligations which a third party may owe to the Buyer as a result of the use, manufacture or resale of the Products, without the permission of the Seller; and
  - (vi) must immediately advise the Seller of any breach by the Buyer of this clause.
- Nothing in this clause 7(c) limits or excludes the Seller's interest as principal in those debts and other obligations. If the Price of all Products sold to the Buyer is greater than the sum of all payments actually received by the Seller in respect of the Products, the difference remains a debt owing by the Buyer to the Seller.
- (d) If, at any time, the Seller retains legal title to the Products as contemplated by this clause 7, the Buyer acknowledges and agrees that:
- (i) these terms and conditions are a *security agreement*;
  - (ii) this clause 7 creates a *security interest* in all present and after acquired Products as security for the Buyer's obligations to the Seller;
  - (iii) the Seller is a *secured party* in relation to the Products and any proceeds of the Products, and is entitled to register its interest on the register established under the PPSA as a *security interest* or, if applicable, a *purchase money security interest*, at the discretion of the Seller;
- (iv) the Seller may, by notice to the Buyer, require the Buyer to take all steps that the Seller considers necessary or desirable to ensure its *security interest* in the Products is enforceable, and to perfect, or better secure the position of the Seller under these terms and conditions as a first ranking security;
  - (v) the Buyer must comply with a notice from the Seller under this provision at the cost and expense of the Buyer;
  - (vi) the Buyer must promptly inform the Seller of any change to information that it provides to the Seller under this provision; and the Seller is not obliged to give any notice or provide copies of any documents or other information under the PPSA (including notice of a verification statement) unless the provision of the notice, document or information is required by the PPSA and cannot be excluded.
- (e) The Buyer will be liable for any loss arising from or in connection with the recovery of possession of the Product by the Seller, in the event of a breach of this clause 7 by the Buyer.
- (f) Every payment to the Seller in respect of the Products must be taken to be a payment:
- (i) firstly, of the amounts held by the Seller subject to a *security interest*, to the extent that the *security interest* is not a *purchase money security interest*;
  - (ii) secondly, of amounts subject to a *security interest* to the extent that it is a *purchase money security interest*;
  - (iii) thirdly, for any Products that the Buyer has sold but for which it has not received proceeds; and
  - (iv) fourthly, for whatever Products that the Buyer has not sold as the Seller elects.
- (g) If a Default Event occurs:
- (i) any right of the Buyer to sell or otherwise dispose of the Products, or part with their possession in the ordinary course of business and any other rights of the Buyer in respect of the Products, immediately terminates;
  - (ii) the Buyer must immediately return to the Seller all Products in which title has not passed; and
  - (iii) without notice to Buyer and without prejudice to any of the Seller's other rights, the Seller may recover and/or re-sell the Products and the Buyer irrevocably authorises the Seller (and anyone authorised by it) to enter the Buyer's premises at any time to take possession of the Products for that purpose.
- (h) The Buyer indemnifies the Seller for all claims, actions, suits, demands or orders for costs or damages relating to or arising out of the Seller exercising its right of entry under this clause.

## 8. FORCE MAJEURE

- (a) The Seller is not liable for any delay or the failure to perform any obligation to the Buyer caused by a Force Majeure Event.
- (b) If a Force Majeure Event causes an increase in costs to be incurred by the Seller (for example, as a result of changes in exchange rates), the Seller may change the Price payable for the Products at any time (including after an order has been placed) to reasonably reflect the additional costs incurred or to be incurred.

## 9. PRICE AND PAYMENT

- (a) The Buyer must pay the Price for the Products amount to the Seller.
- (b) The Price for subsequent orders of Products is subject to change at any time, including after an order has been placed.
- (c) All invoices must be paid within 7 days of issue unless otherwise agreed.
- (d) Amounts outstanding beyond the time due for payment as agreed by the Seller will automatically be subject to a service charge of 1.25% for each month, (or part) that the outstanding amount remains unpaid.

## 10. DEFAULT

- (a) If a Default Event occurs, the Seller may exercise any rights it may have against the Buyer including (without limitation):
  - (i) suspending Delivery of Products;
  - (ii) requiring cash payment on Delivery;
  - (iii) entering any Premises and removing Products owned by the Seller;
  - (iv) commencing legal action to recover any amount owing by the Buyer; or
  - (v) exercising any security it holds in respect of the Buyer's obligations to the Seller.
- (b) Any expense, cost or disbursements incurred by the Seller in recovering any outstanding monies including debt collection agency fees, commission and any fees, costs or disbursements paid to the Seller's solicitors, must be paid by the Buyer on a full indemnity basis.
- (c) If the Buyer is a trustee of a trust, the Buyer acknowledges that in addition to the assets of the trust being available to meet its obligations, the Buyer is personally liable for those obligations.

## 11. DESIGN OF PRODUCTS

The Buyer;

- (a) Acknowledges that the Seller does not provide any warranty or make any representation in respect of the design of any Product;
- (b) Indemnifies the Buyer together with its officers employees and contractors and agrees to keep them indemnified against any loss or claim any of them suffer or incur (including legal costs on a solicitor/client basis) arising out of the supply of any Product which has been designed by anyone other than the Seller; and

- (c) Acknowledges that whilst the Seller may make suggestions in respect of the design of any Product for the Buyer to consider, it is not providing Services in respect of the design of any Product. The Buyer must satisfy themselves that the design of any Product is suitable and of a sufficient standard to achieve the purposes for which the Buyer intends to use the Product.

## 12. GST

- (a) In these terms:
  - (i) **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended (**GST Act**) or any replacement or other relevant legislation and regulations;
  - (ii) words used in this clause which have a particular meaning in the GST law (as defined in the GST Act) have the same meaning, unless the context otherwise requires;
  - (iii) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.
- (b) Unless GST is expressly included, the consideration expressed to be payable under any other clause of these terms and conditions for any supply made under or in connection with these terms and conditions (including the price at which the Products are sold) does not include GST.
- (c) To the extent that any supply made under or in connection with these terms (including the supply of the Products) is a taxable supply, the GST exclusive consideration otherwise payable for that supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is to be paid or provided.

## 13. GENERAL

- (a) The Seller may at any time set-off any amount owing by the Seller to the Buyer, against any amount payable by the Buyer in respect of Products and/or Services whether or not that amount is due and payable or actually or contingently due.
- (b) If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of these terms remains in force.
- (c) The law of New South Wales governs these terms. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.